

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Wednesday, July 23, 2008

Volume 19

INQUIRY PROCEEDINGS

COMMISSION STAFF:

Mr. David M. Paciocco Commission Counsel
Mr. Vincent Clifford Associate Commission Counsel
Mr. R.L. Giasson Chief Administrative Officer
Ms. Melissa Braun Administrative Secretary
Ms. Wendy Bergmann Administrative Assistant
Ms. Kim Pohorily Commission Clerk

APPEARANCES

Mr. G. Zazelenchuk and
Mr. I. Restall For Robert Taman and Family
Mr. M. Green and
Ms. K. Dixon For Mr. Marty Minuk
Mr. J. Prober and
Mr. B. King For Derek Harvey-Zenk
Mr. R. McDonald and
Ms. B. Bowley For R.M. of East St. Paul
Mr. H. Weinstein and
Ms. L. Labossiere For Mr. Harry Bakema
Ms. S. Hanlin and
Mr. M. Jack For Winnipeg Police Service
Mr. K. Labossiere, Ms. K. Clearwater,
Mr. S. Hoepfner and Mr. S. Messner
For Winnipeg Police Assoc.
Mr. G. McFetridge and
Mr. S. Nozick For the Province of Manitoba
Court Reporters:
Debra Kot
Cecelia Reid

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1 WEDNESDAY, JULY 23, 2008

2 UPON COMMENCING AT 9:30 A.M.

3

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

6 THE COMMISSIONER: Good morning.

7 MR. PACIOCCO: Good morning,

8 Mr. Commissioner. First witness today is going to
9 be Inspector Humniski. I understand that's his
10 current rank, I may be mistaken, but we'll learn
11 shortly enough.

12 CHRISTOPHER BASIL HUMNISKI, having
13 been first duly sworn, testified as
14 follows:.

15 BY MR. PACIOCCO:

16 Q Am I correct, Mr. Humniski, that
17 you're now an inspector with the Winnipeg Police
18 Service?

19 A No, I hold the rank of sergeant.

20 Q I do apologize, not for having
21 promoted you, but for having the information
22 wrong.

23 Sir, you were the shift supervisor of
24 B-1 platoon, District 3, on February 24th and 25th
25 of 2005?

1 A Yes.

2 Q Sir, if you could speak into the
3 microphone and maybe pull it a little closer to
4 you, and try and make audible responses to the
5 question so that the transcription will include
6 all --

7 A Yes, I was.

8 Q Thank you, sir. You were an officer
9 for at least 27 years at that point?

10 A Yes.

11 Q Sir, I'm going to begin by asking when
12 you first learned about this horrible tragedy
13 involving the death of Crystal Taman?

14 A On Friday the 25th, I came into work
15 at 11:00 a.m. And I was at work for an hour or
16 two, and at that point I had heard about it.

17 Q And I understand you received some
18 communication from, at the time, Keith McCaskill
19 who was the head of the District 3?

20 A Yes.

21 Q What was his position, sir?

22 A He was Inspector at that time.

23 Q Sir, and he contacted you, sir?

24 A Actually, I was in one of the hallways
25 and bumped into each other.

1 Q Okay. And what did you learn during
2 that conversation?

3 A At that time he advised me that one of
4 my shift members, Derek Harvey-Zenk, had been
5 involved in an accident where there was a fatality
6 involved and that a woman had been killed. And I
7 asked him what time it had happened, and he
8 indicated at 7:30.

9 Q And I think you also received
10 information, did you not, that he was at the East
11 St. Paul Police Station?

12 A Yes. When I first heard about it, I
13 asked if he had been injured, and that was when
14 the Inspector McCaskill advised me that he was at
15 the East St. Paul Station.

16 Q And sir, did Inspector McCaskill
17 indicate to you that he was there being processed,
18 sir?

19 A No.

20 Q Because Inspector McCaskill, we have
21 had the privilege of his testimony, now as Chief
22 McCaskill, in this matter. And his narrative of
23 what he learned was that Derek Harvey-Zenk was at
24 the East St. Paul Police Station being processed.
25 And can you cast your memory back and try and

1 determine whether you had, in fact, learned that
2 information, given that it seems logical, at least
3 to me, that that would have been mentioned to you
4 at the time?

5 A From what I recall, when I went for my
6 interview here, is that that was the information I
7 had received at the time. As far as the exact
8 wording is being processed or not, I couldn't say,
9 but he was there at that East St. Paul Station at
10 the time.

11 Q As an experienced officer, I take it
12 your intuition, or certainly your educated
13 inference would have been that he had somehow been
14 implicated in that accident as a suspect, given
15 that he was at the police station, sir?

16 A Well, because it's a fatality, I
17 couldn't -- I don't believe he indicated that. I
18 believe that he just indicated that he was at East
19 St. Paul. And any time there's a fatality, it's
20 the person that's involved would be taken into the
21 station.

22 Q Okay. Sir, I understand that you
23 learned later that day that, in fact, there were
24 going to be charges arising out of this incident?

25 A Yes.

1 Q Do you recall where you learned that?

2 A Yes. I contacted the Police
3 Association and made inquiries.

4 Q I see. And when did you do that, sir?

5 A It was later in the afternoon, I
6 believe.

7 Q Do you recall who you spoke to at the
8 Police Association?

9 A Yes, I spoke with Lorne Schinkel.

10 Q And did you receive any information
11 about a wellness officer or anyone else attending
12 with Derek Harvey-Zenk?

13 A No, I didn't.

14 Q Sir, I'm going to take you to the
15 evening prior to the collision, and Branigan's. I
16 understand that you attended Branigan's after
17 midnight, approximately 1:00 o'clock in the
18 morning on what would have been February 25th,
19 2005?

20 A Yes.

21 Q And you have testified, in your
22 interview with Mr. Clifford, that this was a very
23 unplanned event, I think those were your words,
24 sir?

25 A Yes.

1 Q And when you were being interviewed by
2 the Professional Standards Unit, Detective
3 Sergeant Girard at one point, in summarizing your
4 evidence, referred to, this as an impromptu
5 get-together and there's no response by you in the
6 interview. I take it, sir, that you didn't take
7 any issue with the suggestion that it was
8 impromptu? Is that a word you feel comfortable
9 with? I guess I should ask you that.

10 A That's probably not a word I would
11 use. But I know it wasn't -- for me, it was a
12 last minute decision to go there, and I wasn't
13 involved in any kind of a plan for it. And as far
14 as what transpired after, that I would say was
15 impromptu as well.

16 Q All right. Do I sense that you are
17 qualifying any impression that I may have gotten
18 from reading the transcript that Branigan's was an
19 unplanned event, sir?

20 A I heard about it that evening during
21 the course of the evening but...

22 Q That's your recollection?

23 A Yes.

24 Q So you're basing that description of
25 it being unplanned on your own stage of discovery

1 that this was going to occur; is that fair to say,
2 sir?

3 A Yes, I believe I was asked that in my
4 interview, and yeah.

5 Q And the reason I'm asking you is
6 because we have received information that David
7 Harding, one of your police constables, contacted
8 the general manager of Branigan's, Mr. Rodrigo
9 Bravo, to alert him that a large group of police
10 officers were going to be coming. And our
11 information is also that Rodrigo Bravo finished
12 work that day at 7:00 p.m. And as a result, that
13 communication most logically would have taken
14 place before that time. So, do you have any
15 information, sir, as to whether this was something
16 that was in the works earlier?

17 A No, I don't.

18 Q And in fact, Constable Harding
19 testified, although he had no clear memory of it,
20 he said this may have been something mentioned
21 during the shift briefing on the 24th. Is that --
22 were you at the shift briefing? Would you have
23 been there on the 24th, sir?

24 A At the briefing on the 24th, I
25 couldn't say for sure.

1 Q You couldn't say for sure whether you
2 were there?

3 A I don't always sit in on the shift
4 briefings. The shift briefings are normally held
5 by the Patrol Sergeant.

6 Q Yes, sir. So it may or may not have
7 happened, but it doesn't spring to mind, me having
8 mentioned the possibility of an announcement
9 occurring at the shift briefing?

10 A On that night?

11 Q Yes, sir?

12 A I couldn't be sure.

13 Q Thank you. I think you did observe,
14 in one of your interviews, that it ended up being
15 effectively the entire shift that went, with the
16 exception I think of Constable Parag? You did not
17 mention Constable Parag, but he's the only
18 gentleman who we have determined wasn't there
19 based on the list of the shift members, sir?

20 A Yes. Yeah, I recall that.

21 Q Sir, you were aware, of course, that
22 this shift, and perhaps many other shifts in the
23 Winnipeg Police Service, but the one we are
24 interested in did, from time to time, attend at
25 Branigan's for the purpose of a get-together, just

1 before the overlap day at the end of the evening
2 shift, sir?

3 A Yes.

4 Q And it's kind of a fairly regular
5 occurrence?

6 A For some of the shifts maybe, I'm not
7 sure.

8 Q Yes. So that the general manager of
9 Branigan's indicated that this was about a once a
10 month event. And Constable Harding, in his
11 evidence, basically said the same thing, sir. So
12 it's something that -- I think the point is, this
13 is not something that would have come right out of
14 the blue?

15 A There may have been discussion that
16 date about it.

17 Q Yes, sir. But this type of
18 get-together on the evening before the overlap
19 day, after the shift that was worked, is not
20 something that would have been unexpected, it's
21 not something that would have come out of the
22 blue, given past practice?

23 A No.

24 Q And so it wouldn't really be accurate
25 to use the term, and I know it's not your word,

1 "impromptu" with respect to describing this type
2 of a get-together, sir?

3 A Not for that get-together, for the
4 going to Sean Black's afterwards --

5 Q Okay.

6 A -- would be more impromptu.

7 Q All right. And you would agree with
8 me that this was something of a shift party?

9 A It was a shift going out to socialize.

10 Q But would you agree that it's
11 something of a shift party? I'm not trying to
12 build on any nefarious connotation there, sir.
13 It's just that Inspector McCaskill apparently used
14 that word in your presence when describing what
15 you had just told him, when he was with Inspector
16 Stannard?

17 A Well, it could be referred to as a
18 shift party. It was a shift of people going out.

19 Q What was the atmosphere like at
20 Branigan's when you were there, sir?

21 A There was people that were just
22 socializing there.

23 Q Sir, was it loud or anything like
24 that?

25 A Not extremely loud, no.

1 Q Did you notice whether it got louder
2 during the closing time? I know it says the
3 evening progressed, sir, and I know you didn't get
4 there until 1:00 in the morning. But over the
5 course of the hour plus that you were there, did
6 you notice any change in the atmosphere, sir?

7 A No, I didn't.

8 Q You responded to that same question
9 during your interview with Mr. Clifford by saying:
10 "Not that I recall, sir."

11 Did you mean, when you said that, you don't
12 remember whether there was a change in the
13 atmosphere, or were you basically denying that
14 there was any change in the atmosphere, based on
15 your memory?

16 A If I indicated I didn't recall, it was
17 I wouldn't remember, or I didn't remember.

18 Q Okay. Because, again, the Commission
19 has heard evidence from one of the servers,
20 Chelsea O'Halloran, who was present that evening,
21 and I'm going to quote from her transcript and see
22 whether or not this is something that accords with
23 your memory. At page 15 of her testimony, excuse
24 me, at transcript 15, page 3715, she says:

25 "Towards the middle and the end of the

1 night, they were all getting kind of
2 loud and rowdy because they were
3 drinking.

4 Q What was the noise level like?

5 A It was loud."

6 So she's testified that there was a change in the
7 atmosphere, that it became louder as the officers
8 continued to drink, and that by the end of the
9 evening it was loud, sir. Does that assist you at
10 all in remembering what the atmosphere was like at
11 Branigan's?

12 A Well, I only attended there, like I
13 said, after 1:00, and it would have been more
14 towards the end of the evening, and I never
15 noticed really a change in the atmosphere.

16 Q Would you agree with the suggestion
17 that it was loud, sir?

18 A I'm not sure what it would be loud in
19 comparison to. This was a lounge, it's a large
20 room.

21 Q Sir, who was present at that room when
22 you were there? And I'm not necessarily asking
23 about individuals, but how was the room composed
24 in terms of patrons?

25 A In the actual room?

1 Q Yes, sir?

2 A I know I drew a sketch here at my last
3 interview.

4 Q Yes, I saw that.

5 A Yeah.

6 Q What I'm essentially putting to you,
7 sir, is that we have heard evidence that certainly
8 by the time in the evening when you got there, the
9 only people who would have been there would be
10 members of the Winnipeg Police Service who were
11 attending this get-together. And what I'm going
12 to suggest to you, sir, is that while it may have
13 been in a lounge, it was much more like a private
14 gathering by that point in the evening, sir.
15 Would you accept that?

16 A I couldn't accept that. I'm not sure
17 if there was other patrons there as far as public
18 at that point or not.

19 Q So it's not something you noticed one
20 way or the other?

21 A No, I didn't.

22 Q Where did you go when you arrived at
23 Branigan's?

24 A Where did I go?

25 Q Within the lounge?

1 A I sat at a table more in the northern
2 area of the lounge area.

3 Q Okay. So closer to the fireplace
4 area, sir?

5 A When I gave my interview, and I still
6 don't remember exactly where this fireplace was, I
7 don't recall a fireplace there, it was just that I
8 was more in the northern most part of the lounge
9 area.

10 Q How often have you been to Branigan's?

11 A I was there probably twice.

12 Q Okay. And so you sat at the north
13 end. What about the kind of seating that you
14 would have had? Can you describe that for the
15 Commissioner?

16 A I know the seating that I was at was
17 kind of a lower lounge type of seating, lounge
18 area, what I recall.

19 Q Okay. We've been furnished with
20 descriptions of the seating available, and it
21 consisted either of stools and high-top tables or
22 small love-seat style couches with slightly lower
23 tables. I take it, sir, that you are describing
24 that you may have been sitting in some type of
25 love-seat or couch type atmosphere?

1 A Yeah, something lower.

2 Q Who were you sitting with?

3 A From the best of my recollection, Jim
4 Anderson was at my table and I believe Jack Kapka
5 might have been there as well.

6 Q All right. Sir, how strong is your
7 recollection of that?

8 A Not very.

9 Q Because Sergeant Anderson testified
10 yesterday, and he talked about how he gravitated
11 over to the high tables and stood there, or
12 perhaps sat there. While he allowed for some
13 mingling, there was no description of him sitting
14 at the type of setting you are describing, nor
15 could he recall whether he was with you, sir. So
16 does that all shake your confidence in who was
17 with you, sir?

18 A No. I believe when I first sat down,
19 Jim Anderson was at the table, and Jack Kapka as
20 well.

21 Q Is there anyone else you can recall at
22 your table?

23 A No.

24 Q What did you have to drink at
25 Branigan's, sir?

1 A I had two beer.

2 Q And you had something to eat as well,
3 I take it?

4 A Yes.

5 Q You had wings?

6 A Yes.

7 Q How did you pay for your beer, sir,
8 and your wings?

9 A I believe I paid cash.

10 Q And, sir, you had an interview
11 ultimately with the Professional Standards Unit?

12 A Yes.

13 Q Sir, did they ask you whether you had
14 a receipt or anything that might verify your
15 consumption?

16 A I don't believe so, no.

17 Q Sir, would you have any idea how much
18 Derek Harvey-Zenk had to drink at Branigan's that
19 evening, sir?

20 A No, I would not.

21 Q And why would that be, sir?

22 A I don't even recall seeing Derek at
23 Branigan's. There was a larger group of people
24 and I didn't pay any notice to him.

25 Q Okay, sir. When you heard about the

1 horrible tragedy that befell Crystal Taman, and
2 that Derek Harvey-Zenk was implicated in that, I
3 take it you would have cast your mind back to try
4 to figure out what you could about whether or not
5 Derek Harvey-Zenk could have committed the crimes
6 that were being alleged against him?

7 A Yes.

8 Q And sir, having done that, you still
9 came up empty in terms of having any recollection
10 of seeing him at Branigan's?

11 A Yes.

12 Q Do you recall seeing other people from
13 your shift there, sir?

14 A Yeah.

15 Q Do you recall seeing other specific
16 individuals there?

17 A Yes, I do.

18 Q Are you able to tell us where any of
19 those individuals were sitting, sir?

20 A No, not specifically, sir.

21 Q We've been given to understand that,
22 when the evening came to an end and it came time
23 to pay, there was a bit of a delay in paying and
24 getting out of there. Does that accord with your
25 recollection, sir?

1 A Yes.

2 Q And we've been given to understand
3 that, in fact, there was kind of a cluster of
4 people or a line-up around the pool table area,
5 tailing back into the lounge area, at the cash
6 register while people waited their turns to pay.
7 Does that accord with your recollection?

8 A Yes.

9 Q And I'm going to ask you whether, in
10 that cluster of people you recall, having the
11 opportunity to cast your mind back, seeing Derek
12 Harvey-Zenk?

13 A No, I did not.

14 Q Sir, we have received testimony from
15 the manager on duty, Mr. Darcey Gerardy, at
16 Branigan's. And I'm going to ask you first
17 whether you noticed anybody who was not fit to
18 drive as you were mulling around, waiting to pay
19 your bills, or as you were leaving Branigan's?

20 A No, I did not.

21 Q Sir, Mr. Gerardy's testimony was that
22 there were a few officers whose condition caused
23 him enough concern that he said he would have cut
24 them off. They should have been cut off. And in
25 fact, he testified that he very forcefully

1 insisted that they not be allowed to leave if they
2 were going to drive. Did you recall overhearing
3 any such conversation involving Darcey Gerardy or
4 anyone else about the fitness of any of your
5 colleagues to drive after being at Branigan's?

6 A No, I didn't.

7 Q Sir, he also indicated that a few
8 people came forward and assured him that
9 individuals who he had identified or was speaking
10 about were being taken care of and that they would
11 not be allowed to drive. You don't know who those
12 individuals would have been, sir?

13 A No, I don't.

14 Q Mr. Gerardy also testified that he
15 actually went out into the parking lot, or looked
16 out into the parking lot to make sure that the
17 people he was concerned about didn't get behind
18 the wheel of any vehicles. You have no
19 recollection of anything like that happening, sir?

20 A No, I don't.

21 Q Did you see Constable David Harding at
22 Branigan's?

23 A I believe I did, yes.

24 Q Sir, what was your assessment of his
25 fitness to drive?

1 A I didn't make any assessment at the
2 time.

3 Q And what type of observation
4 opportunity did you have with respect to Constable
5 Harding?

6 A I recall him mingling in the lounge
7 area, but that's basically all I can recall about
8 that.

9 Q Do you recall anything about his
10 behaviour, sir?

11 A No.

12 Q Because, again, the testimony that we
13 have received is that his behaviour had changed
14 over the night, and that even the word "obnoxious"
15 has been used to describe the way he was behaving.
16 You didn't notice anything like that, sir?

17 A No, I didn't.

18 Q So you leave Branigan's. What happens
19 after you leave Branigan's, sir? I take it you
20 leave with everybody else at around 2:30 is the
21 general time we had been given, sir?

22 A Yeah, I believe it was approximately
23 that time. While I was waiting to pay, Sean Black
24 had invited me to his residence.

25 Q That was a personal invitation to you

1 from Sean Black, sir?

2 A Yeah.

3 Q All right. Please continue.

4 A And with that in mind, I went out to
5 my vehicle and then I followed Sean. I wasn't
6 sure where he lived, other than I knew it was off
7 Hoddinott, and I followed a group of vehicles
8 towards Sean's residence.

9 Q I understand that it was basically on
10 your way home. It wasn't like you were having to
11 go out of your way to go there, or am I
12 misunderstanding?

13 A Yes, that's one of the reasons I went,
14 it was on my way home.

15 Q You went in a bit of a convoy with
16 other vehicles in order to locate his house with
17 precision, I take it?

18 A Yes.

19 Q Did you stop? Did the convoy or group
20 stop?

21 A Yes, they stopped at a 7-11 store.

22 Q And sir, what was the stop for?

23 A Sean went in, and from what I saw
24 later when he arrived home, he went to pick up a
25 couple of sodas and some ice, I believe.

1 Q Sodas and ice, mix for drinks, sort of
2 thing?

3 A Yeah.

4 Q When he invited you to his place, what
5 did he say to you?

6 A Well, I couldn't give you his exact
7 words. I believe he just said some people were
8 coming over to his place and he wanted to know if
9 I wanted to attend there.

10 Q Okay. Was there any suggestion that,
11 come on over for a drink?

12 A I couldn't say for sure, no.

13 Q All right. You wouldn't be able to
14 say that didn't happen?

15 A No, I couldn't.

16 Q You were -- when you arrived there, we
17 have heard evidence as to who the composition of
18 officers was who attended that location, including
19 yourself and now Sergeant Black, we understand
20 that there were a total of 11 people. Does that
21 accord with your recollection, sir?

22 A I never counted the number, but that
23 would be the approximate number, I think, yeah.

24 Q Where did that group go when they
25 arrived at Constable Black's house?

1 A I believe everyone entered through the
2 front door.

3 Q Yes, sir?

4 A And some went in the kitchen area. I
5 know I went in and got a bit of a tour of the
6 house. I think Sean was kind of showing the house
7 around a bit.

8 Q Okay. And where did you ultimately
9 congregate as a group for the most part?

10 A Mainly in the kitchen/family area.

11 Q Okay. What did you have to drink at
12 Constable Black's?

13 A I had Rye and Coke.

14 Q And how did you get the Rye and Coke,
15 sir?

16 A When I first got there, one of the
17 fellows offered me a drink and they had Rye there
18 so...

19 Q That would have been Norbert Bauer,
20 sir?

21 A Yes.

22 Q And do you know where Norbert Bauer --
23 I take it when you say he offered you a drink, did
24 he fetch it for you? Did he go and get it for
25 you?

1 A He was standing at a kitchen counter.

2 Q Okay. And what did he do after -- I
3 take it you agreed to have a drink, sir -- what
4 did he do?

5 A He poured a drink.

6 Q You were present with him when he
7 poured the drink?

8 A Yeah.

9 Q Sir, who else was with you and Norbert
10 Bauer as he was pouring you that drink?

11 A I believe Sean Black was in the area.
12 He was unpacking -- he had chips as well and he
13 was putting food out.

14 Q All right. Sir, anybody else that you
15 recall being in the area when you are pouring your
16 drink or when your drink is being poured for you?

17 A Well, everybody is in the immediate
18 area, like as far as the kitchen and into the
19 family-room area, but not specifically who was
20 beside me or anything at that point.

21 Q Did you have any other drinks
22 throughout the evening apart from the one that was
23 initially poured for you by Norbert Bauer?

24 A Yes.

25 Q And how many other drinks did you

1 have, sir?

2 A I had one.

3 Q You say that with some confidence.

4 You remember you had two drinks there, sir?

5 A Yes.

6 Q And I understand that you left around

7 3:30, 4:00 o'clock in the morning?

8 A Yeah, approximately that time, yeah.

9 Q So you were there in total either just
10 under or an hour; is that fair, sir?

11 A Yes.

12 Q And there was a reason why you left
13 when you did?

14 A Yes.

15 Q And could you just advise the
16 Commissioner as to what that was?

17 A Well, I was working at 11:00 the next
18 morning. Plus the routine at home is I get up at
19 7:00 when my wife leaves to work, she was driving
20 my daughter to university at that point. And my
21 two sons had to get up and have breakfast, I had
22 their lunches packed, and get ready for school.

23 Q So you had responsibilities in the
24 morning?

25 A Yes.

1 Q Are you able to tell us whether anyone
2 who had attended at Sean Black's residence
3 departed before you did?

4 A I don't believe so. I think I was the
5 first one.

6 Q Did you have any interaction with
7 Harvey-Zenk at Sean Black's house?

8 A Not really. I didn't -- I don't
9 recall speaking directly to him. He was in the
10 group, but I don't recall speaking to him
11 directly.

12 Q Do you recall seeing him, sir?

13 A Yes.

14 Q And could you indicate where you saw
15 him?

16 A In the kitchen area, I believe I saw
17 him seated at one point in the, there is like a
18 kitchen nook area, and also maybe mingling and
19 walking through the kitchen.

20 Q Do you have a distinct recollection of
21 that, sir?

22 A Yes.

23 Q And so are these two discrete
24 sightings when you just can picture him in a
25 particular location, are you able to tell us how

1 long he was in each of those modes?

2 A No. What happened after this incident
3 had occurred, I was trying to think back of when I
4 did see him, and those are the situations where I
5 remember seeing him in.

6 Q So casting your mind back, you
7 basically came up with, would it be fair to say,
8 two sightings of him in your mind's eye?

9 A Yes.

10 Q And that's really all you were able to
11 come up with, sir?

12 A Yes. I also recall him having a glass
13 in his hand --

14 Q All right, sir.

15 A -- during one of those sightings.

16 Q Okay. Is there anything more you can
17 tell us about the glass in his hand, sir?

18 A No.

19 MR. PACIOCCO: This is what you put in
20 your interview with the PSU. I'm going to ask
21 that document F-2.35.s be made an exhibit and
22 provided to the witness, please?

23 THE CLERK: Exhibit 174.

24

25

1 (EXHIBIT 174: F-2.35.s, Transcript
2 Interview of Sgt Chris Humniski,
3 February 28, 2005)

4 MR. PACIOCCO: The number is F-2.35.s
5 and the exhibit number would be 174.

6 BY MR. PACIOCCO:

7 Q Sir, what's been placed in front of
8 you is the statement that you had furnished to the
9 PSU. And I'm going to take you, please, to page
10 13 of the statement, page 1154 for those of us who
11 have tabbed books.

12 You said, sir, and you'll look and see
13 that response about four lines down from the top
14 of the page.

15 "As far as even at Sean's, as far as,
16 I didn't really see Derek having any
17 drinks. I didn't see him pouring
18 anything. I may have seen, I was
19 trying to go back because I know it's
20 important for the sake of the MVA and
21 I may have seen him with a glass in
22 his hand but I'm not sure what he had
23 in it."

24 Does that response accord with your recollection,
25 sir?

1 A Yes.

2 Q I just want to plumb a little further
3 at some of the language that you used. You say:
4 "I didn't really see Derek have any
5 drinks."

6 Is that something you are certain about, that you
7 didn't see him have drinks? It's just the term
8 "really" in there is a little disconcerting to
9 someone who is trying to get as much precision as
10 possible.

11 A That could be just a manner of which I
12 speak.

13 Q Yes, sir.

14 A I can't really explain why that's
15 there but...

16 Q We all have speech patterns, sir. So
17 the idea essentially is, you're saying you did not
18 have any recollection of seeing him drink. Is
19 that a fair way to put it, sir?

20 A Yes.

21 Q The same,
22 "I didn't see him pouring anything."
23 Are you sure at that time that you didn't see him
24 pouring anything, or are you basically describing
25 your state of memory as it was?

1 A What I did during this, prior to the
2 interview --

3 Q Yes, sir?

4 A -- is I went back and thought about it
5 as much as I could, because it was important
6 regarding the motor vehicle accident that had
7 occurred, and that was all I could recall.

8 Q Okay. And you saw him with a glass in
9 his hand?

10 A Yes.

11 Q What can you tell us about the glass?

12 A Not very much.

13 Q Are you able to tell us whether it was
14 opaque or whether it was something that you
15 couldn't -- that you could see through?

16 A I believe it was just a glass. I
17 couldn't really get any kind of description of it.

18 Q Are you able to tell us what colour
19 the liquid was inside of the glass?

20 A No.

21 Q And, sir, you have been a police
22 officer for 27 years?

23 A I have been one for 31 years now.

24 Q Twenty-seven at the time?

25 A Yes.

1 Q Twenty-eight?

2 A Yes.

3 Q And you have also worked in the
4 investigations area, sir?

5 A Yes.

6 Q You are certainly trained to be
7 inventory and accustomed to being observant?

8 A While at work, yes.

9 Q Yes. Well, sir, is it something that
10 you switch on and off, your capacity to observe
11 and catch detail and remember things that you
12 would have trained a lifetime for, sir?

13 A Well, I didn't go to Branigan's or
14 Sean Black's with a work mentality, I was going
15 there to socialize, you know, and relax. And I
16 didn't really notice, out of a group of people, it
17 was very difficult to single one out after the
18 fact.

19 Q All right, sir, so --

20 A That's all I could notice.

21 Q So even though it was shortly after a
22 matter that you understood to be of tremendous
23 significance, that's the best you are able to do?

24 A Yes.

25 Q Do you know who he was interacting

1 with?

2 A Not in particular, no. There was a
3 group of people, and people were mingling around
4 through the kitchen, and I don't really recall
5 seeing him with anyone in particular.

6 Q So it's fair to say that, in your
7 recollection of events, after learning about this
8 horrid tragedy, he remained a fairly anonymous
9 person in terms of the gathering, sir?

10 A Yes.

11 Q And as a result, I take it, you were
12 unable to observe whether Derek Harvey-Zenk
13 appeared to be under the influence of alcohol?

14 A Yes.

15 Q Sir, did you -- you told the PSU that
16 it wasn't like a drinking party or anything. Do
17 you remember saying that to them, sir?

18 A Yes.

19 Q You didn't mean to suggest that there
20 was no alcohol being served?

21 A No.

22 Q This wasn't a stop at a doughnut shop
23 for a coffee on the way home from an evening out
24 with your friends, sir. It was individuals who
25 had gone to a bar for upwards of three hours,

1 yourself excepted, going off to a colleague's
2 house, to a home in a group as large as 11 where
3 alcohol is being served, sir. What is a drinking
4 party, in your view?

5 A The term drinking party to me, from my
6 years working in uniform patrol, a drinking party
7 is a loud, kind of a wild gathering.

8 Q So, sir, is it the wildness that turns
9 it into a drinking party, sir?

10 A Well, I think also with the, maybe the
11 amount of drinking that's going on.

12 Q Was Branigan's a drinking party, in
13 your view, sir?

14 A I couldn't say.

15 Q You were there.

16 A Yes.

17 Q It's your definition. Why are you not
18 able to say whether Branigan's meets your
19 definition of a drinking party?

20 A Well, Branigan's is a lounge that
21 serves food and liquor.

22 Q Yes, sir. And there was food and
23 liquor being served at Constable Black's house as
24 well, sir?

25 A Yes.

1 Q And why can't you indicate whether or
2 not Branigan's was a drinking party, in your view?

3 A Well, in my view, I would say it
4 wasn't a drinking party, even though there was
5 liquor and food being served there. It didn't
6 appear to me that it was, in your definition, a
7 drinking party.

8 Q I don't really have a definition, sir.
9 I'm asking you to work with your definition. Was
10 Officer Black's not just a continuation of the
11 party that was happening at Branigan's? Would
12 that be a fair way to put it? Some people were
13 prepared to go home and others were prepared to go
14 on and keep on?

15 A Well, I didn't really see a party like
16 you're describing at Branigan's, it was a group
17 going to another colleague's place after, after
18 the place closed.

19 Q Okay. Sir, I'm going to take you to
20 an exchange that occurred with the PSU, and this
21 one is at page 1151. I don't know whether your
22 pages are numbered that way. But you will find it
23 at page 10. Sergeant Girard -- this is at line 4,
24 sir, are you with me?

25 "Okay. How would you characterize the

1 gathering at Sean Black's place?

2 At Sean's it was fairly quiet."

3 Sir, you had described how we have almost 11
4 people, some might not be there at the same time,
5 all in the kitchen area after being at a bar for
6 three hours. Reflecting back on it, do you really
7 feel that "quiet" is an appropriate description of
8 the atmosphere at Sean Black's house?

9 A Yes.

10 Q Okay.

11 "At Sean's it was fairly quiet. It
12 was not like it was -- and that's one
13 of the reasons I came, because it
14 wasn't like a big drinking party or
15 anything. He made popcorn. The guys
16 had chips and dip. It was very low
17 key. There wasn't that many people
18 and no one seemed to be having
19 problems or difficulties as far as
20 over-consumption, that I could see."

21 Now you go on, sir, and you talk about Dave
22 Harding, but the phrase no one was having
23 difficulties as far as over-consumption that you
24 could see, is that an accurate description of your
25 observation, sir?

1 A Yes.

2 Q Would you include Dave Harding in
3 that?

4 A No, I wouldn't.

5 Q So it's not an accurate statement to
6 provide that no one seemed to be having problems
7 or difficulties as far as over-consumption?

8 A No, I mentioned David Harding.

9 Q Yes, you do.

10 A Yes, I do.

11 Q And here's how you mention him.

12 "I know prior to me leaving, David
13 Harding was saying he didn't feel very
14 good, so I know he sat down I think in
15 the living-room for a bit, and then
16 Sean offered him a couch. Sean's
17 family wasn't home so he offered him a
18 place to stay. It was shortly after
19 that that I left."

20 Do you see anywhere there, sir, where you describe
21 Dave Harding as having a difficulty with
22 over-consumption?

23 A I don't know really how to answer
24 that, other than Dave had been drinking, and I
25 know in my other statement as well I mentioned

1 that Dave was having a little difficulty.

2 Q Yes, you did.

3 A As far as, I was asked if, I believe I
4 was asked if I had any problems with someone maybe
5 being able to drive afterwards.

6 Q Yes, sir, you were.

7 A Yeah.

8 Q And you did mention Dave Harding in
9 your interview with Mr. Clifford --

10 A Yeah.

11 Q -- as having too much to drink. You
12 didn't, you'd agree with me, mention him as
13 someone having too much to drink in your interview
14 with the Professional Standards Unit, did you,
15 sir?

16 A No, I didn't.

17 Q In fact, Sergeant Girard continues:
18 "Okay. You said David Harding,
19 earlier you said Rob Harding. Is it
20 Dave Harding?
21 I am sorry, it's Dave Harding, not
22 Rob, I am sorry.
23 Sergeant Girard: No, that's all
24 right. So from the sounds of it,
25 correct me if I'm wrong, but it

1 sounded like nothing was really out of
2 control and you didn't have any
3 concern about anybody when you left?

4 No. No, I didn't,"
5 is your response, sir.

6 So would you not agree with me that
7 the way you couched this was kind of an
8 understatement of what was actually happening at
9 Sergeant Black's home?

10 A No, I wouldn't, sir.

11 Q Well, sir, I put that to you because I
12 notice, when you're talking about it fairly quiet
13 and you're describing what goes on, you are
14 talking about him putting out popcorn, chips and
15 dip, and I don't see any reference there to him
16 putting out alcohol, after you specifically saying
17 it wasn't a drinking party.

18 And then I see you talking about no
19 one having problems, difficulties as far as
20 over-consumption that I see. And when you mention
21 Dave Harding, you don't talk about the fact that
22 he wasn't fit to drive, that he drank enough at
23 that party that he actually had to be put down
24 because of alcohol.

25 And then when Sergeant Girard

1 basically summarizes what he understands you to be
2 saying, that you didn't have concern about
3 anybody, you say, no, you didn't.

4 Do you not agree with me that that
5 looks like an attempt to play down what actually
6 happened at Sean Black's house, sir?

7 A What I think I meant by that is that
8 Dave was being looked after. I think Sean Black
9 had offered him a place to stay.

10 Q You'd certainly agree with me, sir,
11 that the way you described it, you soft peddled
12 that, you certainly weren't crisp and clean about
13 exactly what you meant?

14 A I was responding to the questions that
15 I was being asked.

16 Q Sir, I understand that you went to
17 Professional Standards Unit ultimately after
18 attending with Inspector McCaskill at the time?

19 A Yes.

20 Q And that you went to see Inspector
21 McCaskill along with Sergeant Anderson for the
22 purpose of telling the story?

23 A Yes.

24 Q And making sure that everybody had an
25 accurate picture of the evening; correct?

1 A Yes.

2 Q And they ultimately had you give that
3 story to Professional Standards Unit; correct?

4 A That's correct.

5 Q So why would you say that you didn't
6 provide information because you were just
7 responding to the questions, when your quest that
8 day was to get the story out? Why would you limit
9 the story to what you were asked?

10 A That was the way the investigation was
11 being conducted.

12 Q And you didn't feel the need to
13 volunteer relevant information about the nature of
14 the party?

15 A I answered the questions as they were
16 put to me to the best of my manner.

17 Q Sir, you talked to Inspector McCaskill
18 and to Superintendent Stannard that day?

19 A On the Monday, yes.

20 Q The same day that you gave this
21 interview, is that your recollection?

22 A Yes.

23 Q You didn't mention David Harding's
24 condition to them either when you were unfolding,
25 to the extent that you were allowed to, the

1 atmosphere at Sean Black's house, did you?

2 A No, I didn't get into much by the way
3 of detail speaking with --

4 Q The details you did give had to do
5 with the fact that it wasn't a drinking party and
6 you were effectively trying to describe the
7 atmosphere, but you don't include in that the fact
8 that at least one member of that group had
9 consumed enough alcohol that he had to be taken
10 care of. Is that fair, sir?

11 A Yes. And I wouldn't describe it that
12 way because I wouldn't describe any evidence or
13 whatever with the Inspector.

14 Q Well, sir, you were trying to
15 characterize the nature of the party, were you
16 not?

17 A Yeah.

18 Q You were trying to give him a picture
19 of what the party was like, were you not?

20 A I believe so, yeah.

21 Q And you don't think that helps people
22 understand what the gathering was like, sir?

23 A From the actions of one individual as
24 opposed to the group, no.

25 Q Sir, you told us that you learned what

1 happened from Inspector McCaskill; is that
2 correct?

3 A Yes.

4 Q And you had discussions about this
5 event with other members of your shift afterwards,
6 did you not, sir?

7 A We had a briefing, if that's what you
8 are referring to.

9 Q Okay. Well, I'm not going to deal
10 with the briefing. We've heard quite a bit about
11 the briefing. What I do want to talk about is
12 your one-on-one conversation, sir. You clearly
13 had a one-on-one conversation with Sergeant
14 Anderson?

15 A Yes.

16 Q You spoke to him on the weekend?

17 A Yes, I did.

18 Q You resolved to get together and set
19 the record straight with the executive at the
20 Winnipeg Police Service?

21 A Yeah.

22 Q When you were speaking to Sergeant
23 Anderson and getting ready to go in and set the
24 record straight, I take it you wanted to be able
25 to provide the executive with relevant facts they

1 would need to understand what had taken place that
2 evening, or in the early hours of that morning?

3 A Well, I couldn't provide him with all
4 the facts, I didn't know all the facts involved in
5 this matter.

6 Q Sir, did you make any inquiries to try
7 and see what facts you could get before you went
8 forward and purported to describe the nature of
9 that get-together?

10 A No, I didn't.

11 Q Sir, how can you describe the nature
12 of a get-together, and clear the air, and get the
13 record straight, without knowing the details?

14 A I could only provide the details that
15 I gathered while I was there, and my observations.

16 Q And sir, so you're saying that you and
17 Sergeant Anderson went forward, and you had
18 information that was going to terminate at 3:30 to
19 4:00 o'clock in the morning. And you weren't
20 there for the last three and a half hours or three
21 hours of this affair. And you didn't bother to
22 try and find out what the balance of the affair
23 was before going forward and saying it was a quiet
24 evening?

25 A No, I didn't. And the reason for that

1 being is, I knew there would be, or would probably
2 be an investigation launched, and I wasn't going
3 to start conducting that investigation on my own.

4 Q But you were prepared to go on a joint
5 mission with another witness, Sergeant Anderson,
6 and describe your shared perception of the nature
7 of the event. Is that fair, sir?

8 A I discussed some of the incident with
9 Sergeant Anderson, and because of the situation as
10 it was, I thought it was important that it be
11 brought forward. And that was what the decision
12 was.

13 Q What did you talk to Sergeant Anderson
14 about relative to his observations?

15 A We really didn't discuss too much
16 about his observations as well, other than I had
17 indicated I didn't see anything really going wrong
18 or being done wrong.

19 Q You told him that?

20 A Yes.

21 Q And did you ask him whether he saw
22 anything really wrong or being done wrong?

23 A I don't think I had to ask him. I
24 believe he just indicated that.

25 Q All right. So you basically got to

1 the point where you both were in agreement that
2 nothing wrong happened?

3 A Yes.

4 Q Doesn't that involve discussing the
5 event with another witness, sir?

6 A Well, to a point, but not to the point
7 of I would be discussing any evidence that he is
8 going to provide.

9 Q Sir --

10 A I had a situation I had to deal with,
11 that I felt I had to deal with at that time.

12 Q Okay. And I will give you an
13 opportunity to explain how you felt you had to
14 deal with and how, in a moment.

15 You did indicate in your interview
16 that you did learn from Sergeant Anderson what
17 time he left; right?

18 A Yeah, I didn't get an exact time.

19 Q All right. Did he give you the best
20 time he could, sir?

21 A I think he had indicated that he
22 didn't think it was that much longer after I left.

23 Q Sir, did you ask him that question,
24 when did you leave?

25 A No.

1 Q So it was just in the course of a
2 conversation that he told you?

3 A I believe so.

4 Q And I'm just going to ask you, sir,
5 what relevance does his time of leaving have to
6 the mission you were going to undertake?

7 A I don't think it had, other than he
8 was there after I was.

9 Q What would have had relevance, sir, is
10 Jim, what did you see? What was it like there?
11 Look, we're going forward to our superiors and
12 we're going to tell them this was a quiet
13 get-together and it wasn't a drinking party. I
14 don't want to do that unless I'm sure that's the
15 case. Now, what was going on there after I left?
16 Wouldn't that be the conversation you would have
17 had in that situation, sir?

18 A No, it wasn't.

19 Q Sir, you were asked by Mr. Clifford
20 whether you approached Officer Black and said to
21 him, look, what happened after I left your place?
22 And your answer to him was "no," right?

23 A Yes.

24 Q What was that no to? Was that no to
25 whether you approached Officer Black, or was that

1 no to whether you asked him what happened at his
2 place?

3 A It was to if I had asked him anything
4 about the incident.

5 Q So, you did approach Officer Black?

6 A I wouldn't say I approached him. I
7 advised him of Mr. Zenk's accident.

8 Q It was a pretty important piece of
9 information, sir, Mr. Zenk's accident. It was
10 huge news, wasn't it, sir?

11 A Yes.

12 Q And it was something that you felt
13 that the shift was going to have to deal with?

14 A At the time I spoke with Officer
15 Black?

16 Q Just speaking generally, sir, you're
17 an experienced police officer and you were the
18 Sergeant in charge of that platoon. Surely, when
19 you learned that information about one of their
20 colleagues, you realized that this was a big event
21 for the whole group?

22 A When I first heard about it, I was
23 more concerned about Derek Harvey-Zenk's condition
24 and what had happened, and I didn't have a lot of
25 the details.

1 Q Sir, you learned that day that he was,
2 in fact, going to be charged?

3 A Later that day, yeah.

4 Q Are you saying you didn't know that
5 when you spoke to Sergeant Black?

6 A Yes.

7 Q What did you know when you spoke to
8 Sergeant Black?

9 A When I first spoke with Sean Black
10 about the incident was basically what I had
11 learned from Inspector McCaskill, that there had
12 been an accident.

13 Q That's all you told him?

14 A Yes.

15 Q You told him Derek Harvey-Zenk was in
16 the accident?

17 A Yes.

18 Q You told him that a woman died?

19 A Yes, I did.

20 Q You told him Derek Harvey-Zenk was at
21 the police station at East St. Paul?

22 A I would imagine I did, yeah.

23 Q Yes. And do you remember the
24 circumstances in which you told him that?

25 A Yeah. We had a cake and coffee kind

1 of thing going on in the office, in the lunch room
2 at District 3. And I pulled Sean aside and
3 indicated to him this is what I had learned.

4 Q You didn't just pull him aside, sir,
5 you took him outside into the parking lot?

6 A Yeah, outside the lunch room area.

7 Q Notwithstanding that it's the middle
8 of winter, you went out into the parking lot?

9 A Yeah, there's a picnic table lunch
10 room area outside of the lunch room.

11 Q And sir, you took him into a private
12 area where you could have a conversation?

13 A Well, I took him into an area because
14 the lunch room was full of people, I took him
15 outside.

16 Q Yeah. So you wouldn't be around those
17 people, correct?

18 A Yes.

19 Q Why did you feel the need to do that?

20 A I just thought, I didn't want to
21 announce anything amongst people at the gathering
22 as to what had happened.

23 Q Did you think it was going to be a
24 secret, sir?

25 A No.

1 Q And do you think it wasn't something
2 that was pretty important for other police
3 officers to be aware of?

4 A Well, I wasn't sure what was happening
5 at that time with Derek Harvey-Zenk, and I didn't
6 really want to start any rumours or anything
7 happening.

8 Q Well, surely, sir, as the shift
9 supervisor, and you understand that one of your
10 charges, one of the people under your command has
11 been involved in a fatal accident, after leaving a
12 party where there had been alcohol served, after
13 being at a bar all night, surely, sir, you wanted
14 to find out as much as you could about what
15 happened?

16 A Well, I did not ask Sean Black what
17 had happened.

18 Q You learned from Ken Azaransky where
19 he -- that he had stayed overnight, did you not,
20 sir?

21 A I learned that Ken Azaransky had
22 stayed overnight. I'm not 100 per cent sure of
23 how I learned that.

24 Q And you indicated in your interview
25 with Mr. Clifford that it may have been with

1 direct conversations with Ken Azaransky, but you
2 couldn't recall, right?

3 A Yes.

4 Q So you are prepared to discuss with
5 Ken Azaransky or somebody else what his actions
6 were that night?

7 A As I stated, I don't know, and I
8 believe I stated that in my statement, I don't
9 know if I got that information from Ken or not.

10 Q I understand that.

11 A Or from someone else.

12 Q You got it from somebody talking about
13 the events of that night?

14 A I can't say where I got that
15 information from, no.

16 Q But you got it from somebody, you
17 didn't --

18 A Yeah.

19 Q -- just conjure this up?

20 A Yes.

21 Q It was a conversation relating to the
22 events of that night, right?

23 A As I stated, I learned it from
24 someone. I'm not exactly sure who. It may have
25 been Ken. I'm not sure.

1 Q When you left, David Harding was still
2 there at the party?

3 A Yes.

4 Q And according to Superintendent
5 Stannard's notes, he attributes to you the
6 information that people drove "officers" back.
7 And I'm going to ask you to look at this. These
8 are his notes, sir, they are Q-1.89.b.12,
9 Q-1.89.b.12.

10 If we could make that the next
11 exhibit, please?

12 THE CLERK: Exhibit 175.

13 (EXHIBIT 175: Q-1.89.b.12,

14 Superintendent A. Stannard (notes))

15 BY MR. PACIOCCO:

16 Q Now, you recall going to see
17 Superintendent Stannard, along with Inspector
18 McCaskill, Sergeant Anderson and yourself, sir?

19 A Yes.

20 Q And what you have in front of you are
21 his notes from the 28th of February, starting at
22 around 3:00 o'clock. And he lists, if you go
23 through them, I'm not going to ask you to read all
24 the details, but in the third paragraph he
25 describes what Inspector McCaskill stated. And

1 that's where I got that reference to shift party
2 in there, sir.

3 The next paragraph, the fourth, he's
4 got J. Anderson who spoke briefly, and then he's
5 got two paragraphs of comments attributed to J.
6 Anderson. Then he has briefly stated:

7 "Shift went out after work,
8 Branigan's, then Constable S. Black
9 residence. B-1 shift, left at
10 different..."

11 probably, not exactly sure what that word is, but
12 it's going to describe times in some way. Appears
13 members,

14 "Again, members safety net, drove
15 officers back."

16 All right, sir? Do you see where it says "drove
17 officers back"?

18 A Yes.

19 Q Now, that's not something you would
20 have known from your own personal experience that
21 evening, sir?

22 A No, I wouldn't.

23 Q And surely, sir, you and Sergeant
24 Anderson understood that you were going together
25 to make a joint presentation, you would have taken

1 time to figure out what was going to be said, sir?

2 A Well, I had discussions with Sergeant
3 Anderson, and I believe that would have been
4 information coming from him.

5 Q Yes, I'm sure it was, sir. But the
6 point is, I understood from your earlier evidence
7 that you really didn't find out anything about
8 what took place after you left because it was
9 something that you really shouldn't trouble
10 yourself with as a potential witness. Here you
11 are sitting in a room with Sergeant Anderson and
12 you are together relaying the events of the night,
13 and details are coming out that you couldn't have
14 had any personal knowledge of; correct?

15 A That's correct.

16 Q And I'm suggesting that you had a
17 conversation with Sergeant Anderson before you got
18 even in there about what took place at Sean
19 Black's after you left?

20 A Well, like I stated earlier, he had
21 discussed when he had left, it was not that long
22 after myself. But we had no discussions as far as
23 Mr. Harvey-Zenk's condition. I think at this
24 time, at that time, that was the main focus for me
25 as far as any evidence that might be gathered, is

1 people that were looking at Derek Harvey-Zenk and
2 his condition.

3 Q So is it fair to say you felt
4 comfortable talking about anything but Derek
5 Harvey-Zenk's condition? Who left when, how they
6 got home, what kind of safety precautions were in
7 place, what the atmosphere was like, you felt
8 comfortable talking about all those things with
9 Sergeant Anderson, as long as you didn't talk
10 about Derek Harvey-Zenk? Is that fair, sir?

11 A Well, there was some discussion --

12 Q Yes?

13 A -- of these things. I was privy to
14 that during that time.

15 Q Sir, what are your responsibilities as
16 shift supervisor?

17 A On any given day or --

18 Q Just, yeah, just generally, what are
19 your responsibilities?

20 A The administration of the shift, my
21 position is where I stay inside, I handle incoming
22 arrests, make decisions on release. The
23 operations of the shift on a day-to-day basis, as
24 far as that goes, there are daily shift briefings
25 which are conducted by the patrol sergeants.

1 Q Yes, sir.

2 A They are the supervisors that are out
3 on the street.

4 Q Your responsibilities include ensuring
5 that your shift is functioning properly?

6 A Yes.

7 Q That it's able to do its job
8 effectively?

9 A Yes.

10 Q And you're concerned about the morale
11 within your shift?

12 A Yes.

13 Q And you're concerned about the
14 well-being of your members?

15 A Yes.

16 Q And you're concerned about the
17 reputation of your unit?

18 A I'm not sure what you mean by that.

19 Q Well, how it would be viewed within
20 the police force, for example, if this is a
21 dysfunctional group, or if this is a group that is
22 ineffective, or if this is a group that
23 misbehaves, that would be a matter of concern to
24 you, sir?

25 A Yes.

1 Q Because it would not only tarnish the
2 suggestion about how well you do your job, it
3 would also affect the morale of the group that
4 you're dealing with, sir?

5 A Yes, I believe so, yeah.

6 Q You were aware early on that this
7 event involving Derek Harvey-Zenk had
8 implications, not only for this unfortunate family
9 and this woman who died so tragically, and for
10 Derek Harvey-Zenk, you understood that this event
11 had implications for the entire shift, sir?

12 A I think it had implications for the
13 entire service.

14 Q Yes, sir, including and most
15 specifically the people who worked closely with
16 Derek Harvey-Zenk? Do you agree?

17 A I think it had implications for
18 everyone on the service, including those that he
19 worked with, yes.

20 Q And you wouldn't agree that especially
21 those he worked with, who might know him
22 personally and developed some type of personal
23 bond with the man?

24 A Yeah, I would think so.

25 Q Yes. And you understood early on that

1 part of the investigation that was going to be
2 conducted would be into the conduct of the
3 officers who were there at Branigan's and then
4 particularly at Black's?

5 A Initially, no, it was more of a motor
6 vehicle accident investigation, in my mind, and it
7 was regarding --

8 Q As the information broke that this was
9 involving alcohol-related charges against a
10 service member who had been partying, or as the
11 allegation was, with other members of the shift,
12 you understood, certainly, that this event could
13 have implications for the personal interests of
14 other members of your shift, did you not, sir?

15 A I'm not sure what you mean by personal
16 interests?

17 Q Well, let's talk about association
18 issues, and potential disciplinary issues, or
19 letters or other things that might be put on
20 people's records if they were found to have
21 misconducted themselves?

22 A Later on, I believe, that came into
23 mind, but initially it was regarding the accident
24 itself.

25 Q It was on your mind by the time you

1 went to see the individuals who you visited from
2 the executive from the Winnipeg Police Service.
3 Would you agree with that?

4 A Yeah.

5 Q Yes. And this also had implications
6 potentially even for yourself, sir. You were the
7 shift supervisor, you were at a drinking
8 establishment with members of your shift, and
9 albeit not a formal police event, it was organized
10 because of your common function as police
11 officers. That was the common bond that brought
12 all of you together. And then a fairly
13 significant group of members of your shift go to
14 Constable Black's house, and you attend there as
15 well, and so does Platoon Sergeant, Sergeant
16 Anderson. Now, if that was a drinking party, if
17 there was all kinds of alcohol being consumed, and
18 if someone was not taken care of from that platoon
19 and they caused a death, that would reflect very
20 poorly on you, sir. Would you agree with that?

21 A Well, going into it, I didn't think
22 that there was a drinking party. And from my
23 observations, it didn't really -- I didn't see
24 anything being done wrong, so that didn't really
25 cross my mind.

1 Q It didn't cross your mind, sir, that
2 your interest as a member of the Winnipeg Police
3 Service, and your reputation within the Police
4 Service, and your reputation within the community
5 were not implicated by what was being said and
6 alleged about that event, sir?

7 A I am not sure -- if you could rephrase
8 the question for me, please?

9 Q You weren't concerned in the slightest
10 that you could somehow be discredited as a result
11 of the events of that evening, sir?

12 A I was not, no.

13 Q I understand there were rumours out
14 there, sir?

15 A Through the media?

16 Q Yes?

17 A Then and since, yes.

18 Q Even at that time, before you went in
19 to see the executive members, sir?

20 A I believe so, yeah.

21 Q In fact, a lot of the conversation
22 about why you went there was to stop the rumours,
23 right, or at least make sure the executive
24 understands that they are not true, right?

25 A The reasons I went there, that may

1 have been mentioned, but the reasons I went there
2 is, I indicated this in my other statement, is I
3 wanted the truth to be put out there as to what
4 had happened.

5 Q All right, sir, we'll look at that
6 now. I'm going to suggest that you went there,
7 and this isn't a criticism, but you went there
8 because you were concerned with the well-being of
9 your unit. And that's why you contacted, or
10 Sergeant Anderson along with you contacted
11 Inspector McCaskill. Is that a fair statement,
12 sir? You were concerned about the well-being of
13 your unit?

14 A I had concerns of that nature, and I
15 also had concerns about the investigation of the
16 fatality. As being police officers, we are
17 obligated to provide information.

18 Q Yes, sir, I understand you were
19 obligated to provide information, and that is a
20 duty, you would agree with me, that applies not
21 just because you could be disciplined for not
22 doing so, it's a duty that applies as a matter of
23 moral responsibility, sir?

24 A Yes.

25 Q And you would not hold back evidence

1 in an investigation just because you might not be
2 compellable. You would feel that as a police
3 officer, part of your oath would require you to
4 come forward, right?

5 A Yes.

6 Q Well, I'm suggesting, sir, that while
7 that might have been in the back of your mind, it
8 wasn't in the front of your mind, and that the
9 reason you went to see Inspector McCaskill had to
10 do with the well-being of your shift, sir?

11 A You're incorrect, sir.

12 Q All right. I'm going to show you the
13 explanations that you've given variously
14 throughout this proceeding as to why you went
15 forward. First I'm going to take you to the
16 statement that was given to the Professional
17 Standards Unit. And again, this is at tab
18 F-2.35.s. And I'm going to take you to page 16 at
19 the top of your document, sir. Everybody can look
20 at page 1157 at the bottom of the document.

21 You're asked by Sergeant Girard at
22 line 14:

23 "Is there anything else that you can
24 think that might be important that we
25 are overlooking?"

1 Sergeant Humniski: I don't think so.
2 I know that the reason Jim and I came
3 out here is we wanted to get away from
4 this interpretation of that this is a
5 shift, a big party. It wasn't. It
6 wasn't a planned thing. It's just, I
7 didn't want things to be brought up
8 that weren't there.

9 Sergeant Pearson: You didn't want
10 rumours hatching?

11 Sergeant Humniski: Yeah."

12 All right?

13 A Yeah.

14 Q So there's nowhere there where you're
15 talking about wanting to make sure that the truth
16 comes out to help the investigation into Derek
17 Harvey-Zenk. You're talking about going to see
18 the executive members of the Winnipeg Police
19 Service so that they have a proper impression of
20 what took place. Is that not a fair reading of
21 what that says, sir?

22 A It's an interpretation maybe.

23 Q I'm going to take you to the notes
24 that were provided to us by Inspector McCaskill.
25 Do you have those notes in front of you, sir?

1 THE CLERK: That's Exhibit 158.

2 MR. PACIOCCO: Exhibit 158 at

3 Q-1.89.b.11.

4 BY MR. PACIOCCO:

5 Q And you'll look at about two-thirds of
6 the way down the page, and you will see Inspector
7 McCaskill recording:

8 "Both wanted the exec to know the
9 truth."

10 Do you see that, sir?

11 A Yeah.

12 Q You were focused on the executive
13 wanting to know the truth, sir, and that was your
14 primary motivation, was it not, sir?

15 A No, it wasn't. And if I could add,
16 because it was a different Police Service that was
17 investigating this, the incident, I thought we
18 should be going through our service, through my
19 divisional commander and approaching it that way.

20 Q Why would you do that, sir, if it's
21 another police force investigating it? Why would
22 you go through your division commander, sir?

23 A Because our member was one that was
24 involved, and our members are my shift that was
25 potential witnesses. And I wasn't sure, I hadn't

1 been in this situation before, and I couldn't see
2 myself walking into, just walking into the East
3 St. Paul Police Station. We have a chain of
4 command in our service and that's the way I
5 thought we should approach it.

6 Q Well, sir, you'd agree with me that a
7 witness to a crime, if, in fact -- and I know that
8 will be debatable whether that's what you were,
9 but a witness to a crime normally just goes and
10 speaks to the investigators, and they don't first
11 go and check with, or check in with their own
12 organization because of chains of command. Don't
13 you agree with that, sir?

14 A Well, we're a police service and we
15 have certain processes with which we do things,
16 and I think that was the best route to take.

17 Q So your impression was, even though
18 you may have been a witness to a crime being
19 investigated by another police force, your first
20 loyalty and obligation was to get through your own
21 chain of command in terms of how to deal with it?
22 Is that fair?

23 A Not on how to deal with it, but how to
24 report it, who to see.

25 Q All right, sir, when you were talking

1 to the PSU, at page 1159 at the top, beginning
2 with the first sentence that appears on page 18 in
3 your document, sir.

4 "It's terrible what happened, and it
5 happened, and I just want to know that
6 these guys aren't the kind that you go
7 out and have booze parties and stuff."
8 Right?

9 A Yes.

10 Q You're telling the PSU that you just
11 want them to understand it, this is not the way
12 that shift behaves, it's not the kind of people
13 they are. That's what you're trying to get
14 across, isn't it, sir?

15 A That's, from my observations of the
16 shift from the time I was there, that was my idea
17 of what the shift was like.

18 Q I'm suggesting you went there in
19 defence of your shift, and that's the kind of
20 information you were intent on providing, sir.
21 You were worried about the reputation of the
22 shift, and that was why you came forward, sir?

23 A No, sir.

24 Q You told Mr. Clifford at page 9 of the
25 interview with him at line 22 -- sir, you will

1 notice there are four pages per sheet of paper on
2 each side. I'm referring to the small pages as
3 pages, sir. Page 9 will be in the lower
4 right-hand corner of the third page of the
5 document you have, sir. Do you see it there?

6 A Yes.

7 Q This is your answer at line 17.

8 "Over the weekend, you know, hearing
9 different things, yes, I was concerned
10 because there's always rumours out
11 there. And I was aware of where they
12 were at the point in time, at the time
13 prior to this happening. As far as
14 like my statement stated, I had been
15 to both places, and I felt that I was
16 obligated to, as a police officer, to
17 come forward and supply, you know, the
18 service with an explanation as to what
19 had happened up to that point."

20 You felt your obligation was to
21 account to the service as the superior sergeant on
22 that platoon, sir. Do you not agree with that?

23 A As part of my, part of the service and
24 my job function, I think is my job to take a
25 leadership role. My people, at that time, were

1 coming back to work on the Wednesday, and I wanted
2 to be able to deal with this matter. Because I
3 knew there were potential witnesses in the
4 prosecution of Mr. Zenk, they may have seen
5 things, and that is why I came forward.

6 Q What did you tell Inspector McCaskill,
7 and what did Mr. Anderson tell Inspector McCaskill
8 in your presence? What was the information being
9 communicated to him?

10 A I don't recall the exact information,
11 other than we had information as to what had --
12 where Mr. Zenk may have been coming from --

13 Q Yes, sir.

14 A -- at the time.

15 Q Anything else?

16 A I can't remember if we got into any
17 details as far as the shift.

18 Q Well, one thing that he has recorded
19 is it was a subdued get together. Would you have
20 told him that, sir?

21 A I can't recall if I told him that.
22 Jim Anderson may have told him that. I'm not
23 sure.

24 Q If that was said in front of him,
25 would you have said no, no, it wasn't, or would

1 you have agreed?

2 A I would have agreed, because that's
3 what it was.

4 Q And, sir, there's also a notation that
5 there were plans to allow anyone to sleep over or
6 get driven home, in Inspector McCaskill's notes.

7 "There were plans to allow anyone to
8 sleep over or get driven home."

9 Did you communicate that to him, or did Sergeant
10 Anderson do so in your presence, sir?

11 A Like I said, I can't recall the exact
12 conversation, we're going back a few years. I
13 know there were plans that I was aware of that,
14 when I left Sean Black's, the plan I thought was
15 that Dave Harding was going to be staying there.

16 Q And you saw Sean Black ask David, you
17 know, invite David to stay over; right?

18 A No.

19 Q Where do you get that from then, that
20 Dave Harding was going to be staying there?

21 A I believe because Sean Black had
22 offered him a couch.

23 Q Do you call that a plan, sir?

24 A It would depend on -- a simple plan I
25 guess you could call it.

1 Q Or is it just a spontaneous decision,
2 hey, you should stay on the couch?

3 A It would have been spontaneous.

4 Q What about the driven home part, sir,
5 you weren't there when anybody was being driven
6 home?

7 A No, I wasn't.

8 Q We have already established you must
9 have got that through your conversations with
10 Mr. Anderson?

11 A Yes.

12 Q Sir, Inspector Stannard was also told
13 that there were precautions. It's noted twice in
14 his statement, precautions. I suggest that what
15 you were doing is you were going to these
16 gentlemen and you were saying, look, this was not
17 an irresponsible thing, there were precautions in
18 place. There were safety measures is another word
19 that was used. The shift was behaving
20 responsibly. Do you not agree with that, sir?
21 Precautions and safety measures being in place,
22 that was part of the main message that was being
23 communicated to these gentlemen?

24 A Yeah. I don't think it would have
25 been communicated by myself. Jim Anderson was at

1 the party longer and I believe he would have been
2 the one making those --

3 Q And you joined him in wanting to get
4 that message across, did you not, sir, that this
5 responsible shift of young people who were working
6 with you had plans and safety measures in place;
7 right?

8 A I didn't join him in that
9 conversation. I don't think I supplied that
10 information.

11 Q No. It was a joint mission to get
12 across the message, was it not, sir?

13 A I think it was a joint mission to
14 bring the shift forward, to provide information,
15 and as witnesses regarding the accident.

16 Q Sir, maybe you can answer this
17 question. When do arrangements or precautions
18 have to be put in place in the context of a party,
19 sir?

20 A Well, I believe in this case, they
21 were put in place by Sergeant Anderson after I
22 left, by him driving someone home.

23 Q Sir, when are precautions and plans
24 put in place in the context of a party, sir?

25 A I'm not sure what you mean by that?

1 Q I'm going to suggest to you, sir, that
2 unless there's enough drinking going on to have to
3 worry about things like rides home and staying
4 over, there's no need to put plans and precautions
5 in place. Do you not agree with that, sir?

6 A Yes. And they could happen
7 spontaneously. In the case of Dave Harding, I
8 would imagine that's what happened.

9 Q And so you wouldn't feel comfortable
10 with the word "plan" that appears in those notes
11 in those interviews, sir?

12 A I didn't make those notes. I think it
13 was just the relation of what had happened to the
14 Inspector and Superintendent.

15 MR. PACIOCCO: Thank you, sir. I
16 don't have any further questions for you.

17 Mr. Commissioner, it's 10:50, it's a
18 good time for the morning break.

19 And sir, I know as an experienced
20 officer, you realize there's more to go so you
21 have to stick around.

22 THE WITNESS: I'm here.

23 THE COMMISSIONER: Let's take 15
24 minutes.

25 THE CLERK: All rise.

1 (Proceedings recessed at 10:50 a.m.

2 and reconvened at 11:05 a.m.)

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

5 BY MR. ZAZELENCHUK:

6 Q Sergeant, you attended Branigan's on
7 the early morning of February 25th, 2005. You
8 told us that you had a couple of beer. What kind
9 of beer did you have?

10 A Lab Light.

11 Q And that came in bottles?

12 A Yeah.

13 Q Okay. So you had two bottles of beer?

14 A Yes.

15 Q And then you told us that you drove to
16 now Sergeant Black's residence, and somebody mixed
17 you a Rye and Coke?

18 A Yes.

19 Q Yes. Who did that?

20 A Norbert Bauer.

21 Q I see. And that was right in front of
22 you?

23 A Yes.

24 Q So you were able to observe how much
25 Rye he poured into the drink?

1 A Yes.

2 Q How much Rye did he pour into the
3 drink?

4 A It was a normal drink, approximately
5 an ounce, I guess.

6 Q Ounce, ounce and a half?

7 A No, hard to say, but more like an
8 ounce.

9 Q Okay. We'll take your word for that.
10 And then you told us that after that you had a
11 second drink?

12 A Yes.

13 Q Yes. And who mixed that drink?

14 A I did.

15 Q You did. And how much -- that too was
16 Rye and Coke?

17 A Yeah.

18 Q Yes. And how much Rye did you pour
19 in?

20 A Less than an ounce.

21 Q Less than an ounce?

22 A Yeah.

23 Q Okay. So that was the alcohol that
24 you consumed between 1:00 o'clock in the morning
25 and approximately 3:30 or 4:00 when you left?

1 A Yes.

2 Q Yes. So you had two beer and just
3 under two ounces of Rye?

4 A Yes.

5 Q Yes. And in your opinion, you were
6 fit to drive?

7 A Yes.

8 Q Yes. And how much did you weigh at
9 that time?

10 A Approximately 225 pounds.

11 Q I see. Okay. Let's move on. You
12 were asked in detail about your interviews with
13 the Professional Standards Unit, and I'm not going
14 to go there because that was canvassed in detail.
15 But I wonder if Madam Clerk would be good enough
16 to give you exhibit 48b? And for the benefit of
17 those people with the book, it's R-4, and I'm
18 going to page 3401.46.

19 If you could look in the bottom
20 right-hand corner, there's numbers, sir?

21 A I'm still trying to find the page
22 number, 3401.

23 MR. ZAZELENCHUK: R-4.

24 THE COMMISSIONER: Yes, I have so
25 many.

1 THE WITNESS: R-4 page --

2 BY MR. ZAZELENCHUK:

3 Q 3401.46. Now, witness, Mr. Minuk, the
4 special prosecutor in this matter, was paid by the
5 government, and the Government of Manitoba
6 requires lawyers to itemize their time. And what
7 you have in front of you is what we believe to be
8 Mr. Minuk's time records. And if you look up at
9 the top of that page, we've got an entry for 12,
10 July, '07, and it says meeting with Chief Carter,
11 that has nothing to do with you, letter to Richard
12 Wolson, ditto, telephone call from R. Harding and
13 C. Humniski.

14 So Mr. Minuk records that on July 12th
15 of last year, you telephoned him. Do you have a
16 recollection of that telephone call?

17 A I believe it could have been, I'm not
18 sure what the date and everything, but I know I
19 was subpoenaed as a witness in the matter.

20 Q Correct.

21 A And I was trying to contact him.

22 Q Okay. And this isn't a memory test
23 and I don't expect you to have calendars
24 memorized, but as the facts are, the Preliminary
25 Inquiry was scheduled to start on Monday, the 16th

1 of July, and Friday was the 13th of July. And
2 this entry is referring to Thursday, July 12th.
3 So you're telling us that you had received a
4 subpoena and you put in a call to the prosecutor,
5 correct?

6 A Yeah. Looking further down, I see my
7 name again --

8 Q We'll get to that.

9 A -- on the 13th, I had a meeting with
10 him, so obviously that was a call to set up the
11 meeting, I would imagine.

12 Q So you called the prosecutor to set up
13 a meeting in response to your subpoena; is that
14 correct?

15 A Yes.

16 Q Okay. And then if we go down, as you
17 indicated, on July 13th of '07, we've got an
18 entry, "Meeting with Chris Humniski," and it's .5
19 of an hour. Do you see that?

20 A Yeah.

21 Q Okay. Was the meeting in Mr. Minuk's
22 office?

23 A Yes.

24 Q Yes. And that's where, corner of
25 Portage and Main, Trizec Building?

1 A Yeah, I believe so, yeah.

2 Q Okay. What was discussed at that
3 meeting?

4 A Mr. Minuk went over my evidence
5 regarding the case.

6 Q Right.

7 A And that was basically it.

8 Q Okay. Did he discuss, for example,
9 when you were going to be called as a witness?
10 Does that strike a bell at all?

11 A No. I think the subpoena, I believe
12 we were under subpoena at that point in time, the
13 subpoena would have a date on it.

14 Q No, I understand that, sir, and I'm
15 not trying to trick you. You and I both know --
16 sorry, you can finish reading before I ask the
17 next question if there's something you want to
18 read?

19 A No.

20 Q Okay. You and I both know that
21 preliminary inquiries and trials often as not
22 don't start and finish in one day. Isn't that
23 correct?

24 A That's correct.

25 Q And you and I both know that the

1 practice is, you subpoena everybody for the first
2 day, and then you give people a rough schedule of
3 when they are expected to come. That's happened
4 to you?

5 A Yes, it has.

6 Q Sure. And I'm not trying to trick you
7 or anything like that. I was just asking if you
8 had any memory of discussing when you'd be giving
9 your evidence? And I'm going to show you a
10 document which may refresh your memory. If Madam
11 Clerk would be good enough to give you S-98.b? I
12 don't think that book has ever be taken out,
13 Mr. Commissioner, so it might be behind you,
14 volume S?

15 THE COMMISSIONER: F?

16 MR. ZAZELENCHUK: S -- S for Sydney.

17 THE COMMISSIONER: All right. Page?

18 MR. ZAZELENCHUK: Tab 98.b and the
19 page is 3481.

20 BY MR. ZAZELENCHUK:

21 Q What you have in front of you, sir, is
22 a disclosure which I believe came from Mr. Derek
23 Harvey-Zenk's counsel. And we'll find out for
24 sure later, but I believe it's handwriting, it's
25 Mr. Wolson's handwriting. And Mr. Wolson was, of

1 course, Mr. Harvey-Zenk's defence lawyer. And
2 we've got a list of witnesses, and we've got an
3 entry right at the top, July 16th, number one,
4 Humniski. Do you see that, sir?

5 A Yes.

6 Q Yes. So does that refresh your memory
7 at all? Did you and Mr. Minuk discuss that you
8 would probably be the first witness on the 16th?

9 A No, it doesn't.

10 Q It doesn't refresh your memory?

11 A No. I don't recall discussing
12 anything as far as witness lists or anything like
13 that with him, no.

14 Q You recall discussing your evidence
15 with Mr. Minuk, but you don't recall discussing
16 when you would be called as a witness?

17 A That's correct.

18 Q Yeah. Do you at least have a
19 recollection that as of the 12th, when you met
20 with Mr. Minuk, you were told to be in court on
21 the 16th?

22 A According to this, I met with him on
23 the 13th.

24 Q Okay. Well, as of the 13th when you
25 met with him, were you told to be in court on the

1 16th?

2 A I can't recall for sure. I think I
3 was subpoenaed to attend, I'm not sure of the
4 exact date but -- I couldn't tell you.

5 Q So when you met -- you only met with
6 him once in person; is that correct?

7 A Yes.

8 Q Yes. And that was in his office in
9 the Trizec Building. And when you left, can you
10 tell us, were you expecting to go to court on
11 Monday, or had you been cancelled?

12 A I believe I was still expected to go.

13 MR. ZAZELENCHUK: Thank you. Perhaps
14 that document which has been entered could become
15 an exhibit, Mr. Commissioner?

16 THE CLERK: Exhibit 176.

17 THE COMMISSIONER: 176.

18 (EXHIBIT 176: S-98.b, Wolson's Notes -
19 Notes of list of witnesses that were
20 going to be called)

21 MR. ZAZELENCHUK: Those are my
22 questions. Thank you.

23 THE WITNESS: I was just going to add
24 to that. Usually in these cases, we'll get
25 cancellation notices from the Crowns, but I don't

1 know if I got one or not regarding that.

2 MR. ZAZELENCHUK: Thank you.

3 MR. McDONALD: No questions.

4 MR. LABOSSIÈRE: Thank you,

5 Mr. Commissioner.

6 BY MR. LABOSSIÈRE:

7 Q Sergeant Humniski, as I understand it,
8 as soon as you became aware that there was an
9 incident after the evening that we have been
10 talking about, you made the decision to come
11 forward and speak to both your inspector,
12 Inspector McCaskill, and ultimately the executive;
13 is that right?

14 A Over the course of the weekend, yeah.

15 Q And when you were back at work, you
16 made arrangements to speak with Inspector
17 McCaskill?

18 A Actually, we were off the weekend and
19 I was off until the following, I would have been
20 coming in on a Tuesday night, I believe it was
21 March 1st, for a midnight shift.

22 Q Right.

23 A But I felt that the matter should be
24 dealt with prior to that, so on the Monday is the
25 date I contacted Inspector McCaskill.

1 Q And my learned friend, Commission
2 Counsel, put to you some of the notes that were
3 taken at the meeting that you and Patrol Sergeant
4 Anderson had with Inspector McCaskill, and they
5 have been marked as Exhibit 175. I don't know if
6 you still have those in front of you?

7 A Yes, they are.

8 Q It's Q-1.89.b.11 in the book. At
9 exhibit 17 -- sorry, 158, Exhibit 158, my
10 apologies.

11 THE COMMISSIONER: Page?

12 MR. LABOSSIERE: It's page 2992.

13 THE COMMISSIONER: Thank you.

14 BY MR. LABOSSIERE:

15 Q And you will recall, sir, that my
16 learned friend put to you some of the excerpts, if
17 you will, from Inspector McCaskill's hand?

18 A Yeah.

19 Q Do you recall that? He pointed you to
20 some of the notes. And if you just look on page
21 2992 right now, you'll see, the heading begins
22 1415, and there are two brief paragraphs, and then
23 there's something that says:

24 "Generally indicated they wanted to
25 come forth and help the

1 investigation."

2 Do you see that?

3 A Yes.

4 Q And then at the bottom it appears to
5 be a note of Inspector McCaskill, as he then was,
6 note of a conversation with Art Stannard where he
7 says:

8 "I told him they wanted to help the
9 investigation."

10 Is that what your intention was, sir?

11 A Yes, it was.

12 Q And ultimately, you meet with
13 Superintendent Stannard, and that's found at
14 Exhibit 175, and in the book it's the next tab,
15 Q-1.89.b.12, page 2994.

16 And again, as I understand it, sir,
17 these are notes that Superintendent Stannard took
18 from a meeting with yourself and Patrol Sergeant
19 Anderson. And I just want to take your attention
20 to another paragraph that you weren't referred to.
21 It's the third last on that page, 2994. It says:

22 "J. Anderson spoke briefly, was
23 willing to provide details, stopped
24 him, explained that the best course of
25 action was to avoid the middle person,

1 talk directly to East St. Paul - PSU."

2 Is that your recollection of what occurred during
3 that meeting?

4 A Yes.

5 Q And so it wasn't that you weren't
6 willing to, or weren't prepared to provide the
7 executive details. In fact, when Patrol Sergeant
8 Anderson attempted to, he was stopped by the
9 executive. Is that right?

10 A Yes.

11 Q And so, as he had suggested, and as
12 you had intended, as I understand it, you did
13 speak to Professional Standards Unit?

14 A That's correct.

15 Q Now, just prior to dealing with that
16 interview, sir, I take it from your evidence that
17 it was your understanding that in coming forward
18 in the manner that you did, with Inspector
19 McCaskill and Superintendent Stannard, that if
20 there wasn't an investigation already launched,
21 this would be the launching pad, if you will, for
22 an investigation; is that right?

23 A Yes.

24 Q You weren't under any illusion that
25 the investigation would begin and end with a

1 conversation that you'd have with Inspector
2 Stannard -- with Superintendent Stannard?

3 A No.

4 Q You were essentially trying to give
5 them, as best you could, a heads up that, hey,
6 look, we were involved. It's not like they are
7 saying in the papers and we want to -- we want to
8 tell our side of the story?

9 A Yes.

10 Q You didn't wait for someone to come to
11 you, did you?

12 A No, I didn't.

13 Q So ultimately, sir, you go to
14 Professional Standards shortly thereafter, and
15 your interview with them is found at Exhibit 174.
16 And if I could just draw your attention to page
17 1144, and I'm not sure if you have those pages at
18 the bottom like we do, but if not, it's page 3 at
19 the top, Sergeant Humniski.

20 A Yeah, I have it.

21 Q I'll just give an opportunity for the
22 Commissioner to find the document.

23 THE COMMISSIONER: I have it here, I
24 just have to move the pile from my left to my
25 right.

1 MR. LABOSSIERE: I'm giving the
2 Commissioner a workout.

3 THE COMMISSIONER: 1144?

4 MR. LABOSSIERE: Yes.

5 THE COMMISSIONER: Thank you.

6 BY MR. LABOSSIERE:

7 Q And at the top of the page, it's just
8 a continuation of a transcript of Sergeant Girard,
9 who was one of the PSU investigators, saying:

10 "We were advised a short time ago that
11 yourself and another Sergeant from
12 District 3 were over on the 5th floor
13 of the PSB, and someone had phoned
14 over here stating that you wanted to
15 come over and talk to us about this
16 matter."

17 And so PSU was also advised, it appears, that you
18 were the ones who wanted to talk with them; is
19 that right?

20 A Yes.

21 Q And as I understand it, from your
22 answers given to Commission Counsel at the time,
23 you had thought about the incident after it was
24 raised, and you tried your best to recall
25 specifically what occurred the night before,

1 particularly anything you could recall about Derek
2 Harvey-Zenk; is that right?

3 A Yes.

4 Q And you did that. In fact, you gave
5 as much detail as you could, and you recalled that
6 at one point you remember him having a glass in
7 his hand, but that's all that you can recall?

8 A Yes.

9 Q And sir, it's fair, is it not, to say
10 that you searched your memory at the time, and you
11 told PSU, ultimately Commission Counsel and this
12 Inquiry, all that you knew about the incident in
13 question; is that fair?

14 A Yes.

15 Q You had been totally forthright?

16 A Yes, I have.

17 Q And sir, if you knew how many drinks,
18 for example, Derek Harvey-Zenk or any other
19 officer had, would you have disclosed that?

20 A Yes, I would have.

21 Q Now, have you had any discussions with
22 any officer or groups of officers who were
23 involved in this matter in an effort to coordinate
24 your evidence in any way?

25 A No.

1 Q Have you had conversations with any
2 officer or groups of officers to discuss or
3 suggest to them that you ought to downplay the
4 event, or cover up the event, or shade the truth,
5 or hide the details in any way?

6 A No.

7 Q Has anyone suggested that to you?

8 A No.

9 Q Now, you knew, Sergeant Humniski, that
10 whether you came forward or not, there most likely
11 would have been an investigation; correct?

12 A I believe there would have been
13 questions asked and possibly an investigation,
14 yeah.

15 Q And certainly once you came forward
16 and provided information, you knew that an
17 investigation would begin?

18 A Yes.

19 Q And ultimately, you knew that one did
20 begin?

21 A Yes.

22 Q Correct. And as I understand it, in
23 your 31 years of experience, you have had occasion
24 to take part in and lead a number of
25 investigations; is that right?

1 A Yes.

2 Q And I take it, sir, that you would
3 agree that, when you were conducting an
4 investigation, you would want to ensure that
5 witnesses to your investigation don't speak
6 amongst themselves about the subject matter of the
7 investigation; is that fair?

8 A Yes.

9 Q And unlike a regular citizen, perhaps,
10 you would have some unique insight into the
11 problems that that could cause for investigation;
12 correct?

13 A That's correct.

14 Q And it's not that you didn't want to
15 trouble yourself with, as Commission Counsel had
16 suggested, or that you weren't curious about what
17 happened that night, you knew that as a witness to
18 an incident, that was being investigated, it would
19 have been inappropriate for you to speak about the
20 details with another witness; correct?

21 A That's correct. I have been involved
22 in major incidents like that, and that's where I
23 drew that method from.

24 Q And that's why you didn't sit down
25 with either Sean Black or a group of officers and

1 talk about what happened?

2 A Yes.

3 Q Now, my learned friend, Commission
4 Counsel, also spoke to you about the suggestions
5 as to your concerns about members. And as a shift
6 supervisor, he's putting to you that obviously you
7 care about your members, you are concerned about
8 their well-being and their reputation. Do you
9 recall that line of questioning?

10 A Yes.

11 Q And whatever concern you might have,
12 would that extend to covering up the misdeeds of
13 one of the individuals you supervise?

14 A No.

15 Q Would you lie, or shade the truth, or
16 withhold details to protect anyone, shift member
17 or otherwise?

18 A No, sir.

19 Q Now, you understand, sir, that such an
20 implication has been made, certainly in the media,
21 that the police are simply protecting their own,
22 they are covering up for one of their members.
23 You have heard things of a thin blue line. You've
24 heard those implications in the media?

25 A Yes, I have.

1 Q And what, if anything, do you have to
2 say in reaction to such suggestions as they apply
3 to this incident?

4 A That for me, it's very disheartening
5 for the service to have that kind of reputation
6 brought forward to the media like that, the way
7 the media has been treating this. I have spent a
8 long time on the service, and it angers me at many
9 points in time.

10 Q Are you aware of anyone who has in any
11 way attempted to be anything but fully forthright,
12 honest and truthful with this Commission of
13 Inquiry?

14 A No, I'm not.

15 Q Or the PSU investigation?

16 A No, sir.

17 Q Or with Commission Counsel themselves?

18 A No.

19 Q Now, sir, as I understand it, when you
20 came forward initially and spoke to Inspector
21 McCaskill, and ultimately Superintendent Stannard,
22 my learned friend asked you a number of questions
23 as to what your intentions were. And as I
24 understand it, sir, you were simply trying to give
25 them, as best you could, a picture of what had

1 occurred; correct?

2 A That's correct.

3 Q And you acknowledge that you weren't
4 there the entire night?

5 A Yes.

6 Q And at the time that you left, is it
7 fair to say that based on your dealings with all
8 who were in attendance, both at Branigan's and at
9 Sean Black's, that it surprised you to hear
10 rumours that there was a wild drinking party, or
11 that officers were intoxicated, and somehow this
12 may have played a role in that fatal incident?

13 A It surprised me with the things that
14 came out in the media regarding it. Actually, I
15 shouldn't say it surprised me, I was -- I wasn't
16 happy with what was coming out.

17 Q Why do you say it didn't surprise you?

18 A Over the course of my time on the
19 service, media has not been very friendly in a lot
20 of cases to the Police Service.

21 Q And so when you came forward that
22 night, that day, the media were already starting
23 to, and this is my word, spin the story to suggest
24 that perhaps police were drinking at a wild party
25 the night before; correct?

1 A Yes.

2 Q And as Sergeant Girard had said to you
3 in your PSU interview, one of the reasons you came
4 forward was you wanted to try and put an end to
5 the rumours that were hatching, the rumours that
6 that, in fact, was what was occurring that night;
7 correct?

8 A Yes.

9 Q Because those weren't true, were they?

10 A No, they were not.

11 Q And you wanted to ensure that
12 initially your supervisor, Inspector McCaskill,
13 and ultimately the executive of the Winnipeg
14 Police Service knew the truth; correct?

15 A Yes.

16 MR. LABOSSIERE: Thank you, Sergeant
17 Humniski. Those are my questions.

18 THE COMMISSIONER: Thank you.

19 MR. WEINSTEIN: No questions.

20 BY MR. PROBER:

21 Q Mr. Commissioner. Good morning,
22 Sergeant.

23 Commission Counsel talked to you for a
24 little bit about what you meant by a drinking
25 party. I didn't hear the whole answer, but I

1 think you described a drinking party as one that
2 was especially loud, wild, and focused on the
3 amount of drinking; right?

4 A Yes.

5 Q And was the primary purpose that night
6 of this get-together to socialize with colleagues,
7 as far as you know?

8 A Yes.

9 Q Yeah. And just because one guy,
10 namely Dave Harding, who himself admitted that he
11 had too much to drink, doesn't turn this into a
12 drinking party, does it?

13 A No, it doesn't.

14 Q No. From what you knew of Derek
15 Harvey-Zenk in his work as a police officer, you
16 would agree with me that he was conscientious?

17 A Yes.

18 Q And that he was responsible?

19 A Yes.

20 MR. PROBER: Thank you.

21 MS. DIXON: No questions.

22 MR. McFETRIDGE: No questions.

23 THE COMMISSIONER: Thank you.

24 BY MS. HANLIN:

25 Q Mr. Commissioner, I have a few

1 questions for the witness.

2 Sergeant Humniski, as supervisor of
3 Division 13, that would include somewhat of a
4 leadership role for you?

5 A Yes.

6 Q In terms of your shift?

7 A Yes.

8 Q As part of your role as sergeant and
9 supervisor, you, with Patrol Sergeant Anderson,
10 made the decision at the time to come forward to
11 Inspector McCaskill, who was divisional commander
12 of Division 13; is that correct?

13 A That's correct.

14 Q You knew that your shift was coming
15 back to work shortly?

16 A Yes.

17 Q Now, I understand from Inspector
18 McCaskill's notes, and this is at Exhibit 158, he
19 has the notation that you were not aware of what
20 took place at Sean Black's after you left. Is
21 that correct?

22 A I had no personal observations of what
23 happened. I wasn't there. But I think he got --
24 any other information would have been from Jim
25 Anderson.

1 Q Okay. And then at page 2992, that
2 would be the first page of his notes, he has lower
3 down stated, or noted:

4 "Both wanted the investigation to have
5 the benefit of their knowledge of what
6 happened."

7 Does that accord with your recollection of meeting
8 with Inspector, at the time Inspector McCaskill?

9 A Yes.

10 Q So it wasn't your own. And then after
11 discussions with Inspector McCaskill, the decision
12 was made to approach Superintendent Stannard, who
13 was part of the executive; is that correct?

14 A Yes.

15 Q And if you can turn over to
16 Superintendent Stannard's notes, and that is at
17 page 29 --

18 THE COMMISSIONER: 2994.

19 MS. HANLIN: Thank you,
20 Mr. Commissioner.

21 BY MS. HANLIN:

22 Q Superintendent Stannard, you were in
23 his office with Patrol Sergeant Anderson --

24 A Yes.

25 Q -- and Inspector McCaskill. He has a

1 note that contact was made with East St. Paul, and
2 that they had indicated that they had no resources
3 to interview you and Sergeant Anderson. Were you
4 aware of that?

5 A Yes.

6 Q That wouldn't have been a decision
7 that you were involved in, however; is that
8 correct?

9 A No.

10 Q You were following the chain of
11 command by going to your divisional commander --

12 A Yes.

13 Q -- the superintendent, who then made
14 contact, or had contact made with East St. Paul;
15 is that correct?

16 A Yes.

17 Q Now, you gave your interview to
18 Professional Standards Unit on February 28th?

19 A Yes, I did.

20 Q And you understood that to be in
21 regards to Derek Harvey-Zenk?

22 A Yes.

23 Q And how much he would have had to
24 drink?

25 A Yes.

1 Q It wouldn't necessarily have been in
2 regards to Dave Harding and what he would have had
3 to drink?

4 A No.

5 Q And you were not, when you met with
6 Professional Standards Unit, providing a summary
7 of absolutely everything that took place at Sean
8 Black's house; is that correct?

9 A That's correct.

10 Q Now, at page 13 of your interview with
11 Professional Standards Unit, that's Exhibit 174,
12 you stated that at Sean's:

13 "I didn't really see Derek Harvey-Zenk
14 having any drinks. I know it's
15 important for the sake of the MVA and
16 I may have seen him with a glass, but
17 I'm not sure what he had in it."

18 Do you recall saying that?

19 A Yes.

20 Q We can gather from that that the motor
21 vehicle accident was part of your concern, that
22 that was the reason that you were coming forward
23 to Professional Standards Unit?

24 A Yes, it was.

25 Q And I also note that at page 5 of your

1 interview with Professional Standards Unit, you
2 gave a list of names to them, and that would have
3 been people that were at the gathering?

4 A Yes.

5 Q The shift briefing, however, was not
6 until March 2nd, and that's the shift briefing
7 where it was discussed that people would be coming
8 forward to Professional Standards Unit?

9 A Yes.

10 Q And I understand that shift briefing
11 was not a consultation with the members, it was
12 more a matter of explaining to them that they
13 would be coming forward to Professional Standards
14 Unit?

15 A Yes. They were addressed by Inspector
16 McCaskill and Lorne Schinkel and advised of what
17 was going to be transpiring over the next couple
18 of days.

19 Q But that it was expected of them that
20 they would be giving statements?

21 A Yes.

22 Q How would you describe Mr. Harvey-Zenk
23 in terms of his personality?

24 A From my dealings with Derek
25 Harvey-Zenk, he was one of the quieter members, a

1 steady worker, and I have never had any problems
2 with him. He was good for our shift.

3 Q Was he a loud person?

4 A No.

5 Q The type of person to draw attention
6 to himself?

7 A No, he's not.

8 Q In your interview with Professional
9 Standards Unit, you don't have a lot of details
10 about Harvey-Zenk. Would you agree with that?

11 A Yes.

12 Q Is that a matter of memory, or is it a
13 matter of not noticing what he was doing?

14 A Well, I guess it would be a bit of
15 both. I think with Derek Harvey-Zenk, if he had
16 acted in a manner that was say, you know,
17 different from what he was, or if he was louder,
18 I'd probably pay more attention to it. But in
19 this case, I never really noticed him.

20 Q You noticed that Dave Harding was
21 offered the couch by Sean?

22 A Yes.

23 Q And you stated that to Professional
24 Standards Unit?

25 A Yes.

1 Q If other individuals had been offered
2 the couch or needed to sit down, would you have
3 noticed that?

4 A Possibly, possibly not, I couldn't
5 say.

6 THE COMMISSIONER: Could you say that
7 you knew Derek Harvey-Zenk well?

8 THE WITNESS: I knew him from the work
9 environment, and on speaking with, in my previous
10 interview, Derek Harvey had -- Harvey-Zenk had
11 hosted a Christmas party at his residence, we had
12 our families over. But I didn't know him really
13 well.

14 THE COMMISSIONER: From your contact
15 with him, was he the type of person who would
16 accept direction?

17 THE WITNESS: I believe so, yes, sir.

18 THE COMMISSIONER: And advice?

19 THE WITNESS: Yes.

20 THE COMMISSIONER: And if someone had
21 said to him on that evening, do not drive home,
22 you're not in a condition to do so, or be careful
23 not to -- don't drive home because you might cause
24 an accident, would he have accepted that advice?

25 THE WITNESS: I would imagine so, sir,

1 yeah.

2 THE COMMISSIONER: I'm sorry?

3 THE WITNESS: Yes, I believe so, he
4 would have.

5 THE COMMISSIONER: Okay.

6 MS. HANLIN: Thank you. Those are my
7 questions.

8 BY MR. PACIOCCO:

9 Q Just very brief re-examination, sir.
10 I noted that when my friend asked you about the
11 Stannard interview and the purpose behind it, if I
12 understood her correctly, she suggested to you
13 that the interview was about Derek Harvey-Zenk and
14 what he had to drink, and you said yes?

15 A Meaning I -- the interview would have
16 been regarding the MVA and the situation around
17 that.

18 Q Well, your evidence I think earlier
19 was that you didn't discuss Derek Harvey-Zenk and
20 his consumption with anyone, sir, and that you
21 were going there and you were discussing the
22 nature of the get-together in more broader terms.
23 Is that not what you said, sir?

24 A The reason I came forward and the
25 reason we went through the chain of command was

1 regarding the MVA.

2 Q Okay, sir. With respect to Derek
3 Harvey-Zenk being a quiet guy, would he be the
4 kind of guy who could have a conversation with a
5 colleague, say Constable McLure, from a distance
6 of a number of feet in a bar that she might
7 describe as animated over the new computer system,
8 sir?

9 MR. PROBER: Well, I object to the
10 question because it doesn't fairly put the
11 witness's evidence. Constable McLure, in fact,
12 didn't agree with my suggestion it was animated,
13 and at no time did she say they were apart a
14 number of feet.

15 THE COMMISSIONER: I think she said it
16 was heated.

17 MR. PROBER: Yes, you are right, she
18 said it was a heated discussion over the computer
19 system. But I don't think, my recollection is she
20 didn't say she was a number of feet. I actually
21 put "animated" to her and she didn't accept that,
22 as I recall.

23 MR. PACIOCCO: With his power of
24 suggestion, Mr. Prober planted that word in my
25 mind, "animated," and I do apologize if I

1 misstated her evidence. "Heated" was the word I
2 was looking for, and I am going to pose the
3 question.

4 BY MR. PACIOCCO:

5 Q As far as the number of feet, her
6 testimony was they did not leave their respective
7 chairs, and she had described that her chair was
8 several feet away from Harvey Zenk. And, sir,
9 Constable McLure, if she was to have a heated
10 conversation with Mr. Derek Harvey-Zenk in a
11 public place, in a bar, from several feet, that
12 wouldn't surprise you, sir, notwithstanding he's a
13 quiet gentleman?

14 A Well, I wasn't privy to any
15 conversation, so I'm not sure what would have lead
16 up to it.

17 Q I'm not asking about whether you
18 witnessed the conversation. The question had to
19 do with the character of Harvey-Zenk and the
20 suggestions that had been put forward about him
21 being a quiet individual. And I'm asking you
22 whether that would be in keeping with your
23 understanding of his character?

24 MR. PROBER: You know, I again object
25 for a different reason. I think that -- what I

1 think I suppose is irrelevant, but I suggest --

2 THE COMMISSIONER: What you think is
3 irrelevant? That's the first time I've ever heard
4 counsel make that suggestion. Mr. Weinstein said
5 I should never rely on anything you say.

6 MR. PROBER: Well, he didn't quite go
7 that far, just that you require a second opinion.
8 But Justice O'Sullivan was very, in our Court of
9 Appeal, when he was alive, used to admonish
10 counsel for saying what they think. We don't care
11 what you think, we want to hear your submissions
12 and your suggestions.

13 But, in any event, the objection is
14 this, that nobody described what heated was,
15 nobody described the meaning of heated. Heated
16 doesn't necessarily mean loud, it doesn't
17 necessarily mean the opposite of quiet. And it's
18 unfair because, as well, because I don't recall
19 Constable McLure saying she remained seated and
20 Derek Harvey-Zenk remained seated. They had this
21 heated discussion within an hour of her arriving
22 at 12:00 midnight, approximately, and may well
23 have been while they were standing. She wasn't
24 pursued by Commission Counsel as to where they
25 were in their location. So it's not fair to put

1 it to this witness, in my respectful submission.

2 MS. HANLIN: Mr. Commissioner --

3 THE COMMISSIONER: I am sorry, just a
4 second, I'll deal with one at a time. I don't
5 think Mr. Paciocco cares how far they were apart.
6 He's concerned -- and the question is very proper,
7 heated discussion. We don't have to define
8 "heated." No one was asked -- no one asked McLure
9 to define "heated." She used the word "heated."
10 It had some meaning. And that question is proper.

11 MR. PROBER: Okay.

12 THE COMMISSIONER: I'm sure
13 Mr. Paciocco will put the question again but won't
14 indicate how far apart they were. Next.

15 MS. HANLIN: I recall Constable's
16 McLure's evidence to be that they were
17 face-to-face in their conversation.

18 THE COMMISSIONER: Well, Mr. Prober
19 doesn't want the distance to be put to the
20 witness, and I'll accept that. Mr. Paciocco will
21 put the question without indicating the distance.
22 Go ahead.

23 BY MR. PACIOCCO:

24 Q All right. Forgetting about any
25 distance between the two, would Constable McLure

1 and Derek Harvey-Zenk having a heated conversation
2 in a public location about computer systems be in
3 keeping with your understanding of this quiet
4 gentleman?

5 A Well, I know, if they are talking
6 about the police computer, I think at that time it
7 was being implemented, and I know there were -- I
8 think a lot of people were having difficulties
9 with it.

10 Q All right, sir. I'm not asking you
11 about whether you think that's a conversation they
12 would have had, I'm asking you whether the
13 description by that witness of her engaged in a
14 heated conversation with Derek Harvey-Zenk is in
15 keeping with your description of him as a quiet
16 man?

17 A Well, I think it's depending on how
18 heated it got, if the voices were raised or
19 whatever. But I was asked my opinion of Derek
20 Harvey Zenk, and what from what I saw, he's a
21 quieter individual.

22 MR. PACIOCCO: Thank you for your
23 evidence today, Officer. I have no further
24 questions for you.

25 THE COMMISSIONER: You got it in,

1 Mr. Prober.

2 Thank you very much. You can step
3 down. Who is the next witness?

4 MR. CLIFFORD: Mr. Commissioner, the
5 next witness is Constable Ted Michalik.

6 TED JOHN MICHALIK, being first duly
7 sworn, testified as follows:

8 THE COMMISSIONER: Your first name is?

9 THE WITNESS: Ted.

10 THE COMMISSIONER: Is that short for
11 Edward?

12 THE WITNESS: Actually, it's short for
13 Teddy.

14 THE COMMISSIONER: For what?

15 THE WITNESS: Teddy?

16 THE COMMISSIONER: Teddy? You were
17 baptized as Teddy?

18 THE WITNESS: I was.

19 BY MR. CLIFFORD:

20 Q Good morning, officer.

21 A Good morning.

22 Q Sir, I understand you were, and still
23 are, an officer with the Winnipeg Police Service?

24 A Correct.

25 Q And what's your current rank?

1 A Constable.

2 Q And in February 2005, sir, can you
3 tell the Commission where you were working shift
4 wise?

5 A District 3.

6 Q And, sir, for how long had you been an
7 officer as of February 2005?

8 A February 2005?

9 Q Yeah, how many years experience would
10 you have had at that point?

11 A Nineteen.

12 Q Who were you partnered up with at that
13 point?

14 A No one.

15 Q No one?

16 A No.

17 Q Now, sir, we understand that you left
18 work on February 24th to go to Branigan's?

19 A Correct.

20 Q And do you recall what time you left,
21 or you booked off, sir?

22 A Sometime after 11:30.

23 Q Okay. And your shift was scheduled to
24 go later than that?

25 A Correct.

1 Q And you took some early leave hours?

2 A I had started early that day because I
3 had some administrative work to do.

4 Q And what was your understanding, sir,
5 of what was going to be taking place at Branigan's
6 that evening?

7 A Going out to have a couple of beers
8 and some wings.

9 Q Okay. And when did you find out, sir,
10 that the shift was going to be going out for beer
11 and wings?

12 A I believe the night before it had been
13 mentioned, but there was no definite plans.

14 Q And do you recall who it might have
15 been the night before that mentioned it to you?

16 A No.

17 Q Okay. Am I correct, sir, that
18 everybody from the shift was there with the
19 exception of a guy named Stan?

20 A I believe that's correct.

21 Q That would be a fair characterization
22 of your recollection, that everybody from the
23 shift, as far as you were concerned, was there
24 except for an officer with the first name Stan?

25 A Correct.

1 Q Who is Stan?

2 A I'm trying to think of his last name
3 now. It's been a long time since I have seen him.

4 Q Okay. An officer named Stan who was
5 on the night shift?

6 A An officer named Stan, yeah.

7 Q All right. Now, am I correct also in
8 understanding that there were a number of, there
9 were also a few officers from another shift who
10 were present?

11 A Correct.

12 Q Do you know who they were?

13 A It was a couple of fellows from our
14 traffic division, I believe, were there, and some
15 people from Division 11.

16 Q Did you travel down to Branigan's on
17 your own, sir?

18 A Yes.

19 Q And what time did you get there?

20 A Fifteen minutes before midnight.

21 Q And, sir, can you tell me where people
22 were located within Branigan's? We've heard
23 testimony that there was a lounge area at the
24 south end?

25 A Correct.

1 Q And I take it you went in there?

2 A I did.

3 Q Okay. And can you describe the layout
4 that you observed when you arrived?

5 A Well, I was seated at the south end of
6 the lounge. There was a group of high tables
7 there. To the west side of the lounge, there was
8 some lower tables. And to the east side of the
9 lounge, there was some tables basically for eating
10 and they had some kind of lounging couches there.

11 Q And, sir, how many high tables were
12 there, do you recall?

13 A Approximately six maybe.

14 Q Okay. And what sort of configuration
15 were they in and how were they set up in the room?

16 A There was no set pattern. They were
17 kind of here and there, but I think there was
18 maybe three along the south wall, and the rest
19 were kind of scattered around.

20 Q Okay. What about the lower seating,
21 was that off to the sides then?

22 A Yes.

23 Q And did you notice where there were
24 people sitting in the vicinity of the fireplace?

25 A Yes.

1 Q Okay. And what was the seating
2 arrangement down there?

3 A Lower seating.

4 Q Okay. And how were the chairs
5 configured?

6 A I don't understand the question?

7 Q Were there little sofas?

8 A No, no, regular chairs.

9 Q Okay. And were they facing one
10 another?

11 A They would have been round tables.

12 Q Little shorter tables around the
13 fireplace?

14 A Shorter tables with maybe four chairs
15 around them.

16 Q And were the chairs facing one
17 another? Do you recall people sitting at those
18 tables and facing one another?

19 A Yes.

20 Q Were they open to the group, the
21 larger higher top tables that were set up in the
22 middle of the room?

23 A Yes.

24 Q And from what you could see, were the
25 people sitting at the lower tables able to look to

1 their side and see all the individuals that were
2 at the higher tables?

3 A Well, it's not that large of a lounge.
4 I mean, if you were sitting in that area, you
5 could see everyone pretty -- if you wanted to.

6 Q And what about the little sofas that
7 were on the other side of the room? Were there
8 individuals sitting in those sofas?

9 A There was people sitting there, but
10 I'm not sure if all of the people who were sitting
11 there were part of our group or not.

12 Q Okay. Now, despite whether they were
13 part of your group or not, would you agree with
14 the same suggestion, sir, that the people sitting
15 at those little sofas would have a clear view of
16 everybody else that was in the room?

17 A Yes.

18 Q In your view, the chairs weren't
19 configured in such a way that if you were sitting
20 at the chairs at the fireplace or at the sofas,
21 that you wouldn't be able to turn sideways and see
22 the individuals that were sitting at the high-top
23 tables?

24 A If you wanted to make the effort to
25 look around, you can see the entire lounge, yeah.

1 Q Now, what sort of things did you see
2 taking place there, sir?

3 A People socializing.

4 Q And were they -- people that were
5 socializing, were they having drinks and food and
6 that sort of thing that goes along with being in a
7 bar or lounge?

8 A Yes, they were.

9 Q Okay. And what can you tell the
10 Commission with respect to your observations of
11 the service of alcoholic beverages?

12 A Well, I can only comment on myself. I
13 mean, the waitress was coming and going, she was
14 bringing wings, she was bringing beverages on her
15 platter. It's just kind of normal lounge area.

16 Q Okay. Now, when you say the waitress
17 was coming and going, bringing wings and
18 beverages, we understand that she brought you some
19 wings and some beverages?

20 A She did.

21 Q Okay. And what did you have to drink?

22 A During the evening, I had
23 approximately four pints and I had a plate of
24 wings.

25 Q Now, the waitress was coming and going

1 with beverages. I take it you observed her
2 bringing similar things to other people that were
3 in the lounge with you?

4 A Yes.

5 Q You saw her serving alcoholic
6 beverages, I take it, to many other people that
7 were present that evening?

8 A Well, she was serving a variety of
9 beverages, I guess. I mean, some, it's obvious if
10 she's serving a beer, what it is, but if it's a
11 glass with what appears to be Coke or whatever, it
12 could be a cocktail or it could be just a Coke, I
13 can't comment on that.

14 Q And did you see her doing just those
15 things, serving a variety of things, beer, and
16 beverages that you wouldn't know whether they were
17 mixed drinks or soft drinks?

18 A Exactly.

19 Q Okay. The Commission has heard, sir,
20 that one of things that takes place there is that
21 the officers are given a special discount price on
22 beer. And Chelsea O'Halloran has described her
23 evening -- that, by the way, is the server who was
24 working and has testified before the Commission --
25 and indicated that she had a busy evening of it?

1 A Well, I don't recall getting a
2 discount on beverages.

3 Q Well, that means, sir, that you
4 weren't ordering the \$2.75 pints. So do you
5 recall what type of beer that you were ordering?

6 A Well, what I was paying per pint was
7 about \$3.50, so I don't know where the \$2.75 comes
8 from.

9 Q Do you recall what you were ordering?

10 A It was either, usually I drink
11 Labatt's Light, so I wasn't getting a deal on
12 that.

13 Q No?

14 A So if they had a special on, I didn't
15 know about it.

16 Q You were having Labatt's Light?

17 A Yeah.

18 Q All right. And we have heard from the
19 server, she has testified before the Commission
20 and told us that she was indeed coming and going,
21 and her evidence was that she had a busy night of
22 it there. And I take it, would that accord with
23 your recollection, sir, that you observed her
24 coming and going, serving beer and beverages, et
25 cetera, throughout the time you were there?

1 A Yes.

2 Q Do you recall, sir, where you sat when
3 you arrived there?

4 A South end at the lounge.

5 Q Okay. And were you at a high table or
6 a low table?

7 A High table.

8 Q Okay. And who was sitting with you,
9 sir? And I know that you went there alone, and
10 when I say with you, who was on your right, who
11 was on your left, who was across from you?

12 A Bryan Neumann on my right, Al Williams
13 on my left, and an old partner of Al's from
14 District five, Jules, was seated basically in
15 front of me.

16 Q Okay. What about the table beside
17 you, to the right? Was there a high-top table to
18 your right?

19 A Yeah. I don't recall who was sitting
20 there.

21 Q Okay. What about the high-top table
22 to the left?

23 A I don't remember who was sitting there
24 either.

25 Q Okay. Do you recall where Harvey-Zenk

1 was located?

2 A Yeah.

3 Q Okay. Where was that?

4 A He was one table ahead of me, or to
5 the north.

6 Q So what was between you and
7 Harvey-Zenk?

8 A A bit of space and a couple of people,
9 I guess, were on the side of his table, so we were
10 two tables apart, basically.

11 Q Okay. And you would have been
12 distance wise, about six, seven feet from him?

13 A Between six to 10 feet.

14 Q Okay. I noticed, sir, that you, in
15 your Professional Standards Interview, indicated
16 at that point that you were about six, seven feet
17 from him?

18 A That was just a rough estimation
19 considering the size of a table and that so...

20 Q What we'll do as well I think at this
21 time is we'll have your interview entered as an
22 exhibit in these proceedings.

23 Sir, you recall giving an interview to
24 the Winnipeg Professional Standards Unit on March
25 3rd, 2005?

1 A Yes.

2 THE CLERK: Exhibit 177.

3 (EXHIBIT 177: F-2.35.j, Transcript of
4 Cst Ted Michalik, March 3, 2005)

5 MR. CLIFFORD: That's Exhibit 177 now,
6 and that document is found in our disclosure at
7 F-2.35.j.

8 BY MR. CLIFFORD:

9 Q So I noted, sir, in your interview
10 with Professional Standards Unit, and I'm
11 referring to page 1018 at line 16?

12 A Page 1018?

13 THE COMMISSIONER: Look at the top,
14 it's page 8.

15 BY MR. CLIFFORD:

16 Q Do you have the exhibit copy there,
17 sir?

18 A Okay.

19 Q 1018, line 16?

20 A Yeah.

21 Q You see there, sir, you were asked the
22 question:

23 "How many people between like you and
24 him, how far roughly?"

25 Your response was:

1 "Probably be about as far as me from
2 as you are from me right now. So
3 maybe what is that, six, seven feet."
4 So when you were giving your interview with
5 Professional Standards Unit, you had a point of
6 reference, you put yourself about as far as you
7 and the person that was interviewing you, that
8 would be Sergeant Girard. Does that refresh your
9 memory, sir, that would have been about six,
10 seven feet that you were away from Derek
11 Harvey-Zenk?

12 A Approximately.

13 Q Now, sir, do I understand correctly
14 that you had a clear line of vision with him, you
15 were essentially facing him, he was facing you.

16 A I could see him.

17 Q And who was he sitting with?

18 A I think Jay Nolet was at his table,
19 but I don't remember.

20 Q Okay. So your best evidence on this
21 point is that you recall Jay, or you think Jay
22 Nolet was sitting with him?

23 A Yeah.

24 Q And what is it, sir, that brings you
25 to that conclusion that you --

1 A They were partners at the time, so
2 they probably would have arrived at basically the
3 same time, they probably would have sat together.
4 That's an assumption, but usually you sit with
5 your partner.

6 Q Okay.

7 A At least for the beginning of the
8 night.

9 Q That would be your understanding, I
10 take it, sir, having 19 years experience at that
11 time?

12 A Yeah.

13 Q You'd go there, particularly if you
14 booked off with your partner, you might end up
15 there sitting with him for a little while?

16 A Usually.

17 Q Now, are you basing the testimony that
18 you recall Jay Nolet sitting with him on that
19 assumption, or do you have a recollection of
20 actually -- I mean, he wasn't sitting alone,
21 right?

22 A No, he wasn't sitting alone, but I
23 don't recall exactly who he was sitting with.

24 Q What about in the vicinity of Derek
25 Harvey-Zenk, do you recall other people being

1 around him?

2 A Well, I believe Sergeant Humniski,
3 Anderson and Sean Black perhaps were seated in the
4 lower seats on the west side. And a few of the
5 other fellas were seated a little bit further
6 back, Harding and a few of them, so...

7 Q Can you picture Officer Black at the
8 lower seat on the --

9 A From my recollection --

10 Q -- on that side?

11 A -- I believe that's where he was,
12 yeah.

13 Q Okay. And what was the configuration
14 between Derek Harvey-Zenk and officer Black? Were
15 they facing one another? Were they angling away
16 from one another? Were they --

17 A No, I guess Zenk's back would have
18 been to Sean.

19 Q Okay. And who was Sean facing, do you
20 recall?

21 A I believe he was facing Sergeant
22 Humniski and Anderson.

23 Q Do you recall anybody else being in
24 that vicinity?

25 A Not that I can say for sure.

1 Q Okay. So you put Sergeant Black,
2 Humniski and Anderson at the lower tables?

3 A Yeah.

4 Q You don't picture anybody else down
5 there?

6 A No.

7 Q You make the assumption only that
8 Derek Harvey-Zenk would be with his partner at the
9 high-top table?

10 A Exactly.

11 Q You have ordered yourself a drink, I
12 take it. You've got a drink in front of you, do
13 you not, at the table?

14 A I did.

15 Q Do you see other people with a drink
16 in front of them at the high-top tables?

17 A Yes.

18 Q Okay. Did you see that Derek
19 Harvey-Zenk had a drink in front of him?

20 A I believe he did.

21 Q Okay. And what was it?

22 A I believe it was a beer.

23 Q Now, sir, you say that you believe he
24 had a beer. The Professional Standards Unit asked
25 you basically the same question in March of 2005,

1 sir, and I'm going to see if I can refresh your
2 memory and perhaps clarify your evidence on that
3 point.

4 Could I ask you again to refer to page
5 1018? And you were asked, sir, starting at line
6 19:

7 "All right. Did you notice at all
8 what he was drinking or how much he
9 had to drink while you guys were at
10 Branigan's?"

11 You responded, sir:

12 "I couldn't see how many, how much he
13 was drinking, I noticed he had a beer
14 in front of him and also noticed that
15 he ate about 40 wings."

16 A Correct.

17 Q Okay. So you didn't indicate to the
18 Professional Standards Unit, sir, on March 3rd,
19 2005, that you had a belief that he had a beer,
20 you indicated very clearly that you noticed he had
21 a beer in front of him?

22 A Well, I believe it was a beer.

23 Q It looked like a beer?

24 A It looked like a beer.

25 Q In a beer glass?

1 A I had a beer glass, he had a glass,
2 the substances looked like they were the same.

3 Q You could spot a glass of beer, I take
4 it, six feet away from you? It wouldn't be --

5 A I would think so, unless someone is
6 drinking apple juice.

7 Q Okay. So this was a beer, for all
8 intents and purposes?

9 A I believed it to be a beer.

10 Q Okay. Short of you getting up and
11 tasting it?

12 A Exactly.

13 Q Fair enough.

14 A Tasting it, smelling it, I believed it
15 was a beer.

16 Q And did you see him consuming that
17 beer?

18 A I seen him take a sip.

19 Q And I take it this is something that
20 you would have seen on a number of occasions
21 throughout the evening, he was drinking his beer
22 just like everybody else in the bar?

23 A Well, I wouldn't say I was staring at
24 Zenk watching every sip he was taking. At the
25 beginning there, he was devouring the wings so he

1 really wasn't sipping too much.

2 Q No. But I just want to clarify your
3 evidence, Constable, that when you say you saw him
4 drink his beer, you didn't see him take a sip once
5 throughout the evening. He was drinking beer
6 throughout the evening when you were there?

7 A I saw the one glass of beer in front
8 of him. After that, and after I had finished my
9 beers, I started moving around, talking to other
10 people, socializing with other people, so I can't
11 say what he did after that, or how many sips he
12 had after that.

13 Q All right. But your evidence is quite
14 clear, he had a drink in front of him?

15 A Yes.

16 Q It was beer, as far as you were
17 concerned?

18 A Yes.

19 Q And you saw him drinking it?

20 A I saw him take a sip, yes.

21 Q Now, you also indicated to
22 Professional Standards Unit that you noticed that
23 he ate about 40 wings?

24 A Um-hum.

25 Q And what brings you to that statement

1 to Professional Standards, I mean, that you see
2 this individual and you quantify the food?

3 A Well, because Zenk is known for eating
4 a lot of wings when he goes out. So, I seen four
5 different platters come to him and they are
6 usually served in portions of 10, so I assumed he
7 had 40 wings.

8 Q Okay. Sir, you mentioned that you had
9 your drink, beer, you noticed that Derek
10 Harvey-Zenk had a beer, you saw him take a sip.
11 You've told the Commission about the wing
12 consumption?

13 A Yeah.

14 Q Then you were about to indicate, I
15 think, that you got up and you were walking
16 around, socializing?

17 A Yeah, or I might have just turned and
18 started speaking to Al, or speaking to Brian, or
19 whatever. I mean, just a normal night out.

20 Q All right. Now, you gave us your
21 arrival time, sir. What time did you leave? I
22 understood from your interview that you stayed
23 until, I understood it was approximately
24 2:00 o'clock or so, maybe a little bit earlier?

25 A I believe I left prior to 2:00, yeah.

1 Q Your understanding, sir, was that you
2 were one of the first, if not the first of the
3 group to leave and you in fact left on your own?

4 A Correct.

5 Q So you were there for the most part,
6 the bulk of the evening, subject to leaving a
7 little bit earlier than the others, and we're
8 going to come back to that. Was this something
9 that was taking place through the evening, sir,
10 that individuals were mingling around,
11 socializing, talking to one another?

12 A Yes.

13 Q These weren't static little clusters
14 of people that were engaged in private
15 conversations that evening?

16 A Some would be, some had their private
17 little conversations in the corner, some were
18 walking around.

19 Q And did you walk around, sir, to have
20 conversations with individuals?

21 A I did.

22 Q And did you see other people
23 participating and doing the same thing?

24 A Yes.

25 Q And did you see Derek Harvey-Zenk

1 anywhere other than at the high-top table that you
2 referred to?

3 A Yeah, I seen him socializing with
4 different people, talking to different people.

5 Q And can you indicate to the Commission
6 who you saw him socializing with?

7 A I saw him speaking with Dave Harding,
8 I saw him speaking with Guyot, I saw him speaking
9 with Jay Nolet.

10 Q Anybody else?

11 A Not that I can recall.

12 Q Okay. Now, those individuals that you
13 mentioned, Harding, Guyot and Nolet, you have a
14 specific recollection of Harvey-Zenk speaking to
15 them that evening?

16 A Yes.

17 Q And did you participate in any
18 conversations with Derek Harvey-Zenk and any of
19 those individuals, Harding, Nolet, or Guyot?

20 A No.

21 Q Okay. So you saw these things taking
22 place. Did you have a private conversation at any
23 point with Derek Harvey-Zenk?

24 A That night, no.

25 Q And when you saw him speaking with

1 Dave Harding, where was that?

2 A They were standing up in the, kind of
3 in the middle area of the lounge.

4 Q And you say middle area, could I ask
5 you -- I don't mean to nit-pick here -- but when
6 you say the middle area of the lounge, could you
7 be a little more precise about that?

8 A Okay. Between the fireplace and the
9 east wall.

10 Q And how long was the conversation
11 taking place between Harding and Mr. Harvey-Zenk?

12 A I don't know.

13 Q Okay. What about the conversation
14 with Christian Guyot?

15 A Well, they were all together.

16 Q The three of them were together --

17 A Yes.

18 Q -- having that conversation?

19 A Yeah.

20 Q Were they all standing up?

21 A Yeah.

22 Q Okay. Do you picture this in your
23 mind's eye now? Can you see it in front of you,
24 in your memory?

25 A Well, as I'm glancing around, I see

1 that -- I saw them standing there, and then I go
2 back to my conversation.

3 Q When the three of them were standing
4 there, did they have pints of beer in their hand?

5 A I don't recall. They could have had
6 it on the table. I don't recall if they had
7 anything in their hands at that time.

8 Q And did you have conversations with
9 Constable Black that evening?

10 A Yes.

11 Q Okay. Where did that conversation
12 take place?

13 A In the lower chairs.

14 Q You got down there with him and --

15 A Yeah.

16 Q -- spoke with him.

17 A Sat with him and Anderson and Humniski
18 for a bit.

19 Q So Officers Black, Anderson and
20 Humniski were down on the lower chairs?

21 A Yes.

22 Q Was there anybody else down there when
23 you sat down to talk to them?

24 A Not that I recall.

25 Q Do you recall whether there were

1 female officers from the shift that were present
2 at Branigan's?

3 A Well, we only had one female on our
4 shift at that time, and she was there.

5 Q And did you -- you are referring to
6 Constable McLure?

7 A Correct.

8 Q Okay. And did you speak with her?

9 A I don't believe I spoke with her, no.

10 Q Had you been to Branigan's prior to
11 that evening with the shift?

12 A I believe maybe on two other
13 occasions.

14 Q Similar type of occasions?

15 A Similar, yeah.

16 Q I'm sorry?

17 A Similar, yeah.

18 Q Okay. Thank you. Similar in the
19 sense that it was after the series of evening
20 shifts, and the similar time to gather, and a
21 similar time for people to leave?

22 A Correct.

23 Q And was that in the months leading up
24 to February 2005?

25 A Yeah, it would have been months.

1 Q And can you give me an approximation
2 in terms of the number of months, how frequent it
3 would have been leading up to February?

4 A I can only speak for myself. The time
5 prior to that, it might have been four months
6 prior.

7 Q And the time prior to that would have
8 been when?

9 A It could have been another four months
10 prior.

11 Q And were you aware, sir, of gatherings
12 that were taking place within that time period
13 that you just didn't participate in?

14 A Not that I could speak of, no.

15 Q All right. Sir, I have asked you some
16 direct questions about specific individuals
17 communicating with one another, and we've covered
18 that. And I have asked you direct questions about
19 whether you have communicated with specific
20 constables I was interested in. Who else did you
21 talk to that I haven't raised with you?

22 A I don't recall who else I might have
23 spoken to that night.

24 Q How would you describe the atmosphere
25 at the lounge when you first arrived?

1 A When I first arrived?

2 Q Yeah?

3 A Well, everybody coming in at different
4 times, finding a place to sit, trying to get the
5 waitress's attention to order some wings or
6 whatever, basically that.

7 Q There was, I take it, a certain amount
8 of comradery, everybody is happy to be in that
9 setting as opposed to being at work?

10 A Yeah.

11 Q Okay. And as the night progressed,
12 individuals, as you say, continued to order
13 beverages and food, et cetera, from the server,
14 and she kept bringing them out?

15 A Correct.

16 Q You were enjoying yourself, I take it?

17 A I was having a pretty good time, yeah.

18 Q And I take it, would you conclude that
19 the other officers there, nobody was demonstrating
20 to you, or you didn't observe that people were not
21 having a good time?

22 A What I could tell, everybody was
23 having a good time.

24 Q And were they laughing and joking --

25 A Yes.

1 Q -- and poking fun at one another?

2 A Yes.

3 Q That sort of thing?

4 A Um-hum.

5 Q Anybody clapping hands or any of that
6 sort of thing happening?

7 A I don't remember anybody clapping
8 their hands, no.

9 Q Now, we have learned, sir, the
10 Commission has learned and received disclosure on
11 the issue that there were some young recruits that
12 were at Branigan's that evening? Let me put it
13 this way, some new officers? Maybe I am not --

14 A Depends what you're calling new. If
15 you're talking people that were field training, I
16 don't recall any field trainees being there.

17 Q Well, we have received some
18 disclosure, sir, that there was at least one field
19 trainee there.

20 A There could have been. I mean, there
21 could have been people I don't even know that were
22 police officers that were there. I mean, I've
23 been on this job for 22 years, and I could walk
24 into District 3 station right now and I probably
25 couldn't recognize three-quarters of the people in

1 there.

2 Q Had you been to gatherings prior to
3 February where there were new recruits or field
4 trainees that were out for their first time with
5 the shift?

6 A Oh, I believe it's happened on
7 occasion, sure.

8 Q Okay. And when it does happen, is it
9 a situation where the senior constables, and I
10 don't mean necessarily senior in the sense of
11 many, many years experience, but guys that have,
12 or women that have been on the job for a few years
13 will take the opportunity to welcome the field
14 recruit in, and they might buy them a drink, there
15 might be some talk or celebration about the fact,
16 look, welcome to the shift? That sort of thing
17 takes place, does it not?

18 A Sure.

19 Q Do you recall who it was, sir, that
20 you were speaking to when you wound up the
21 evening, when you were making your way to leave?

22 A No.

23 Q Now, we understand, sir, that you did
24 in fact leave alone?

25 A Correct.

1 Q But you didn't leave that much earlier
2 than everybody else?

3 A Well, I am assuming they left. All I
4 remember was it was a cold night, so I was out in
5 the parking lot warming up my car, and I could see
6 people standing in the area of the cashier. So I
7 was just, I am assuming that they were paying
8 their bills and leaving, but I never actually saw
9 them come out into the parking lot.

10 Q There's a couple of things I want to
11 cover with you, sir, on that observation that you
12 make. You told Mr. Commissioner that you were out
13 in the parking lot, but you could see people
14 moving up to the area where they pay their bill.

15 A Yeah, because that's basically in the
16 lounge area. They may have just been standing
17 there, I don't know.

18 Q And this was what you understood to be
19 a group of people that were up there together?

20 A Correct.

21 Q And I understood, sir, from your
22 interview with the Professional Standards Unit
23 that, in fact, you could see that Derek Harvey
24 Zenk was indeed a part of this large group that
25 was standing together in the area where you cash

1 out?

2 A Correct.

3 Q Now, when you describe a group being
4 together, and again I don't mean to be prone to
5 the extreme here on the detail, but I'm sure the
6 Commission is interested in this, these people
7 were close to one another. They were in close
8 proximity together as a group of officers on their
9 way out?

10 A Correct.

11 Q I take it, sir, that based on your
12 observation, and I'm not asking you what anybody
13 else said or heard, because I know that you're out
14 in the parking lot at this point, but you observe
15 these individuals together. And I take it your
16 conclusion would be that if one of them was saying
17 something, certainly the other ones were close
18 enough and they were within earshot that they
19 could hear what was going on?

20 A I would presume that, yeah.

21 Q Now, you saw Derek Harvey-Zenk as a
22 part of that group that was getting up and going
23 to the area where you cash out. Who else was in
24 that group?

25 A I don't recall who was standing with

1 him.

2 Q And in terms of the number of officers
3 that were standing together with Derek
4 Harvey-Zenk, how many?

5 A Maybe four.

6 Q Now, did you see other people that
7 were around those four persons?

8 A Well, I didn't have that great of a
9 parameter of a view. I mean, I'm looking through
10 the doors so it's not -- I could only see a small
11 portion of the lounge area from there.

12 Q Did you see people coming out into the
13 parking lot?

14 A While I was in the parking lot, I
15 didn't see anybody else come out. Prior to me
16 leaving, no one came out.

17 Q So I take it, sir, that that would
18 have ended your evening at Branigan's and your
19 opportunity to observe what was happening with the
20 fellow officers?

21 A Correct.

22 Q And we know, sir, that you did not go
23 to Officer Black's residence?

24 A Did not.

25 Q And then your next involvement, so to

1 speak, in what occurred later in the night was
2 when you went back to work. Is that the case?

3 A I don't understand your question?

4 Q We know that you didn't go to Officer
5 Black's residence?

6 A Correct.

7 Q You became aware of the fact, of
8 course, that Derek Harvey Zenk was charged with
9 criminal offences early in the morning on
10 February 25th?

11 A I didn't know about it that day, I
12 heard about it afterwards.

13 Q Okay. You saw him at 2:00 o'clock in
14 the morning on February 25th when you were
15 leaving?

16 A Right.

17 Q You learned subsequent to that that he
18 would have been charged with a criminal offence at
19 about, give or take, 7:00 o'clock in the morning?

20 A Correct.

21 Q Five hours later. You learned about
22 this when you got to work, is that the case, or
23 did you learn about it through the media?

24 A I learned about it prior through the
25 media or through somebody, but I heard about it

1 prior.

2 Q Okay. Who was it that you heard about
3 it from?

4 A I believe I heard it from Harding at a
5 computer course at the Academy. He was there on
6 an unrelated course.

7 Q Okay. So you were at the -- the next
8 day I take it?

9 A Actually, it wasn't the next day, I
10 was mistaken about that. It was the day after.

11 Q On a Saturday?

12 A We went on a Wednesday to Branigan's,
13 correct?

14 Q Wednesday, Thursday?

15 A Yeah. So I didn't hear about it
16 Thursday. Friday when I was on a computer course,
17 I bumped into Harding.

18 Q Okay. We're going to get this
19 resolved, sir, that the next person you spoke to
20 about it who told you what happened was Dave
21 Harding. You're clear on that?

22 A He spotted me in the hallway and said,
23 did you hear what happened?

24 Q And this was at?

25 A At the Academy.

1 Q At the Academy on a computer course?

2 A I was on a computer course for
3 supervisors. He was on an unrelated course. I
4 guess he happened to spot me in the hallway,
5 approached me and said, "Did you hear what
6 happened?" I said, "No."

7 Q Okay. And your understanding, sir, is
8 that this course was occurring on what day of the
9 week?

10 A Friday.

11 Q On a Friday?

12 A Yes.

13 Q Okay. Sir, it would have been Friday,
14 2:00 o'clock in the morning.

15 A Friday at 2:00, I don't know --

16 Q Your understanding was that you saw
17 Dave Harding the next day at work, or the day
18 after?

19 A I don't understand your question?

20 Q Okay. The computer course that you
21 went on with Dave Harding --

22 A I didn't go on a computer course with
23 Dave Harding.

24 Q The computer course where you met him
25 was during the week?

1 A Yes.

2 MR. CLIFFORD: Okay. What I'll do,
3 Mr. Commissioner, is I'll, when we come back at
4 2:00 o'clock I can clarify the date. It's just a
5 matter of pulling up a document.

6 THE COMMISSIONER: Are we not agreed
7 upon when this event occurred? We don't have to
8 clarify it. When did the accident occur? It was
9 a Thursday night, wasn't it, Friday morning? So
10 if it happened Friday morning, and you were at the
11 party Thursday night, you couldn't have been with
12 him at a computer course on Sunday.

13 THE WITNESS: Then I've got my dates
14 mixed up. I thought we went to Branigan's on a
15 Wednesday and the accident happened on a Thursday.
16 If it happened on the Thursday to Friday, then I
17 probably would have seen him at the computer
18 course on the Monday.

19 THE COMMISSIONER: I don't think after
20 six weeks, we don't know when the accident
21 happened. It happened Thursday night, Friday
22 morning. Isn't that correct? Yeah. Okay. We
23 can resolve that and let's get on with it.

24 BY MR. CLIFFORD:

25 Q All right. Your recollection is the

1 computer course was on Monday?

2 A It must have been on the Monday
3 because they don't do things on the weekend.

4 Q That's right. And what was the
5 conversation that you had with Dave Harding?

6 A Like I said, he approached me and he
7 said, did you hear what happened? I said no. He
8 said Harvey-Zenk was involved in a fatal accident.
9 I was shocked. And I got a few details, and then
10 my class started and I went back in.

11 Q Did you talk to him about what
12 happened later in the evening at Officer Black's
13 house? Were you curious about what he knew about
14 what had occurred later in the evening?

15 A No, I didn't ask him.

16 Q Okay. And sir, one area I'll ask you
17 about was the shift briefing. I understood that
18 you attended a shift briefing?

19 A We have a shift briefing every day.

20 Q Okay. And you attended a shift
21 briefing where this matter was brought up?

22 A Yes.

23 Q And do you recall what day that
24 occurred?

25 A It would have been our first day back

1 at work.

2 Q It would have been the Monday, right?

3 A It could have been.

4 Q Okay.

5 A Whatever our first day back at work
6 was.

7 Q Okay. Because I'm just trying to help
8 you, sir, with respect to the days when things are
9 occurring, because I think there's some confusion
10 with respect to when you spoke with Harding and
11 when you had the briefing. You do understand, or
12 recall that those two things occurred, that you
13 attended a shift briefing and it was discussed?

14 A It was brought up at a shift briefing,
15 yes.

16 Q And you also had a conversation with
17 Dave Harding?

18 A Prior to that shift briefing.

19 Q Okay. So if we pin down the day of
20 the shift briefing, that will help us determine
21 the day that you spoke with Dave Harding, right?

22 A I'm presuming so.

23 MR. CLIFFORD: All right. And I think
24 that that might be a good place, Mr. Commissioner,
25 if you wanted to break now for lunch. I will be a

1 little longer with him.

2 THE COMMISSIONER: You'll be a little
3 longer with him?

4 MR. CLIFFORD: Yeah.

5 THE COMMISSIONER: Okay. An hour and
6 15 minutes, gentlemen, ladies.

7 THE CLERK: All rise. This Commission
8 of Inquiry will take the luncheon recess.

9 (Proceedings recessed at 12:31 p.m.
10 and reconvened at 1:45 p.m.)

11 THE CLERK: All rise. This Commission
12 of Inquiry is now reopened.

13 MR. CLIFFORD: Good afternoon,
14 Mr. Commissioner.

15 THE COMMISSIONER: Good afternoon. We
16 are missing Mr. Prober.

17 MR. KING: Good afternoon,
18 Mr. Commissioner. Mr. Prober, I believe will be
19 away for this afternoon, so I'm here in his place.

20 THE COMMISSIONER: Thank you.

21 BY MR. CLIFFORD:

22 Q Constable Michalik, just prior to
23 recessing for lunch, we had determined that you
24 had a conversation with, you recalled with Dave
25 Harding, about the incident of February 25th, and

1 that you realized that the shift briefing was
2 subsequent to the conversation with Dave Harding.
3 And we were going to attempt to make some further
4 determination about when these things occurred.
5 Do you have a copy of your interview with
6 Commission Counsel, sir, that took place on
7 April 3rd, 2008?

8 A Yes.

9 Q Could I ask you, sir, to open that up
10 and turn to page 33, please?

11 Sir, this is a transcript of an
12 interview that was conducted on April 3rd, 2008,
13 as I've mentioned, and it is you and I. And just
14 on that point, sir, with respect to what day it
15 was that you talked to Dave Harding, if I could
16 ask you to refer to page 33, line 17. Are you
17 with me, sir?

18 A Yes.

19 Q "Q Moving forwards from that
20 evening, can you tell me when it was
21 that you had first learned that there
22 had been a fatality involving Derek
23 Harvey-Zenk and that he was facing
24 serious criminal allegations?

25 A Well, this is what I'm trying to

1 remember. I can't remember if it
2 was -- why I left so early is because
3 I had the computer course that morning
4 or if it was a couple of days
5 afterwards. But I went to the academy
6 on a computer course, and I believe it
7 was Dave Harding who was at the
8 academy on an unrelated course who
9 came up to me and asked me if I had
10 heard. At that point, I hadn't heard
11 anything.

12 Q What day was this?

13 A I'm just trying to remember. I
14 can't remember if it was the next day
15 or if it was a couple of days after,
16 but I heard about it. I heard about
17 the accident on the radio, but I had
18 no idea who the participants were or
19 who was involved.

20 Q After having this conversation
21 with Dave Harding, who did you speak
22 with, or what was the next time it was
23 brought up?

24 A The next time it would have been
25 brought up was when I was back to

1 work.

2 Q At the briefing that you told me
3 about?

4 A Yes.

5 Q At the commencement of the
6 interview?

7 A That's correct."

8 Sir, having an opportunity to review
9 those questions and answers, does that refresh
10 your memory to the extent that it would allow at
11 least for the possibility that the training would
12 have been that day?

13 A I will concede that the training was
14 that day then.

15 Q And, sir, I can tell you that the
16 Commission has heard evidence from Constable
17 Harding that, in fact, he was at training the next
18 day.

19 A I won't contradict that then, I was at
20 training the next day.

21 Q You mentioned, just prior to recessing
22 for lunch, that Dave Harding spoke to you, and you
23 mentioned that he had given you some details. Can
24 you tell me what those details were?

25 A Like I said previously, he asked me if

1 I had heard. I said no -- or did you hear the
2 news? I said no. He said Derek was involved in a
3 very serious fatal accident. I was in shock or
4 whatever, and I didn't get to any further
5 conversation with him because my class was
6 starting and I went back into the room.

7 Q Did you speak with him again
8 throughout the course of that day?

9 A No.

10 Q Did you speak with any other officer
11 involved in that evening throughout the weekend?

12 A No, I didn't speak to anybody until I
13 came back to work.

14 Q Now, you mentioned the briefing in
15 that question and answer sequence. And the
16 briefing would have been on your first day back at
17 work?

18 A Correct.

19 Q And I can tell you, sir, that the
20 Commission has heard evidence and that would have
21 been, you would have been back to work on Tuesday
22 working on the night, March 1st?

23 A Okay.

24 Q And you recall that the briefing took
25 place at the commencement of your shift?

1 A Correct.

2 Q And can you tell the Commission, sir,
3 who it was that was holding the briefing for the
4 shift?

5 A It would have been Sergeants Humniski
6 and Anderson.

7 Q And what I would like you to tell me,
8 sir, is what took place during the briefing?
9 Given the fact that you were together with a
10 number of officers at Branigan's, you knew that
11 they had gone over to Officer Black's, what did
12 you understand to be the purpose of the briefing
13 and what was being said to you?

14 A I think the purpose of the briefing
15 was to just make sure that everybody was updated
16 as to what was going on. And we were advised that
17 there was some discussion with the District 3
18 commander in regards to this. And I think all of
19 us realized, because of the circumstances, that
20 our Professional Standards Unit would be becoming
21 involved sooner or later. And we all made the
22 decision that we were going to make ourselves
23 available for any interviews that they required of
24 us.

25 Q Okay. Was there any discussion, sir,

1 with respect to the facts that would be delved
2 into, or the questions that would be asked, and
3 the facts around the circumstances of the evening
4 of the 24th and 25th?

5 A The only thing I was privy to was the
6 facts that would probably be asked -- yes, we were
7 out at a lounge, alcohol was consumed. We would
8 be questioned on our -- on how much we personally
9 drank, and we would probably be questioned on what
10 other people drank.

11 Q Okay. And who was telling you, as one
12 of the constables at Branigan's, that these were
13 the types of questions that you could potentially
14 be asked?

15 A Well, no constable brought that up.

16 Q No, who was telling you, as one of the
17 constables involved, that these are the questions?

18 A Either Humniski or Anderson. They
19 were kind of flipping back and forth.

20 Q So, do I understand that they were
21 flipping back and forth telling the shift that
22 these are the types of questions that you can
23 anticipate from the Professional Standards Unit?

24 A Yes, they wanted us to be open and
25 available.

1 Q They wanted you to be open and
2 available, but they were also telling you, these
3 are the questions that you are going to be faced
4 with at the Professional Standards Unit?

5 A Well, I think most of us realized what
6 type of questions would be asked.

7 Q Was anybody else participating in
8 giving the briefing?

9 A No.

10 Q Were you given any information with
11 respect to the criminal investigation that was
12 going to be taking place?

13 A No.

14 Q Sir, did they discuss with you the
15 fact that East St. Paul Police or the RCMP were
16 going to be involved in the case?

17 A Well, I had heard over the news media
18 that East St. Paul had made the arrest, so I would
19 assume that they were going to conduct the
20 investigation. And they may have called in the
21 RCMP to do, you know, the road scene management.

22 Q Sir, if I could refer you to page 6 of
23 your Commission interview, I want to determine if
24 I can refresh your memory on this point. Page 6,
25 sir at line 13. This is you and I again.

1 "Q And you have told me generally
2 that they went over the facts and the
3 officers are being told that
4 Professional Standards will look into
5 it, but I would like you to give me
6 some additional and more specific
7 detail about what you were told in the
8 briefing?

9 A In the briefing?

10 Q Yeah.

11 A Well, obviously that Constable
12 Zenk was involved in a serious
13 accident that was being investigated
14 by East St. Paul Police and I believe
15 the RCMP. And then because he is a
16 member of our shift, that sooner or
17 later our Professional Standards would
18 get involved. So just instead of
19 waiting to hear, let's step up to the
20 plate and take care of this now."

21 Now, does that refresh your memory,
22 sir, whether they would have told you in the
23 briefing, either Officer Humniski or Anderson,
24 that East St. Paul Police was investigating Derek
25 Harvey-Zenk?

1 A You know what, I probably heard it on
2 the media first, and they may have repeated it.
3 Obviously, if I said that, then they did repeat
4 it.

5 Q And was there a discussion that took
6 place, sir, about, amongst the officers, about
7 what actually occurred that night in the hours
8 leading up to the accident?

9 A None that I was involved in.

10 Q Did you see some of the officers
11 together having discussions?

12 A I seen officers together talking.
13 What they were talking about, I can't comment on.

14 Q And who were the officers that you saw
15 together talking during the briefing?

16 A I don't recall who was talking to who.

17 Q How long did the briefing last, sir?

18 A Approximately 30 minutes, but that
19 would have also included our regular briefing,
20 which we do on a daily basis. So after that, the
21 business of the incident was taken care of, we
22 would have gone to our regular briefing matters.

23 Q Were Officers Humniski and Anderson
24 raising potential questions such as, look, you can
25 anticipate that you will be asked what time you

1 got there, what time you left, who you were with,
2 and those sorts of things?

3 A Yeah.

4 Q Do you recall there also being a
5 discussion, sir, being lead by Sergeant Humniski
6 or Anderson with regard to the fact that this is
7 not looking very good for the shift, it is casting
8 a very negative light on the shift?

9 A I think that's kind of obvious, it
10 wouldn't even have to be said.

11 Q Now, sir, you were a senior constable
12 at that point, an officer with a lot of
13 experience. Would it have been your practice
14 typically in an investigation to get a group of
15 witnesses together that are going to be
16 interviewed by someone else and tell them, look,
17 before you go for your interview, these are the
18 types of questions you are going to be facing? Is
19 that something you would do in the course of an
20 investigation?

21 A I wasn't leading this investigation.

22 Q I realize that, but was it something
23 that you would do, with your level of experience,
24 having a group of witnesses together and telling
25 them collectively, look, PSU or another police

1 force is going to investigate this, but as a group
2 I want you all to know these are the questions
3 that you are all going to be facing?

4 A Would I do that? No.

5 Q Why not?

6 A I would like to interview my witness
7 separately.

8 Q Yeah, you want to approach witnesses
9 fresh?

10 A I don't think this is the same
11 situation as what you are trying to bring forth.

12 Q But the practice that you were taught
13 and that you've adopted through your career is
14 that you would --

15 A Yeah, but Sergeant Humniski nor
16 Anderson were investigating this matter.

17 Q Other officers --

18 A Another department was investigating.
19 If someone from East St. Paul came over and tried
20 to speak to us as a group, yes, I would say that
21 that's not the right way to handle the situation.

22 Q Well, I'm not concerned, sir, about
23 the fact that they spoke to you as a group, but
24 the information that you were receiving as a group
25 was, look, when you get interviewed by

1 Professional Standards Unit, these are the
2 questions that you are going to be facing?

3 A I would think that the level of
4 experience we had at our briefing, these are the
5 questions that we all would be asking, so it is
6 not like we needed someone to really tell us this.

7 Q What about the trainee officers, what
8 about the new officers?

9 A There was no trainee officers on our
10 shift at that time.

11 Q T.J. Spruyt, Kelly McLure's partner?

12 A I believe they were -- I thought they
13 were past their training.

14 MR. CLIFFORD: Constable Michalik,
15 those are the questions that I have for you.
16 Remain seated and other counsel will have
17 questions.

18 BY MR. ZAZELENCHUK:

19 Q Officer, you told us that you had four
20 pints of Labatt's Light and a plate of wings?

21 A Correct.

22 Q And when asked how you knew that Derek
23 Harvey-Zenk had 40 wings, you said that you saw
24 four different plates come to his -- come to him
25 and that they usually come in tens?

1 A Correct.

2 Q And yours came in tens?

3 A Correct.

4 Q Do you recall what your bill was?

5 A 20 bucks.

6 Q Yeah. Okay. And that's very good,
7 because we have records from Branigan's, and pints
8 of Labatt's Light were \$4.95 that night, and wings
9 were 35 cents a piece. The four plates that you
10 saw coming to Harvey-Zenk, to in front of Derek
11 Harvey-Zenk, did they come in quick succession or
12 was this over the course of the two hours that you
13 were there?

14 A No, quick succession.

15 Q Quick succession?

16 A Yes.

17 Q So it would have all been near the
18 beginning?

19 A Yeah.

20 Q And the waitress just brought the
21 plates, or did she have other things with her?
22 Was she serving other people as well?

23 A You know, she would bring, put a plate
24 or two in front of Derek, and probably serve some
25 of the other people that were sitting at that

1 table their plates, so they weren't waiting while
2 he was eating all four and then the rest were
3 sitting there eating nothing.

4 Q Okay. Did you notice her bringing any
5 glasses of beer or anything else?

6 A Not while she was serving the wings.

7 Q And then after that?

8 A After that, I don't recall, but prior
9 to the wings coming, there was glasses of
10 something on the table, and then the wings came
11 shortly thereafter.

12 Q Sure. And the something looked
13 yellowish as opposed to clear?

14 A Correct.

15 Q Yeah. Okay. And one last point, do
16 you recall any pitchers of beer being served that
17 night?

18 A No.

19 MR. ZAZELENCHUK: Okay. Thank you.

20 MR. McDONALD: No questions.

21 MS. CLEARWATER: No questions.

22 MR. KING: No questions.

23 MS. HANLIN: Mr. Commissioner.

24 BY MS. HANLIN:

25 Q Constable Michalik, your interview

1 with Professional Standards Unit was on March the
2 3rd, 2005, is that correct?

3 A I believe so.

4 Q You didn't waste any time in coming
5 forward to meet with Professional Standards Unit?

6 A No. When they called to set it up, I
7 made myself available.

8 Q And you understood the purpose of your
9 interview with Professional Standards Unit to be
10 in regards to Harvey-Zenk and the accident that he
11 had been involved in?

12 A Correct.

13 Q And that there were allegations
14 involving alcohol?

15 A Correct.

16 Q And I noticed at page 8 your
17 interview, you noted that Harvey-Zenk had a beer
18 in front of him and he ate about 40 wings; is that
19 correct?

20 A Correct.

21 Q And you testified today that you saw
22 him take a sip out of that beer?

23 A Correct.

24 Q That's what you noticed, that's
25 correct?

1 A Yes.

2 Q And that's what you told Professional
3 Standards Unit?

4 A Yes.

5 Q If you had noticed anything else about
6 Harvey-Zenk, such as drinking excessively, or
7 anything else at all, would you have told that to
8 Professional Standards Unit?

9 A Yes.

10 Q You also noted, page 11 of your
11 statement, that no one was intoxicated at
12 Branigan's. Do you recall stating that?

13 A Yes.

14 Q And had you noticed people had been
15 intoxicated at Branigan's, would you have any
16 hesitation in telling that to Professional
17 Standards Unit?

18 A I wouldn't have any problem doing
19 that. I would have done something that night.

20 Q What would you have done, sir?

21 A I would have spoken to the person.

22 Q And what would you have said?

23 A Asked them how they were getting home.

24 Q With the view to them not drinking and
25 driving?

1 A Correct.

2 Q When you were in the parking lot
3 warming up your vehicle, you stated that you
4 noticed the group of people that you were with
5 leaving the restaurant; is that correct?

6 A I saw them standing near the cashier
7 area, so I was presuming that they were perhaps
8 paying their bills.

9 Q Okay. So it would seem likely that
10 they weren't there for very much longer than you
11 were there?

12 A That's my assumption.

13 Q And when you saw the group of people
14 standing around, presumably to pay their bills,
15 you, in answer to question by Commission Counsel,
16 stated that they might have appeared to be in
17 earshot. Do you recall stating that?

18 A Yes.

19 Q But sitting in your vehicle, you would
20 have no idea what they were hearing, is that
21 correct?

22 A Correct.

23 Q I understand at the end of the evening
24 you went to your mother's place?

25 A Um-hum.

1 Q Now, you testified that at the shift
2 briefing, it was put out that certain questions
3 would be asked by Professional Standards Unit?

4 A Correct.

5 Q Was there any discussion of answers to
6 be given to these questions?

7 A No, just to be truthful.

8 Q Any discussion of evidence?

9 A No.

10 Q Any discussion of getting together in
11 terms of what to tell Professional Standards Unit?

12 A No.

13 Q Any discussion that answers should be
14 consistent?

15 A No.

16 MS. HANLIN: Thank you, those are my
17 questions.

18 BY MR. CLIFFORD:

19 Q Just one area. Constable, when I
20 asked you about the officers that were in a group
21 together and they were leaving, and you could
22 observe them from your car, and they were in the
23 restaurant, were you under any confusion as to
24 whether I meant they were in earshot of one
25 another, or did you think I meant they were in

1 earshot of you?

2 A No, no, I understood your question.

3 Q They were close enough to one another
4 that you thought they could hear one another?

5 A Oh, yeah, I would think so.

6 Q All right. No doubt in your mind,
7 obviously, you can't hear what they are saying,
8 you are sitting in your car?

9 A Exactly, yes.

10 MR. CLIFFORD: All right. That's
11 everything. Thank you, Mr. Commissioner. Thank
12 you, Constable.

13 THE COMMISSIONER: Thank you very
14 much.

15 MR. CLIFFORD: Mr. Commissioner, the
16 next witness is constable Jay Nolet.

17 JAY NOLET, having first been duly
18 sworn, testified as follows:

19 THE COMMISSIONER: Do you pronounce
20 Nolet the French way, or "Nolet" the Winnipeg way?

21 THE WITNESS: "Nolet," the Winnipeg
22 way.

23 MR. CLIFFORD: Madam clerk, the
24 Professional Standards Unit interview for this
25 witness is at F-2.35.1. If we could make that an

1 exhibit and provide a copy to the witness?

2 THE CLERK: Exhibit 178.

3 (EXHIBIT 178: F-2.35.1, Transcript
4 interview of Jay Nolet, March 3, 2005)

5 BY MR. CLIFFORD:

6 Q Good afternoon, Constable Nolet.

7 A Good day.

8 Q Sir, I understand that you were Derek
9 Harvey-Zenk's partner in February of 2005?

10 A That's correct.

11 Q And for how long had you been his
12 partner at that point?

13 A About five or six months.

14 Q And as his partner, that would mean
15 that you would ride along with him in the cruiser
16 and you two would work on certain projects
17 together?

18 A That's right. We would respond to
19 calls for service and that kind of thing.

20 Q As of February 2005, sir, what was
21 your level of policing experience?

22 A Just over two years. I started
23 September 3rd, 2002.

24 Q And how was it that you met Derek
25 Harvey-Zenk?

1 A I met him through my shift.

2 Q Okay. And did you have any prior
3 involvement or interaction with him?

4 A No.

5 Q Can you tell Mr. Commissioner, sir,
6 about what time you would have started work that
7 day, both you and Derek Harvey-Zenk?

8 A On that day there we started early, we
9 started at 2:30, the reason being we had to do a
10 follow-up at Elwick Community School in regards to
11 some children that were bullying each other. So
12 normally we would have started at 4:30, but we
13 started at 2:30 that day, and we would have been
14 ending at around 12:30.

15 Q Now, we've received information, sir,
16 that both you and Constable Harvey-Zenk were given
17 an opportunity to get off work early that day?

18 A That's correct.

19 Q And we understand that you, in fact,
20 got off at 10:30 p.m.?

21 A Yes.

22 Q And what did you do at 10:30?

23 A At 10:30 I would have handed in my
24 radio, safety my firearm, gotten changed, and got
25 my lunch from the lunch room, filled out the form,

1 the blue slip form.

2 THE COMMISSIONER: Done paperwork?

3 THE WITNESS: Yes. And after that I
4 got into my car and I headed to Branigan's.

5 BY MR. CLIFFORD:

6 Q Okay. So if you booked -- you booked
7 off at 10:30?

8 A Um-hum.

9 Q In order to change out of your
10 uniform --

11 A Right.

12 Q -- and get your paper work done, would
13 you have been out the door by 11:45 -- 10:45,
14 pardon me?

15 A Somewhere in around there.

16 Q And that would put you at Branigan's
17 at what time?

18 A In and around 11:00.

19 Q And you took your own vehicle, I
20 understand?

21 A That's correct.

22 Q And Derek Harvey-Zenk, as far as you
23 knew, took his own vehicle there?

24 A That's correct.

25 Q And you both arrived there at

1 approximately 11:00 o'clock?

2 A I believe so.

3 Q And do I understand that you both
4 arrived there at approximately the same time?

5 A In and around the same time, yes.

6 Q Okay. Do you recall seeing him
7 walking in, in or about the same time as you did?

8 A That I do not recall. When I arrived,
9 I came in, there were officers that were already
10 there. There were a group of people sitting at
11 some of the higher tables that were in the lounge,
12 and there wasn't enough room for me to sit there,
13 so I ended up sitting on the sofa next to it with
14 a couple of the other officers.

15 Q Who do you recall sitting at the high
16 table when you arrived?

17 A I don't recall anyone in particular.
18 Again, it was three years ago. I was sitting at
19 the sofa with Sean Black. Again, I don't remember
20 who else was sitting with me on the sofa. In
21 terms of where Derek Harvey-Zenk was sitting, I
22 was not sitting with him, he was sitting at the
23 table in front of me so...

24 Q Okay. Let's pinpoint where you recall
25 Derek Harvey-Zenk sitting. You were at a sofa and

1 a lower table?

2 A That's correct.

3 Q You mentioned there was high tables
4 and low tables?

5 A I don't know how many tables there
6 were.

7 Q High tables and low tables?

8 A Yes, yes.

9 Q And you mentioned that the high tables
10 were full, there was nowhere for you to sit at
11 those high tables?

12 A That's correct.

13 Q Derek Harvey-Zenk got a seat at one of
14 those tables?

15 A Yes, that's correct.

16 Q And who was he sitting with?

17 A I don't remember who was sitting with
18 him at the table. I don't remember who was
19 sitting next to him, who was sitting in front of
20 him or that kind of thing.

21 Q Okay. In terms of who was sitting to
22 his right, his left, behind him, or in front of
23 him, do I understand your testimony to be that you
24 cannot give any evidence on that issue?

25 A That's correct. It would have been

1 people from my shift, because, again, it was our
2 shift that was going for wings.

3 Q When you picture him sitting at this
4 high table, sir, is he facing you?

5 A No, he had his back to me.

6 Q And who are you facing when you are
7 talking to somebody?

8 A I would have been sitting at an angle,
9 so the sofa wasn't facing the same way as the
10 tables, the high-bar tables. The high-bar tables
11 were like this, and I was sitting right to the
12 side there.

13 Q Instead of pointing to the Bible or
14 putting your hand on it, can you just describe it
15 for us, sir?

16 A Derek would have been sitting with his
17 back to me on this side of the table. Again, I
18 was sitting down on the sofa next to, I believe it
19 was a fireplace, with my back to the fireplace,
20 facing the group.

21 Q Okay. So you were facing the room, I
22 take it --

23 A That's correct.

24 Q -- you had a fair view of the room?

25 A That's correct.

1 Q But Derek Harvey-Zenk has his back to
2 you?

3 A That's correct.

4 Q Do you have alcoholic beverages, sir,
5 while you were at Branigan's?

6 A I did.

7 Q What did you have?

8 A I believe I had a beer.

9 Q And what else did you have, sir?

10 A I don't know if I had wings or not. I
11 probably did. Again, that would have been it,
12 though.

13 Q And with respect to the amount of
14 alcohol that you had --

15 A Um-hum.

16 Q -- can you tell the Commission how
17 much you had?

18 A I would have had two beers.

19 Q And you were there from approximately
20 11:00 o'clock to closing, we understand?

21 A That's correct.

22 Q And what type of beer were you having?

23 A I don't recall. Again, I'm not fussy
24 with the kind of beer I drink, so whatever might
25 be on tap or whatever it might be, it doesn't -- I

1 don't recall what I had.

2 Q Now, sir, is it your evidence that
3 throughout the entire evening, from your arrival
4 at 11:00 o'clock until 2:30 or so in the morning,
5 that your total consumption of alcohol was two
6 beers?

7 A Yeah, in around two beers.

8 Q Okay. You said in around two beers?

9 A Yeah.

10 Q Are you allowing for the possibility,
11 sir, that you consumed more alcohol?

12 A I may have had three, but I didn't
13 have many.

14 Q Do you allow for the possibility, sir,
15 that you had more than three?

16 A No.

17 THE COMMISSIONER: Did you have any
18 hard liquor?

19 THE WITNESS: At Branigan's?

20 THE COMMISSIONER: Yes?

21 THE WITNESS: No.

22 THE COMMISSIONER: There was evidence
23 lead that 19 shots of liquor were delivered that
24 evening that were free. You, I take it, didn't
25 have any?

1 THE WITNESS: No, I did not.

2 THE COMMISSIONER: Did you see anybody
3 else have liquor?

4 THE WITNESS: Again, I don't know what
5 other people were drinking. From what I recall, I
6 remember looking at the tables and, yes, there
7 were pints on the tables. What each person was
8 drinking, I don't know. I'm not saying that
9 people weren't drinking hard liquor, I don't know.
10 But I didn't see anyone hold, you know, a rye and
11 Coke, or vodka, or anything like that, I didn't
12 specifically see anyone holding any kind of drink
13 in their hand like that. But I did see liquor on
14 the table, so I'm presuming that people were
15 consuming alcohol.

16 THE COMMISSIONER: You presume that
17 some people were drinking liquor?

18 THE WITNESS: That's correct.

19 THE COMMISSIONER: I say that because
20 there were two dozen people there, approximately.

21 THE WITNESS: Yeah.

22 THE COMMISSIONER: 19 free shots of
23 liquor -- I don't recall any of the officers
24 indicating that they were drinking liquor.

25 THE WITNESS: I can't speak for any

1 other officers, I'm speaking for myself.

2 THE COMMISSIONER: So somebody must
3 have been drinking it, but it wasn't you?

4 THE WITNESS: It was not me.

5 THE COMMISSIONER: And no one that you
6 saw was drinking liquor?

7 THE WITNESS: Again, like I said
8 before, I saw pints on the tables in front of me.
9 Again, I did not pay attention to what each person
10 was drinking, so I do not know what each person
11 was drinking.

12 THE COMMISSIONER: Thank you.

13 BY MR. CLIFFORD:

14 Q When you say you saw pints on the
15 table in front of you, I take it you saw pints on
16 the table in front of other officers as well?

17 A That's correct.

18 Q Did you see a pint of beer on the
19 table in front of Derek Harvey-Zenk?

20 A That's correct.

21 Q But you didn't see him drinking it, so
22 I understand?

23 A I did not see him put it up to his
24 mouth. Again, I wasn't paying attention to that.
25 I was off duty. I wasn't in work mode anymore. I

1 was, you know, relaxing and socializing with my
2 friends, and I was not paying attention to what
3 each person was consuming.

4 Q But no doubt in your mind that Derek
5 Harvey-Zenk, your partner, had a pint of beer in
6 front of him at the restaurant?

7 A I presume he had a drink, because I
8 had a drink there.

9 Q And you mentioned, sir, that you had
10 two, that maybe you had three. I'm going to refer
11 you to your interview with me on March 26th, 2008.

12 A Um-hum.

13 Q If you could refer to page 19, at line
14 25, sir. Do you see the question:

15 "Okay. And through the evening?"

16 A Page 19 you said? Page 19, line 25?

17 Q Yes.

18 A "There was just one bottle and then
19 there was three bottles of Pepsi."

20 Is that the page you are referring to?

21 Q No, I'm referring to -- the pages are
22 broken up into four quadrants.

23 THE COMMISSIONER: It is the other
24 transcript. This is the one on March 26th of this
25 year.

1 THE WITNESS: Okay.

2 MR. CLIFFORD: That's the one.

3 THE WITNESS: Okay. Line 25?

4 BY MR. CLIFFORD:

5 Q Okay. I will read the question and
6 answer sequence, and we will see if it refreshes
7 your memory, or clarifies your evidence on how
8 much alcohol you consumed.

9 "Q Okay. And through the evening,
10 from your approximate arrival time of
11 11:00 p.m. to approximate departure
12 time of 2:30 a.m.?"

13 A Um-hum.

14 Q Was that all you consumed was one
15 beer?

16 A I don't recall how many beers I
17 would have had.

18 Q Would it have been more than one?

19 A Possibly.

20 Q Is the likelihood that it was only
21 one extremely remote, given the
22 circumstances and the amount of time
23 you spent there?

24 A I might have had another. I don't
25 know how many I would have had."

1 Sir, when I interviewed you on
2 March 26, 2008, I understood that to be your
3 evidence, that you didn't recall how much you had
4 to drink at Branigan's that night?

5 A I stated in my statement that I might
6 have had more than one. So, again, it is still
7 what I'm saying now.

8 Q You also state, sir, that you don't
9 recall how many beers you would have had. I'm
10 wondering how it is that you can cap it at three?

11 A I am just saying, I believe I had two
12 or three, that's all. I was driving, and I'm
13 responsible. And again, if I started drinking
14 more than that, then, yeah, I could be under the
15 influence, so I wouldn't put myself in that
16 position.

17 Q Mr. Commissioner asked you about
18 observations, and you commented to the Commission
19 that you saw that there were alcoholic beverages
20 and beer that was out. And you also mentioned to
21 me when I interviewed you, sir, in March, that
22 when dealing with the Professional Standards Unit,
23 when you spoke to them, you said to them that you
24 knew that Harvey-Zenk had consumed alcohol, but
25 you just didn't know how much he had consumed?

1 A Um-hum.

2 Q And I take it you stand by that
3 statement made to both PSU and to the Commission
4 in your interview?

5 A Yes. Because, again, like I just
6 said, I saw alcohol on the table so I was
7 presuming they would have consumed alcohol.

8 Q Did you move around at Branigan's,
9 sir. When you got yourself situated there, you
10 had your beer or beers, you had some food, did you
11 start to move around and socialize?

12 A No. Like I said in my statement, I
13 might have gotten up to go to the washroom, and
14 even that I don't recall so...

15 Q Okay. So the persons that you were
16 sitting with then; Officer Black?

17 A Um-hum, that's correct.

18 Q Yourself, and who else was there?

19 A Again, I don't recall who was sitting
20 with me other than that.

21 Q Okay. And do I understand your
22 evidence, sir, that at no point do you get up and
23 mingle or socialize or stand around and talk with
24 people in the middle of the bar?

25 A I don't recall.

1 Q What you indicated, sir, was that that
2 didn't happen?

3 A Um-hum.

4 Q And now you've indicated -- expressed
5 it a different way?

6 A I don't believe that I got up and
7 moved around. Again, I would have gotten up to go
8 to the washroom, but even that, I don't recall if
9 I went to the washroom or not.

10 Q Did you socialize --

11 A I socialized with the people that I
12 was sitting with. And again, I remember that Sean
13 Black was sitting with me, but outside of that, I
14 don't recall who else was sitting with me.

15 Q Were you sitting with your partner for
16 a little while before you went down to the lower
17 couch?

18 A No.

19 Q Did you socialize with him at the
20 table when you first went in, spend a little bit
21 of time with him?

22 A No, there was not enough room at the
23 table for me to sit. So, again, I went and sat
24 down on the sofa.

25 Q Well, he is your partner officer, you

1 guys have been riding together for five, six
2 months at this point?

3 A That's correct.

4 Q You have known him for a number of
5 years. You didn't want to spend any time with him
6 when you first got to the bar?

7 A Like I explained to you before, I'm in
8 a vehicle with him for 10 hours, you know, for a
9 full shift length, five days in a row. I have
10 other friends on the shift. We have a big shift.

11 THE COMMISSIONER: Ten hours is
12 enough?

13 THE WITNESS: Yeah, ten hours is
14 enough, I don't need to be sitting with him for
15 another ten hours wherever we go after the job. I
16 have other friends that I like to socialize with
17 too. Sometimes it is -- I didn't want to -- I had
18 that opportunity to talk with other friends, so
19 you take it, right? And I didn't feel that I had
20 to sit with him or be at his side protecting him,
21 you know, so...

22 BY MR. CLIFFORD:

23 Q I don't want you to under a
24 misapprehension, Constable Nolet, about my
25 expectation that you would be with him for another

1 10 hours, or be by his side, but I have a
2 reasonable expectation that, as his partner, you
3 would have at least socialized with him at some
4 point during the evening?

5 A I did socialize with him. I
6 socialized with him at Sean Black's.

7 Q Okay. Did you spend some time at
8 Branigan's talking to him?

9 A Not that I recall, no, I did not.

10 Q Well, the last person that sat in the
11 witness chair, sir, was Constable Michalik, and he
12 testified, sir, that he saw you and Dave Harding
13 and Christian Guyot standing in the middle of the
14 lounge, engaged in conversation with one another?

15 A I don't recall that at all. That
16 might have been when we were going to pay, I don't
17 know. But I was not sitting with him at the table
18 or conversing with him. So I can't say. I don't
19 recall talking with him, so that's something that
20 Mr. Michalik said, that's his observation. Again,
21 that's not -- I don't recall that at all, so...

22 Q Constable Michalik wasn't there when
23 you got up to pay. He was one of the first to
24 leave. So we can take that out of the equation,
25 that's not a possibility in terms of what he is

1 talking about. He was in the parking lot when he
2 saw a group getting up to pay and he had been
3 there for about ten minutes. His testimony, I
4 think, was unequivocal, sir, that he saw you
5 standing in the area of the middle of the lounge
6 engaged in conversation with Derek Harvey-Zenk,
7 Dave Harding and Guyot?

8 A This is just -- now, what time was
9 this at?

10 Q This is during the evening?

11 A No, I don't recall this at all.

12 Q And I take it, sir, you are not
13 denying that it happened, are you?

14 A I am going to have to deny that
15 happened because I don't recall it happening.

16 Q Is that how it works with you, sir, if
17 you don't recall something happening, you just
18 deny outright that it happened?

19 A No. But in this circumstance, I'm
20 saying that I don't remember talking to him at
21 Branigan's. Okay? I remember the night as
22 sitting down on the sofa and talking with Sean
23 Black, and that was pretty much it. I don't
24 remember socializing with Derek Harvey-Zenk at
25 Branigan's.

1 Q Okay. Well, your evidence is in
2 direct contradiction to that of Constable
3 Michalik. And do I understand, sir, that your
4 position is that you are not mistaken about it and
5 he, therefore, must be wrong, or do you want the
6 benefit of the doubt, sir, that you just don't
7 recall it?

8 A I don't recall it at all.

9 Q All right. So there are some things
10 about Branigan's that you are prepared to concede
11 that you wouldn't recall, such as something as
12 important as speaking with Derek Harvey-Zenk?

13 A I don't recall speaking to Derek
14 Harvey-Zenk at Branigan's.

15 Q Did you spend time with Dave Harding,
16 did you socialize with him at Branigan's?

17 A I'm sorry, but, again, I don't recall.
18 I remember talking with Sean Black on the sofa. I
19 don't recall the conversations that I had at
20 Branigan's. I don't recall speaking with Dave
21 Harding.

22 Q So, can I take it from your evidence,
23 sir, that the only person you recall talking to
24 that night is who?

25 A I remember Sean Black sitting with me

1 there. And you know, I'm making myself out to be
2 a loner, but, again, I don't remember who I was
3 sitting with at the sofa and what kind of
4 conversations I was having at the location.

5 Q Sir, we are trying to be as precise as
6 we can and get the full extent of what your
7 evidence will be. And I understand that the full
8 extent of it is, and I'm not going to go over it
9 again, but you have a recollection of talking to
10 one person there, and that's Officer Black?

11 A In my memory, I remember seeing him
12 sitting with me and talking. But, again, what our
13 conversations were, I don't recall.

14 Q What about his alcohol consumption?

15 A Are you talking about Sean Black?

16 Q Yes?

17 A I don't recall. Again, there were
18 drinks in front of us, so I imagine he had a drink
19 too, you know, but I wasn't paying attention to
20 how many drinks he was having, or if he was even
21 having drinks.

22 Q Did you know, sir, whether anybody was
23 demonstrating the effects of consuming alcohol
24 towards the end of the evening?

25 A Which part of the evening are you

1 referring to?

2 Q At the end, when people were making
3 their way out?

4 A Of Branigan's?

5 Q Yes?

6 A No, I did not observe anyone to be
7 under the influence.

8 Q Did you know or understand that Dave
9 Harding was part of the group that left at the end
10 of the night?

11 A That's correct, because he was at Sean
12 Black's.

13 Q And were you part of the group that
14 got up to leave together at the end of the night?

15 A That's correct.

16 Q And Derek Harvey-Zenk and Dave Harding
17 were part of that group?

18 A That's correct.

19 Q You made no observations with respect
20 to levels of intoxication or alcohol consumption
21 on any of those individuals?

22 A Again, I did not observe anyone to be
23 intoxicated at Branigan's.

24 Q What about Ken Azaransky, did you
25 spend any time with him there?

1 A Again, I do not recall speaking to
2 Azaransky or observing whether he had been
3 drinking or not, or if he was intoxicated or not,
4 or anything for that matter.

5 Q How did you get to Officer Black's
6 house?

7 A I drove my own vehicle.

8 Q Okay. And did you go by yourself, did
9 you know where you were going, or did you follow
10 other cars there?

11 A I had never been to Sean Black's house
12 before, so I had to follow him.

13 Q Did you make a stop along the way?

14 A I did not stop.

15 Q Is this something that you know, sir,
16 or something that you don't recall doing?

17 A In terms of?

18 Q Stopping along the way?

19 A Stopping along the way, I did not get
20 out of my car at any point.

21 Q Do you recall whether your vehicle
22 stopped, sir, at a 7-Eleven? Because the
23 Commission has heard evidence there was a stop
24 along the way at 7-Eleven to pick up soda and ice.

25 A Again, I was following Sean Black and

1 he did stop at 7-Eleven.

2 THE COMMISSIONER: He stopped?

3 THE WITNESS: He stopped to get out of
4 his car, and I would have had to have stopped too.
5 But, again, I did not get out of my car or do
6 anything, I waited in my car.

7 BY MR. CLIFFORD:

8 Q Okay. Just so we are clear, the
9 question is, did you stop along the way, make a
10 stop? And I understand that you did?

11 A Yes.

12 Q Because we know that Sean Black did
13 and you are following him?

14 A Yes.

15 Q Did you know what he picked up?

16 A Again, I did not go in the store, I
17 remained in my car, so I do not know, I did not
18 see what he picked up. He came out with some
19 bags, I think. I don't know.

20 Q Tell us, sir, what happened when you
21 got to Officer Black's residence?

22 A We basically -- he was in the process
23 of going through the promotion process, to become
24 a Patrol Sergeant, and I remember we were sitting
25 in his kitchen, and he pulled out his file because

1 we were talking about it, and all of the stress
2 that you go through and everything, all of the
3 preparation they have to do and everything like
4 that. So we talked about that for the evening.
5 It was low key. We were talking about working as
6 a team, doing search warrants in the summer.

7 Q What I'm referring to, sir, is what
8 took place when you first arrived there?

9 A First arrived there? I don't --
10 basically, went into the kitchen and sat down and
11 that kind of thing. It wasn't anything --

12 Q Where did you sit in the kitchen?

13 A There was, I believe there was a
14 kitchen, small kitchen table.

15 Q Okay. And who were you sitting with?

16 A I would have been sitting with Sean
17 Black, Azaransky, and Derek was in there too, he
18 was sitting with us.

19 Q And this is at the beginning of the
20 evening at Officer Black's residence?

21 A No, this would have been throughout
22 the evening. I don't know exactly what happened
23 right at the beginning when I got there, I don't
24 recall.

25 Q Let me ask you this --

1 A We would have gone in the house, we
2 would have been socializing and --

3 Q Where were you socializing? Were you
4 standing around in the kitchen?

5 A In the kitchen area, yes.

6 Q Do you recall at the beginning of the
7 evening at Officer Black's, so from 2:45,
8 3:00 o'clock, at that point you would have been
9 standing around in the kitchen?

10 A And I believe that Sean Black, he was
11 making popcorn, he was having problems with the
12 popcorn machine. He made tacos, there was some
13 chocolate muffins or something there. He did put
14 out a bottle of Crown Royal and he had some Cokes
15 or Pepsi or something like that out on the table,
16 and we could help ourselves to some drinks if we
17 wanted.

18 Q Did you see any other alcohol out
19 other than Crown Royal?

20 A No, I did not.

21 Q And where was the Crown Royal placed?

22 A It was on the kitchen counter.

23 Q And do I understand, sir, that you
24 poured your own drink?

25 A That's correct.

1 Q And how many drinks did you have at
2 Officer Black's house?

3 A I had one.

4 Q And you were there until 6:23 a.m. in
5 the morning. And we will come back to that in
6 terms of how we know it was the time you left, but
7 give or take a minute or two?

8 A That's correct.

9 Q And you only had the one drink?

10 A Yeah.

11 Q From approximately 2:45, 3:00 o'clock
12 to 6:23 a.m.?

13 A That's correct.

14 Q And how much alcohol did you put in
15 your glass?

16 A Not much.

17 Q Can you quantify it?

18 A No.

19 Q Single, double, triple?

20 A A single, in and around there.

21 Q So, in around an ounce of alcohol?

22 A Yeah.

23 Q And during that entire time that you
24 were there, sir, did you see anybody else make
25 themselves a drink?

1 A No, I did not.

2 Q Did you see anyone else with a glass
3 in their hand drinking?

4 A I believe that people had glasses in
5 their hands. In terms of what they were drinking,
6 I don't know if it was just Coke, if there was rye
7 and Coke in it, if they were drinking water,
8 juice, whatever it may be, I don't know. I was
9 not paying attention to what each person was
10 drinking, and I did not pay attention to who went
11 up to serve themselves.

12 Q Did you see any other alcohol placed
13 out?

14 A No, I did not.

15 Q Did you have any interaction with
16 Derek Harvey-Zenk at Officer Black's house?

17 A Interaction with him, yes.

18 Q This was as the evening wore on, you
19 got to the point where you are sitting at the
20 table?

21 A That's correct.

22 Q And what about when everybody is
23 standing around?

24 A Again, I don't recall any
25 conversations with him privately at all. I don't

1 believe I had any private conversations with him,
2 it was just general conversation, because there
3 was a big group of us in the kitchen. So it was
4 just general conversation, it wasn't -- there was
5 no personal conversation with Derek Harvey-Zenk.

6 Q Was there any arm wrestling taking
7 place?

8 A Yes.

9 Q Were you involved in that?

10 A That's correct. Azaransky challenged
11 me to an arm wrestle and I gave in.

12 Q You were involved in an arm wrestle
13 with Azaransky?

14 A That's correct.

15 Q Okay. And you guys would have been
16 standing around the kitchen counter, I take it?

17 A No, it would have been -- I think it
18 was at the kitchen table, I believe. I'm not
19 sure. I don't recall.

20 THE COMMISSIONER: Constable, I'm
21 again having a little bit of a problem about the
22 drinking. Sean Black indicated that there was a
23 26 ounce of Crown Royal and the heel of another
24 bottle of rye, and there were 11 of you. Did you
25 see anybody drink more than he should?

1 THE WITNESS: Dave Harding had
2 consumed too much throughout the evening, and I
3 specifically gave him a glass of -- well, Blackie
4 got him a glass of water and I went and took it to
5 him. And that's when Blackie -- Sean Black,
6 sorry -- told him he should go lay down.

7 THE COMMISSIONER: I see. So he was
8 the only one who was drinking heavily of the rye?

9 THE WITNESS: Yes.

10 THE COMMISSIONER: I ask that because
11 all of the officers seem to indicate that they had
12 one drink, maybe two at the most. And when I add
13 that up, somebody must have been consuming more
14 than one or two. And you think that may have been
15 Dave Harding?

16 THE WITNESS: It was Dave Harding. He
17 looked to be intoxicated.

18 THE COMMISSIONER: Thank you.

19 BY MR. CLIFFORD:

20 Q You don't know how many drinks Dave
21 Harding had at Constable Black's house, do you?

22 A No.

23 Q And you don't know how many drinks he
24 had at Branigan's, do you?

25 A No.

1 Q Your view was that -- did you think he
2 was okay to drive when he left Branigan's, Dave
3 Harding?

4 A Again, I didn't observe him to be
5 intoxicated at Branigan's, so I didn't believe
6 that he was intoxicated.

7 Q Would you have been in a position to
8 determine whether he was -- it would have been
9 appropriate for him to drive his car leaving
10 Branigan's?

11 A Can you repeat that?

12 Q Were you in a position to determine
13 whether it would have been appropriate for Dave
14 Harding to drive his car once he left Branigan's?

15 A No.

16 Q Were you aware of the fact that he
17 didn't drive his car, that he got a ride there
18 with someone else?

19 A No, I was not aware of that.

20 Q Now, you seem to be expressing to
21 Mr. Commissioner that you think Dave Harding got
22 intoxicated at Constable Black's house by drinking
23 rye. Is that your impression?

24 A I don't know where he got intoxicated.
25 I believe it probably would have been at Sean

1 Black's, but I imagine he had had a few drinks at
2 Branigan's as well, which lead to the intoxication
3 eventually.

4 Q Indeed, sir, he did testify and he
5 told the Commission that he did consume alcohol at
6 Branigan's, and he consumed it in such a quantity
7 that he didn't feel he could drive his own car?

8 A Okay. That's fine. I'm not going to
9 disagree with you.

10 Q And then when he got to Officer
11 Black's, you assume that he is drinking alcohol
12 there?

13 A I presumed he was.

14 Q You didn't see him drinking alcohol?

15 A He did have a glass in his hand, which
16 was taken away from him.

17 Q And ultimately he is in a position
18 where you think he is intoxicated?

19 A Yes.

20 Q But in terms of how drunk he got at
21 Branigan's -- or how drunk he got at Black's, you
22 are not in a position to give any evidence on
23 that, are you?

24 A No.

25 Q Now, one thing that I thought was

1 peculiar, sir, was that you have raised evidence
2 with respect to a popcorn machine. And when the
3 Professional Standards Unit interviewed you, sir,
4 one of the things that you commented to them was
5 that Officer Black was messing around with the
6 popcorn machine the whole night long. Is that
7 what you meant to say, sir?

8 A Throughout the evening he was working
9 on the popcorn machine, because I guess it kept
10 going off, I don't know what the problem was.
11 But, yeah, he spent some time trying to get it to
12 work.

13 Q What you indicated at Professional
14 Standards Unit was as follows, referring to page
15 1048 of your interview with Professional Standards
16 Unit at line 18.

17 "Yes, he was messing around with the
18 popcorn machine the whole night long.
19 I don't know if he was blowing fuses
20 or what, but the popcorn machine
21 wasn't working properly."

22 THE COMMISSIONER: What page was that?

23 MR. CLIFFORD: 1048.

24 THE WITNESS: Yes.

25

1 BY MR. CLIFFORD:

2 Q Now, were you trying to suggest, sir,
3 that your host was pre-occupied with a popcorn
4 machine the entire time that he had his guests
5 over?

6 A No, I wasn't.

7 Q This incident with the popcorn machine
8 would have taken what, a couple of minutes?

9 A No. Again, he was going back to it.

10 Q But nowhere near messing around with a
11 machine the whole night long?

12 A No.

13 Q Now, you actually took a drink from
14 Dave Harding at Officer Black's house, is that the
15 case?

16 A Yes.

17 Q And it was Officer Black who told him
18 to go downstairs and lie down in the basement?

19 A Yes.

20 Q And, sir, I understand that for the
21 majority of the evening you, in fact, were
22 standing up in the kitchen with the other
23 officers?

24 A Standing, sitting.

25 Q Well, you were standing at the

1 beginning of the night, and then when it got down
2 to the final four or so of you, I understand that
3 you all sat down together at the table, when
4 everyone else left?

5 A Yes.

6 Q Now, were you speaking with Officer
7 Black at that point, with Derek Harvey-Zenk at
8 that point, and with Ken Azaransky?

9 A Yes.

10 Q Okay. So that would have been the
11 final three that you were spending time with?

12 A Um-hum.

13 Q And was the invitation expressed to
14 you, sir, that it is getting late at night, maybe
15 you should stay over?

16 A Basically, what happened is, Sean
17 Black had asked us, do you guys -- he said, it is
18 getting early in the morning now, do you guys want
19 to stay here, I have got some beds, whatever. And
20 I said, no, I'm going home. I got a phone call
21 from my wife and she was saying she was going to
22 work and I said I was coming home.

23 Q That phone call came, and we alluded
24 to it earlier, at 6:23 a.m.?

25 A That's correct.

1 Q And you had the call log and you were
2 able to determine --

3 A On my cell phone, yes.

4 Q Yeah, your cell phone gave you the
5 time of the call. Do you recall other individuals
6 leaving Officer Black's, for instance, Tracey
7 Fudge and Kelly McLure and Jim Anderson taking
8 Dave Harding out of the residence?

9 A Jim Anderson took Dave Harding earlier
10 in the night. I don't know what time.

11 Q We have heard evidence, sir, that that
12 would have occurred at approximately 5:30 in the
13 morning?

14 A I don't know. Sure.

15 Q Does that accord with your
16 recollection?

17 A No, I don't recall.

18 Q Okay. As I understood the evidence,
19 there may have been a span, 5:00 to 5:30 in the
20 morning. You have no recollection on them
21 leaving?

22 A I don't recall what time they left. I
23 remember Norbert Bauer left before me, and then I
24 left after Norbert Bauer. And then there was Sean
25 Black, Ken Azaransky, and Derek Harvey-Zenk that

1 were still remaining. But the times that Tracey
2 Fudge, or Kelly McLure, or Chris Humniski, I don't
3 know what time they left or in what order they
4 left.

5 THE COMMISSIONER: Was it obvious to
6 you that Dave Harding should not drive?

7 THE WITNESS: Yes.

8 THE COMMISSIONER: Would that be
9 obvious to any police officer, that Dave Harding
10 should not drive?

11 THE WITNESS: Yes. And that's why we
12 took the appropriate action to make sure he got a
13 ride home.

14 THE COMMISSIONER: I'm sorry?

15 THE WITNESS: That's why we took the
16 appropriate action to make sure that Dave Harding
17 got a ride home.

18 THE COMMISSIONER: You say "we," you
19 didn't do it. You went with them --

20 THE WITNESS: Well, I handed him the
21 water, suggesting that maybe you have had too much
22 to drink.

23 THE COMMISSIONER: I see.

24 THE WITNESS: So at that point it was
25 determined, he is not capable of driving himself

1 home. So --

2 THE COMMISSIONER: But you went home,
3 did you not, before he left, or did you go after?

4 THE WITNESS: After.

5 THE COMMISSIONER: You went after he
6 left?

7 THE WITNESS: Yes.

8 THE COMMISSIONER: I am sorry. Thank
9 you.

10 BY MR. CLIFFORD:

11 Q So you are standing around in the
12 kitchen for the majority of the evening, there are
13 a number of other officers there, you have dealt
14 with Dave Harding. And you do have a recollection
15 of Kelly McLure, Tracey Fudge, Dave Harding and
16 Jim Anderson leaving; do I have that correct?

17 A They would have had to have left
18 before me, because I know they were at the house.
19 The time that they left, I don't know, and the
20 order in which they left, I don't know.

21 Q Do you recall them leaving, though?

22 A They would have had to have left. I
23 don't recall saying goodbye to each and every one
24 of them. So, the times that they left, I can't
25 tell you.

1 Q Do you recall anything about them
2 going downstairs to get Dave Harding up and
3 bringing him with them?

4 A Again, I just remember seeing Dave
5 Harding leaving with Jammy, or Jim Anderson,
6 sorry.

7 Q And then at that point you have a
8 recollection of yourself, Harvey-Zenk, Sean Black,
9 Azaransky and Norbert Bauer?

10 A That's correct.

11 Q And then Norbert Bauer leaves?

12 A That's correct.

13 Q Okay. And then is it at that point
14 that you and the others that are remaining sit
15 down together at the kitchen table?

16 A Again, we had been sitting down and
17 standing up in the kitchen throughout the evening.
18 So -- but, yes, at that point we were sitting down
19 in the kitchen and we were talking about working
20 on search warrants that summer, and just doing
21 projects.

22 Q And you would have stayed there until
23 you got the telephone call from your wife?

24 A That's correct.

25 Q And at that point, sir, were people

1 having drinks?

2 A Not that I recall. Because -- Sean
3 Black was having problems with the popcorn
4 machine, popcorn was shooting everywhere, so he
5 ended up cleaning up the kitchen earlier in the
6 evening, and there was no more drinks on the table
7 to serve yourself or anything that I recall so...

8 THE COMMISSIONER: It was all gone,
9 was it?

10 THE WITNESS: Yes, he put it away.

11 THE COMMISSIONER: No -- he put what
12 away?

13 THE WITNESS: The Crown Royal.

14 THE COMMISSIONER: He said it was all
15 gone.

16 THE WITNESS: It was all gone? I
17 don't know if it was all gone.

18 THE COMMISSIONER: And the heel as
19 well.

20 THE WITNESS: Again, I didn't see it
21 so I presumed he put it away is what I'm saying.

22 BY MR. CLIFFORD:

23 Q Okay. I think I can clear up this
24 evidence, sir. At the point that you are sitting
25 down at the table where there is just yourself,

1 Derek Harvey-Zenk, Officer Black and Ken
2 Azaransky, you've indicated that you think that he
3 put the alcohol away?

4 A Yes.

5 Q Officer Black testified and gave very
6 detailed testimony, and it was covered a number of
7 times by Commission Counsel, he indicated that he
8 didn't put the bottle away until the next day, and
9 what he meant by the next day was 6:00 o'clock
10 that morning. So, sir, again, you are being
11 directly contradicted by another constable on a
12 point. I take it you are willing to concede, sir,
13 that you got that wrong, that the alcohol was not
14 put away earlier in the morning?

15 A 6:00 the next morning is which
16 morning?

17 Q 6:00 o'clock, sir, 23 minutes before
18 you left?

19 A So he put it away. I don't see how I
20 am contradicting myself. I said he put it away
21 before I left.

22 Q You mentioned that he put it away
23 earlier?

24 A That's correct.

25 Q So by that you meant he put it away 23

1 minutes earlier?

2 A I didn't give you a time. I didn't
3 know what time.

4 Q Sir, do you recall what you said to
5 the Professional Standards Unit when they
6 interviewed you?

7 A Yes. I said in my statement there
8 that I believed it was around 4:00, but I guess
9 I'm wrong.

10 Q You weren't wrong when the
11 Professional Standards Unit was interested in the
12 last time you saw Derek having a drink at Sean's.
13 That was the question they asked you, do you
14 recall?

15 A Yes. And I still believe -- I didn't
16 know it was 6:00 o'clock. Again, I wasn't
17 checking my watch. I believed it was in and
18 around there, because time had passed, and I
19 thought that, you know --

20 Q Let me put this to you, this is
21 important, sir. The Professional Standards Unit
22 asked you, what was the last time that you saw
23 Derek having a drink at Sean's? Your response
24 was:

25 "He put -- Sean put all of the alcohol

1 away, I would say two hours, so around
2 4:00 o'clock."

3 A Yes.

4 Q "He was cleaning up."

5 A Um-hum.

6 Q Now, you are prepared, sir, to concede
7 that you got that time wrong now?

8 A I guess I do, if Sean Black says he
9 did it later than that, then what can I say? But
10 he did put it away before I left.

11 Q Okay. I will give you that, 23
12 minutes before. But these are observations that
13 you are making --

14 A Yes.

15 Q -- when he is putting it away. You go
16 on to say:

17 "He was cleaning up the floor, there
18 was popcorn on the floor from the
19 popcorn machine, so he was sweeping it
20 all up and doing all of that kind of
21 stuff, so there wasn't any alcohol
22 around. And I don't recall Derek
23 having a drink in his hand after
24 that."

25 THE COMMISSIONER: What page is that?

1 MR. CLIFFORD: 1056 in the Winnipeg
2 Professional Standards Unit.

3 THE COMMISSIONER: Thank you.

4 BY MR. CLIFFORD:

5 Q So you don't recall Derek Harvey-Zenk
6 having a drink in his hand after 6:00 o'clock?

7 A Again, if I had the time wrong, then
8 so be it.

9 Q So that's the last time --

10 A I didn't see him with a drink in his
11 hand after he put the stuff away.

12 Q Okay. So the last time you saw Derek
13 Harvey-Zenk with a drink in his hand was at
14 6:00 o'clock, on the corrected time; correct?

15 A I can't confirm it.

16 Q Pardon?

17 A I can't confirm it. Like I said, I
18 didn't --

19 Q Well, if we rely on Officer Black that
20 he put it away at 6:00 o'clock, that's the last
21 time that you saw Derek Harvey-Zenk with a drink
22 in his hand; right?

23 A I presume that's the time, yes.

24 Q And the question, am I correct about
25 that, sir, if that's the time --

1 A If he put the liquor away --

2 Q At 6:00 o'clock?

3 A -- then I would -- again, I didn't see
4 him with a drink in his hand after that time.

5 Q So it was at 6:00 o'clock you saw him
6 with a drink in his hand. When the liquor was put
7 away, you didn't see him with a drink after that?

8 A That's Sean Black's statement, so I
9 can't comment on his statement.

10 THE COMMISSIONER: You are not saying
11 that it was at 4:00 o'clock is the last time you
12 saw him --

13 THE WITNESS: I thought it was earlier
14 than 6:00, I had no -- I did not believe it was
15 6:00 o'clock. But, again, that's what Sean said,
16 that wasn't --

17 THE COMMISSIONER: You said he put the
18 alcohol or the bottles away at 6:00 o'clock?

19 THE WITNESS: I didn't. That was Sean
20 Black that said that.

21 THE COMMISSIONER: I see. And you
22 left at 6:23?

23 THE WITNESS: That's correct.

24 THE COMMISSIONER: And can you tell
25 us, from your best recollection, how long before

1 you left did Sean Black put the bottles away?

2 THE WITNESS: Again, I stated
3 4:00 o'clock, around 4:00 o'clock. I didn't see
4 any liquor on the table, and I don't know what
5 more I can say.

6 THE COMMISSIONER: I guess the problem
7 is this; you left at 6:23.

8 THE WITNESS: Yes.

9 THE COMMISSIONER: Are you saying that
10 it is more likely that you are correct, and that
11 there was some two and a half hours before you
12 left in which the liquor was gone, or is it more
13 likely that he put the liquor away at
14 6:00 o'clock, just before you were leaving?

15 THE WITNESS: Not just before.

16 THE COMMISSIONER: Sorry, just
17 after -- well, half an hour, 23 minutes before you
18 were leaving?

19 THE WITNESS: Again, my observation
20 was that I did not see liquor on the table after
21 about 4:00 o'clock. So, you know, if he is saying
22 that it was at 6:00, you know, that's his
23 statement. I can't comment on his statement. I
24 don't -- that's what I observed, 4:00 o'clock.

25

1 BY MR. CLIFFORD:

2 Q Your evidence is that at 4:00 o'clock
3 you observed him put it all away?

4 A In around there. Time went by, there
5 was no liquor being served, like no one was
6 helping themselves to any drinks or anything like
7 that.

8 Q How would you know that, sir? How
9 would you know that at 4:00 o'clock no one was
10 helping themselves --

11 A I said it was in and around, I didn't
12 say a specific time exactly.

13 Q Everybody is still there at
14 4:00 o'clock, sir.

15 A Um-hum.

16 Q Tracey Fudge, Kelly McLure is there.
17 Jim Anderson is there. Dave Harding is asleep in
18 the basement. How do you know people weren't
19 drinking at 4:00 o'clock?

20 A I don't know. Again, that was my
21 observation.

22 Q So when you got this telephone call
23 from your wife, the other officers, the final
24 three were sitting at the kitchen table; is that
25 right?

1 A Yes.

2 Q So at 6:23 we can take it from you
3 that Derek Harvey-Zenk, Ken Azaransky and Officer
4 Black are at the kitchen table?

5 A Yes.

6 Q When you were getting ready to leave,
7 sir, once you got this telephone call, did you
8 interact with the fellows that you were talking
9 with for a while? Did you bid them good night,
10 have a little chat with them before you --

11 A Yes, I said good-bye.

12 Q And what observations were you making
13 at that point? You had been together all night as
14 a group --

15 A Um-hum.

16 Q -- from approximately 11:00 o'clock
17 on. What can you tell the Commission with respect
18 to signs of alcohol consumption?

19 A I did not observe Derek to be
20 intoxicated at the time, or Ken Azaransky.

21 Q Did you know whether -- what Ken
22 Azaransky's plans were for the evening?

23 A No, I didn't.

24 Q Had there been any discussion, as of
25 6:23 when you were leaving, with respect to what

1 he was going to do?

2 A No.

3 Q And for how long were you four sitting
4 at this table together?

5 A From -- throughout the evening?

6 Q No, at the end of the evening, when
7 you got the telephone call, I understand from your
8 testimony that there was four of you sitting
9 around together. You get this call from your
10 girlfriend. How long were you at the table, just
11 the four of you?

12 A After I got the phone call, I said I'm
13 going to be going home, and that was it, I left.

14 Q And how much time did you spend
15 together as a group at the table before the
16 telephone call?

17 A Before the telephone call? I don't
18 recall a certain amount of time. We were sitting
19 there for a while. I can't give you an exact time
20 at all. I don't recall.

21 Q And how did Derek Harvey-Zenk appear
22 to you?

23 A He was fine. We were having
24 conversation about our projects that we wanted to
25 do during the summer and that, and I didn't make

1 him out to be intoxicated or anything like that.

2 Q Was he enthusiastic about the
3 conversation?

4 A Yes. We were all talking about what
5 we wanted to do. And, you know, he didn't show
6 any signs to me that he was intoxicated.

7 Q Did he show any signs of anything else
8 to you?

9 A No.

10 Q And you were his partner for a number
11 of months?

12 A Yes.

13 Q What kind of a guy was he?

14 A He was a good guy. He was a very hard
15 worker. He was dedicated to the Winnipeg Police
16 Service, and I feel horrible about what everyone
17 is going through here, and especially him and the
18 Taman family. I think it is, you know --

19 Q And in terms of his personality?

20 A Personality? Good guy. He was easy
21 going, very friendly.

22 Q Was he outgoing?

23 A Outgoing, no, I wouldn't say so, no.

24 Q What do you mean by easy going?

25 A Easy going, I'm just saying that he

1 was an easy person to talk to, you know, I got
2 along with him well in the cruiser car. I am with
3 him for 10 hours, we had a good relationship, you
4 know, because sometimes you are with partners that
5 you don't necessarily get along with that well,
6 and he was one person that I got along well with,
7 you know.

8 Q And that night at Officer Black's, did
9 you see him talking to other people, besides you
10 and Ken Azaransky and Sean Black and --

11 A Again, we were -- it was a group, we
12 were in the kitchen, so there was lots of
13 conversations happening. There were some --
14 again, at the end of the night we were talking
15 about some projects that we wanted to do during
16 the summer, so he was in on the conversation with
17 us.

18 Q I take it you would agree, sir, that
19 it is not a big kitchen that you are all standing
20 around in? It was pretty close confines?

21 A Yes.

22 MR. CLIFFORD: Sir, if you would
23 remain seated other counsel will have questions
24 for you.

25 THE WITNESS: Sure.

1 BY MR. ZAZELENCHUK:

2 Q Constable, your badge number is 2316?

3 A That's correct.

4 Q Yes. So you are junior to, or you
5 were junior to your partner, Derek Harvey-Zenk?

6 A That's correct.

7 Q Because he had a lower badge number.

8 A Okay.

9 Q You spent, when Mr. Clifford was
10 questioning you, you kept saying, referring to the
11 Crown Royal bottle being on the kitchen table. Is
12 that where you remember it was?

13 A Yes.

14 Q And was it always there?

15 A I just recall seeing it on the counter
16 and that's where I went and got my drink.

17 Q Okay. Because that's what Officer
18 Black told us, is that he put it out on the
19 counter. And he did a diagram of the kitchen, if
20 that will help you?

21 A Okay.

22 Q How did it get to the kitchen table,
23 do you know?

24 A I don't remember it getting to the
25 kitchen table.

1 Q Well, you kept saying it was on the
2 table?

3 A Sorry, I meant counter, I didn't mean
4 table.

5 Q Oh, so your evidence is that the Crown
6 Royal bottle was put out on the counter?

7 A Yes, in the kitchen.

8 Q In the kitchen, and it remained there
9 through the evening?

10 A Yes.

11 Q And all of the times you told us about
12 the bottle being on the table, that was a mistake?

13 A No, it wasn't a mistake, it was just
14 the wording that I used, I used the wrong word.
15 It should have been counter instead of table,
16 sorry.

17 Q Okay. But isn't using the wrong word
18 a mistake?

19 A It is still a table.

20 MR. ZAZELENCHUK: Thank you.

21 MR. McDONALD: No questions.

22 MS. CLEARWATER: No questions.

23 BY MR. WEINSTEIN:

24 Q Sir, just so you know, you and the
25 previous eight witnesses have been asked, at

1 Branigan's where was Mr. Zenk sitting, what was he
2 drinking, did you see the glass in front of him.
3 It is obvious, is it not, sir, that when you were
4 sitting at Branigan's, or got to Branigan's, and
5 while you were at Branigan's, you had no way of
6 knowing that Mr. Zenk at 7:00 or 7:15 was going to
7 be involved in a fatal accident, did you?

8 A No, I did not know.

9 Q So would there have been any
10 particular cogent reason why you would be paying
11 attention specifically to Mr. Zenk?

12 A Again, I was no longer working. I was
13 with my friends there after work, and we were
14 socializing. I didn't feel that I needed to -- I
15 was no longer on the job, like I was --

16 Q Forget about --

17 A -- my mind wasn't focused on
18 observation at that point. You know, we were
19 having -- people were having wings and we had a
20 couple of beverages.

21 Q But would there be any particular
22 reason, not knowing that Mr. Zenk is going to be
23 in an accident at 7:00 or 7:15, why you would pay
24 more attention to him than anyone else?

25 A Yes.

1 Q There is a reason, or do you
2 understand the question?

3 A No, I don't, sorry.

4 Q Would there be any particular reason
5 why at Branigan's you would be paying more
6 attention to Mr. Zenk than to anyone else?

7 A No.

8 Q Right. Because you didn't know what
9 was going to happen, correct?

10 A That's correct.

11 Q You didn't know on March the 3rd that
12 you were going to be asked by PSU, or later on by
13 Commission Counsel, where was Mr. Zenk, what was
14 he doing, what was he drinking, that type of
15 thing?

16 A Exactly.

17 Q Okay. And I guess the same applies
18 also at Sean Black's place. You know, again, you
19 did not know that Mr. Zenk was going to be
20 involved in an accident five hours later; correct?

21 A That's correct.

22 Q So at that time there wouldn't have
23 been any particular reason why you would have paid
24 more attention to Mr. Zenk than to anyone else;
25 isn't that correct?

1 A That's correct.

2 Q Now --

3 A Like I will go out with my family for
4 dinner, I will go out with friends and, you know,
5 I go to a restaurant or something like that, I
6 don't pay attention to how many glasses of wine my
7 mom has or, you know, if my dad is having more
8 than one beer, you know. And I think that can be
9 said for most people in this room, but --

10 THE COMMISSIONER: But you would pay
11 attention if he had three, four or five, wouldn't
12 you?

13 THE WITNESS: I would pay attention if
14 I thought he was intoxicated, yeah.

15 THE COMMISSIONER: Yes.

16 MR. WEINSTEIN: Thank you.

17 BY MR. WEINSTEIN:

18 Q Now, it didn't happen here, but
19 Commission Counsel has thrown out the term
20 "drinking party." All right. And I'm referring
21 to --

22 MR. CLIFFORD: No, no. If it is -- I
23 don't know if it is going to be a question related
24 to the examination-in-chief. If it is a general
25 question on drinking party then I don't have an

1 objection, but I don't know if it is going to be
2 characterized as me putting anything to the
3 witness about that.

4 THE COMMISSIONER: No, I don't think
5 so.

6 MR. WEINSTEIN: I thought I said that
7 it hasn't been put to you, it hasn't been thrown
8 out, but we have heard the term by Commission
9 Counsel "drinking party." Okay. It wasn't put to
10 you. That I know.

11 BY MR. WEINSTEIN:

12 Q If you were hosting, you, "a drinking
13 party," would you put out more than a bottle of
14 rye and a heel of rye, first of all?

15 A Yes, I would.

16 Q You've gone out drinking with peace
17 officers, police officers --

18 A Yes.

19 Q -- on more than one occasion?

20 A Yes.

21 Q Several occasions?

22 A Yes.

23 Q Do you recall many police officers
24 ordering Bailey's?

25 A No, I don't recall anyone ordering any

1 Bailey's.

2 THE COMMISSIONER: Unless they were
3 women.

4 MR. WEINSTEIN: Well, I don't want to
5 be sexist.

6 THE COMMISSIONER: I wouldn't say that
7 is sexist, because Constable McLure was the only
8 one who drank Bailey's.

9 MR. WEINSTEIN: If the majority -- I
10 will just follow up on that -- thank you,
11 Mr. Commissioner.

12 BY MR. WEINSTEIN:

13 Q If the majority of people, say you
14 were having 11 at a drinking party, and the
15 majority would be males, okay, would you even
16 think about putting out Bailey's? Let's put it
17 that way.

18 A No, it wouldn't be on the top of my
19 list.

20 Q Is that because it is only 17 proof,
21 or is there other reasons?

22 A I don't know, I don't drink Bailey's
23 so -- I mean, yeah.

24 MR. WEINSTEIN: All right. Thank you,
25 sir.

1 BY MR. KING:

2 Q Good afternoon. My name is Brad King,
3 I'm assisting counsel for Mr. Harvey-Zenk, I just
4 have a few questions for you.

5 A Sure.

6 Q Thankfully, Mr. Weinstein asked most
7 of my questions. But in any event, I will take
8 you back to the end of the evening. You
9 indicated, your evidence was that Mr. Harvey-Zenk
10 was fine, essentially?

11 A Yes.

12 Q And your evidence was that you were
13 talking about what projects you were going to do
14 that summer?

15 A Yes. We were saying how we wanted to,
16 you know, do search warrants and that kind of
17 thing.

18 Q Okay. And you indicated that
19 Mr. Harvey-Zenk was engaged in the conversation?

20 A Yes, he was.

21 Q Participating?

22 A Yes.

23 Q And you indicated that he showed no
24 signs of having had consumed too much alcohol, he
25 was showing no signs?

1 A Right.

2 MR. KING: Thank you. Those are my
3 questions.

4 MS. DIXON: No questions.

5 BY MS. HANLIN:

6 Q Constable Nolet, your interview with
7 Professional Standards Unit was on March the 3rd,
8 2005; is that correct?

9 A Yes.

10 Q It would be fair to say that you
11 didn't waste any time coming forward to give your
12 interview to Professional Standards Unit?

13 A That's correct.

14 Q And you understood your interview to
15 be regarding the incident on February 24th to
16 25th, involving Derek Harvey-Zenk?

17 A That's correct.

18 Q And that that involved allegations of
19 alcohol consumption; is that correct?

20 A That's correct.

21 Q And you told Professional Standards
22 Unit how, near the end of the evening, you were
23 sitting around the table with Derek Harvey-Zenk,
24 Ken Azaransky and Sean Black; is that correct?

25 A Yes.

1 Q And you were engaged in conversation?

2 A Yes.

3 Q And you had full opportunity to
4 observe Derek Harvey-Zenk?

5 A Yes.

6 Q And that went on until 6:23 when you
7 got a phone call from your common-law?

8 A Yes, at the time.

9 Q And you indicated to Professional
10 Standards Unit that Derek Harvey-Zenk did not show
11 any signs of intoxication?

12 A Yes.

13 Q And you were very clear about that in
14 your interview with them?

15 A Yes.

16 Q In terms of the investigation that the
17 Professional Standards Unit was doing regarding
18 Derek Harvey-Zenk, was there any more important
19 information that you would have had to give them
20 regarding Mr. Harvey-Zenk and any alcohol
21 consumption that he may have had?

22 A No, I didn't have any more
23 information.

24 Q As a peace officer, what do you
25 consider your obligation to be if you see someone

1 who has been drinking and is going to drive?

2 A My obligation would be to confront him
3 about the matter and take the keys away from him,
4 and either drive him home, or contact his wife or
5 significant other and have them come pick him up.
6 I would not let someone who I felt was intoxicated
7 drive home.

8 Q And would that apply to
9 Mr. Harvey-Zenk on that evening in question?

10 A Yes. And he was my partner, so, you
11 know.

12 Q So you would have felt more of a
13 responsibility towards him?

14 A Yeah.

15 Q And, in fact, you did show
16 responsibility towards Dave Harding, not in terms
17 of whether or not he was going to drive, but in
18 terms of him showing signs of intoxication?

19 A Yes.

20 Q And in doing that, you took his drink
21 from him and gave him a glass of water, I
22 understand?

23 A Yes.

24 MS. HANLIN: Thank you. Those are my
25 questions.

1 MR. CLIFFORD: No re-direct,
2 Mr. Commissioner.

3 THE COMMISSIONER: Thank you very
4 much. Want to break now and we will come back and
5 do our next witness?

6 MR. CLIFFORD: Thank you.

7 THE CLERK: All rise.

8 (Proceedings recessed at 3:15 p.m.
9 and reconvened at 3:30 p.m.)

10 THE CLERK: All rise. This Commission
11 of Inquiry is now reopened.

12 MR. CLIFFORD: Mr. Commissioner, prior
13 to swearing in the witness, I wonder if I could
14 take a moment and address a scheduling issue?

15 THE COMMISSIONER: Yes.

16 MR. CLIFFORD: This is Constable
17 Spruyt who is in the witness box and he,
18 Mr. Commissioner, will be the last witness for the
19 day. And I spoke with Mr. Paciocco, he will not
20 be a lengthy witness. And if he is the last
21 witness, it would result in our finishing a little
22 bit earlier today than we had anticipated. He
23 would be the last constable that was in the
24 Branigan's/Black residence sequence, and then the
25 next two witnesses that we will deal with to

1 finish off Winnipeg would be from the Professional
2 Standards Unit, that would be Poole and Girard.
3 So it was our hope to do those two witnesses
4 tomorrow to complete this block. And what we
5 would suggest, with your approval and permission,
6 is that we would finish a little bit earlier with
7 Constable Spruyt, who should be relatively brief,
8 and that we would make up for it by starting at
9 9:00 o'clock tomorrow morning and take an approach
10 with the schedule tomorrow and try to get those
11 other two Winnipeg officers completed.

12 THE COMMISSIONER: Senior counsel at
13 the rear is nodding his head in approval.

14 MR. WEINSTEIN: 9:00 o'clock is fine.

15 THE COMMISSIONER: Anybody else have
16 problems with 9:00 o'clock? All right.

17 MR. PACIOCCO: What I did want to
18 indicate, Mr. Commissioner, another scheduling
19 matter that counsel should be aware of. We
20 currently have Corporal Paul Lobsinger scheduled
21 for the 30th of July. I have arranged to defer
22 Corporal Lobsinger's evidence until after Brian
23 Gover has testified. And so if he does give oral
24 testimony, it won't be until late on the 5th or on
25 the 6th of August. Although there are discussions

1 amongst counsel to simply file the report of
2 Corporal Lobsinger rather than have him come and
3 testify. So what can be assured at this point is
4 he will not be up for questioning on the 30th of
5 July. What is still a little bit up in the air is
6 whether he will be called for viva voce evidence
7 at all.

8

9 THEODORE JACK SPRUYT, having first
10 been duly sworn, testified as follows:

11 BY MR. CLIFFORD:

12 Q Good afternoon, Constable Spruyt.

13 A Good afternoon.

14 Q Sir, as of February 2005, I understand
15 that you were in field training with the Winnipeg
16 Police Service?

17 A That's correct.

18 Q And you would have had approximately
19 six, seven months experience at that point?

20 A Yeah, that's correct.

21 Q And we've heard in evidence, sir, that
22 your training officer was Kelly McLure?

23 A That's correct.

24 Q And you would have been working on
25 February 24th, 2005?

1 A Yes.

2 Q And you made your way over to
3 Branigan's at what was the end of your shift?

4 A Yeah.

5 Q And we know that you actually booked
6 off early. And can you tell the Commission a
7 little bit about that?

8 A Sure. I booked off work approximately
9 11:00 o'clock p.m. that night I guess, taking
10 three hours of what is called stat credit leave,
11 and headed over to Branigan's with the rest of my
12 shift.

13 Q Now, was it your understanding, sir,
14 that you would be meeting the rest of the shift
15 there?

16 A Yeah, that was my understanding.

17 Q And when did you learn about the
18 evening at Branigan's?

19 A I'm not too sure if it was that night
20 or if it was earlier that week. I'm not sure of
21 the exact time.

22 Q You traveled over there by yourself,
23 did you not, sir?

24 A I did, that's correct.

25 Q And what can you tell the Commission

1 about what you observed when you arrived?

2 A When I arrived, I went inside, and I
3 don't remember if there was -- if all of the
4 officers were there already, or if they had come a
5 little bit after I had got there.

6 Q How many officers were there when you
7 arrived, sir?

8 A Can I refer to my statement, Your
9 Honour?

10 THE COMMISSIONER: Of course.

11 THE WITNESS: Thank you.

12 BY MR. CLIFFORD:

13 Q Now, before you do that --

14 A Sure.

15 Q -- I will get another order of
16 business out of the way. I take it you want to
17 refer to your Professional Standards Unit
18 statement?

19 A Yeah, I'm not too sure -- yeah, I will
20 refer to that one, sure.

21 Q And what we are going to do to assist
22 you, sir, is we will identify that. That's a
23 statement that you gave to the Professional
24 Standards Unit on March 3rd, 2005?

25 A That's correct.

1 MR. CLIFFORD: And if we could provide
2 the witness, Madam clerk, with a Commission copy
3 and have it marked as the next exhibit?

4 THE CLERK: Exhibit 179.

5 MR. CLIFFORD: So F-2.39.n.

6 (EXHIBIT 179: F-2.35.n, Transcript
7 interview of Theodore Jack Spruyt,
8 March 3, 2005)

9 BY MR. CLIFFORD:

10 Q Constable, you have a copy there
11 before you, and the copy that you are looking at,
12 sir, does it have the pages on the lower
13 right-hand corner?

14 A Yeah, it does.

15 Q All right. You should be fine. And
16 if you want some assistance, sir, you might want
17 to look at 1077, line 19?

18 A Who was there -- Kelly McLure, Derek
19 Harvey-Zenk, Sean Black, Ken Azaransky, Gord -- I
20 wasn't sure of his last name at the time but I
21 know his name is Schneider -- Sergeant Humniski,
22 and I guess there is people that came later, Shaun
23 Veldman, Dan Mikawoz, Sergeant Anderson, Ted
24 Michalik, Al Williams, Tracey Fudge, Norbert
25 Bauer. Those were the people that were there. I

1 don't recall if they were there when I soon walked
2 in or if -- they were there throughout the night,
3 though, obviously.

4 Q And, sir, could you comment please on
5 the layout or the configuration of the tables in
6 Branigan's?

7 A As far as the tables, I remember there
8 being approximately four or five. I couldn't tell
9 you exactly where they were. I know we were in
10 the southeast part of Branigan's, and there was
11 two sofas that were facing each other.

12 Q And when you say there were four or
13 five tables, sir, do you recall whether there was
14 a height differential between some of the tables
15 that were in the restaurant?

16 A Not that I recall, no.

17 Q You don't recall there being high
18 tables and low tables?

19 A No. That was my first time being
20 there. No, I didn't.

21 Q The table that you were sitting in,
22 sir, was it one that had a bar stool at it or a
23 regular chair?

24 A I have no idea.

25 Q You have no recollection on that?

1 A No. I just know there was four or
2 five tables. At one point I was sitting at one of
3 the tables there. I couldn't tell you if it was
4 tall or short.

5 Q And, sir, did you see alcohol being
6 served there?

7 A I have no recollection of that, no.

8 Q Okay. You have no recollection of
9 alcohol being served in --

10 A Myself there was, I remember that.

11 Q All right. You ordered yourself a
12 drink?

13 A Yeah, I had a couple of beers while I
14 was there.

15 Q Okay. And let's move to anybody else.
16 Do you recall anybody else having a drink?

17 A No, I don't. I mean -- I was new
18 there, I was getting to know people and getting to
19 know people's names. You know, I wasn't paying
20 attention to whether other people were drinking or
21 not.

22 Q Could you go to page 1080 of your
23 Professional Standards Unit interview? Line 22,
24 do you see it, sir?

25 A Yeah.

1 Q Okay. Sergeant Girard -- actually,
2 sir, what I'm going to do here is I will read you
3 a passage from that statement.

4 THE COMMISSIONER: Page?

5 BY MR. CLIFFORD:

6 Q Page 1080, Mr. Commissioner, line 23
7 from the Professional Standards Unit interview.
8 Sergeant Girard asks you:

9 "Okay. All right. Was anybody, by
10 your estimation, obviously intoxicated
11 at Branigan's?

12 A I would say everybody was having a
13 few drinks. I shouldn't say
14 everybody. Everybody was having a
15 good time. From what I could see
16 nobody was, you know, intoxicated
17 or..."

18 A Yeah.

19 Q Now, what you said there in response
20 to that question was:

21 "I would say that everybody was having
22 a few drinks, I shouldn't say
23 everybody."

24 What did you mean by that, sir?

25 A Well, what I meant by that was just,

1 everybody was having a good time. I mean, you
2 know, obviously Branigan's was a licensed
3 establishment, or a pub. I mean, one could assume
4 that people were having drinks that were there,
5 but I don't have any recollection of that.

6 Q Okay, now I want to be fair to you,
7 sir, your evidence is not that there were people
8 having drinks, and you don't recall what they had
9 or how many, your evidence is that you don't
10 recall anybody having any alcoholic drinks?

11 A Yeah. And like I said, one could
12 assume that people were having -- I don't want to
13 assume, but, to the best of my recollection, no.
14 Like I said, I was brand new, I had just got on
15 the street. You know, that in itself is a pretty
16 overwhelming experience. And when you are field
17 training, yeah, it is --

18 Q You were there from 11:00 to
19 approximately 2:30, 2:45 in the morning?

20 A That's correct.

21 Q So whether you were new or it was a
22 new experience, I mean, that's a lot of time to be
23 in a bar and put yourself in a position when you
24 are testifying, sir, to say that you don't recall
25 anybody having a drink. I mean, we have heard it

1 qualified throughout evidence in the Commission,
2 but you are taking it to a new level here, sir.
3 You don't recall anybody having a drink in two and
4 a half hours?

5 A Like I said, I was getting to know
6 people's names. I wasn't paying attention to
7 whether other people were drinking or not, or if
8 there was alcohol being served.

9 Q Now, everybody left there at the same
10 time; is that right?

11 A I would say for the most part, there
12 was a group of us that left.

13 Q And there was about 15 of you or so
14 that were leaving at the same time at the end of
15 the night?

16 A That's correct.

17 Q And what happened was that group of
18 about 15 of you got up about the same time and --
19 because the place was closing down, right, you had
20 to pay your bills?

21 A That's correct.

22 Q And who did you get up, sir, to pay
23 your bill with?

24 A I don't remember who I paid my bill
25 with.

1 Q Do you remember having any specific
2 conversation with anybody at Branigan's that
3 night?

4 A No, I don't.

5 Q Okay. So not a situation where you
6 even recall who you sat with -- but how about your
7 training partner, Kelly McLure, do you remember
8 having any interaction with her?

9 A I don't remember having any particular
10 interaction. But, I mean, she would have been the
11 person that I would have known the best, so, I
12 mean -- I can't deny that I probably would have
13 had a conversation with her. Do I remember having
14 one with her? No, I don't.

15 THE COMMISSIONER: You were drinking
16 beer?

17 THE WITNESS: Yes, I was.

18 BY MR. CLIFFORD:

19 Q How many beers did you have, sir?

20 A I would guess two or three.

21 Q And you say you guess two or three?

22 A Um-hum.

23 Q Can you elaborate on that a little
24 more and maybe -- could you take the guess part of
25 out of it and be a little more accurate with

1 respect to how much alcohol you consumed?

2 A I don't know. It would have been two
3 or three beers, nothing more than that.

4 THE COMMISSIONER: There was liquor
5 served that night apparently. Were you drinking
6 any liquor?

7 THE WITNESS: Yeah, I had beers.

8 THE COMMISSIONER: Apart from beer?

9 THE WITNESS: No, I drank, I am pretty
10 sure --

11 THE COMMISSIONER: Did you see anybody
12 else drinking something other than beer?

13 THE WITNESS: Not that I can remember,
14 no.

15 THE COMMISSIONER: Okay.

16 BY MR. CLIFFORD:

17 Q Do you recall anything, sir, about the
18 process of getting up to pay and leaving at the
19 end of the night?

20 A I mean, I paid for my tab. As far as,
21 you know, remembering how it was, not really.

22 Q So you have no recollection of how you
23 paid; cash, bank card?

24 A I would have had a credit card and a
25 debit card, and I'm not sure if I had cash on me

1 at the time, but obviously I would have used one
2 of those three options.

3 Q Now, we know that you don't recall
4 where or who you were sitting with, but did you
5 move around during the night? Did you socialize a
6 little bit and talk to other people?

7 A I would say I was moving around, yeah,
8 talking to other people. I mean, that was the
9 whole point I was there.

10 Q And were you getting to know people?

11 A I guess as well as you could in that
12 time frame. I was getting to know names and --

13 Q And you were a new officer, right?
14 This would have been your first time out, was it
15 not, with the shift?

16 A That's correct, yeah.

17 Q And when you were walking around, did
18 you have one of your beers with you?

19 A I don't remember.

20 Q Were there other new recruits, other
21 people in their field training?

22 A There was one that showed up later,
23 yeah.

24 Q And who was that?

25 A Dan Mikawoz.

1 Q Okay. So there was yourself and Dan
2 Mikawoz, so there are two trainees there?

3 A Um-hum.

4 Q And were people welcoming you aboard,
5 so to speak, extending congratulations to you,
6 trying to make you feel welcome as part as the
7 shift?

8 A People were nice about it. As far as
9 welcoming us to the shift, I mean, at that point
10 you are just field training, there is nothing
11 saying that you are going to back to that shift.
12 So people were nice, people were friendly.

13 Q But it was your first time with the
14 group?

15 A That's correct, yes.

16 Q Nobody buy you a drink, sir?

17 A Not that I can remember.

18 Q Nobody walked up and sort of toasted
19 you, you know, clinked the beer glasses together
20 and said, you know, good luck with your career?

21 A No.

22 Q How was it that you ended up going to
23 Officer Black's residence?

24 A I drove my vehicle.

25 Q And who was it that invited you there?

1 A It would have been people who were
2 there at Branigan's. I don't know if it was
3 Sergeant Black himself, or if it was other people
4 that were there, I don't recall. I just know
5 there was people going back there and people had
6 invited me to go back to his residence.

7 Q Okay. So the answer to the question
8 would be, you don't recall?

9 A That is fair to say.

10 Q And with respect to whether anybody
11 was intoxicated at Branigan's, you don't have any
12 independent recollection of actually interacting
13 with anybody there. I take it you are unable to
14 comment on whether anybody was intoxicated or not
15 there?

16 A Nobody by my observation was
17 intoxicated.

18 Q Now, you drove your vehicle to Officer
19 Black's?

20 A That's correct.

21 Q Do you recall whether you made a stop
22 along the way?

23 A To the best of my knowledge, I didn't
24 stop.

25 Q Do you recall, sir, whether that

1 happened or not?

2 A I don't recall. I don't think I
3 stopped.

4 Q Let me ask you this; would you have
5 known how to get there?

6 A No, I wouldn't have.

7 Q Would you have been following people?

8 A Yeah.

9 Q What did you do when you got to
10 Officer Black's residence?

11 A Attended into the kitchen area, had
12 arm wrestling competitions.

13 Q Who was involved in the arm wrestling
14 competitions in the kitchen?

15 A I don't recall. Obviously, I wasn't
16 doing it by myself, but I don't know who I was
17 doing with it.

18 THE COMMISSIONER: You saw somebody
19 arm wrestling?

20 THE WITNESS: Sorry, I was doing the
21 arm wrestling too.

22 THE COMMISSIONER: You were?

23 THE WITNESS: Yes.

24 THE COMMISSIONER: But you don't know
25 who you were wrestling with?

1 THE WITNESS: No.

2 BY MR. CLIFFORD:

3 Q What did you have to drink there, sir?

4 A I just had a Coke.

5 Q And do you recall that specifically,
6 that's one thing that you can recall about being
7 there?

8 A Yeah.

9 Q With some certainty?

10 A Yeah.

11 Q Okay. Where did you get the Coke?

12 A Sergeant Black, I guess. I didn't
13 bring it with me.

14 Q You say Sergeant Black you guess. Do
15 you recall, sir, where you got the Coke?

16 A I would have got it from Sergeant
17 Black, because I didn't bring it with me.

18 Q Okay. When you say you would have got
19 it -- you didn't bring anything there to drink?

20 A No.

21 Q So you got it at the residence?

22 A Yes.

23 Q Did Sergeant Black hand it to you, did
24 he hand you a drink?

25 A I don't remember how I got the Coke.

1 Q Do you recall if there was any alcohol
2 out at the Black residence?

3 A I don't recall.

4 Q Do you recall where people were
5 sitting or standing, or what they were doing at
6 Branigan's?

7 A At Branigan's?

8 Q I stand corrected; at Officer Black's.

9 A From what I remember, most of the
10 people were in the kitchen area. And like I said,
11 I was seated at the kitchen table there, I was
12 having arm wrestling competitions.

13 Q Do you know whether people had glasses
14 in their hands?

15 A There was glasses out. I don't know
16 if people had them in their hands or not. I
17 remember seeing glasses out.

18 Q Where were the glasses?

19 A I don't remember. I just know there
20 was glasses out.

21 Q Now, sir, you told me that you can not
22 provide any evidence as to whether anybody
23 consumed alcohol at Branigan's?

24 A Um-hum.

25 Q Do I understand from your PSU

1 interview and your interview with me, sir, that it
2 is basically the same evidence with respect to
3 Officer Black's, you have no evidence to give
4 whatsoever about even the mere fact of alcohol
5 being out and being served?

6 A Yeah, that's correct. I mean, my
7 intention to go back there wasn't to go back there
8 and have a drink. I was just going back there to,
9 you know, to get to know some of the people there.
10 So I wasn't paying attention whether there was
11 alcohol or not.

12 Q Okay. And you were there until what
13 time?

14 A I was there for an hour, maybe two
15 tops.

16 Q And you knew Dave Harding at the time?

17 A I did. Well, I knew him as reasonably
18 well as I could, I mean, I had only been on the
19 shift for two sets of shifts.

20 Q But given the circumstances, you knew
21 who he was?

22 A I knew who he was.

23 Q You knew him from work?

24 A I knew who he was. I mean, I hadn't
25 spent a lot of time with him, but I was aware of

1 who he was, yeah.

2 Q He was at Officer Black's residence?

3 A That's correct, yes.

4 Q Did you make any observations with
5 respect to what he was doing or have any
6 interaction with him?

7 A I don't recall specifically, no. I
8 might have talked to him when I was there, I don't
9 know, but...

10 Q When you had your Coke, sir, was it in
11 a glass?

12 A I believe -- I don't know, I don't
13 know if it was in a glass or if he gave it to me
14 in a can, I don't know.

15 Q Going back to if he gave it to you in
16 a can, you don't know if he gave it to you or not,
17 right?

18 A That's true.

19 Q You don't know where you got it. You
20 had a Coke and you don't know if it was in a glass
21 or a can?

22 A I would guess it would either have
23 been in a Coke can or in a glass.

24 Q Do you recall Derek Harvey-Zenk being
25 at Officer Black's?

1 A I do.

2 Q Apart from recalling him being there,
3 sir, can you give any testimony on what he was
4 doing, who he was with?

5 A No, I can't.

6 Q Can you give the Commission any
7 evidence, sir, on any statement, anything that was
8 said to you that night at Officer Black's?

9 A It wasn't directed at me specifically,
10 but when I was walking in, I overheard Sergeant
11 Black saying that anybody who wanted to spend the
12 night, they are more than welcome to.

13 Q Okay. That's the only comment that
14 you attribute to anybody through the whole night,
15 right?

16 A That's correct.

17 Q And you wanted the Professional
18 Standards Unit to know about that, didn't you?

19 A Not so much that I wanted them to
20 know, but I thought, when I was going to my
21 interview with them, I thought it was obviously
22 something that was very relevant given the
23 situation and what happened.

24 Q You wanted them to know that, sir, and
25 you told them why you wanted them to know it?

1 A Right, and that's why -- like I said,
2 I thought it was relevant given the situation.

3 Q And that one comment, the only thing
4 that you can attribute to any person that night,
5 it was important for you to get it to the
6 Professional Standards Unit, what was the reason
7 you wanted them to have that information?

8 A Just to show that Sergeant Black was
9 being responsible.

10 THE COMMISSIONER: What was that?

11 THE WITNESS: Just to show that
12 Sergeant Black was being responsible.

13 BY MR. CLIFFORD:

14 Q So he says this at the beginning of
15 the night, if anybody wants to stay over --

16 A Um-hum.

17 Q -- they are welcome to do so. This
18 would have been at what, at about 15, 20 minutes
19 after leaving Branigan's?

20 A Yes, roughly 3:00 o'clock, I guess.

21 Q I take it you didn't feel it was
22 necessary for you to stay over?

23 A No, I didn't.

24 Q So you are in a rather unique position
25 that you are basically, with all due respect, you

1 are not providing really any information
2 whatsoever to either Professional Standards Unit
3 or the Commission, other than you attended these
4 locations, you yourself consumed some alcoholic
5 beverage and a Coke, and one person made a comment
6 to you, and you wanted to relay it because you
7 thought -- you wanted to demonstrate that this
8 person was being responsible. That would be the
9 sum total of your evidence, right?

10 A I would say that's pretty accurate.

11 Q You don't recall if there was any
12 music on at the residence?

13 A No.

14 Q Did you thank your host, sir, when you
15 left at the end of the night?

16 A I don't recall if I did. I mean,
17 usually I give a blanket statement and say -- not
18 a blanket statement, sorry. Usually I say bye
19 before I leave, that's my usual practice. Do I
20 remember saying it that night?

21 Q Do you recall --

22 A No, I don't.

23 Q Do you recall speaking to anybody when
24 you were leaving?

25 A Not in particular, no.

1 MR. CLIFFORD: Sir, those are the
2 questions that I have for you. Other counsel will
3 have questions.

4 BY MR. ZAZELENCHUK:

5 Q Officer, today, almost three and a
6 half years later, you can't remember whether you
7 settled your bill at Branigan's by cash or by
8 credit card or by debit card; is that correct?

9 A That's correct.

10 Q And I can accept that and I understand
11 that. And you may not believe me, but I can also
12 understand what it was like to be the new kid on
13 the block 35 years ago when I was an articling
14 student. You had only been working for, you said,
15 a couple of shifts?

16 A Yes, it was the completion of my
17 second shift with that platoon.

18 Q Okay. So you were off the -- this
19 Branigan's was Thursday night. Did you work
20 Friday?

21 A I don't believe I did.

22 Q So you were off the Friday, the
23 Saturday, the Sunday, the Monday, and then Tuesday
24 night -- you were to start working, in fact,
25 Wednesday nights; correct?

1 A Yeah. I don't remember the exact time
2 I would have went back but that sounds pretty
3 accurate.

4 Q Yeah. And by the time you came back
5 to work on the Tuesday night, you had already
6 found out, one way or another, about Derek
7 Harvey-Zenk being in a really serious accident?

8 A That's correct.

9 Q And there was a lot of that in the
10 newspaper and there were stories going around the
11 police force. You recall that?

12 A Yeah, I mean, it was in the paper for
13 sure, yeah.

14 Q And we heard from the man who was then
15 your division commander, who is now your Chief,
16 saying that he addressed the shift that evening on
17 the Tuesday night saying, look, guys, it is
18 important that the truth come out. Do you recall
19 that?

20 A Yeah, I vaguely recall that. I mean,
21 no surprise obviously, the Chief has testified
22 here, yeah.

23 Q Do you recall him addressing the shift
24 on that evening, that Tuesday evening?

25 A Yeah, I remember him coming down.

1 Q And that would have been March 1?

2 A Okay.

3 Q Sure. Because the 25th, it was a
4 Friday, it is not a leap year, the 28th is a
5 Monday. Are you with me?

6 A Yeah.

7 Q Okay. And you were interviewed by the
8 Professional Standards Unit on March 3?

9 A I believe so, yeah.

10 Q So between March 1 and March 3, did
11 you make any efforts to determine whether or not
12 you could find your bill from Branigan's?

13 A No, I didn't.

14 Q Why not?

15 A Why would I?

16 Q Because it is important that the truth
17 come out.

18 A Okay.

19 Q I mean, your bill would be evidence of
20 what you purchased that night. It might be of
21 assistance to the investigation.

22 A My bill would have been whatever, you
23 know, two, three beers and some wings would have
24 come to.

25 Q But do you not agree with me that it

1 might have been of some assistance to the
2 investigation?

3 A I mean, I don't know. Like I said, I
4 don't know, whatever a couple of beers and some
5 wings would have come to is what my bill would
6 have been. I'm not -- there is no --

7 Q So you didn't look for it, didn't try
8 to find it?

9 A No.

10 Q And you weren't asked about it by
11 Professional Standards Unit, were you?

12 A Was I asked about my bill?

13 Q Yeah?

14 A I think I was, yeah, because I think
15 they asked if I paid my tab.

16 Q No. My question was, were you asked
17 by Professional Standards Unit if you looked for,
18 or if you would look for your actual bill?

19 A I don't recall that in here.

20 Q You can look through it, it doesn't
21 matter. I don't recall it in there either.

22 A Okay.

23 MR. ZAZELENCHUK: Thank you.

24 MR. McDONALD: No questions.

25 MS. CLEARWATER: No questions.

1 MR. WEINSTEIN: No questions.

2 MR. KING: No questions.

3 MS. DIXON: No questions.

4 MS. HANLIN: Mr. Commissioner, just a
5 few questions for Constable Spruyt.

6 BY MS. HANLIN:

7 Q Your recollection, Constable Spruyt,
8 was that you were in field training with Constable
9 McLure; is that correct?

10 A That's correct.

11 Q If we looked at the records at volume
12 F-1.33.b, page 831?

13 THE COMMISSIONER: S?

14 MS. HANLIN: F as in Frank,
15 Mr. Commissioner.

16 THE COMMISSIONER: Page?

17 MS. HANLIN: Page 831.

18 THE COMMISSIONER: Yes.

19 BY MS. HANLIN:

20 Q There is a list of lineup for
21 operations. If we look about halfway down it
22 shows -- now, it shows, Constable Spruyt, that you
23 are actually with Constable Swanson, and that's
24 also reflected in Constable Swanson's statement,
25 that were you partnered with him. Would you

1 disagree with that?

2 A No.

3 Q But it is just not something that you
4 recalled at the time that you gave your interview?

5 A No. I mean, Kelly McLure was my field
6 trainer, and I'm pretty sure I said in here that I
7 wasn't sure if I worked with her that day or not.

8 Q But it is obviously not -- it is
9 something that could be shown by record, and it is
10 not something that you would attempt to mislead
11 anyone about?

12 A Correct.

13 Q Simply something that you were
14 mistaken about?

15 A Correct.

16 Q Mr. Commissioner, the reference in
17 Constable Swanson's statement is at page 1101,
18 just for your reference.

19 Now, you were in field training and
20 you had just finished your second set of shifts?

21 A Um-hum.

22 Q If we can turn to volume Q-2.89.b.19,
23 page 3037? I'm not sure if that's has been made
24 an exhibit yet.

25 THE COMMISSIONER: What are we looking

1 at?

2 MS. HANLIN: It is a shift schedule,
3 Mr. Commissioner.

4 THE COMMISSIONER: Sorry?

5 MS. HANLIN: It is a shift schedule,
6 page 3037 of Q-2.

7 THE CLERK: Exhibit number 180.

8 (EXHIBIT 180: Q-2.89.b.19 Shift
9 schedule)

10 BY MS. HANLIN:

11 Q Now, if you can go to pay period four,
12 you will see across from B-1, six days. Do you
13 see that, Constable Spruyt?

14 A I do, yes.

15 Q So that would have been your first set
16 of shifts; is that correct?

17 A On the evenings? Sorry, the days,
18 yes, days, would have been my first shifts, yeah.

19 Q 11, 12, 13, 14, 15, 16?

20 A Yes.

21 Q And then you are off the 17th, 18th,
22 19th and 20th?

23 A That's correct.

24 Q And then you are back on the 21st,
25 22nd, 23rd, 24th. Now, is that the sum total of

1 the time that you had worked on the street?

2 A No, I had completed a phase downtown
3 first. But as far as the North End, that's the
4 phase I completed there.

5 Q Okay. And a phase is two shifts, is
6 that correct?

7 A No, I think a phase is a little bit
8 longer than that. I don't recall how much it is,
9 but I think it is a little bit longer.

10 Q Okay. But it wasn't a long period of
11 time that you had in training on the street; is
12 that correct?

13 A That's, yes, very accurate.

14 Q What would be some of the new duties
15 that you were learning?

16 A Powers of arrest, interview
17 interrogation, firearms, how to use the computer,
18 Highway Traffic Act. I mean, essentially, you
19 are, in the first approximately five months of
20 your policing career, you are learning the
21 foundation, you know, of what you are going to be
22 using for the rest of your career. So when you
23 get out on the street it is obviously very
24 mentally exhausting. You are trying to apply all
25 of this new information that you have learned, and

1 you are learning new information as you go as
2 well.

3 Q I think you described the experience
4 as overwhelming?

5 A Yes.

6 Q And after you had completed this set
7 of shifts, I understand you were to go back to the
8 classroom for further training?

9 A Once I was done my field, yeah, once I
10 was done my field training phase in the North End,
11 I was scheduled to go back.

12 Q Now, in regards to the statement that
13 you had given or attributed to Sean Black --

14 A Um-hum.

15 Q -- that if anybody had wanted to stay
16 the night, that was something that you understood
17 him to say?

18 A Um-hum.

19 Q And it was something that you
20 attributed to him acting responsibly, is that
21 correct?

22 A That's correct.

23 Q Now, if you had any evidence that Sean
24 Black or anyone else was behaving irresponsibly,
25 would you have hesitated to tell that to

1 Professional Standards Unit?

2 A Not at all.

3 Q And you understood their interview
4 with you to be about Derek Harvey-Zenk?

5 A My interview with Professional
6 Standards Unit?

7 Q Yes?

8 A Yes.

9 Q And the accident that he was involved
10 in?

11 A That's correct.

12 Q That there was some allegations of
13 alcohol consumption?

14 A On Harvey-Zenk?

15 Q Yes?

16 A Yeah.

17 Q And if you had had anything of
18 relevance regarding that, would you have hesitated
19 to give that to Professional Standards Unit?

20 A Not at all.

21 MS. HANLIN: Thank you. Those are my
22 questions.

23 THE COMMISSIONER: Any re-examination?

24 MR. CLIFFORD: No re-exam.

25 THE COMMISSIONER: Thank you very

1 much. 9:00 o'clock.

2 MR. CLIFFORD: Thank you.

3 THE CLERK: All rise. This Commission
4 of Inquiry stands adjourned until 9:00 a.m.
5 tomorrow morning.

6 (Proceedings adjourned at 4:08 p.m.)

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COURT REPORTERS' CERTIFICATE

Debra Kot and Cecelia Reid, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

Cecelia Reid

Debra Kot

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