

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Thursday, July 24, 2008

Volume 20

INQUIRY PROCEEDINGS

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1 THURSDAY, JULY 24, 2008

2 UPON COMMENCING AT 9:00 A.M.

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

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,
7 Mr. Commissioner. Just an announcement for the
8 benefit of counsel. They were apprised of an
9 application for standing that had been brought by
10 Richard Wolson, and it was brought to my attention
11 this morning that they were not advised that the
12 application was denied, but that permission has
13 been given to Mr. Wolson, if he chooses to have
14 counsel attend during his evidence, and to ask him
15 questions if counsel feels that there are matters
16 that have not been adequately canvassed by other
17 lawyers present.

18 Today we intend on calling Inspector
19 Jim Poole of the Winnipeg Police Service, and
20 Detective Sergeant Girard, both with the
21 Professional Standards Unit. The theme, if there
22 is one today, is going to be the investigation of
23 the Winnipeg Police Service witnesses by the
24 Professional Standards Unit.

25 If we could have Inspector Poole

1 called to the stand, please?

2 JAMES ARTHUR POOLE, having been first
3 duly sworn, testified as follows:

4 BY MR. PACIOCCO:

5 Q Good morning, Inspector Poole.

6 A Good morning.

7 Q My name is David Paciocco and I want
8 to thank you for your attendance here today to
9 assist the Commissioner in his very important
10 work.

11 Sir, you are of course now an
12 inspector, and I understand you are with the
13 Criminal Investigation Bureau of the Winnipeg
14 Police Service?

15 A One of three, yes.

16 Q Okay. And at the time of the incident
17 that has resulted in this Commission of Inquiry,
18 the 24th to the 25th of February, 2005, you were a
19 Staff Sergeant with the Professional Standards
20 Unit of the Winnipeg Police Service?

21 A That's correct, sir.

22 Q What was your role as Staff Sergeant
23 with the Professional Standards Unit?

24 A At that point, the role of the Staff
25 Sergeant was one of overseeing investigations

1 within the Professional Standards Unit,
2 coordinating those investigations to a point,
3 signing matters that were brought into the -- as
4 complaints, and then assigning them.

5 Q Were you effectively the highest
6 ranking officer dedicated to Professional
7 Standards Unit?

8 A We had an inspector at that point in
9 time as well, who I believe was away on a course.

10 Q I see. And that inspector, would his
11 work have exclusively been with the Professional
12 Standards Unit?

13 A I believe so, yes. Yes.

14 Q And, sir, I'm going to ask you some
15 general questions about the Professional Standards
16 Unit, because it's something the Commissioner
17 would like to be educated about. And certainly if
18 I stretch your actual knowledge, please feel free
19 to either decline answering the question, or to
20 tell us how you know as much or as little as you
21 do about the topic.

22 What kind of cases does the
23 Professional Standards Unit get involved in, sir?

24 A There's two types primarily, and they
25 are regulations incidents and/or criminal

1 offences, and those would be allegations of either
2 criminal misconduct or regulatory misconduct by a
3 police service member, a Winnipeg Police Service
4 member.

5 Q When you refer to regulatory
6 misconduct or regulatory offences, sir, are you
7 talking about violations of statutes, other than
8 Police Act or things of that nature that may
9 involve police officers, sir?

10 A Correct. The Police Service adopted a
11 new group of regulations in May of 2000, and
12 that's what we were currently, or were operating
13 under at that point in time. And they outline a
14 number of different breaches, though, they are not
15 all encompassing, certain offences of regulatory
16 nature.

17 Q So just so I understand, sir, would it
18 be fair to say that the Professional Standards
19 Unit can focus on two different types of
20 investigations, although they may sometimes
21 overlap?

22 A That's correct.

23 Q The first would be service violations,
24 violations of the internal regulations that govern
25 the conduct of police officers. And the second

1 would be investigations into alleged offences
2 committed by police officers against any statute,
3 including the Criminal Code?

4 A That's correct, sir.

5 Q With respect to the investigations of
6 allegations of criminal conduct, or violations of
7 other penal statutes, sir, would the Professional
8 Standards Unit conduct the investigation that
9 would be used by prosecutors in court, or would it
10 just be for internal purposes that the
11 Professional Standards Unit would get involved?

12 A No, it would be for supplying the
13 information. All matters, if the evidence deems
14 appropriate, would be referred to independent
15 counsel appointed by Manitoba Justice at the time.

16 Q So, effectively, the Professional
17 Standards Unit can act as the police force, if you
18 will, who was investigating a Winnipeg Police
19 Service Officer, so that they can assist a
20 prosecutor, an independent prosecutor, in
21 ultimately bringing that case forward to the court
22 if the evidence warrants it?

23 A Correct.

24 Q Sir, I understand that that is the
25 practice with respect to criminal allegations, or

1 breach of statute allegations for Winnipeg Police
2 Service Officers where those allegations arise
3 within the jurisdiction of the Winnipeg Police
4 Service. But my understanding, and correct me if
5 I'm wrong, is that that's not the typical practice
6 if a Winnipeg Police Service Officer were to be
7 alleged to have committed an offence in another
8 jurisdiction?

9 A Typically, it's unfortunate that
10 incidences have occurred outside Winnipeg's
11 jurisdiction, and if it was potentially an arrest
12 by the RCMP for, for instance, a domestic matter,
13 the RCMP would carry out that investigation and
14 we'd be apprised of it.

15 Q Okay. So, for example, if you had a
16 Winnipeg Police Service Officer who had a cottage
17 just on the other side of the Ontario border, and
18 the alleged domestic offence occurred over there,
19 the Professional Standards Unit would not
20 participate in the investigation of that case, but
21 you would be advised of the investigation by the
22 relevant police force, sir?

23 A That's correct.

24 Q All right. And of course, it would
25 hold true as well, even if the offence was

1 committed in Manitoba but outside the ordinary
2 jurisdiction of the Winnipeg Police Service?

3 A That's correct.

4 Q I understand that there is not an
5 independent, and I don't use the term as a loaded
6 term, but just as a descriptive one, there's not
7 an independent policing body like the Special
8 Investigations Unit in Ontario in existence here
9 in Manitoba at the current time, sir; is that
10 correct?

11 A Not for criminal matters, no.

12 Q So, there is not another body, under
13 the responsibility of the government but not part
14 of the Winnipeg Police Service, that is put into
15 existence for the purpose of investigating serious
16 allegations against police officers?

17 A Only body in existence is the Law
18 Enforcement Review Agency, that I'm aware of, that
19 deal with non criminal matters.

20 Q And the Law Enforcement Review Agency,
21 what's its function, sir?

22 A They receive complaints as well. They
23 have a particular mandate, and identified matters
24 that can be brought to them. And quite often
25 complaints are made to the Winnipeg Police and to

1 Law Enforcement Review Agency, and they will put
2 their matter in abeyance if we are investigating,
3 and then ultimately, when our file is concluded, a
4 package would be sent to the Law Enforcement
5 Review Agency for their investigation. They would
6 have the benefit of our investigation already.

7 Q So, effectively, LERA is an
8 administrative oversight body more concerned with
9 the career implications of police officers who may
10 have violated the law, rather than a police body
11 that would assist a prosecutor, sir. Would that
12 be a fair way to put it?

13 A I don't think that they would be
14 assisting prosecutions per se. They receive
15 complaints for all of Manitoba really, against all
16 policing agencies in Manitoba. Winnipeg is just
17 part of that.

18 Q What's the outcome of a LERA
19 complaint, sir? How does it proceed and what
20 happens to it?

21 A Well, from my -- I don't have exact
22 knowledge, obviously the Commissioner of the Law
23 Enforcement Review Agency would be best to speak
24 to, but they can impose penalties, or have
25 penalties suggested to the Chief of Police to

1 impose as an end result.

2 Q All right. And that's what I had
3 understood. So they would make a recommendation
4 to the Chief of Police who, as the administrator
5 of the police force, would make the ultimate
6 decision whether to accept LERA's recommendations?

7 A Correct.

8 Q So it's not a criminal investigation
9 body that would go out and gather evidence to
10 assist in a prosecution?

11 A No, sir.

12 Q I understand that the Professional
13 Standards Unit reports to the Chief of Police,
14 sir?

15 A That's correct.

16 Q And I noted from the website that its
17 mandate is to conduct professional, thorough, and
18 impartial investigations of allegations of
19 misconduct by members of the service?

20 A That's correct.

21 Q So the aspiration is that this unit,
22 although it exists within the Winnipeg Police
23 Service, can function independently of the other
24 units within the Winnipeg Police Service, and
25 report directly to the Chief, rather than through

1 the other chains of command that may exist. Would
2 that be fair?

3 A That would be fair, yes.

4 Q And, sir, don't misunderstand the line
5 of questioning I'm going to pose to you, but
6 essentially I want to probe the degree to which
7 that type of independence can really, both in
8 practice and as a matter of perception, operate.

9 Speaking generally, the Chief of
10 Police is also responsible for the morale of the
11 police force, I would think, sir?

12 A Certainly.

13 Q And the Chief of Police is also
14 concerned with the public image of the police
15 force?

16 A Public image, public trust.

17 Q Criminal offences alleged against
18 police officers, I think through your experience
19 you would agree, can affect the public image of
20 the police force adversely?

21 A Correct.

22 Q They can also have a negative impact
23 on the morale of individuals within the police
24 force?

25 A Be it the people involved in the

1 incident or generally.

2 Q Generally, the colleagues, other
3 police officers?

4 A Certainly, no one likes to be, you
5 know, have people in their profession, you know,
6 brought.

7 Q Certainly. It can make the whole
8 profession look tainted, even though that may be
9 an unfair perception, if people are prepared to
10 generalize from the conduct of a few?

11 A Correct.

12 Q The Chief would also, of course, need
13 to demonstrate, at least to some degree, that he
14 stands behind his police officers, sir?

15 A Yes.

16 Q And he has to demonstrate that he will
17 treat his officers fairly and be concerned with
18 their welfare and their interests?

19 A Yes.

20 Q And so, effectively, a Chief of Police
21 overseeing a Professional Standard Unit has to
22 appropriately bear in mind the higher
23 responsibility to ensure that officers don't break
24 the law, but that there may be pressures on police
25 officers, or administrators, or even the Chief

1 because of the difficult balance that has to be
2 maintained between being fair to the officers and
3 worrying about the public image of the police
4 force on the one hand, and really trying to get to
5 the bottom of the criminal allegation on another.

6 Would that be a fair statement in your
7 assessment, sir?

8 A Yes. In my time in Professional
9 Standards Unit, I always maintained that we had
10 four different stakeholder groups that we had to
11 be concerned about. And that was, you know, the
12 Police Service, the police members, the public,
13 and the complainant him or herself. And those
14 were the people that we were responsible to in
15 conducting that impartial investigation.

16 Q So, it takes a very firm understanding
17 of appropriate priorities to be able to maintain
18 the kind of independence and impartiality and
19 thoroughness that you aspire to?

20 A Yes.

21 Q How many officers are there in the
22 Professional Standards Unit, or were there at the
23 time you were involved in it, sir?

24 A At that time, there would have been
25 eight -- seven full time investigators, one

1 temporarily assigned as a rotational basis, and
2 then myself and the inspector.

3 Q So that's a fair number of officers to
4 deal with internal matters, sir. Is that a busy
5 unit?

6 A Yes. It's increased in size in recent
7 past as well.

8 Q And where are the officers who staff
9 the Professional Standards Unit drawn from?

10 A Where are they drawn from?

11 Q Yes, sir?

12 A From -- when I was brought into the
13 unit, people that were promoted to the rank of
14 sergeant were the ones that were staffing it. It
15 was basically sergeants that staffed the unit in
16 1998. At that point, there was a slight change
17 and they brought in detective sergeants as well,
18 to increase the investigative pool that there
19 were, or that there was within the service.
20 Traditionally, people were approached off of those
21 lists and asked if they'd, you know, consider an
22 assignment to the Professional Standards Unit or
23 Internal Investigation Unit in 1998, when I went.
24 And since then, it's, you know, people that are
25 interested in that type of work. There's no set

1 selection process, in my mind, other than people
2 that are interested in the work and/or those
3 people being approached to come into the unit.

4 Q I see. So there had been a practice
5 of taking these individuals from a particular rank
6 level. But if I understand you, these are
7 officers who are Winnipeg Police Service Officers,
8 sir?

9 A Correct.

10 Q So they are taken from within the
11 service and had, prior to their attachment to the
12 Professional Standards Unit, had worked in other
13 units within the Winnipeg Police Service?

14 A Yes, sir.

15 Q And the ones who would have worked as
16 sergeants, many of them may have been responsible
17 for overseeing shifts and platoons and doing the
18 jobs that staff sergeants and patrol sergeants
19 normally undertake?

20 A Yes.

21 Q And they also, of course, and we've
22 heard evidence from staff sergeants and sergeants,
23 platoon sergeants themselves, they do have a
24 responsibility for the morale of the group and to
25 try to make sure it's a cohesive group that is

1 capable of supporting each other?

2 A Certainly.

3 Q So those individuals would understand
4 that ethic when they came into the Professional
5 Standards Unit?

6 A Yeah, they'd have that understanding,
7 I'm sure.

8 Q Sir, your Chief came, we had the
9 privilege of his testimony. He spoke very
10 eloquently about the trust he has in the
11 Professional Standards Unit and in the system that
12 is in place. He kept an open mind as to other
13 possibilities. I'm not going to begin to ask you,
14 to suggest that this is not an objective process.
15 I'm certain that those who work within it believe
16 very strongly in it. But I'm going to ask you
17 about your views on the public perception of
18 having an internal unit within the Winnipeg Police
19 Service responsible for investigating Winnipeg
20 Police Service members?

21 A There is going to be different and
22 varying opinions on it. I, having been in there,
23 I was there for a total of seven years, three
24 years as an investigator. I left through
25 promotion to staff sergeant for six months, and

1 was asked to come back as staff sergeant when the
2 current one left, and remained there for another
3 four years. And I had the utmost confidence in
4 the people that I had selected and that were in
5 the unit at the time.

6 And the opinions of various people,
7 some believe that we can't police ourselves and
8 others, you know, feel that we can. Everybody
9 will have a personal opinion on that issue, I'm
10 sure.

11 Q You acquired that confidence in part,
12 sir, because you had the benefit of being on the
13 inside and working there and actually seeing what
14 goes on, sir?

15 A That's right.

16 Q And others, members of the public, for
17 example, I think you would agree, may not have the
18 benefit of actually getting in and seeing the way
19 that things are done?

20 A That's correct.

21 Q And of course, there are other
22 institutions that operate in a different way in
23 terms of trying to ensure appearances of
24 impartiality such as, for example, the practice
25 that you described earlier of appointing a special

1 prosecutor in cases involving police officers,
2 sir, rather than going to a typical line Crown?

3 A That's right.

4 Q And in fact, you would agree with me,
5 sir, that a special prosecutor, being brought in,
6 in those cases, has this difference: The actual
7 line prosecutors are not members of the Winnipeg
8 Police Service, they simply work with the Winnipeg
9 Police Service, yet the Attorney General's
10 perspective would be that the working
11 relationship, even though they are not direct
12 colleagues between prosecutors and the Police
13 Service, is strong enough that the perception
14 would be better served by not having line Crowns
15 prosecuting regular officers, sir. Would you
16 agree that that's the way you see the role of the
17 special prosecutor, sir?

18 A Yes. I believe, you know, from my
19 background, they have removed from the normal
20 Crown Attorney role as prosecutor and have, you
21 know, vast experience in matters as well. They
22 are senior people in their field. And it would
23 certainly eliminate any ideas of -- I guess they
24 have to work with them, again, case by case,
25 whether the file is -- in many cases members

1 aren't removed from duty during an investigation,
2 and yet a Crown, or the special independent Crown
3 will know about the file right from the outset.
4 But they wouldn't be working hand in hand with
5 those people on the service during that process.

6 Q Sir, members of the Professional
7 Standards Unit move in and out of the Professional
8 Standards Unit into other places within the
9 Winnipeg Police Service, do they not?

10 A That's correct. A standard tour of
11 duty within the Professional Standards Unit is,
12 two years is what we bring people in under the
13 understanding they will be there for a period of
14 two years, and then longer if they so choose to
15 stay.

16 Q So they are expected to temporarily
17 take off their hat as fellow officers, who are
18 really going to be focused on doing the job with
19 each other in a cooperative way, they are expected
20 to take that hat off and go in temporarily, and
21 put their priority on the enforcement of the law
22 by their colleagues. And then ultimately they
23 step back out and work with the very same groups
24 that may have been implicated in their earlier
25 investigations. Is that fair?

1 A True. It's another element of
2 policing and it's another investigative unit.
3 And, yes, they are, you know, they do go back into
4 regular policing roles afterwards. And that's why
5 in -- we've got a rank structure of the detective
6 sergeants and sergeants that are doing the
7 investigating, so they are going back as a
8 supervisory role.

9 Q Does the Professional Standards Unit,
10 or the Winnipeg Police through the chief, ever
11 bring in outside police agencies to investigate
12 Winnipeg Police Service Officers?

13 A In my time in the unit, no outside
14 agencies were involved in any matters other than
15 one particular joint forces operation that did
16 take place.

17 Q Is that something that you are at
18 liberty to talk about briefly, sir?

19 A I would rather not, no, I don't think
20 so.

21 Q Okay. So there are reasons of
22 confidentiality or investigative confidences that
23 you are bearing in mind, sir?

24 A That's correct. But the two agencies
25 worked jointly.

1 Q Are you able to identify the other
2 agency, sir?

3 A It was the Royal Canadian Mounted
4 Police.

5 Q Thank you. Sir. Are you able to
6 advise the Commissioner about the development of
7 the Professional Standards Unit at all? And I
8 know you didn't come here as a police historian,
9 sir, but I sense from your earlier answer that you
10 were there for a transition that occurred in the
11 way that the internal policing occurs?

12 A Really, since I can just basically
13 allude to the way things were operating when I
14 went in, in 1998, in the fall I was promoted to
15 sergeant and requested to go into the unit. I did
16 so. And we were only a unit of four investigators
17 and one staff sergeant at that time, as well as
18 support clerical staff. That unit evolved over
19 the next little while to the point where -- we
20 also reported to the Executive Assistant to the
21 Chief of Police, the EACP is the acronym, and that
22 was the link to the chief. So we would go through
23 that EACP, and that was the rank of inspector.

24 Ultimately, we transitioned out of --
25 sorry, just to backtrack -- when I went in, in

1 '98, we were in a separate building as well from
2 main police headquarters, but there was still, the
3 personnel division was right across the hall from
4 us.

5 Q Yes, sir.

6 A And ultimately, the best case scenario
7 for conducting investigations and interviews is to
8 be totally separate and away from a police
9 facility. Primarily, in the past, the internal
10 investigation unit was actually on the fifth floor
11 within the police headquarters, and staffed by two
12 people and I believe a staff sergeant. And that
13 was back in the early -- late '80s, '90s. And
14 then we ultimately moved, and I'm not sure of the
15 year, I think it was 2001, to 457 Main Street,
16 which is another historic building within the
17 city, and we occupy the 10th floor solely as the
18 sole police tenant within that building. And we
19 increased our staff at that time as well, and now
20 it's since increased again.

21 Q Are you able to advise us as to how
22 the Professional Standards Unit is created? Is it
23 through internal regulations that have been
24 developed within the Winnipeg Police Service, or
25 is it through some type of statutory provision

1 that may have been passed by the Government of
2 Manitoba?

3 A I honestly can't answer that. I know
4 that we are the investigative arm under the
5 Chief's in the organizational chart. What was
6 specifically mandated at the outset, going back
7 that far, I can't recall.

8 Q When did it become the Professional
9 Standards Unit in name, sir?

10 A I am believing that it was in around
11 2000, when the regulations were adopted.

12 Q Okay. So those are internal
13 regulations that you are describing, as opposed to
14 government regulations?

15 A That's correct.

16 Q Yes. And I take it that's how the PSU
17 was, in fact, created, through the Chief and the
18 executive making the decision to create this
19 separate unit and establishing it through internal
20 regulations.

21 Sir, I understand that there's a
22 protocol in place for conducting interviews with
23 police officers?

24 A Yes.

25 Q And could you describe the protocol

1 for the Commissioner, please?

2 A Certainly. And it's documented at
3 this point in the Professional Standards Unit
4 operational guide that, actually, when I went in,
5 in 1998, there was no specific operating guide
6 that we had. And there are a lot of intricacies
7 and things that investigators need to know. So at
8 that point, I actually put pen to paper and
9 started formulating this guide that's evolved over
10 the years, and I believe is still in use there
11 today. And it outlines the varying steps that
12 members of the internal, or Professional Standards
13 Unit have to take through an investigation,
14 basically.

15 Q Okay, sir, I'm going to interrupt you
16 just briefly. So this is a guide that is
17 effectively a formalized protocol within the unit?

18 A Yes.

19 Q It is expected that officers will
20 follow this?

21 A Yes.

22 Q Okay. Please continue, sir?

23 A For any investigation, whether it's a
24 regulatory investigation or a criminal offence
25 investigation, we basically fulfill the same

1 steps. It's just the outcome, and how a suspect
2 officer or a respondent officer would be dealt
3 with ultimately would be the differing. But we
4 would basically get a file. We would background
5 that information, and have the complainant
6 interviewed. And then follow the normal steps of
7 an investigation, to the point of retrieving all
8 pertinent police data reports and so on, outlining
9 who we feel is necessary to be interviewed
10 regarding the matter. And then we would go forth
11 on with those steps. And that's where we have,
12 between -- we have the Winnipeg Police
13 Association, obviously, representing members from
14 the rank of constable to staff sergeant, as well
15 as staff members with the city or civilian
16 members.

17 There is steps that we follow where we
18 send out notification letters to the divisional
19 commander to have served on the members within
20 their division. And those letters basically state
21 that -- I don't have one in front of me -- but we
22 believe that they have information relating to
23 this incident, and that an interview has been
24 scheduled with them and the Professional Standards
25 Unit at such-and-such a location, and

1 such-and-such a date and time. And that they have
2 the right to contact the Winnipeg Police
3 Association for advice. And that's written into
4 the notification form.

5 Ultimately, they show up for their
6 interviews at our facility, and the interviews are
7 conducted. And that's sort of how the witness
8 process goes. If it's civilian witnesses, we go
9 out or phone them and deal with them at their
10 convenience, at their residence or at our facility
11 as well.

12 Q Very good, sir. So the first steps
13 you described were just the basic investigative
14 plan of identifying the complaint and determining
15 who the witnesses might be, and identifying the
16 potential suspect, or in the case of a regulatory
17 investigation, you would call them a respondent.
18 Is that fair, sir?

19 A Yes.

20 Q So you have suspect officers who are
21 ones who are alleged to have committed an offence,
22 and respondent officers who are ones who are
23 alleged to have violated a regulation?

24 A Yes.

25 Q Is that the way you used that

1 terminology?

2 A Yes, sir.

3 Q All right. So you've gone to that
4 point. And then you actually, if the officers, if
5 there are officers who are witnesses or the
6 subject of the inquiry, you can provide them with
7 notices that they are going to be required to come
8 and meet with the Professional Standards Unit and
9 furnish evidence, sir?

10 A That's right.

11 Q And I understand that they are
12 obliged, or can be made obliged as a result of
13 receiving those notices, as a matter of employment
14 obligation?

15 A That's right, and it's stipulated
16 within the Winnipeg Police Service Regulations.

17 Q So they must come, and they are also
18 advised that they have 24 hours, is it, sir,
19 typically, or is that a set period?

20 A That's usually the minimum that is
21 written in the guidelines. Typically, most
22 investigations, because of scheduling of members,
23 they are interviewed when on duty in most cases.
24 So scheduling becomes an issue. So they are given
25 a date sometimes, you know, it can be a week or

1 two weeks down the road that they are attending.
2 But we get our notices out to them so that the
3 investigation process can continue. But at a
4 minium, we can have them in, if it was a
5 significant event that occurred right now and we
6 needed to talk to people, we could, you know,
7 certainly have them in, but we'd still give them
8 the same caution, or ability, opportunity to speak
9 with Winnipeg Police Association for advice.

10 Q So if I understand you, you may not,
11 if it's an urgent situation, you may not go
12 through the process of actually drafting and
13 filing the notice, you might just get them in
14 somehow. And when they are in there, you tell
15 them that they can have 24 hours to go and get
16 that advice?

17 A No. They'd be allowed to make a phone
18 call at that time, prior to the interview with us,
19 that's all. It's happened very rarely, but it did
20 happen on one occasion that I can recall where
21 something had been alleged on a Friday afternoon,
22 and an officer was going home that we felt we
23 needed to talk to right away, and there were a
24 number of steps that took place involving the
25 Police Association and the Police Association

1 counsel and the member. And ultimately that
2 interview did take place --

3 Q Does the --

4 A -- on short notice.

5 Q Does the person from Professional
6 Standards Unit who is conducting the investigation
7 have the discretion to say, we're not going to
8 follow the usual 24 hours, or is it something that
9 has to be passed through any chain of command?

10 A Well, we work as a team in there, and
11 closely enough with the investigators that the
12 staff sergeant would be involved in those
13 decisions.

14 Q I also noticed that in the interviews
15 that were conducted in this case, there is a
16 warning read to the officers about the possibility
17 of the statements they give being used in any
18 future civil, criminal or administrative
19 disciplinary type proceeding, sir?

20 A Yes, I am sorry.

21 Q Yes. And that's a standard practice?

22 A Yes.

23 Q So police officers get notice
24 typically. They get an opportunity to consult
25 with the Winnipeg Police Association typically.

1 They are, as I understand it, scheduled to come in
2 typically during their work hours?

3 A That's correct.

4 Q With sensitivity to their annual leave
5 or other forms of leave, sir?

6 A Not to incur overtime unduly in their
7 time off, that type of a --

8 Q Okay. So the attempt is to try and
9 minimize the costs to the municipality of paying
10 for its police force and to not inconvenience the
11 officers, you try to bring them in under this
12 notice. And then when they come in, after they
13 have had this period of time, they are warned
14 about the implications of making their statement,
15 and at that point, sir, they are interviewed. Is
16 that how it basically goes?

17 A Yes. Yes, sir.

18 Q Are you able to tell us how that
19 practice of allowing officers to go speak to the
20 Winnipeg Police Association before giving
21 statements was generated, sir?

22 A I wasn't in the unit at the time that
23 that would have come about. I know that that was
24 the standard practice when -- even before being
25 assigned to the unit in, I'm guessing '95, '96, I

1 was requested to be interviewed as a witness
2 officer. And at that point, we contacted counsel,
3 and then attended for our scheduled interview,
4 myself and my partner at the time.

5 What specifically spurred the
6 agreement between the service and the Police
7 Association, I don't know.

8 Q All right. So you do think it's an
9 agreement between the service and the Police
10 Association?

11 A That this is how matters will proceed,
12 yes.

13 Q Yes, sir. And that's what I was
14 essentially getting at.

15 The protocol you described, and you
16 did say this, so correct me if I'm wrong, it
17 applies not only if it is an investigation into a
18 breach of police internal regulations that might
19 result in some employment discipline, that same
20 regime is also used in criminal cases, sir?

21 A For witness officers, yes.

22 Q What happens if a criminal
23 investigation is being conducted into a Winnipeg
24 Police Service Officer by an outside police force
25 or agency? What does the Professional Standards

1 Unit do in a case where there may be a serious
2 allegation against a police officer? That
3 obviously is going to, if it proves to be true,
4 have employment implications for the officer, but
5 the investigation is under way in another
6 jurisdiction?

7 A Typically, we would open up a file
8 within the Professional Standards Unit, and my
9 belief would be that we would send that member a
10 notice that, pending the outcome of the criminal
11 file that is under way by the other jurisdiction,
12 they may be subject to regulatory matters under
13 the Winnipeg Police Service. And that would be,
14 if somebody was ultimately convicted of a criminal
15 offence, that's a separate regulatory offence and
16 can be dealt with by the service at that point in
17 time.

18 Q Would the Winnipeg Police Service take
19 steps in the interim, while the external criminal
20 investigation is going on, to investigate the
21 event themselves?

22 A No, sir. We would ultimately get the
23 file from the other service and let them do their,
24 do their investigation.

25 Q And again, correct me if I'm wrong, I

1 take it that's because of concern that the
2 internal investigation by the Professional
3 Standards Unit could somehow step on the toes of
4 or compromise the external criminal investigation?

5 A Well, it just seems one investigative
6 body and that would be it. We wouldn't be doing a
7 regulatory investigation at the same time. We'd
8 just let the criminal, if it was a criminal
9 allegation, play out.

10 Q But the criminal allegation
11 investigation takes priority, sir?

12 A That's right.

13 Q You would have the means, or perhaps
14 it wouldn't be your body that does this, but the
15 Chief would have the means to temporarily suspend
16 officers if the allegation was serious enough,
17 even though the PSU was not actively engaged at
18 that time?

19 A That's right. The service would no
20 doubt hold a suspension hearing.

21 Q Have you ever been involved in
22 investigating police officers and their role in a
23 criminal allegation that has occurred in another
24 jurisdiction such as East St. Paul, sir?

25 A I'm just thinking back through the

1 years and, no, I don't believe so.

2 Q Sir, I'm going to move on to another
3 line of questioning, but not before alerting the
4 Commissioner to that, and I know he may have some
5 general questions about the Professional Standards
6 Unit or the internal investigation process. I
7 don't know whether he does?

8 All right. Sir, I'm going to move
9 then to the events of the 25th of February, 2005.
10 And you know that, of course, we're here in
11 connection with the tragic death of Crystal Taman
12 and the investigation and prosecution of the
13 charges that arose out of that case.

14 What was your first involvement with
15 this case, sir?

16 A It would have been Friday morning, the
17 25th, that I was actually having a cup of coffee
18 at a location across from the Public Safety
19 Building, and I received the phone call basically
20 notifying me that an incident had occurred, and
21 that one of our members was involved in an
22 accident, and tragically, one person was deceased
23 at that time.

24 Q Sir, do you recall who you got that
25 phone call from?

1 A I don't have it noted in my notes. I
2 took some -- at that point, I didn't have my
3 notebook with me and I took some scratch pad notes
4 and have attached them. I didn't note who it was
5 received from. I believe it was from
6 Superintendent Scott.

7 Q Do you know approximately what time
8 you received that call?

9 A Again, I didn't note the time, but it
10 would have been approximately 8:00 in the morning.

11 Q And the information the Commissioner
12 has is that the accident occurred at approximately
13 between 7:00 and 7:10 in the morning, sir. So
14 that would have been very early notification. And
15 that, I have to tell you, is an earlier time than
16 anyone else may have suggested that information
17 got through to the Winnipeg Police Service.

18 Do you have any degree of confidence
19 in your indication that it was around
20 8:00 o'clock, sir?

21 A Well, I just, I'm thinking it could
22 have been anywhere between 8:00 and 9:00.
23 Typically my day started at 7:30 over at the
24 Professional Standards Unit. And we would have,
25 you know, spoken about the day's activities at

1 that point in time, and we walked from there over
2 to the Red River College area across from the
3 Public Safety Building, and was sitting there for
4 a period of time. So it's a speculation that
5 8:00 o'clock was the time. It's between 8:00 --

6 Q It is based essentially on your daily
7 practice and where you were at the time you
8 received the call?

9 A That's correct.

10 Q You can situate it quite early that
11 morning, sir?

12 A Yes.

13 Q And you made it on a scratch pad. I
14 think at one point you referred to a napkin in
15 your interview?

16 A Yes, sir.

17 Q I notice that your notes,
18 unfortunately, produced to everyone, which are
19 found at tab Q-1.89.b.4 of the volume you don't
20 have, sir, those notes didn't come across totally
21 legibly. But I think we should work from the book
22 for the purposes of the first few pages where you
23 have notes that appear to be on a white sheet of
24 paper, that I'm going to ask you about in a
25 second, and also Chief of Police memo pad, office

1 of the Chief of Police. So I'm going to ask the
2 clerk if she can provide you with, I believe this
3 information should be in Exhibit 137?

4 THE CLERK: Q-1.89.b.4, it hasn't been
5 filed.

6 MR. PACIOCCO: If that can be made an
7 exhibit. If I can just have a quick look at it,
8 please?

9 THE CLERK: So that's Exhibit 181.

10 MR. PACIOCCO: That would be exhibit
11 181, so that would be tab Q-1.89.b.4. And I can
12 alert the lawyers in the room you were given
13 another copy of the same document and, hopefully,
14 you have it with you and you'd be able to read
15 along.

16 THE COMMISSIONER: Page 2907 of Q-1.

17 MR. PACIOCCO: All right. If I can be
18 of some assistance. Thank you, Mr. Green, Exhibit
19 137 is the same document, but I believe that it
20 was the initial copy of the notes, and we have
21 since provided a cleaner copy, and that's why we
22 now have two. So I'm going to ask that that
23 exhibit number be stricken and that this simply be
24 used as Exhibit 137, because it's a duplicate of
25 137, only one that's now legible.

1 THE CLERK: Okay.

2 THE COMMISSIONER: Does one have a
3 legible one for the Commissioner?

4 MR. PACIOCCO: I believe the clerk
5 does.

6 THE CLERK: I do.

7 THE COMMISSIONER: Thank you.

8 MR. PACIOCCO: At the risk of
9 confusing things more, Mr. Commissioner, does your
10 copy of the legible one begin with a page that
11 looks like a piece of white paper laying on top of
12 a note pad?

13 THE COMMISSIONER: Yes.

14 MR. PACIOCCO: Very good.

15 BY MR. PACIOCCO:

16 Q All right, sir. You now have that in
17 front of you?

18 A I do.

19 Q And I note a little white sheet on the
20 first page, which would be page 2907 for the
21 lawyers in the room, sir. Are you able to -- and
22 it's page 44 your book, sir -- are you able to
23 identify that piece that's sitting vertically on
24 the page?

25 A Again, as I mentioned, I did not have

1 my notebook with me at the time, and it was the
2 only thing that I had handy that I could write on
3 at the point, and it's a napkin from a restaurant.

4 Q All right, sir. I can indicate to you
5 I see the writing on there, and it appears to say
6 East St. Paul, Harvey-Zenk, it says something
7 about custody, sir?

8 A It's actually "Harvey-Zirk." The name
9 wasn't evident at the time.

10 Q Okay.

11 A And I didn't know the person or the
12 member, but it is in custody.

13 Q And --

14 A And then there's scrawlings there
15 about driving cause death. I was writing as I was
16 getting the information.

17 Q Sir, does that look like "driving imp
18 cause death"?

19 A Yes.

20 Q So that would be impaired?

21 A Yes.

22 Q You have the name Marty Minuk?

23 A Yes.

24 Q Norm Carter, and a phone number?

25 A Yes.

1 Q And Russ Ridd?

2 A Yes.

3 Q And you have a phone number for him,
4 sir?

5 A Yes.

6 Q Was this the napkin and the note that
7 you made when you first heard about this?

8 A Yes.

9 Q Sir, I can indicate to you that
10 according to the notes of Norm Carter, who is a
11 police sergeant at East St. Paul, he phoned you as
12 a result of advice from Mr. Marty Minuk, who was
13 asked as a special prosecutor by Mr. Russ Ridd to
14 deal with the matter. And that Carter's notes
15 indicate he spoke to you at 10:55 in the morning,
16 and that none of this information that's on the
17 napkin would have been available to you until that
18 time, sir.

19 A Well, I know that I walked over to the
20 Public Safety Building directly from receiving
21 this information, and that's where the other
22 notations come in on the office of the Chief of
23 Police --

24 Q Okay.

25 A -- note pads is what those are.

1 Q Okay. Well, sir, I can imagine that
2 the office of the Chief of Police note pad is not
3 the one you typically use?

4 A No. Again, it was paper that was
5 handy at the time and I just made a few notations
6 on it.

7 Q Do you know where you were where you
8 got access to this?

9 A As I say, from receiving this phone
10 call, I walked over to the Public Safety Building
11 and went up to the fifth floor, which is the
12 executive offices for all the chiefs and deputy
13 chiefs and superintendents, and I recall sitting
14 at a desk there of one of the clerks, and these
15 pads are there as reference material when they --
16 for filing systems and direction from
17 superintendents to inspectors to carry out certain
18 activities.

19 Q All right, sir. And did you have
20 other contacts with anyone from East St. Paul
21 while you were making the notes on those pads,
22 that you recall, sir? I know it was three and a
23 half years ago but --

24 A Yes. And I don't remember any of
25 those phone calls that -- I know that as those

1 notations are made on the Chief of Police action
2 request sheets, they are more detailed.

3 Q Yes, sir?

4 A And as I say, the napkin was just a
5 very brief phone call, such-and-such had happened,
6 and these were the names of people involved. And
7 I do not have noted who I received that phone call
8 from.

9 Q Okay. And I also notice on one of the
10 pages of your notes that appears at 2910 of the
11 book, it would be about the fourth page of the
12 action request at the bottom, maybe the third
13 page, it says "released on PTA," down in the lower
14 left-hand corner of the page?

15 A Yes.

16 Q And our information is that Sergeant
17 Carter learned at the time of his conversation
18 with Mr. Minuk, where he would have got your phone
19 number, that that was the plan, but that
20 Mr. Harvey-Zenk was not actually released on a
21 promise to appear until sometime later. It was
22 1:03 in the afternoon. So that note doesn't
23 necessarily assist us in the timing, because you
24 may, I think, have written released as it was past
25 tense rather than that was what the plan was. Are

1 you able to recall at all? Because if you are
2 recording that, you know, he was released, then
3 you must have had a further conversation?

4 A Yes. With having it released --
5 unless I would have written to be released on PTA.
6 Again, without a time there, it's hard to say.

7 Q Okay. You said earlier you don't
8 really remember the phone calls. Are you able,
9 with the benefit of those notes, to tell us what
10 information you were given when you spoke to the
11 caller? And do you remember first speaking to
12 Sergeant Carter?

13 A I believe that I phoned out to get
14 more information from, and I don't know if I made
15 that phone call from the Chief's office foyer,
16 outer area, or back over from 457 Main Street,
17 which was our office.

18 Q All right, sir. And what information
19 did you acquire in your search for information
20 that morning?

21 A Again, just what I've got noted here.
22 It was just again brief details of the officer
23 involved, the location. Just a very brief, brief
24 summary of the event, vehicles involved, and then
25 the details on the charges and who the special

1 prosecutor was.

2 Q You have the name of the drivers of
3 the other vehicles. You have Chris Beattie's wife
4 recorded there in your notes, sir. You were
5 alerted that another Winnipeg Police Service
6 member's wife was implicated in the accident in
7 some way?

8 A Yes.

9 Q You also have the name of Crystal
10 Taman recorded in your notes, so you were advised
11 of who was in fact killed as a result of that
12 event?

13 A That's correct.

14 Q And then I notice on the last page,
15 which is at 2911 of the document that the lawyers
16 have:

17 "When does he work where?"

18 Are you able to provide any insight into what that
19 notation is about, sir?

20 A Whether or not we would have to be
21 notifying divisional commanders, you know, that
22 this member was involved in something that
23 obviously would take him away from his duties from
24 that point forward.

25 Just moving ahead, I do note that I've

1 got a time of 12:10 written midway down that same
2 page so -- and it says call again -- so I'm
3 assuming the first of those previous notes were
4 from an initial phone call.

5 THE COMMISSIONER: Who is Paul Isaak?

6 THE WITNESS: Paul Isaak, sir, is the
7 sergeant who is in our behavioural health unit.
8 He's the wellness officer for the service.

9 THE COMMISSIONER: Thank you.

10 BY MR. PACIOCCO:

11 Q And Mr. Commissioner, you'll hear
12 evidence that Paul Isaak attended at the East St.
13 Paul Police Station to assist Mr. Harvey-Zenk.

14 So you indicate here that paperwork is
15 to come in ASAP. And what is that a reference to,
16 sir?

17 A Their investigation, their, you know,
18 as soon as they are able to forward it to us, that
19 we would want to have a copy of the report.

20 Q Okay. We'll get into that in a
21 second, sir. The next line, if you could you
22 please read it and tell us what that's about?

23 A We had gone over that previously "call
24 to," it looks like Carver but I believe it may be
25 Carter, and "EST," I'm thinking it was East St.

1 Paul, just quickly describing this out without
2 the --

3 Q Fair enough.

4 A And he relates he's looking for work
5 number for wife, and I believe that to be for
6 Constable Harvey-Zenk at the time.

7 Q I understand that this call enabled
8 you then to brief your executive?

9 A That's correct.

10 Q And who did you brief after you
11 received this information?

12 A Going from my notes, I meet with Steve
13 West and Superintendent Scott.

14 Q Steve West was the Deputy Chief of
15 Police at that time?

16 A No, sir, he's a staff member. His
17 card is photocopied at the top of page 45 of my
18 notes, manager of administrative and strategic
19 issues for the service.

20 Q Okay. And Superintendent Scott?

21 A Yes.

22 Q What else did you do, sir?

23 A And again at that time there's a
24 notation here for 11:45 hours. So I have jumped
25 back and forth a little bit here, by the looks of

1 it, on a timing issue. Briefed Superintendent
2 Scott and that she was going to be speaking with
3 then Inspector McCaskill, who was the divisional
4 commander for District 3 at the time.

5 Q Okay. And I understand you also
6 briefed the Executive Deputy Chief and Acting
7 Chief Menno Zacharias?

8 A That's correct.

9 Q You had a conversation with
10 Superintendent Scott, and I take it that you
11 learned something about Mr. Derek Harvey-Zenk's
12 state or condition?

13 A Through that day there was
14 conversations back and forth, and I had been made
15 aware that Sergeant Isaak was attending to the
16 residence of Constable Harvey-Zenk, and that he
17 was concerned about his state at the time, being
18 despondent is what I had noted, quite despondent,
19 yes.

20 Q As a result of that information, I
21 understand you took some action, sir?

22 A Yes, I made a suggestion in the
23 conversation with Superintendent Scott that we
24 retrieve the member's firearm. On occasion, we
25 have done this in the past where, if we have felt

1 a concern for somebody's well-being, their mental
2 state, we have gone this same route.

3 Q So it's a precautionary measure, sir.
4 Did you receive any specific information about
5 suicidal --

6 A No.

7 Q -- claims? It was just something you
8 just felt was a prudent step to take under the
9 circumstances?

10 A Yes.

11 Q And I understand that you also note on
12 page 47 a phone number for Chief Harry Bakema, a
13 cell phone number?

14 A Yes, sir.

15 Q And record:

16 "Bakema is to be contacted by PSU at
17 700 hours Monday a.m."

18 Can you indicate to the Commissioner how that came
19 about?

20 A Just that -- I believe the page prior,
21 it was just this was Friday and we'd be touching
22 base very first thing on Monday morning.

23 Q So I take it you didn't have any
24 communication with Chief Bakema of the East St.
25 Paul Police on Friday?

1 A I don't believe so, no.

2 Q But you had diarized or recorded a
3 phone number and a plan that this was going to be
4 the first order of business when you got back on
5 the Monday?

6 A Correct.

7 Q All right, sir. Let's go to the
8 Monday. What happens on February 28, 2008?

9 A I have noted an attempt to make
10 contact with East St. Paul in hopes that the
11 package, the report would be ready for us to pick
12 up.

13 Q I take it, sir, that's standard fair
14 if you've got another force conducting an
15 investigation that has implications for
16 potentially the professional standing or stature
17 of an officer, you want to get that information
18 and as much of it as soon as you can, to stay on
19 top of what that's happening?

20 A That's correct.

21 Q All right. So you're contacting, you
22 are trying to get ahold of him at 7:00 in the
23 morning, first order of business to get that
24 information. What happens, sir?

25 A Ultimately speak with Chief Bakema at

1 7:32, after messages were left. And he advised
2 that the package wasn't ready yet at this point in
3 time, that it was still being typed, but that it
4 would be ready in short order, within an hour or
5 so. And that's the conversation that we had at
6 that point in time.

7 Q All right. Sir, and there's also an
8 indication in your notes about Chief Bakema being
9 upset?

10 A Yes.

11 "Package likely ready in an hour or
12 so."

13 And then I have noted,

14 "Bakema upset the police officer
15 I.D.'d in paper. No name though..."
16 is underlined. And that was part of the
17 conversation as well.

18 Q In fact, you were struck enough by it,
19 sir, that you advised Superintendent Scott that
20 Bakema was upset, sir?

21 A I was notifying her of the fact that
22 the report still wasn't quite ready and this lead
23 into that as well, yes.

24 Q Yeah. And you record that you told
25 her about Chief Bakema being upset. I want you to

1 tell us as much as you can about the conversation
2 with Chief Bakema relating to his concerns and
3 what made him upset, sir?

4 A I don't have specifics noted here as
5 to what the issue was, but it's commonplace that
6 different people have different perspectives on
7 police officers being identified in the media.

8 Q By occupation?

9 A And/or name ultimately, Winnipeg
10 Police Service, when a member is charged with an
11 offence, ultimately a media release will go out
12 and the name is included in that, and that's been
13 the practice of the Police Service. There's
14 differing opinions on whether that, you know, from
15 a number of different groups of people, members of
16 the service, why should they be identified, again,
17 by occupation or name.

18 Q So can I take it, and I don't want to
19 extrapolate this to the point where you become
20 uncomfortable, sir, but can I take it that it's
21 your sense that some police officers feel that,
22 even though they are police officers, they
23 shouldn't be treated when engaging in acts that
24 might cause criminal publicity, they shouldn't be
25 treated any differently from anyone else, and why

1 should their occupation be a feature of the story?

2 A That's one perspective, certainly, and
3 some members of the public feel the same way, I
4 believe.

5 Q Sir, and I understand from your note
6 that Chief Bakema was upset about the revelation
7 that the driver was a police officer, even though
8 the driver's name wasn't disclosed?

9 A That's correct.

10 Q And you can't offer us, and I don't
11 want you to be put in a position that is unfair to
12 you or to Chief Bakema, but you can't offer us
13 anything more than that in terms of how he reacted
14 or what his message was, sir?

15 A No, I don't know how, I don't recall
16 the media attention to this over the weekend as
17 well and how quickly it became known that a police
18 officer was involved. I just -- I don't remember
19 that weekend and those types of media reports.

20 Q Sir, you do ultimately succeed in
21 getting the package?

22 A We do. It's picked up by my members.

23 Q And it was picked up, I understand, by
24 Detective Sergeant Girard, who we'll be hearing
25 from this afternoon?

1 A Correct. And it's dropped off at the
2 fifth floor executive offices.

3 Q I want to share a document with you,
4 sir. It's going to be found in one of the books
5 and it will be passed up to you shortly. It's at
6 book Q-2.89.b.26, page 3058 of the materials, tab
7 Q-2.89.b.26, tab 3058. And I have to apologize to
8 the clerk, because I didn't give her the same kind
9 of precision in the list that was furnished this
10 morning as I have been.

11 THE CLERK: Exhibit 181.

12 MR. PACIOCCO: This will be Exhibit
13 181.

14 (EXHIBIT 181: Q-2.89.b.26, E-mail
15 from Jim Poole to Jennifer Smeets,
16 February 28, 2005)

17 BY MR. PACIOCCO:

18 Q Sir, I'm putting to you a document
19 that should contain e-mail messages on it?

20 A Yes.

21 Q And one of them is, or both actually
22 at 9:30. And you have a message from a Jennifer
23 Smeets to yourself and to John Robins, subject,
24 request to authorize to investigate. Who, sir, is
25 Jennifer Smeets?

1 A She is a clerk within the Professional
2 Standards Unit.

3 Q And who is John Robins?

4 A He was a sergeant in the Professional
5 Standards Unit at that time.

6 Q And could you please indicate what
7 Ms. Smeets is communicating in the e-mail, sir, at
8 the bottom of the page?

9 A As noted, I was the Acting Inspector
10 at that point in time.

11 "Can you please prepare authorization
12 to investigate the following
13 complaints."

14 That was protocol that we put in place that the
15 inspector be advised of the investigations that we
16 were about to conduct, so that everybody was on
17 the same page within the unit. It had started as
18 a process well before that, when we had the
19 executive assistant to the Chief of Police, we
20 would actually send a memo over to them when we
21 received a file and/or a complaint, and they would
22 authorize it.

23 Q So whose decision is it to proceed
24 with an investigation at this point? Who is
25 requesting the investigation?

1 A That's -- at this point, I believe my
2 notes go further here on the Monday, and have
3 information.

4 "Call from Superintendent Scott...",
5 this is page 49 of my notes, about halfway down
6 the page.

7 "Call from Superintendent Scott
8 relating information as to where this
9 member Harvey-Zenk may have been prior
10 to the incident Friday morning."

11 And at that point in time, there was discussion
12 from the service executive to initiate an
13 investigation into the whereabouts and activities
14 from the night prior.

15 Q All right. So even though the
16 Professional Standards Unit is an independent
17 body, the executive within the Police Service is
18 effectively causing you to embark upon an
19 investigation, or did I misunderstand you?

20 A No, they can direct us to investigate
21 as well on behalf of the service.

22 Q All right. And so what happens now is
23 Jennifer Smeets, an assistant, knows that what's
24 necessary is a formal authorization for an
25 investigation as a result of that. And is she

1 reminding you that that has to be done?

2 A No, it would be, again, the roles,
3 yes, I was a staff sergeant and the inspector at
4 that point in time, as the acting inspector, so
5 sort of fulfilling both roles. But Sergeant
6 Robins would have been the acting staff Sergeant.
7 And the chain of command is followed on the
8 investigations. The staff sergeant was usually
9 involved in the intake, receiving the complaint.
10 The clerk would, by course of daily business, fire
11 off this memorandum just requesting that the
12 authorization be given.

13 Q Just kind of by coincidence, we're
14 closing the circle here, even though you were the
15 first one to get the information, the practice
16 would be for the staff sergeant to request the
17 information after directed by the executive, which
18 has to then be authorized by you?

19 A That's right.

20 Q And that's what happens in the e-mail?

21 A That's right.

22 Q And at this point, this is a request
23 to conduct an internal investigation, sir, is it
24 not?

25 A Yes. Again, it is to the happenings,

1 the occurrence of the night prior. And I have
2 further notes, obviously, that I have concerns
3 where that may lead.

4 Q Yeah. And I'm going to get you there
5 in one second, sir. So just to be clear, this is
6 not an authorization to participate in a criminal
7 investigation, this is an internal matter that's
8 being inquired into as a result of an event that
9 may have criminal implications, but be
10 investigated by another force?

11 A Could you repeat that, sorry?

12 Q This is not an authorization to become
13 part of the criminal investigation team at this
14 point?

15 A That's right.

16 Q This is going to be an internal
17 management of an allegation that may have
18 professional implications for some of the members,
19 including Mr. Derek Harvey-Zenk?

20 A That's correct. And to ensure there
21 was no, you know, wrongdoing by members under the
22 regulations from the night previous.

23 Q All right. Now, you have some
24 reservations, I take it, from your notes, about
25 what can be done pursuant to the investigation

1 that you are here authorizing?

2 A That's correct.

3 Q And could you share those reservations
4 with the Commissioner, please?

5 A Yes, sir. I mean, I am very concerned
6 about communication and ensuring all parties are
7 on the same page when conducting any form of
8 investigation. And my concern at this point is
9 that if we are seeking input from our own members
10 as well, and it may lead to the state of sobriety
11 of Constable Harvey-Zenk, that East St. Paul be
12 advised that this new information -- and I believe
13 it's noted further here, and I don't have it noted
14 in this conversation with Superintendent Scott,
15 but there was talk of this evening gathering the
16 night before. So it's leading to the potential of
17 drinking history, or state of sobriety from the
18 night leading up to the event. And that would
19 encroach on the criminal investigation that East
20 St. Paul was conducting.

21 Q So, if I can summarize, and correct me
22 if I'm either giving you inaccurate or incomplete
23 information. You were effectively first of the
24 view that Chief Bakema had to be made aware of
25 this information that you had learned, so that

1 East St. Paul knows that there may be some
2 evidence to come from some of the Winnipeg Police
3 Service members?

4 A It certainly was borne out in this
5 conversation at least, whether it was mutual or I
6 thought it initially, but it was certainly
7 forefront in my mind.

8 Q You wanted them to know what you just
9 learned?

10 A Yes.

11 Q In addition, sir, as a separate
12 concern, you were actually expressing some
13 reservations about how far you can go without
14 stepping on the toes of East St. Paul, because if
15 your investigation gets into questions of sobriety
16 with Derek Harvey-Zenk, it could somehow
17 compromise what East St. Paul was trying to do?

18 A Well, I had had some, again, very
19 peripheral experience from another unfortunate
20 incident within the Police Service, some time
21 earlier from my time in the unit, where I knew the
22 history of the previous night's event, or the time
23 leading up to the tragic event was crucial to
24 know, in particular, a drinking history, if it was
25 able to be determined.

1 Q Yes, sir.

2 A And that was my concern here, and
3 certainly it would be helpful to the prosecution
4 being conducted, or the investigation being
5 conducted by East St. Paul.

6 THE COMMISSIONER: Excuse me, you said
7 earlier, if I understood you correctly, that where
8 a criminal investigation is being conducted by
9 another force, you put your own investigation on
10 hold, if it's a regulatory investigation. Is that
11 the concern you had here?

12 THE WITNESS: This was somewhat
13 different, I believe, at the outset, because they
14 were more concerned about, or there was concern
15 about the other Police Service members, you know,
16 to ensure there was no wrongdoing by any other
17 Police Service members potentially that evening
18 prior. So it was somewhat separate, but would
19 bleed over to the criminal one with the
20 information that we may learn, that's -- that was
21 my concern in this regard.

22 THE COMMISSIONER: So I take it you
23 had to get approval from Chief Bakema in order to
24 conduct your own criminal investigation?

25 THE WITNESS: Well, we weren't going

1 to be -- we were looking at the regulatory to make
2 sure there were no regulatory breaches from the
3 evening's events the night prior. But knowing
4 that ultimately it could lead to some evidence
5 being put forth regarding the previous drinking
6 history of Constable Harvey-Zenk, that I wanted to
7 make sure that we were able to do that and all on
8 the same page, being Chief Bakema, as well as
9 ultimately in here I've got noted further ensuring
10 independent counsel was aware. And if they were
11 going to do it, they could do it, but it was
12 something that we felt had to be addressed.

13 BY MR. PACIOCCO:

14 Q So your position normally is, if it's
15 a criminal investigation that's being conducted
16 and is self-contained, it doesn't influence or
17 impact on other officers, you'll hold off. But in
18 this case, you felt that you should get involved
19 because the possibility that persons other than
20 the accused might have somehow contravened some of
21 the regulations?

22 A That's my belief, yes.

23 Q And at the same time, you knew that
24 there was a bit of a risk that your investigation
25 into those other officers could somehow start to

1 bleed, as you put it, into the criminal
2 investigation. And so you were very careful at
3 that point of making sure that Bakema was aware of
4 what you were going to do. And I take it, it
5 would have had some impact on how you were going
6 to conduct your investigation?

7 A Yes. And we didn't want to encroach
8 on his investigation without, again, being of same
9 mind, and that this would somehow potentially
10 benefit the information that he, you know, was
11 putting forth to independent counsel.

12 Q Okay. At 11:20 in the morning, you
13 assign this file to Detective Sergeant Girard?

14 A Okay. I don't have the time noted, I
15 don't believe, unless you're pointing to
16 something?

17 Q That would be from Detective Sergeant
18 Girard's notes?

19 A Okay.

20 Q And he has recorded a PSU file number,
21 and it's in connection with this regulatory
22 investigation that you are describing. And he
23 certainly would have been made aware at that time,
24 I take it, sir, that this was the regulatory side
25 of things that he was going to be investigating

1 and not engaging in a criminal investigation?

2 A That's right.

3 Q And you do, as you note there, you ask
4 if Chief Bakema has been notified?

5 A Yes.

6 Q And there's also an indication that
7 you want directions to the Professional Standards
8 Unit by e-mail, sir?

9 A Yes.

10 Q Can you explain what that's about?

11 A Just something documented in black and
12 white that, you know, whether it be e-mail or a
13 formal letter, I just wanted -- when we are
14 directed to do something through the executive,
15 it's just a way of initializing the file that we
16 ultimately generate.

17 Q Were you also trying to paper the fact
18 that Chief Bakema was alerted about this, in case
19 down the road it became a bit of an issue?

20 A Yes.

21 Q And I notice in your notes, you have
22 given us a copy of the e-mail from Corrine Scott
23 to yourself dated February 28th at 1:24?

24 A Yes, I have stapled that into my
25 notebook.

1 Q We have a couple of copies in our
2 book, it appears at page 2118 and 2119. And
3 effectively the e-mail says:

4 "Hello Jim, I have spoken with Chief
5 Harry Bakema East St. Paul. He
6 relates that Constable Harvey-Zenk did
7 not discuss anything with him
8 regarding the fatal MVC last week.
9 This morning Chief Ewatski related
10 that on Thursday evening, Harvey-Zenk
11 may have been at a party at the home
12 of Constable Sean Black. Apparently
13 Constable Black lives in the Birds
14 Hill area. Please investigate to
15 determine where Harvey-Zenk was coming
16 from and who he would have been with
17 prior to the MVC."

18 Do you see that, sir?

19 A Yes, sir.

20 Q And so the question that you are being
21 asked to investigate here, according to this
22 e-mail, is not so much the conduct of the others,
23 as it is where Harvey-Zenk is coming from, and who
24 he would have been with prior to the motor vehicle
25 collision, or am I --

1 A No, you're correct. It's not
2 stipulated.

3 Q So, the possibility for overlap and
4 confusion and bumping into each other is evident,
5 even in the way the investigation request is
6 framed here, sir?

7 A Yes.

8 Q And I understand, although it's not
9 noted in your notes, that you assisted Detective
10 Sergeant Girard in obtaining the OTEDC slips for
11 members of the shift?

12 A Overtime and EDL or --

13 Q Sorry?

14 A -- extra duly leave.

15 Q And these are documents, and we have
16 looked at them already in this case, and we'll
17 look at them again this morning, but they are
18 documents that effectively identify whether anyone
19 has either taken time off work early or whether
20 they have actually worked overtime during the
21 course of a week?

22 A That's correct.

23 Q And are you able to indicate what the
24 search for those might have been inspired by?

25 A Again, my understanding was that

1 Fridays and Wednesdays of certain points in each
2 month are overlap days. And if this incident took
3 place on a Friday, and they were out on the
4 Thursday, that could have been their last day of
5 their shift. And so it was just a matter of
6 documenting whether or not anybody left early from
7 work. And it was just more facts that we would
8 put together.

9 Q And I take it that you are trying to
10 get as many facts together as you possibly can?

11 A Yes.

12 Q Are you able to recall what you were
13 furnished with when you got the brief from Chief
14 Bakema?

15 A Other than the police report and, I
16 believe, witness statements, some witness
17 statements at the time.

18 Q So you didn't itemize the items that
19 you received from him in any of your notes or
20 anything like that?

21 A No.

22 Q Sir, I understand that something
23 happens, you are now on the investigation in the
24 sense that you're gathering some preliminary
25 information. It's going to be a regulatory

1 investigation. You have gathered the background
2 information that East St. Paul is able or prepared
3 at that time to furnish you. You've gone down,
4 you've sent Girard to get the brief. You have
5 obtained these slips showing whether individuals
6 worked overtime or took early leave on that
7 occasion. And then something happens at 4:20 on
8 that date, March 1st. What occurs at 4:20, sir?

9 A At 4:20 p.m., a phone call is received
10 by myself from Superintendent Stannard, Art
11 Stannard. He relates that he has two members of
12 the B-1 platoon of Division 13 at his office, and
13 they would be Sergeant Chris Humniski and Patrol
14 Sergeant Jim Anderson, and they are there with
15 Inspector McCaskill.

16 Q Yes, sir.

17 A They relate that, I have noted it
18 relates that, it relates that they are very upset
19 about the matter, the collision, but would be --
20 but want to relate their involvement in the events
21 preceding the tragedy that followed. It relates
22 that Superintendent Scott has consulted with East
23 St. Paul Chief Bakema and he has no manpower to
24 speak to these individuals. Speaking to them also
25 falls under the ambit of the newly authorized PSU

1 investigation, which has all occurred this day,
2 into this matter. And ultimately members, these
3 members were willing to talk to the Professional
4 Standards Unit right away.

5 Q Okay.

6 A And ultimately did so.

7 Q Okay. So I'm just going to parse that
8 up a bit. You learn from this that these
9 individuals want to come forward, they are very
10 upset about what happened, they want to approach
11 the PSU and give their version of events. You
12 have information that your concerns that you may
13 have had about starting to interview individuals,
14 even though East St. Paul is conducting a criminal
15 investigation, are somewhat allayed because you're
16 learning that Superintendent Scott has actually
17 talked to Bakema, and he has indicated that he
18 doesn't have the manpower to speak to two.

19 And then there is a reference here:

20 "Speaking to them falls under the
21 ambit of the newly authorized PSU
22 investigation."

23 Whose observation is that? I take it that's an
24 internal observation?

25 A I think that's just myself at that

1 point in time.

2 Q All right. So you feel that this is
3 something that you would need to do, or want to do
4 in any way to fulfill the investigative
5 opportunities that your internal investigation
6 has. And you got clearance from Bakema that this
7 is not going to be a problem?

8 Excuse me -- I apologize,
9 Mr. Commissioner, we have received additional
10 disclosure today from the Winnipeg Police Service,
11 and Mr. Clifford is reviewing it and feeding me
12 information as we are going here.

13 THE COMMISSIONER: Do you want a
14 break?

15 MR. PACIOCCO: I may at some point
16 need to, I don't right at the moment. I think we
17 can continue with the current theme and I can pick
18 that up shortly.

19 THE COMMISSIONER: Is that the same
20 disclosure that we --

21 MR. PACIOCCO: That we spoke of.

22 THE COMMISSIONER: -- that we spoke
23 of?

24 MR. PACIOCCO: Yes. It came in this
25 morning and we are currently reviewing it.

1 BY MR. PACIOCCO:

2 Q So at 4:25, you apparently advised
3 Detective Sergeant Girard of this happening, Staff
4 Sergeant Humniski and Platoon Sergeant Anderson
5 coming in and wanting to make a statement, sir?

6 A Yes.

7 Q And you advise them that they are
8 going to be attending shortly to do this?

9 A Yes.

10 Q You basically make the decision, and I
11 think your notes put it this way, that they can
12 come and they will be accommodated?

13 A Yes.

14 Q So it was their request, but you are
15 prepared to give effect to it. You have learned
16 they are upset and they want to speak, and it's
17 fine, because all of the barriers have been
18 cleared?

19 A Yes.

20 Q You meet very briefly with these
21 people, sir?

22 A When they come in there is a very
23 small foyer outside of the main offices, and I
24 would have, in all likelihood, been present at
25 that time. And I note that I furnish Sergeant

1 Anderson with a glass of water, I believe, while
2 he's waiting.

3 Q Sir, was there any conversation that
4 you can recall that would have been held between
5 you and either of these gentlemen?

6 A Nothing that I remember specifically.
7 Certainly, I think it would have been very brief,
8 if anything. And I don't believe that it would
9 have been pertaining to the matter at hand.

10 Q Okay. You knew they were about to be
11 interviewed and that really wasn't what you were
12 there for?

13 A That's right.

14 Q Did you have any recollection of any
15 observations about their condition, or emotional
16 state, how they seemed, sir?

17 A No, not that I remember. I mean, I
18 don't believe I had noted anything that was, that
19 had stuck out in my mind at the time.

20 Q I take it there was nothing in their
21 behaviour to cause you to think that your earlier
22 record of information that they were very upset
23 was untrue? Their behaviour wouldn't have caused
24 you to say, well, I learned they were very upset
25 before and they don't strike me as very upset now?

1 A No, nothing noted to the contrary.

2 Q So their behaviour may have been
3 consistent enough with that frame of mind that it
4 didn't alert you to any reason to think that that
5 report was wrong?

6 A That's right.

7 Q Sir, you get briefed by Sergeants
8 Girard and Pearson after they conduct the
9 interview. I'm not exactly sure from the top of
10 page 53 of your notes when that occurs. Are you
11 able to help us out?

12 A No. Other than, if both interviews
13 took place, I would have remained in the offices,
14 you know, until they were concluded, and then just
15 made notes briefly on that briefing.

16 Q All right. So it would make sense,
17 sir, wouldn't it, that they would probably
18 interview these gentlemen, the gentlemen would be
19 escorted out, and then they would tell you what
20 just took place?

21 A Yeah, in this particular case. It
22 doesn't happen on all interviews, but certainly
23 just because this was sort of breaking at the end
24 of the day.

25 Q All right, sir. And what did you

1 learn through that briefing, sir?

2 A Would you like me to just go through
3 my notes here?

4 Q Sure.

5 A Okay. I have noted:

6 "Harvey-Zenk and partner leave at 2230
7 hours, go to Branigan's. Humniski and
8 Anderson go to Branigan's Restaurant
9 after."

10 Beer and wings noted.

11 "All leave at closing. An impromptu
12 at Sean Black's house. Anderson
13 leaves his car, as do others at the
14 bar, and ride with a female officer,
15 Constable Tracy Fudge."

16 I've noted that:

17 "Humniski leaves the house at 0330
18 hours. Anderson leaves with Fudge and
19 Harding at 0530. Anderson drives
20 Harding home as Harding is
21 intoxicated. Relates that saw
22 Harvey-Zenk with glass in hand at
23 house. That's it. Not sure what in
24 it."

25 Jay Nolet is the partner, badge number 2316.

1 There's 20 to 25 people there at the restaurant, I
2 am recalling.

3 Q Okay.

4 A "Shift taking this hard. They are
5 affected, hearing rumours regarding
6 the extent of the party."

7 I've got a dash and then I believe "subdued." And
8 then a couple of strikes on the paper,

9 "Shift wants to come into PSU and
10 relate stories."

11 And then I've got discuss McCaskill briefing with
12 Stan Parag and to forward. I think that's a later
13 notation that would have been after the briefing.

14 Q Okay. And there's one other note at
15 the bottom of the page where you relate that you
16 will call Marty Minuk on this?

17 A Yes.

18 Q In the a.m. to let -- sorry, what does
19 that next word say?

20 A Sorry, to determine the tact that
21 should be taken regarding the evidence of sobriety
22 state, history, et cetera.

23 Q All right. So you're still concerned
24 at this time about how you should approach the
25 question of Harvey-Zenk's sobriety during your

1 investigation, and you want the prosecutor's input
2 into that; is that fair?

3 A I just want him to be aware that this
4 has evolved through the day, this all broke on the
5 Monday and that -- again, he's in charge of the
6 investigation at that point -- or not in charge of
7 the investigation but gathering the information --
8 I wanted him aware of any outside involvement, and
9 that would be the case.

10 Q Sir, it says a little more than that,
11 doesn't it? It says you are asking -- you are
12 saying you are going to call him to determine the
13 tact that should be taken?

14 A Regarding the evidence, yes. And I'm
15 thinking back whether or not that was, again, us
16 being involved in it, or the East St. Paul Police.

17 Q Yeah, that would make sense, sir, that
18 at this point you want to talk to the prosecutor.
19 You've got an investigation going and you want to
20 make sure that you don't step on anybody's toes,
21 and how far can you go into this stuff? And this
22 is after Anderson and Humniski had already been
23 interviewed that you're making this notation?

24 A Yes.

25 Q Correct? You have information here

1 that the shift is taking it hard and the shift
2 wants to come into the PSU and relate their
3 stories; correct, sir?

4 A Yes, sir.

5 Q And you have reference here to there
6 being some concern on their part about -- or do
7 you have reference to there being some concern to
8 their part about rumours and what people are
9 saying?

10 A That's, yes, the shift is taking it
11 hard, affected, hearing rumours regarding the
12 extent of the party, that it was subdued. That's
13 what -- I am understanding that's what Humniski
14 and Anderson would have put forth to the
15 investigators, Girard and Pearson.

16 Q So the shift is, the information
17 you're getting is the shift is upset, and they are
18 probably certainly, I think everybody would agree,
19 upset about what took place, and it's a tragedy
20 and they are all touched by at least one of the
21 individuals involved in it. And they are also
22 upset about what's being said?

23 A Yes. And I don't know what was being
24 said. I mean, you know, we weren't privy to that.

25 Q But they have an interest in getting

1 what they say their story is out. They want to
2 clear the air, because they feel it's somehow
3 damaging to them?

4 A That's my understanding, is that they
5 wanted to put forth their story from the night's
6 events.

7 Q And you are in the process of
8 conducting an investigation that may include
9 potential allegations of wrongdoing, depending on
10 what you find out, involving shift members that
11 could affect their careers?

12 A Yes, if that far-reaching, yes.

13 Q And you have information now that the
14 two supervisors on that platoon, the two
15 sergeants, were there for some and most of the
16 night respectively Humniski and Anderson. And
17 that if there was something untoward going on, it
18 could have implications for them as well, if they
19 didn't handle it in a responsible fashion?

20 A Yes.

21 Q So I think you would agree with me,
22 sir, that right from the get-go, you have a
23 foundation for some concern about whether the
24 information you are going to get is self-serving
25 enough that it might somehow be incomplete or even

1 coloured. Would that be fair, sir?

2 A I don't understand?

3 Q What I'm suggesting to you, sir, is
4 there is an interest on the part of these
5 officers, in particular Anderson and Humniski, and
6 the shift in general, in making sure that the
7 ultimate record of this event shows that they
8 acted responsibly. They have a personal interest
9 in that because they could have career
10 implications, they have got reputation concerns
11 about themselves and the police force?

12 A There is that -- there is that, but
13 there also -- I don't know what things they were
14 hearing that were causing them concern about the
15 activities of the night previous, but they are
16 also mandated under the regulations too, if any
17 member has knowledge or information pertaining to
18 a criminal offence alleged to have been made by a
19 member, that they have to come forward and supply
20 that information as well.

21 Q Yes, sir.

22 A And that's, I believe, section 11,
23 early on section 11 of the regulations.

24 Q Sir, you would agree with me that one
25 of the things any good investigator will do is

1 consider whether the person furnishing the
2 information may have an interest in not giving
3 them the whole story?

4 A Sure. I mean, you consider all -- all
5 avenues.

6 Q And so a good investigator in the
7 context of this case would want to take into
8 account the possibility that these officers could
9 have a personal stake in how things develop
10 through this investigation?

11 A They could, yes.

12 Q They could have a commitment, an
13 emotional commitment to their platoon and to the
14 other members on issues such as criminal liability
15 or civil liability. They might be concerned about
16 what they are saying could have a negative impact
17 on Sean Black, who was the owner of the home where
18 the party took place?

19 A I wouldn't want to speculate on what
20 each of these members was thinking.

21 Q I'm not asking you to, sir. I'm just
22 saying, coming at it from the point of view of an
23 investigator, you'd want to try and make sure that
24 whatever you got, you distilled through the
25 realization that might be an interest on the part

1 of these witnesses to perhaps not come forward as
2 forthrightly or as completely as they would if
3 they didn't have an interest in the outcome?

4 A Well, we expect, as investigators,
5 that our police officers are going to come in and
6 tell us the truth.

7 Q When you are investigating other
8 witnesses who might have some type of pressures on
9 them to perhaps not come forward with all the
10 information, don't you, as police officers,
11 approach it with a healthy scepticism in the sense
12 that you want to really be critical of the
13 information you are getting and not just accept
14 what you're being told?

15 A Well, you don't always accept things
16 at face value.

17 Q Yes. And there are some case where
18 the caution light comes on, where you've got to be
19 just a bit more careful, where you have some
20 reason to believe that somebody just could have a
21 motive for providing that kind of information,
22 false information or incomplete information?

23 A I suppose that that's something that
24 you would want to consider.

25 Q So you wouldn't want to start from the

1 presupposition that everything you are getting is
2 necessarily the truth or complete, where those
3 types of influences could be at play, sir?

4 A Well, as I say, you expect people to
5 come in and tell you the truth. And then you
6 build your, you know, you build on your interview
7 from that point.

8 Q But you would want to get enough
9 information to be able to satisfy yourself that
10 they are giving you the truth? And it's not a
11 one-line answer, you want to build around it to
12 find out whether what they are saying is
13 internally consistent, externally consistent,
14 whether they might have some motive to mislead
15 you? Wouldn't that be what a good investigator
16 would do, sir?

17 A Well, as a file would go on, you may
18 learn different things. I would suggest that,
19 without evidence to the contrary, we would expect
20 that our people, in particular in these
21 investigations, our Professional Standards Unit
22 investigations, that the member is telling us the
23 truth.

24 Q Okay. So Professional Standards,
25 because of the trust you have of other police

1 officers and the duties they hold, your starting
2 point is what they tell you is good, unless you
3 have reason to start doubting it?

4 A Well, I would expect that we -- yeah,
5 in my time as an investigator, you expect officers
6 to come in and tell you the truth. And, you know
7 certainly if something was developed during the
8 course of the investigation where you felt you had
9 to go back and speak with somebody, you can do
10 that.

11 Q Do you not agree with me, sir, that if
12 you start from the presupposition that people
13 generally tell you the truth, you might not be as
14 alert to signs that you might not be getting the
15 full story as you would be if you started from the
16 presupposition, you know what, maybe these guys
17 have a bit of an interest in not giving everything
18 and we'd better be careful?

19 A That's -- I'm not quite sure how to
20 formulate the response to that. I just know how
21 investigations go where, you know, we will be
22 interviewing somebody and you accept their version
23 of events. Certainly, if things are uncovered
24 during the course of that, you're going to
25 question further.

1 THE COMMISSIONER: Would you have less
2 suspicion of police officers than you would with
3 ordinary members of the public?

4 THE WITNESS: Without things contrary,
5 no, I don't believe so. I mean, if we are
6 interviewing a witness, whether it be a member of
7 the public to an incident or a police officer,
8 we'd be treating them in the same fashion.

9 THE COMMISSIONER: You said earlier
10 that you presume that all police officers would be
11 telling the truth. Do you proceed on that same
12 assumption with members of the public?

13 THE WITNESS: Yes.

14 THE COMMISSIONER: Okay.

15 BY MR. PACIOCCO:

16 Q All right. Sir, I understand that you
17 also call Chief Bakema and you brief him on the
18 interviews that took place?

19 A Yes, sir.

20 Q And you also indicate to him that you
21 would like the opportunity to liaise with, as you
22 put it, independent counsel?

23 A Yes, sir. And again, all in the
24 spirit of communication and making sure we are all
25 on this together.

1 Q And you are being appropriately
2 deferential. It's their investigation, the
3 prosecution is working with them. You don't want
4 to start calling the prosecutor without clearance
5 from this officer who is really in charge of the
6 investigation?

7 A That's correct.

8 Q You also call Superintendent Scott and
9 brief her at home, which of course is not
10 surprising given the importance of this particular
11 case?

12 A Yes.

13 Q You do contact Mr. Minuk the next
14 morning, sir, at 8:00 o'clock?

15 A Yes, sir.

16 Q And could you indicate what you
17 discussed with Mr. Minuk?

18 A Again, going from my notes, advise
19 Mr. Minuk of the general circumstances surrounding
20 the issue of establishing a prior drinking history
21 for the accused, being Constable Harvey-Zenk, and
22 the matter at hand. I advised him of the details
23 that the Professional Standards Unit has learned
24 that a party had taken place. Because up until
25 that point, I don't believe he would have been

1 aware of that information. And that discussions
2 over the last day show a reluctance on the part of
3 East St. Paul Police to become involved, and the
4 follow-up that appears to be required on that end.

5 I have a good rapport with Mr. Minuk
6 and I've got:

7 "Marty advises that he does not have a
8 copy of the report as yet, but feels
9 that on a refusal he's going to want
10 to know where the suspect was and what
11 he was doing, if there is any
12 possibility of learning details to
13 assist in the prosecution."

14 He relates if that is not addressed in the report,
15 he will be sending correspondence back to ensure
16 it was looked at. And that's -- I advised that
17 Superintendent Scott has had conversations with
18 Chief Bakema, as have I. I relate that yesterday
19 the WPS learned that there appears to have been a
20 shift party at another member's home the night
21 before, and that Harvey-Zenk had been there. That
22 we were tasked to find out where he was and
23 what -- and who he was with, but this also
24 encroached on the criminal investigation. This
25 was told to Chief Bakema and he made no decisions

1 that it should be -- I'm not sure -- it was told
2 to Chief Bakema and he made no decisions that it
3 should be his people to follow up. I'm not quite
4 sure of my literature on my part.

5 Q What page are you on, sir?

6 A Sorry, it should be 56 at the top.

7 Q Okay. Please continue?

8 A We were also advised that two
9 supervisors from -- again, passing this
10 information on -- from District 3 want to speak to
11 PSU. They are at the fifth floor. And advised
12 Marty that Chief Bakema was aware of this and gave
13 his blessing to the interviews. He would be
14 updated and was on the Monday. I also advised
15 Bakema that I would be contacting Marty, just so
16 everybody knew of the conversations that were
17 going to be taking place and what I wanted to do.
18 And that I'd be contacting Marty today for
19 direction if knowledge of drinking history comes
20 forth. And it goes on:

21 "Who to complete the follow-up?"

22 Marty advises that it has to be done. Bakema's
23 people or PSU, I've got, if he has no resources,
24 then should ask for help. And is the WPS willing
25 to help? And I respond and I noted here yes.

1 Where, what, who, how much, I wrote warrants, you
2 know, any of this type of thing that might come
3 from these particular interviews that we'd be
4 looking at doing.

5 Q Okay.

6 A "I, and the investigator at PSU..."
7 being Roger Girard,
8 "...believe that Harry Bakema should
9 formally request assistance before
10 proceeding."

11 And Marty, I have noted that Marty concurs. And I
12 further relate that I will contact Superintendent
13 Scott and have correspondence take place to have a
14 decision made.

15 Q Okay. So you have effectively advised
16 or alerted the prosecutor to what you are doing
17 and what information you have. You are also
18 letting the prosecutor know that you haven't got
19 an indication from Harry Bakema yet that this is
20 going to be done, that the investigation into the
21 drinking history is going to be done.

22 What information do you have about
23 Harry Bakema's decision or thinking about the
24 investigation of the drinking history?

25 A I don't know if I have any specific

1 information. He wasn't, obviously, I believe,
2 going back in the notes, or the notation made,
3 that nothing was said by Harvey-Zenk about the
4 incident or what had transpired prior to the
5 incident. And so that goes back to the e-mail
6 from Superintendent Scott. And ultimately, I
7 think that's where it goes back to, is that's
8 really the only information I had.

9 Q Well, you had -- you had information
10 about resource concerns when you talked to Chief
11 Bakema before you interviewed Anderson and
12 Humniski, sir?

13 A I was aware, they were a very small
14 department, and that we had the opportunity and
15 availability of people to do it, and it did cross
16 over into our previously authorized investigation.

17 Q There are notes of a briefing that
18 occurred at 9:00 o'clock that morning, it would
19 have been shortly after this conversation with
20 Webster. Do you know whether you were at that
21 briefing, sir?

22 A Which page of?

23 Q All right. I'm going to take you to
24 the document. We'll break shortly after we do
25 that. It's at book Q-1.89.59, I think -- no, that

1 would be Q1.89.b.9, and I believe this is Exhibit
2 150, Madam clerk and I do apologize.

3 There are notes there that are from,
4 would it be Deputy Chief Webster, Acting Deputy
5 Chief Webster?

6 A He was deputy chief, yes.

7 Q And it talks about 9:00 o'clock
8 morning briefing on Tuesday, March 1st:

9 "Re the Derek Harvey-Zenk incident,
10 brief Jack and Memo."

11 And then there is just a recitation of things that
12 were communicated during that briefing. Were you
13 party to that briefing, sir?

14 A I don't believe so, no. I think I
15 briefed Superintendent Scott by phone after my --

16 "She will update Deputy Chief Webster
17 and have him call me after the morning
18 meeting."

19 Q Okay. That makes sense, looking at
20 the next page of the notes, because they record
21 Corrine, which I believe to be Superintendent
22 Scott?

23 A Yes, sir.

24 Q And she records this, and I'm
25 wondering if this rings a bell at all with you, or

1 whether you are able to comment?

2 "Conversations with Harry Bakema
3 yesterday. Did not seem concerned
4 about establishing drinking history as
5 evidence to impaired driving charge."

6 So this notation talks not only about resources,
7 but it characterizes it as a lack of concern about
8 doing this part of the investigation. And then
9 down at 1630, you are advised of the discussion
10 and developments of the day, and the discussions
11 that are going to go on during the course of that
12 day with Harry Bakema about you may be taking over
13 the investigation. But does that comment that is
14 recorded in Webster's notes about Harry Bakema not
15 being concerned about establishing drinking
16 history, does that resonate with you at all?

17 A That doesn't. I don't remember
18 anything in regards to that. And just to clarify,
19 it would just be terminology, but we weren't
20 wanting to take over the investigation.

21 Q I apologize if I put it that way.

22 A No, I just wanted to make sure we were
23 clear.

24 Q Yeah. What I meant by that was your
25 earlier conversation with Mr. Minuk in which you

1 indicated your willingness to do so?

2 A To assist.

3 Q And on the assurance that it was going
4 to be with formal request from Harry Bakema?

5 A That's right.

6 Q And, sir, you can take it from that
7 memo, and I take it from your general knowledge
8 that you are aware that there was ultimately a
9 formal request to have the Winnipeg Police Service
10 Professional Standards Unit conduct the
11 investigation of the drinking history of
12 Harvey-Zenk?

13 A Yes.

14 Q And I understand that that didn't come
15 through until 4:15 in the afternoon, when Webster
16 received a formal request after Chief Bakema
17 deliberated over what he would do for some time.
18 And you are notified of it at 4:15, according to
19 your notes, sir?

20 A Yes.

21 "Call from Deputy Chief Webster
22 relating that Chief Bakema has called
23 him back and is requesting the
24 assistance on this investigation
25 regarding follow-up for chronology of

1 events preceding the collision and
2 attempt to determine drinking history
3 of Harvey-Zenk."

4 Q I take it in your mind, sir, this is
5 the time, this is the point when Professional
6 Standards Unit is now engaged in a criminal
7 investigation? Up until now, it's been an
8 internal, regulatory investigation, with some
9 interaction with Bakema to make sure you're not
10 stepping on toes, but now you're told, we want
11 your help, go ahead and do the whole thing?

12 A We are going to be assisting on the
13 criminal investigation, yes. They are still the
14 lead, and this is just the one part of it that we
15 are going to be conducting.

16 MR. PACIOCCO: Thank you very much for
17 that, sir. We're going to take a break now.

18 THE WITNESS: Thank you.

19 THE COMMISSIONER: Are you asking me
20 if it's time for a break?

21 MR. PACIOCCO: As those words were
22 coming out of my mouth, I was regretting them,
23 Mr. Commissioner.

24 THE CLERK: This Commission of Inquiry
25 will take the morning recess.

1 (Proceedings recessed at 10:47 a.m.

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

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

5 THE COMMISSIONER: I will let counsel
6 know that we will break at 12:30.

7 BY MR. PACIOCCO:

8 Q So Inspector Poole, we're at the point
9 where the Winnipeg Police Service Professional
10 Standards Unit has now been invited to assist East
11 St. Paul in the investigation, by looking into the
12 drinking or the history of Harvey-Zenk on the
13 evening. And that allows you to look both at that
14 and at the regulatory issues that were of concern
15 to you at the outset of the investigation?

16 A Yes, sir.

17 Q We have information, and there's some
18 notation in your notes about a decision being
19 taken after Detective Sergeant Girard wanted to
20 begin conducting interviews the evening of the 1st
21 of March that resulted in those interviews being
22 delayed?

23 A Yes, sir.

24 Q What information do you have about
25 that, sir?

1 A We had conversation, I believe, with
2 Inspector McCaskill. Just hang on a second here,
3 I'm just going from my notes. I got noted:

4 "At 2015 hours to District 3 with
5 Girard to serve the envelopes to
6 Inspector McCaskill to commence
7 interviews. Determination was made by
8 us tonight that no interviews would
9 take place tonight to ensure the
10 members' rights and proper
11 notification was given to them for
12 that 24 hour period."

13 And we would conduct the following day.

14 Q So I understand, and if you don't have
15 information about this, please let me know, but I
16 understand the whole story is that Detective
17 Sergeant Girard wanted to get the interviews
18 going. He contacted Inspector McCaskill, or at
19 the time Inspector McCaskill. And as a result of
20 that conversation, you were brought into it to
21 determine whether that shouldn't be delayed in
22 order to facilitate that kind of 24-hour period
23 that you are now describing?

24 A It was mutual conversation at that
25 point, whether we needed to step outside the

1 bounds of our normal processes. Because if we
2 don't have to, we don't like to. And that was,
3 ultimately, the discussion, that it made sense
4 that, you know, even though the supervisors had
5 come forth saying everybody wanted to come and see
6 us and speak to us, we wanted to just ensure that
7 all rights were covered off by giving them that
8 notice.

9 Q Your notes record that you don't want
10 a perception of them being coerced into attending
11 the PSU by the bosses; is that correct, sir?

12 A Well, whether it's through their
13 sergeants or anybody else, or the staff, it's
14 just, that's more terminology from days gone by
15 that I think lead up to the evolution of the
16 process we currently had at this point in time
17 where, you know, past investigations, again, as I
18 say, years passed where there may have been
19 different procedures in place and where we just go
20 and say to members, okay, you're coming in for an
21 investigation or something along those lines. I
22 mean, it wasn't in there at that point, but I just
23 wanted to eliminate any perception of that under
24 the current --

25 THE COMMISSIONER: Excuse me, can you

1 help me with something? At the point that Chief
2 Harry Bakema says, we want you to go ahead with
3 the investigation, is it now converted from a
4 regulatory investigation into a criminal
5 investigation?

6 THE WITNESS: I don't believe so. I
7 think we were just -- I don't know what
8 particulars on the actual file would have changed.
9 I think we were just, we were assisting. As I
10 say, I believe in the regulation -- or in the
11 notices to members that this could be used in any
12 criminal, regulatory or administrative process
13 down the road. So they are made aware of that
14 anyways in the preamble to their statement.

15 THE COMMISSIONER: You continued to
16 follow the procedure for a regulatory
17 investigation, in other words, giving them the
18 notice?

19 THE WITNESS: Yes. And that's the
20 same guidelines if it was a criminal
21 investigation.

22 THE COMMISSIONER: It's the same
23 guidelines as if it's a criminal investigation?

24 THE WITNESS: For a witness interview,
25 sir.

1 THE COMMISSIONER: Yes.

2 THE WITNESS: It would be the same
3 whether it was a criminal investigation or a
4 criminal allegation against a member, or a
5 regulatory allegation against a member.

6 THE COMMISSIONER: Same guidelines?

7 THE WITNESS: The same process, and
8 notification process for a witness officer, yes,
9 sir.

10 THE COMMISSIONER: Thank you.

11 BY MR. PACIOCCO:

12 Q Sir, when you refer to the perception
13 of coercion, this is a human resources issue,
14 isn't it? You are worried about the way the
15 executive and the PSU and the members of the
16 Winnipeg Police Service interact and how they
17 would perceive they are being treated by other
18 members of the Winnipeg Police Service?

19 A Yeah. I mean, Professional Standards
20 Unit is an investigative body of police officers
21 and investigate policemen. So there's, you know,
22 just anecdotally there's that apprehension of
23 being involved in that type of investigation,
24 whether you're a witness or a subject officer.
25 And to eliminate any of that, we just wanted to

1 make sure we were following our normal processes.

2 Q So this pressure, and correct me if
3 you don't accept the word pressure, but this
4 pressure to make sure that the officers feel that
5 they are being dealt with fairly by the Police
6 Service is not something that you would experience
7 when dealing with lay witnesses, sir?

8 A No. A regular civilian witness, I
9 mean, if we approach them and they just decline to
10 speak to us, then we are out of luck in speaking
11 with them. But because of the mandate, that
12 members are mandated to speak to investigators, we
13 just want that balance of appropriateness, and
14 that they can have that liaison time with the
15 Association.

16 Q So you know they want to come forward
17 and you don't want to make it look like you are
18 coercing them, sir?

19 A And we believe they all want to come
20 forward, but the bottom line is they will be
21 coming forward, the ones -- and we just want to
22 follow our proper process.

23 Q So there's a lot of concern about
24 perception here?

25 A If you go outside of your normal

1 processes, there could be a perception issue, yes.

2 Q And you're sensitive to the way the
3 members of the Winnipeg Police Service would
4 perceive that, sir?

5 A Correct.

6 Q So you have paid quite a bit of
7 attention, not to the reality, because they were
8 all ready to come, you were paying attention to
9 the perception?

10 A Yes.

11 Q Now, I don't know whether you had this
12 conversation with Detective Sergeant Girard, and
13 I'll certainly ask him about it, but his notes
14 record:

15 "Agreed that would be a good approach
16 to give people time to contact WPA and
17 let things soak in re interviews."
18 That's what his notes say, and let things soak in.

19 Was there any conversation you were a
20 party to, because he describes that as an
21 agreement, was there any conversation that you
22 remember being a party to that might evoke that
23 kind of language, sir?

24 A No, not let things soak in. I don't
25 know anything in regards to that kind of comment.

1 Q All right. I get the sense from your
2 evidence that this protocol that you have agreed
3 to follow on this occasion was one that you had
4 the option not to. It was a choice that was made?

5 A And as I was thinking again, if this
6 was something that would have just broken, then
7 you have that option to move more swiftly with the
8 same ultimate opportunity for the member to seek
9 advice. But some time had passed, and it didn't
10 seem to make sense to go outside the normal
11 processes.

12 Q Were you suggesting that so much time
13 has passed now, there would be no point in moving
14 quickly, sir?

15 A Well, not to not move quickly, but
16 just to follow our standard operating procedures.

17 Q Okay, sir. And this isn't, of course,
18 done for ordinary witnesses. You typically want
19 to get your ordinary witness and question them the
20 first chance you get, right? Isn't that --

21 A Again, if it's a witness to, if it was
22 a civilian witness involved in this, we would work
23 them into the interview process so they wouldn't
24 be done first or, as you can see, I mean, we
25 followed process where we did a number of officers

1 and then the staff at the hotel, which are
2 civilians, or not hotel --

3 Q I didn't mean to suggest that that was
4 a priority for civilians. What I'm getting at,
5 sir, is that it is really a good investigative
6 practice to try to get your interviews done as
7 soon as you can?

8 A Yes.

9 Q People forget details, and you want to
10 try to nail down their best recollection before it
11 has time to be formed or changed?

12 A Yes.

13 Q And there's also concern witnesses in
14 some circumstances might have an opportunity to be
15 influenced, whether intentionally or accidentally,
16 by other conversations that they have?

17 A Yes.

18 Q And you want to avoid any risk of
19 contamination, whether it be collaboration or just
20 conversation?

21 A Um-hum.

22 Q You want to get on with it. And this
23 is especially true where there's some risk that
24 people may have a common interest among
25 themselves, when they are witnesses, they might

1 have a common interest in the story that
2 ultimately gets told?

3 A Some could, yes.

4 Q And I'm going to suggest to you, sir,
5 that there was some risk of that type of
6 collaboration occurring in this case. And I'm not
7 suggesting because of the specific officers
8 involved or anything like that, I'm just saying
9 that you have officers who are brought together,
10 they come together on shift. This is their first
11 day back. They are going to be in the locker room
12 together, they are going to be at the shift
13 briefing together, some of them are going to be on
14 the road together. And they are officers whose
15 own interests might be affected by the
16 investigation, whose friends might be affected by
17 the investigation. Do you not agree with me, sir,
18 that this would be exactly the kind of case where
19 you'd want to get those people and get their
20 information recorded, in order to try and make
21 sure that there is no risk of that happening, or
22 reduce it as much as you can?

23 A Well, as I'm recalling that they had
24 already been together at some point in time and
25 had an opportunity to discuss this, with the

1 information that had come from the sergeants, that
2 they had been together and heard about the
3 incident and such. So, whether that had taken
4 place, I don't know what the conversations really
5 were, other than that they wanted to come in and
6 tell us about the events of the night prior. I
7 didn't -- it was a decision that I was comfortable
8 with, and that we would put it off one day to
9 ensure that all avenues of contact were available
10 for the members.

11 Q This also involves, as we discussed
12 more generally before, providing a caution to the
13 members about the statement potentially being used
14 for criminal proceedings or for internal
15 proceedings, or even civil proceedings, sir.
16 That's not something you ordinarily do with lay
17 witnesses in an investigation, is it, sir?

18 A That's a preamble that's read into all
19 of our statements.

20 Q I know that.

21 A Sorry.

22 Q Yeah. Go ahead?

23 A Carry on.

24 Q I was just going to say, I understand
25 that, but is it something that you read to lay

1 witnesses?

2 A I believe that -- I don't have the
3 preamble for non police witness available to me,
4 but I believe that it's in there.

5 Q So, is it your evidence, sir, that the
6 Winnipeg Police Service, when interviewing a lay
7 witness, will actually read them a preamble about
8 the statement potentially being used for criminal
9 or civil liability purposes?

10 A I don't want -- I am recalling that we
11 read a preamble to the civilian witnesses, yes.

12 Q I would put it to you, you read a
13 preamble to the suspect witnesses, but not to all
14 witnesses, sir?

15 A To suspect officer?

16 Q No, suspect witnesses. If you're
17 dealing with a lay person and you're not with the
18 Professional Standards Unit, and you're conducting
19 an interview of a witness?

20 A Oh, if you're not with the
21 Professional Standards Unit.

22 Q Yes?

23 A No, that's correct. But under the
24 guise of the Professional Standards Unit, there is
25 a preamble that's read in on all interviews.

1 Sorry, if I misunderstood.

2 Q Yes, okay. So with the regular police
3 investigations, this is just done? There's no
4 preamble read to witnesses?

5 A Correct.

6 Q And this idea of trying to schedule
7 the witnesses at their shift time in order to
8 accommodate and not disrupt the policing, and in
9 order to try and minimize the budget pressures,
10 that's something that can certainly cause delays
11 in the investigation, sir?

12 A Well, I mean, there are a number of
13 investigations, from my recall, three, you know,
14 some years ago now, that we have to juggle the
15 interviews of a number of different investigations
16 that each member may have. And so timing, whether
17 it's a week or two weeks down the road, the shifts
18 and days off come into play in that scheduling,
19 yes.

20 Q And I notice in this case there were
21 no interviews conducted during the four days off
22 between this set of shifts we are now talking
23 about and the next one. And in fact, in the case
24 of one officer, Officer Bauer who was on leave,
25 his interview was delayed until the end of March?

1 A Yes, it was some weeks down the road.

2 Q So there was accommodation in the
3 terms of scheduling that officers benefit from as
4 a result of the protocol?

5 A If they are on leave, yes, we wouldn't
6 call them in on leave. But we try to do them, or
7 tried to do them as expeditiously as possible.

8 Q I understand that it's the next day
9 where you get formal assurance that you are now to
10 conduct this investigation, sir, a written
11 document to that effect? I'm going to take
12 everyone to book Q-2.89.b.28?

13 THE CLERK: Exhibit 182.

14 (EXHIBIT 182: Q-2.89.b.28, Email from
15 Doug Webster to Jim Poole, March 2,
16 2005)

17 MR. PACIOCCO: Exhibit 182,
18 Q-2.89.b.28.

19 BY MR. PACIOCCO:

20 Q Sir, this is you writing, seeking a
21 memorandum for the file outlining contact with
22 Chief Bakema on March 1st, in particular his
23 request for assistance of the Professional
24 Standards Unit. And Doug Webster responds "will
25 do." Correct, sir?

1 A Correct.

2 Q And did he do that, sir?

3 A I don't know if it ultimately came
4 from there or not, or if it was by -- I don't have
5 that.

6 Q It may be that it's buried somewhere
7 in there, but I have certainly not been able to
8 find it, sir. But you are content that this is a
9 go and it's under way at this point, sir?

10 A Correct.

11 Q And Detective Sergeant Girard is
12 assigned the investigation. He was the one who
13 was initially doing the regulatory side, and he's
14 just going to keep on now that the complexion of
15 the investigation has evolved?

16 A Yes.

17 Q Sir, you have a conversation with
18 Marty Minuk on March 7th, sir, it's at page 64
19 notes?

20 A Yes.

21 Q Could you tell the Commissioner about
22 that conversation?

23 A On March 7th, I don't have a time
24 noted.

25 "Contact Marty Minuk and update him on

1 the progress thus far. Interviews of
2 past week and that the aspect of
3 Branigan's starts today. Discuss the
4 aspect of Sean Black responsibility,
5 if any."

6 Marty Minuk relates that those are civil issues.
7 I discuss further, and plan will proceed where
8 Sean is spoken to as a witness officer, and then
9 further updates to legal counsel, Kim Carswell, on
10 the interviews by PSU.

11 Q Okay. Sir. How did it come about
12 that you were asking Marty Minuk about Sean
13 Black's concerns relating to civil liability on
14 the 7th of March, sir?

15 A I think that was something that was
16 suggested from the investigator. I don't have it
17 noted, but I believe it was something that was
18 brought up in discussion on the file, and seemed
19 like a valid point that we would contact Marty for
20 direction on that, Marty Minuk.

21 Q So you were concerned about
22 potentially doing something that could compromise
23 Sean Black's civil liability, sir?

24 A Or whether something like that could
25 be a criminal, you know, there has been things,

1 you know, again anecdotally, news items across the
2 country where people have been held accountable
3 for having a party and somebody driving home after
4 that.

5 Q All right. But you tried to speak to
6 Mr. Minuk about the potential civil liability of
7 Constable Black because you were concerned for
8 him, sir?

9 A Just on the process of how the
10 interview would take place.

11 Q Now, sir, this is, again, this is not
12 something that would have ordinarily happened with
13 a civilian witness who might have some civil
14 liability issues attached to their police
15 statement, sir?

16 A I'm not sure if the concern was more,
17 was there any likelihood of anything criminal
18 coming out against Constable Black, or whether it
19 was he -- I think we are being told that, no, it
20 is just a civil process, so we're conducting our
21 investigation. He wouldn't be interviewed as a
22 suspect officer in any way, it's just as a witness
23 officer.

24 THE COMMISSIONER: You had not yet
25 interviewed him?

1 THE WITNESS: No, we hadn't.

2 BY MR. PACIOCCO:

3 Q Our understanding is by this point,
4 Constable Black at the time already declined the
5 opportunity to come in for an interview because he
6 wanted to check with the WPA and others
7 potentially about potential civil liability. And
8 then even on March 7th, Detective Sergeant Girard
9 had left a voice mail trying to get him to come in
10 for an interview. And it wasn't until the 12th of
11 March, I believe, that the interview was actually
12 conducted -- maybe the 11th of March, but it
13 wasn't until some period after that. So that's
14 why I'm inquiring into it.

15 Did you have any conversations with
16 Constable Black --

17 A No.

18 Q -- about his concern for civil
19 liability?

20 A No, none.

21 Q And of course, Mr. Minuk, it's not his
22 function and he's not prepared to get into any
23 discussion about civil liability issues with you?

24 A Right. And it was just that, you
25 know, would this form any part of the criminal

1 investigation that was going on?

2 Q Sir, you have a phone call to Chief
3 Bakema on March 9th, according to page 68 of your
4 notes?

5 A Yes.

6 Q What takes place there, sir?

7 A I make the phone call to Chief Bakema.
8 He's briefed on the interviews thus far along,
9 with what else is taking place, the Branigan's
10 aspect of things. Relate that Chief Ewatski is to
11 be briefed by me this afternoon. And I ask for
12 anything else that may have been added to the
13 report that we already have, any witnesses, and
14 ask that those statements be faxed, if there were.

15 Q Because you're trying to stay on top
16 of what's happening, because what's happening in
17 the other investigation could have some impact on
18 how you approach your own investigation, including
19 what might happen at an ultimate suspension
20 hearing?

21 A And that's, yes, I was just about to
22 say, there would always be a suspension hearing in
23 these types of incidents, and they need as much
24 information as they can have to make an informed
25 decision.

1 Q You advised Chief Bakema about a
2 problem with his investigation that you or someone
3 at Professional Standards Unit has noticed, sir?

4 A There's a couple of different points.
5 Just in these notes, I advise Chief Bakema of the
6 blood demand noted on the report versus breath.
7 But that, whether that was just a typing error or
8 not, I wanted to make him aware of that.

9 Q And he indicated, from your notes,
10 that he will check into this?

11 A Yeah, he'll check on that.

12 Q So you must have got the impression,
13 sir, and correct me if I'm wrong, that this was
14 something that he hadn't noticed before?

15 A Well, if whoever signed off that
16 report, it says blood demand in it versus breath
17 demand, and it was obvious that he was going for
18 the breathalyzer.

19 Q You also gave him a tip of something
20 else he should look into possibly, sir, based on a
21 rumour?

22 A I also pass on a rumour that was
23 mentioned by one of the sergeants within the
24 Professional Standards Unit that morning.
25 Sergeant Doug Roxburgh was one of my investigators

1 and he advised me he heard yesterday that Harvey
2 Zenk may have been on his cell phone at the time,
3 and that was, I have noted "heads up" that, you
4 know, what property was in the car, or what, you
5 know, maybe the cell phone records or something
6 along those lines, if they felt it necessary to
7 follow up.

8 Q Now, Sergeant Roxburgh was assisting
9 Sergeant Girard in conducting some of these
10 interviews, sir?

11 A He did some, but with another member
12 of the --

13 Q Sergeant Epp.

14 A They worked together, yes.

15 Q And do you have any idea of where
16 Sergeant Roxburgh got that information that
17 Harvey-Zenk may have been on his cell phone?

18 A No.

19 Q And I understand you do receive more
20 information from Chief Bakema that day, you get a
21 statement from Garth Shaw taken on February 25th
22 but not included in the original package?

23 A Yes.

24 Q Mr. Shaw was an eye witness to the
25 accident, sir. At this point, an interest

1 develops in paramedics' statements, statements
2 from the emergency service personnel, sir.

3 A Yes.

4 Q Can you tell the Commissioner about
5 that?

6 A As I was going through my notes, and I
7 have a meeting with legal adviser, Kim Carswell,
8 and the Chief Jack Ewatski at 2:30 in the
9 afternoon that date on the fifth floor Public
10 Safety Building boardroom, and just reviewed the
11 incident, where PSU is right now with our
12 follow-up in our portion of the investigation.
13 And I'm not sure who brings it up at this
14 particular time, but to contact Chief Bakema
15 regarding paramedics and the WFPS, Winnipeg Fire
16 and Paramedic Service at the time, who had contact
17 with Constable Harvey-Zenk.

18 Q So, I take it, sir, somebody noticed
19 that there was no records in the interview, or no
20 records of interviews, or nothing in the brief
21 about the emergency personnels' observations or
22 anything like that. This was -- this struck
23 somebody there as an omission, and you're
24 following up on it?

25 A That's correct. I mean, I know from,

1 again, the past incident that I have spoken
2 briefly about earlier, where fire and ambulance
3 staff would be spoken to, and that would be
4 something that we would do if it was our
5 investigation.

6 Q And this is March 9th when you're
7 having this conversation with Kim Carswell --

8 A Yes.

9 Q -- and the Chief? And on March 10th,
10 I understand that you do have some contact with
11 Chief Bakema about this?

12 A That's correct, at 11:05 I call Chief
13 Bakema, advise of our status and that interviews
14 shall be complete by next Tuesday, I have. Advise
15 that I had briefed the chief yesterday:

16 "Will hold off on suspension hearing
17 until Tuesday at the earliest."

18 I questioned Chief Bakema as to extras of the
19 report, statements, et cetera, ambulance, fire.
20 Chief Bakema relates that they are working on
21 those as we speak and that other people have
22 called with input.

23 Q So this is March 10th, and Chief
24 Bakema is telling you about the emergency service
25 statements, look, we're working on those as we

1 speak?

2 A Yes.

3 Q All right, sir. And I understand that
4 as of March 16th, page 80 of your notes, there's
5 still nothing on the paramedics?

6 A That's correct. Oh, yes, a
7 conversation between -- well, I call it Chief
8 Bakema's office.

9 "He's off till tonight. Sergeant
10 Carter is in."

11 I leave a message to have him call Sergeant Roger
12 Girard and then notify Roger to try and get
13 details of the emergency service's interviews.

14 Q Okay. And we have information from
15 Detective Sergeant Girard that he spoke to
16 Mr. Carter, Sergeant Carter at the time. And he,
17 Sergeant Carter, indicated that he had himself not
18 done the interviews, and if it's been done, he
19 doesn't have it?

20 A That's correct. And I have those
21 comments in my notes as well.

22 Q All right. Sir, and then what
23 happens?

24 A I have a note here that I update
25 Roger, Sergeant Girard, on two other people that

1 stopped at the scene. No impairment evidence is
2 noted in my notes.

3 Q So you would have learned this through
4 conversations with East St. Paul?

5 A Yes. And I'm just thinking back, I
6 don't have specific recall on that. Roger is
7 typing up the brief on the matter which I had
8 required for my briefings.

9 Q So March 22nd, I understand, at page
10 93 of your notes you've got the suspension hearing
11 scheduled?

12 A Yes.

13 Q And you still don't have any
14 information from Chief Bakema or the East St. Paul
15 Police about the emergency service interviews?

16 A That's right. The last lines on my
17 page there, midway down:

18 "Call also to Chief Bakema. No new
19 info from E.M.S. Not interviewed as
20 yet."

21 Q And, sir, I understand that when the
22 suspension hearing did occur, it was without the
23 benefit of the information that both paramedics
24 said that they smelled alcohol on the breath of
25 Derek Harvey-Zenk?

1 A Just -- so the suspension hearing was
2 that same date.

3 Q Yeah, I'm going to take you to a
4 document, this one is at Q-2.89.b.20.

5 THE CLERK: Exhibit 183.

6 (EXHIBIT 183: Q-2.89.b.20, Document
7 "Suspension Hearing Brief, Off Duty
8 Incident" dated March 22, 2005)

9 BY MR. PACIOCCO:

10 Q The document that's just been placed
11 before you, sir, that's at page 3038 of volume
12 Q-2, page 3038, is titled "Suspension Hearing
13 Brief, Off Duty Incident," dated March 22, 2005.
14 If you were to take the time to read through that
15 summary, you will see a description of the
16 evidence summarized by the author of this
17 suspension hearing report. And I take it that
18 would be one of Sergeant Girard's
19 responsibilities?

20 A I believe so, yes.

21 Q And there's no reference in here to
22 paramedics, or the smell of alcohol, or anything
23 like that, sir?

24 A Yes.

25 Q And so we can take it that the

1 suspension hearing was conducted without the
2 benefit of that kind of information?

3 A Correct.

4 Q You would agree with me, sir, that
5 it's useful, when interviewing witnesses, to have
6 as much information about the event as possible,
7 so that you could potentially confront those
8 witnesses with facts or information that may
9 differ from the stories you are getting?

10 A Yes.

11 Q And that's why you try to find out as
12 much as you can about the case before you go
13 ahead. Do you agree, sir, that this was important
14 information --

15 A Yes.

16 Q -- that you would have wanted to have
17 access to?

18 A Whether it was for our side of the
19 investigation, but certainly for the prosecution
20 side is my main concern, that it would have
21 been -- obviously, it was important to the
22 suspension hearing, but also first person contact
23 is crucial in something like this.

24 Q Sir, we'll vault forward to the 26th
25 of April of 2005. And that's the day when you

1 sign Girard's report, which is to be found at tab
2 F-1.33.a, F-1.33.a. If that report could please
3 be made the next exhibit?

4 THE CLERK: Exhibit 184.

5 (EXHIBIT 184: F-1.33.a, Supplementary
6 report - Sergeant Girard)

7 BY MR. PACIOCCO:

8 Q You'll notice, sir, at the bottom:
9 "Date approved, 26th of April, Staff
10 Sergeant J. Poole"

11 And I take it that's just standard operating
12 procedure, that you are the person acting as
13 Inspector for the Professional Standards Unit, and
14 this is a report that's about to go out. You've
15 edited, to the degree that you feel you have to,
16 and you have signed off on it. Is that basically
17 what has taken place?

18 A That's right. There's two review
19 stages at that time in the Professional Standards
20 Unit, where once the report was complete, it was
21 sent to a sergeant for review and sign off. And
22 if there was any revisions or additions that had
23 to be made, they would be sent back, and then
24 ultimately comes to the staff sergeant as the
25 final signing authority on it. And same thing,

1 anything that's noticed would be dealt with.

2 MR. PACIOCCO: Okay. Sir, I'm going
3 to take you to another document that's not yet
4 been made an exhibit. This document appears again
5 in book Q-2, this time at page 3063. And it will
6 be tab 89.b.31, Q-2.89.b.31.

7 THE CLERK: Exhibit 185.

8 (EXHIBIT 185: Q-2.89.b.31, E-mail
9 from Jim Poole to Doug Webster, May 6,
10 2005)

11 MR. PACIOCCO: That document can be
12 made Exhibit 185.

13 BY MR. PACIOCCO:

14 Q Sir, what we have here is an e-mail
15 that purports to be from yourself dated May 6,
16 2005, at 8:11 to Doug Webster and Alex Katz. Doug
17 Webster, we have indicated I think is the deputy
18 chief?

19 A Yes, sir.

20 Q And who is Alex Katz?

21 A He is the inspector of the
22 Professional Standards Unit. When they changed
23 over from the executive assistant to the Chief of
24 Police to an inspector, Alex Katz was appointed
25 that inspector.

1 Q So when you were acting inspector, you
2 were basically standing in his shoes?

3 A That's correct.

4 Q All right. And this, of course, is
5 with respect to the Harvey-Zenk matter, and it
6 reads:

7 "This is just an update on the PSU
8 assistance to the East St. Paul Police
9 and Chief Bakema. A package has been
10 forwarded to independent counsel,
11 Marty Minuk, containing all interviews
12 conducted by the PSU relating to the
13 activities of Harvey-Zenk on the night
14 preceding the motor vehicle collision.
15 If there are no objections, I will
16 meet with Chief Bakema and furnish him
17 with a copy of the PSU report
18 outlining our assisting role and
19 interviews conducted."

20 I'm curious, sir, about why the report, if you
21 were assisting East St. Paul in their
22 investigation, why the report would be sent
23 directly to the special prosecutor and not to East
24 St. Paul? And I'm curious as to why you would
25 canvass the Deputy Chief for any objections to

1 sharing the report with the police force you are
2 assisting?

3 A Nothing specific comes to mind, other
4 than we would be furnishing the information to
5 both, and it was just a matter of courtesy that
6 I'm speaking with my upper echelon to let them
7 know, and that it would be forwarded.

8 Q Sir. You have obviously made a
9 conscious decision to send it to the special
10 prosecutor, and you have also made a conscious
11 decision not to send it to Chief Bakema without
12 canvassing your deputy chief to see whether there
13 would be any objections to sending it to Chief
14 Bakema. Is that not evident in your letter, sir?

15 A Yes.

16 Q Well, why would that be?

17 A I don't know, other than -- I mean, we
18 certainly had the lines of communication open
19 throughout the entire matter, and whether there
20 was conversation with Counsel Minuk that we would
21 just forward the items straight to him, and just
22 with, again, with East St. Paul being outside
23 agency, and us furnishing them the report, I felt
24 that we would just, or that I would just ask for
25 concurrence on that.

1 Q Sir, wouldn't the natural thing, if
2 you are assisting another police agency in
3 investigation by gathering some of the evidence
4 for them, be to give it to that agency so that
5 they could incorporate it into their investigation
6 and fold it into their brief?

7 A Certainly.

8 Q So this would be an unusual kind of
9 choice, wouldn't it, sir?

10 A If it was to not go to them,
11 certainly.

12 Q Sir, when it went to them was on the
13 13th of July, 2005, according to --

14 A My notes.

15 Q -- your notes, which, of course, is
16 more than two months later?

17 A And I don't -- oh, sorry, I thought
18 you were --

19 Q Yeah. I was going to ask if you have
20 any explanation for why it took more than two
21 months to send the report to the police agency
22 whose investigation you were assisting, two months
23 longer to get it to them than it did to give it to
24 the prosecutor?

25 A And I don't have an explanation for

1 that. I have searched through my notes to see if
2 there was logistical things with people being on
3 holidays or what, and I don't know why it took
4 that long.

5 Q You talked about the importance of
6 keeping lines of communication open, and you
7 talked about how you wanted access to as much
8 evidence as they had to assist you as you were
9 going along. Would it not have been -- would you
10 not agree, it's an unfortunate thing that more
11 than two months go by before the investigating
12 police agency, who is probably still conducting or
13 working on the file themselves, get access to what
14 it is you found?

15 A And if that was the case, as I say, we
16 wanted to send it to -- we sent it off to Marty
17 Minuk directly, and I don't know why it didn't get
18 back to Chief Bakema.

19 Q I'm going to suggest to you, sir, and
20 again there's nothing nefarious in this, but I'm
21 going to suggest it looks like two separate
22 parallel investigations you are going on, rather
23 than one integrated investigation with cooperation
24 of two police agencies. Would you comment on that
25 perception, sir?

1 A As time went on, regarding this, I
2 don't know if there were any other conversations
3 that took place. I don't have anything else
4 noted, whether Chief Bakema had called me for any
5 information, and/or how we left it with him other
6 than, you know, I made a lot of notations there
7 early on about discussions, and that we'd be
8 passing the information on to Marty Minuk.

9 Q Yes. And most of those discussions,
10 at least in the early days, had to do with making
11 sure they knew what you were doing in your own
12 investigation, sir?

13 A Yes.

14 Q And then trying to get information
15 from them that you didn't have?

16 A On the basics of their investigation.

17 Q Yes?

18 A Yes.

19 Q There are some wrap-up questions I'm
20 going to give you, because I think the
21 Commissioner will want to hear your opinion on
22 these things.

23 If it is recommended to the
24 Commissioner that he should question the
25 suitability of having a Professional Standards

1 Unit get involved in an investigation being
2 conducted by another police force, in order to
3 question Winnipeg Police Service Officers, because
4 of the perception that that could create, how
5 would you react to that, sir? What would your
6 advice to the Commissioner be?

7 A If it was suggested that?

8 Q If it was going to be suggested to the
9 Commissioner in submissions that, really, from a
10 perception point of view, it isn't a good idea to
11 have Professional Standards Unit get involved in a
12 criminal investigation that is being handled by
13 another police agency, and be assigned the role of
14 investigating Winnipeg Police Service Officers?

15 A If it's outside the scope of
16 resources, as this was, I don't see a problem with
17 it. The RCMP certainly have the manpower and the
18 resources to do something like this. They've got
19 their own internal investigation branch as well.
20 I'm not sure the name of it, but in -- I, you
21 know, certainly believe that we investigate our
22 own members on criminal matters. If this, you
23 know, would have happened another, you know,
24 quarter mile inside the city limits, we would have
25 had the whole thing and would have carried out an

1 investigation on our own in regards to it. But I
2 think it's circumstantial, dependent on assistance
3 required by another agency, if they are able to do
4 it in a timely fashion.

5 THE COMMISSIONER: Did you ever
6 consider contacting the RCMP and asking them to
7 take over this investigation because it involved
8 one of your members?

9 THE WITNESS: On this investigation?

10 THE COMMISSIONER: Yes.

11 THE WITNESS: No, that wasn't a
12 thought.

13 THE COMMISSIONER: It was never a
14 thought?

15 THE WITNESS: Not that I'm aware of.

16 BY MR. PACIOCCO:

17 Q If it was to be recommended to the
18 Commissioner that the protocol that is used by the
19 Professional Standards Unit may be appropriate for
20 regulation violations, but is not really
21 appropriate in a criminal investigation, what
22 would your response to that be?

23 A In regards to interviewing of
24 witnesses, or any specific part of it, or just in
25 general?

1 Q The idea that you, number one, provide
2 notice to police officers about the investigation
3 that's coming, that gives them 24 hours to come
4 forward; that it gets scheduled according to the
5 shift schedule rather than on dedicated
6 investigative needs basis; that these officers are
7 then given a caution that is not given to other
8 witnesses involved in criminal matters, all of
9 those things, sir, if it was suggested to the
10 Commissioner that those things are not really
11 appropriate for a criminal investigation and that
12 the PSU should perhaps do it in a regulatory
13 context, where it's just about a job but not where
14 it's about a criminal allegation, how would you
15 respond to that, sir?

16 A Well, that's something that would
17 certainly have to involve a lot of different
18 parties. These are not the rules as decided upon
19 by the Professional Standards Unit, as I
20 understand it. They were entrenched when I came
21 into the unit and had been obviously a topic of
22 discussion in years gone past. And so there's --
23 to alter any of the procedures would certainly
24 have to involve a lot of different groups.

25 Q You're thinking of the Winnipeg Police

1 Association, I take it, sir?

2 A And the Service itself.

3 Q Sir, with respect to the Winnipeg
4 Police association, and I know Mr. Labossiere is
5 going to have an opportunity to question you and
6 certainly make submissions at the end of the day,
7 but do you not agree that a path that a criminal
8 investigation takes should not be a matter for
9 collective bargaining or Police Association
10 influence?

11 A Well, we have an association and they
12 are there looking out for indemnification issues
13 that, you know, pertain to the membership. And
14 that's where the discussions would hinge, no
15 doubt, on a topic like that.

16 Q You agree with me that in general
17 criminal investigations outside of the PSU, there
18 is no organization out there that tries to or does
19 influence the terms on which witnesses are
20 interviewed, that those witnesses are interviewed
21 according to the needs of the criminal
22 investigation?

23 A Yes.

24 MR. PACIOCCO: I don't have any
25 further questions for you, Inspector. Thank you

1 very much for your evidence. There will be other
2 lawyers who will question you.

3 THE WITNESS: Thank you, sir.

4 BY MR. ZAZELENCHUK:

5 Q If we could begin with, Commission
6 Counsel asked you about your request to the deputy
7 chief for orders or terms of reference in writing.
8 Do you recall that a few moments ago, sir?

9 A Yes, sir.

10 Q I wonder if Madam Clerk would be good
11 enough to give you Q-2.89.b.36? And that's at
12 3068, Mr. Commissioner, of Q-2.

13 THE CLERK: Do you want that marked as
14 an exhibit?

15 MR. ZAZELENCHUK: If he identifies it,
16 yes.

17 BY MR. ZAZELENCHUK:

18 Q Would that be the reply that your
19 deputy chief gave you?

20 THE COMMISSIONER: Is that at page
21 3068?

22 MR. ZAZELENCHUK: Yes,
23 Mr. Commissioner.

24 THE COMMISSIONER: Thank you.

25 THE WITNESS: Yes, sir.

1 BY MR. ZAZELENCHUK:

2 Q Okay. And the last paragraph -- the
3 last sentence of the second paragraph:

4 "He was aware that the PSU was looking
5 into the aspects of the off duty
6 conduct of Harvey-Zenk and potentially
7 other off duty officers that may have
8 been with him in the hours preceding
9 the accident."

10 Now, as I interpret that, the directions to you
11 are, we are most concerned about Harvey-Zenk, but
12 we're also concerned if you come across, you know,
13 one of his pals, something about one of his pals
14 that you feel is inappropriate, somebody that was
15 with him last night, we'd like to know about that
16 too.

17 Is that how you interpret it too, sir?

18 A Yes.

19 MR. ZAZELENCHUK: Yes. Okay. If that
20 could become the next exhibit, Mr. Commissioner?

21 THE CLERK: Exhibit 186.

22 (EXHIBIT 186: Q-2.89.b.36, WPS Inter
23 Office memo, March 2, 2005)

24 BY MR. ZAZELENCHUK:

25 Q Now, going to your notes, Inspector, I

1 believe they are exhibit 137, Q-1.89.b.4, I think.

2 Those are your notes?

3 A Um-hum.

4 Q Yes. And first of all, let me say,
5 just as a lawyer, that I found your notes to be
6 quite meticulous.

7 A Thank you.

8 Q And you know, you put in times and you
9 put in dates and everything else. And I'm
10 interested in the first page to begin with, that's
11 page 2908 in the book and it's page number 44 in
12 your book. And I note that you have an entry
13 right at the top of the page that it's a Friday,
14 25th of February, 2005, 7:30. I guess that's when
15 you get into the office?

16 A Yes, sir.

17 Q And then I note you work on some
18 paperwork, a memorandum for the chief; correct?

19 A Yes.

20 Q Yes. And then you told us that after
21 a certain period of time, you went for coffee, and
22 being a caffeine junky myself, I can understand
23 that. And you were at coffee, you didn't take
24 your notebook with you. I noticed you use a big
25 notebook?

1 A Yes, sir.

2 Q You were at coffee and you received a
3 phone call, presumably on your cell phone?

4 A Yes.

5 Q And you had a pen with you, but you
6 didn't have a notebook or anything, and hence the
7 notes that you made on the napkin?

8 A Yes, sir.

9 Q And again, perfectly natural, I've had
10 businessmen walk into my office with a contract on
11 a napkin. It happens sometimes.

12 A Um-hum.

13 Q But what I'm interested in, sir, is
14 what is the earliest that you would have gone for
15 coffee that day? Can you sort of tell us that?

16 A The earliest would have been first,
17 like first thing in the morning. I don't usually
18 leave the office. For whatever reason this day,
19 some of the other members of the team said, let's
20 go for coffee and we walked across the street.

21 Q Can we be fair in saying that you
22 wouldn't have gone before 8:00 o'clock, because I
23 note from your notebook that you've done some
24 paperwork?

25 A Yeah. That's what I was thinking, it

1 could have been anywhere between 8:00 and 9:00,
2 9:30, in that range.

3 Q Okay. And in terms of the latest
4 possible time that you would have gone, can you
5 give us some of indication there?

6 A I don't think it would have been at
7 mid morning.

8 Q So 9:30 could be the latest?

9 A Yeah, that's what I'm remembering.

10 Q Okay. And I know we're dealing with
11 your memory, but I want to know what you're
12 comfortable with.

13 A Um-hum.

14 Q Okay. And you told us, and again, I
15 have no difficulty with that, you told us that you
16 made the notes in the restaurant on the napkin.
17 And, of course, this was serious stuff. No
18 question there, you agree with me?

19 A Yes.

20 Q Beginning of a potential nightmare?

21 A Yes.

22 Q Yes. Okay. From there, you go
23 directly to the chief's office on the fifth floor
24 of the Public Safety Building; correct?

25 A Yes.

1 Q And again, perfectly natural thing to
2 do. And while you are in the chief's office, you
3 make -- is it four pages of notes or is it five,
4 sorry, five pages of notes on a pad that you find
5 in the police chief's -- or in the foyer?

6 A Yeah. It's in the outer offices, it's
7 all one large area but it's where the clerks do
8 their duty.

9 Q Okay. And then when you come back,
10 when you are through in the chief's office, you go
11 back to your office, and it looks like you stapled
12 the napkin and the five pages of notes into your
13 notebook?

14 A Yes.

15 Q Yes. And again, good, perfectly good
16 thing to do. Can we go to page 2908, which is 44
17 of your notebook?

18 Now, do you have the original of your
19 notebook there or do you have a photocopy?

20 A I do, I have the original as well.

21 Q Because what I'm curious about is, if
22 you look at the photocopy, which we all have, and
23 we've got written "Chief of Police" in printing.
24 Are you with me there?

25 A Okay, sorry, I was distracted there.

1 Q That's okay.

2 A "Chief of Police"?

3 Q Yeah, in printing, do you see what I'm
4 referring to?

5 A On the napkin?

6 Q Beside the napkin, you've got the
7 napkin on top of the scratch pad that you've got
8 from the chief's office, correct?

9 A Yes.

10 Q It says "Chief of Police"?

11 A Yes.

12 Q And then down about a half of an inch
13 it says "EST," just below "Chief of Police"?

14 I'll get to my question in a second,
15 sir.

16 That's the end of request, do you see
17 that?

18 A No, I don't. I can't --

19 MR. ZAZELENCHUK: Mr. Commissioner,
20 may I approach the witness and point it out?

21 THE COMMISSIONER: Of course, yes.
22 Maybe you could point it out to me as you go by,
23 because I'm having difficulty. Okay.

24 THE WITNESS: Okay, yes, EST. That is
25 the end of request, is that what you were asking?

1 BY MR. ZAZELENCHUK:

2 Q Sure. That's what it is. And then
3 we've got a line and another line, and underneath
4 that other line it says "return date"?

5 A Yes, sir.

6 Q Well, let's take a look at that top
7 line and let's go all the way to the end of the
8 right-hand side. Are you with me?

9 A Yes.

10 Q It looks like there's some writing
11 underneath the paper. Can you see that?

12 A Yes.

13 Q Can you tell us what that is?

14 A Yes. I have it actually here in my
15 other note, but it didn't pertain to the file, so
16 I didn't photocopy it. It was -- I have it right
17 here as the original. I'm speaking with Detective
18 Mark Houle in the Edmonton Police Service about
19 training.

20 Q Okay. And it's your evidence today
21 that that has nothing to do with this file?

22 A Correct.

23 Q Okay. Well, I didn't know what it
24 was.

25 A No, that's fine.

1 MS. HANLIN: It's on the next page
2 actually.

3 THE COMMISSIONER: Ms. Hanlin is on
4 her feet. What is it, Ms. Hanlin?

5 MS. HANLIN: What's underneath the
6 napkin is on the next page, it's on 2908.

7 THE COMMISSIONER: He said it doesn't
8 involve this matter. Do you want it to be read
9 into the record for some reason?

10 MS. HANLIN: No, but just what is
11 underneath the napkin is on the next page. That's
12 causing the confusion.

13 THE COMMISSIONER: Well, he just said
14 it does not relate to this matter. That's the
15 Chief of Police note. Underneath it are his notes
16 and they don't relate to this matter. And
17 Mr. Zazelenchuk is prepared to accept that. Let's
18 get on with that.

19 MR. ZAZELENCHUK: I am now that I've
20 been told that by this witness, Mr. Commissioner.

21 BY MR. ZAZELENCHUK:

22 Q If we could move on in your notes,
23 Inspector, to page 56 of your notes, which is 2925
24 in our book. Are you with me, sir?

25 A Yes, sir.

1 Q This is notes of a conversation that
2 you had with Mr. Minuk on March 1, correct?

3 A Yes.

4 Q And you went through some of this with
5 Commission Counsel. What I'm interested in is,
6 about seven lines from the bottom in your notes,
7 and you've got the word "warrants" written there.
8 Do you see that?

9 A Yes.

10 Q Yes. What exactly were you discussing
11 about warrants with Mr. Minuk?

12 A Other than, I don't know specifically,
13 other than it's just something I wrote, you know,
14 where, what, who, how much, warrants, what could
15 ultimately evolve in this.

16 Q Let me try and help out, and it's only
17 a suggestion, feel free to disagree with me. The
18 tenor of this discussion with Mr. Minuk, as I get
19 it from your notes, is you're talking about the
20 drinking history?

21 A Yes.

22 Q Okay. And by this time, you know that
23 Mr. -- or Officer Harvey-Zenk possibly or probably
24 was at Branigan's the night before, because you
25 had been told that there was a bit of a gathering

1 at Branigan's the night before?

2 A Yes, sir.

3 Q And you, like everybody else in
4 Winnipeg, knows that Branigan's is a licensed
5 drinking establishment; correct?

6 A Yes.

7 Q Okay. Could it be that what you're
8 discussing is whether or not you should be getting
9 warrants to go to Branigan's and look for records?

10 A If it evolved to that point, yes.

11 Q Sure. And you are an experienced
12 investigator, then and now. If it had been
13 suggested to you, look, have one of your boys get
14 a warrant and let's get it served on Branigan's,
15 see what kind of records, if any, they have, would
16 you have any difficulty with that?

17 A Well, we'd have to be assessing the
18 information that we had and what was, what would
19 be available there first.

20 Q What would you have to assess?

21 A As I think it came out through the
22 course of the interviews, you know, how payment
23 was made, what would we be searching for?

24 Q How about the records of everything
25 that went on that evening, would you have any

1 difficulty doing that?

2 A Well, for the -- we don't know what
3 type of records they kept, for one.

4 Q I understand that. My question to you
5 simply is this, and you can answer it as you see
6 fit, but if you determined, on reasonable grounds,
7 that Officer Harvey-Zenk was drinking at
8 Branigan's the night before, along with possibly
9 other officers, would you have any difficulty, in
10 your mind, in going to a Justice of the Peace and
11 saying, there has been a fatality, we are
12 assisting, or we're conducting our own internal
13 investigation -- because this is still the morning
14 of March 1 -- but there's been a fatality, we're
15 conducting an investigation, we think this fellow
16 may -- was probably drinking at Branigan's the
17 night before, we'd like a warrant for all their
18 records for the night of February 24th and the
19 morning of February 25th. Do you have any
20 difficulty doing that?

21 A If that was a tact that was chosen to
22 investigate, then we'd assess that, and if that
23 was what we felt we had to do, then, yeah, we
24 would take that forth.

25 Q Sure. And you wouldn't anticipate any

1 difficulties from the Justice of the Peace. I
2 mean you can't read the Justice of the Peace's
3 mind, like I can't read Mr. Commissioner's mind,
4 but you wouldn't anticipate any difficulty?

5 A Depending on, again, the stipulations
6 of what you would be setting out in the warrant
7 and what information you had to base your
8 information on.

9 Q Well, just to narrow that down, the
10 information is that you reasonably believed that
11 Officer Harvey-Zenk was drinking there, and
12 possibly other officers, and you want all the
13 records for the night of the 24th of February into
14 the morning hours of the 25th?

15 A And if they -- it's just, and I'm not
16 debating the point, other than how specific they
17 would get on what a justice would allow us to
18 seek.

19 Q Okay. Let's move onto page 60 of your
20 notes, sir? And it's at page 2928 of the same
21 exhibit, Mr. Commissioner. Are you there, sir?

22 A Yes, sir.

23 Q Okay. We have -- the date looks to me
24 like March 2, 2005?

25 A Yes, sir.

1 Q That's a Wednesday, and what's the
2 first entry all about?

3 A At 8:25 hours, a call from Marty Minuk
4 regarding our investigation being front page news.
5 I have noted, I'll read it verbatim.

6 "Not impressed that some member
7 appears to be talking to the media."
8 And that is something that has been an issue with
9 our service in the past, where information is --

10 Q Let me stop you there, because we can
11 go on, but there's something there I want to ask
12 you about. You said, let me read it verbatim, and
13 then you read, "not impressed that some member
14 appears to be talking to the media." Is that
15 meant to be a quotation?

16 A Well, no, I'm just reading
17 specifically from my notes. That's the exact
18 sentence that I read out.

19 Q Okay. Well, who wasn't impressed?

20 A Marty Minuk, by the sound of it,
21 because the call from Marty Minuk regarding our
22 investigation being front page news, not impressed
23 that some member appears to be talking to the
24 media. That's the whole.

25 Q So your evidence today is it's

1 Mr. Minuk who wasn't impressed?

2 A Yes.

3 Q Yes. And he was somewhat irate, is
4 that --

5 A Yeah, concerned.

6 Q Concerned?

7 A Yeah.

8 Q He wasn't happy?

9 A Yes.

10 Q We can leave it at that, okay. And
11 then what did you discuss after that?

12 A I just make, discuss warnings that the
13 chief has put out in the past as, you know, being
14 the lone spokesman or spokesperson on media
15 issues.

16 Q All right. That's fine. We can move
17 on from there. Just one more point to cover,
18 Inspector.

19 I think earlier in your evidence, when
20 learned Commission Counsel asked you about the
21 mandate of the unit, you said, I tried to get a
22 good note, to conduct professional, thorough and
23 independent investigations?

24 A Impartial, I believe are the words.

25 Q Impartial?

1 A Yes.

2 Q Okay. I never was a good note-taker.
3 But you did use the word "thorough"?

4 A I believe that those were your words,
5 but I concurred.

6 Q Okay.

7 A Yes.

8 Q Okay. Now, I have never been an
9 investigator and I have never been a prosecutor,
10 I've done a fair bit of plaintiff's work, and some
11 of it is not much different. Thorough to me, and
12 you can disagree with me if you have a different
13 definition, thorough to me means following all the
14 leads, going down 20 roads, and if you find
15 something at the end of one, that's pretty good.
16 Would you agree with me?

17 A Yes.

18 Q Yes. So when you come across
19 something which may or may not be of -- may or may
20 not be of value, you follow it up, and if it
21 isn't, you shrug your shoulders, but if it is, you
22 say, hey, I got lucky this time?

23 A Sure, yeah.

24 Q Sure. You have been investigating for
25 what, two decades?

1 A Yeah, more, yeah.

2 Q Okay. If I can just, okay -- if I
3 might just have a moment, Mr. Commissioner, I want
4 to get my documents in order. Maybe my learned
5 friend can help me. It's F-1.34 that I'm looking
6 for, Mr. Commissioner.

7 THE COMMISSIONER: F-1.34?

8 MR. ZAZELENCHUK: Yes. F-1.34,
9 Mr. Commissioner, it's not a document that has
10 previously been entered as an exhibit. I wonder
11 if that document can be shown to this witness,
12 please?

13 THE COMMISSIONER: Yes. That's the
14 Winnipeg Police Service supplementary report?

15 MR. ZAZELENCHUK: That's correct,
16 Mr. Commissioner.

17 BY MR. ZAZELENCHUK:

18 Q Now, you told us earlier -- I'll give
19 you a chance to read that document in a minute,
20 sir, I just want to set it up, if I might. You
21 told us earlier that Sergeant Girard and his
22 partner, Pearson, were assigned to investigate
23 this matter; correct?

24 A Correct.

25 Q And you also told us that Sergeant

1 Roxburgh -- did I pronounce that correctly?

2 A Yes.

3 Q And his partner, Sergeant Epp,
4 assisted by interviewing a few people; is that
5 correct?

6 A Yes.

7 Q Okay. Then presumably what they were
8 to do is pass that information on to Sergeant
9 Pearson or to Sergeant Girard, who was the lead
10 investigator?

11 A Yes.

12 Q Okay. You can take all the time to
13 read that report you want, sir, but I am concerned
14 with the last paragraph on page 1. And it says
15 the witness, and they are speaking about Constable
16 Daniel Mikawoz, at least that's how I pronounce
17 it:

18 "The witness indicates that he looked
19 at his bill the previous night to
20 confirm what time he left. He states
21 he still has the bill and the name of
22 the waitress is on the bill."

23 Do you see that?

24 A Yes, sir.

25 Q Well, I've gone through all the

1 disclosure, and I can't find anything where that
2 bill is produced in any way. And I've gone
3 through the interview, and we can go there if you
4 want, I've gone through the interview with Daniel
5 Mikawoz where he mentions the bill. And nobody
6 seems to ask him, well, go home and get it?

7 A Okay.

8 Q And to me, as a plaintiff's lawyer, if
9 I was putting a case together, I'd say that's not
10 being very thorough. Do you have a comment on
11 that, sir?

12 A No, I don't in regards to that.

13 Q Would you agree with me that that's
14 not being very thorough?

15 A It's another item that we could have
16 asked for.

17 Q Sure. Okay. The other thing, last
18 part of this is if we go to Exhibit 184 which,
19 Mr. Commissioner, is F-1.33.a, and that's the
20 report that Sergeant Girard wrote, and it's not
21 Exhibit 184, my apologies, it's Exhibit 137. It
22 was struck off as 184 and became 137 again?

23 THE CLERK: No, it's 184.

24 MR. ZAZELENCHUK: It is 184. I'm
25 doubly wrong, I apologize.

1 THE CLERK: Did you want to file
2 F-1.34?

3 MR. ZAZELENCHUK: Yes, could we
4 please?

5 THE CLERK: Exhibit 187.
6 (EXHIBIT 187: F-1.34, supplementary
7 report - Roxburgh)

8 THE COMMISSIONER: Have you found the
9 place, Mr. Zazelenchuk?

10 MR. ZAZELENCHUK: Yes, I believe so.

11 BY MR. ZAZELENCHUK:

12 Q If we could go to page 826, which is
13 page 18 of that report? And in that report, down
14 at the bottom, we've got statement synopsis of
15 Constable W. Toews?

16 A Yes, sir.

17 Q And as I read through that, and you
18 can take a moment to read it yourself, I don't see
19 anything there about any kind of receipt; correct?

20 A Okay, yes.

21 Q You'll agree with me on that, sir?

22 A Um-hum.

23 Q Okay. And this document hasn't been
24 entered in as an exhibit yet, Mr. Commissioner,
25 but it is F-2.35.p, for Peter.

1 THE COMMISSIONER: That's the
2 interview of Werner Toews?

3 MR. ZAZELENCHUK: Correct,
4 Mr. Commissioner, if that document could be given
5 to this witness?

6 BY MR. ZAZELENCHUK:

7 Q Now, that's an interview that was
8 conducted by Sergeant Girard on March 15th of
9 2005, correct?

10 A Correct.

11 Q And I'm going to ask you to turn to
12 page 1108? There doesn't seem to be a page number
13 at the top of the page. Are yours numbered at the
14 bottom, sir?

15 A Yes.

16 Q Yes?

17 A Yes.

18 Q And at page 1108, starting at line 14
19 Constable Toews says:

20 "I stayed there..."

21 and take my word for it, he's talking about
22 Branigan's,

23 "I stayed there for approximately one
24 hour. I have a receipt here that
25 shows what time I left. And that was

1 basically it."

2 And again, try as I may, I have never found a copy
3 of that receipt. And that leads me to conclude
4 that perhaps a copy wasn't made by the sergeant.
5 And if a copy wasn't made by the sergeant, sir,
6 you would agree with me that's not being very
7 thorough?

8 A Again, it's something that if he's got
9 it there, yeah, we could have used it.

10 Q Yeah. Could have possibly been
11 important, couldn't it?

12 A For -- well, in particular for Werner
13 Toews --

14 Q Yeah?

15 A -- in determining what time he left,
16 yes.

17 Q Or maybe the receipt would have been
18 identified in some way by a number or something
19 else. Because, you see, we heard evidence earlier
20 from the waitress that although customers' names
21 aren't on receipts, they are assigned numbers?

22 A Okay.

23 MR. ZAZELENCHUK: Okay. Well, thank
24 you, sir, those are my questions.

25 THE WITNESS: Thank you.

1 THE CLERK: Did you want to file that
2 document as an exhibit, Mr. Zazelenchuk?

3 MR. ZAZELENCCHUK: My apologies. Yes,
4 Mr. Commissioner, perhaps it should become an
5 exhibit.

6 THE COMMISSIONER: Yes.

7 THE CLERK: Exhibit 188.

8 (EXHIBIT 188: F-2.35.p, Interview of
9 Cst. Werner Toews, March 15, 2005)

10 THE COMMISSIONER: 188. No questions,
11 Mr. McDonald?

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

14 MR. LABOSSIÈRE: Mr. Commissioner?

15 THE COMMISSIONER: You are at the end
16 now, aren't you?

17 MR. LABOSSIÈRE: I think Ms. Hanlin is
18 going to be at the end now. I expect I'll be
19 longer than 10 minutes. I am comfortable
20 starting, but if others would rather -- if they
21 think they will be less than 10, I know you want
22 to break at 12:30, I am in your hands.

23 THE COMMISSIONER: Come right up, come
24 to the podium and ask your questions. Let's get
25 on with it.

1 BY MR. LABOSSIERE:

2 Q Thank you Mr. Commissioner.

3 Inspector Poole, I noticed throughout
4 your testimony today, you have relied fairly
5 significantly on the notes that you took at the
6 time of this incident; is that a fair assessment?

7 A Yes, sir.

8 Q And it's fair to say, sir, that
9 without those notes, you'd have a very difficult
10 time, would you not, recalling conversations that
11 occurred, and demeanour of individuals, the kind
12 of questions you were being asked by Commission
13 Counsel?

14 A As time has passed, yes.

15 Q In fact, without those notes, and if
16 you were being asked today about conversations you
17 had with individuals, telephone calls, or what the
18 demeanour of individuals were when you met with
19 them, you'd most likely have to respond, I don't
20 recall, if you didn't have your notes; is that
21 fair?

22 A Well, a number of different responses
23 could be used, but, yes.

24 Q Right.

25 THE COMMISSIONER: Excuse me, do you

1 have any notes of demeanour of the witnesses? You
2 don't write down their demeanour, do you? Just
3 what they say?

4 THE WITNESS: No, but I have made
5 comments in my notes about certain --

6 MR. LABOSSIERE: People being upset.

7 THE WITNESS: People being upset or
8 something like that, yes.

9 THE COMMISSIONER: Yes. Go ahead.

10 BY MR. LABOSSIERE:

11 Q My learned friend, Commission Counsel,
12 asked you a number of questions surrounding public
13 perception, if you will, of investigations
14 conducted by the police, of the police. Do you
15 understand --

16 A Yes.

17 Q -- essentially the area that I'm
18 referring to?

19 A Yes.

20 Q And we know that currently in
21 Winnipeg, or in Manitoba, generally speaking, when
22 there are investigations of police, and Winnipeg
23 Police Service, those investigations of a criminal
24 nature are conducted by the Winnipeg Police
25 Service itself; correct?

1 A That's correct.

2 Q And you were asked a number of
3 questions, and you have acknowledged that at times
4 there certainly are some public perception issues
5 that face the service. More particularly, some
6 people are concerned with that perception;
7 correct?

8 A That's correct, whether they are
9 complainants that come to us, some have
10 reservations, but we do our best to allay their
11 concerns.

12 Q Some people believe that the police in
13 Winnipeg shouldn't be investigating their own
14 because there's a perception of bias, or lack of
15 thoroughness, or things along that line, is that
16 fair, of the concerns that you've heard?

17 A Anecdotally, yeah.

18 Q And are you aware, sir, generally
19 across the country there are different processes,
20 some provinces do the same as you do, others have
21 independent bodies that are set up separate and
22 apart from the Police Service in question to
23 conduct investigations?

24 A As -- yes.

25 Q For example, my learned friend made

1 mention of in Ontario, I believe it's called the
2 Special Investigations Unit. You are aware of
3 that, generally speaking?

4 A And their mandate to some degree is
5 for, certainly, I believe into custody deaths and
6 serious injury, and they have a definition that
7 coincides with that.

8 Q And you would agree, sir, that whoever
9 is doing an investigation of a police officer who
10 is alleged to have committed a serious offence,
11 particularly one where there is a fatality,
12 there's always public perception concerns. Is
13 that fair?

14 A I don't know. I don't like to
15 speculate on those things. It could be.

16 Q Well, are you aware of any
17 investigations of a police officer, who is alleged
18 to have committed a very serious offence involving
19 a fatality, where there were some individuals who
20 raised the concern that perhaps the investigation
21 wasn't done as thorough as possible, as carefully
22 as possible, as unbiased as possible?

23 A I can't speak to every investigation
24 that that's, you know, the perception out there.

25 Q But routinely it is?

1 A On occasion it is, yes.

2 Q And I'm not asking you to agree that
3 it's accurate, but that is what comes out from
4 certain corners, fair?

5 A Yes.

6 Q And as a result of that, sir, you
7 would agree that certainly in Winnipeg, in the
8 Professional Standards Unit, you take great pains
9 to ensure that the public perception is dealt
10 with; is that fair?

11 A I certainly -- in my time there that I
12 can speak to, as I illustrated before, those four
13 groups, four stakeholder groups were forefront in
14 my mind all the time.

15 Q Now, we have heard that you have
16 experience beyond just Professional Standards
17 Unit. You have conducted and been involved in
18 investigations outside of Professional Standards
19 Unit?

20 A Yes, sir.

21 Q So, for example, you will have
22 experience where Professional Standards Unit has
23 investigated an officer for an allegation of
24 assault; correct?

25 A Yes.

1 Q And you will also have experience
2 where, as a police officer, you are investigating
3 a regular citizen for assault; correct?

4 A Yes.

5 Q And although on both occasions, I
6 suspect you'd agree with me, you'd do your best to
7 be as thorough as possible. When you're dealing
8 with the police officer, I suggest, you would
9 agree with me, that PSU goes above and beyond and
10 makes sure that no one could suggest that you've
11 left any stone unturned; is that fair?

12 A Well, that's what we strive for, and I
13 think that's what anybody would strive for in an
14 investigation.

15 Q And unlike a regular investigation of
16 a citizen of, let's say assault, in PSU you often
17 are able to use investigative tools that aren't
18 regularly available, such as DNA testing, sending
19 things to the RCMP crime lab, even down to FBI,
20 isn't that fair? With police, you do that,
21 correct?

22 A If it's involved in the investigation
23 then we would look at those things, yes, but not
24 just because it's a police officer. If those are
25 the cases, you know, if the evidence dictates that

1 we need to do certain tests on materials that are,
2 you know, inherent in the investigation, then
3 we'll do that, whether it's citizen or police
4 officer.

5 Q And I guess my point is that your
6 experience in both Professional Standards Unit,
7 investigating police officers, and in the regular
8 stream, if I can call it that --

9 A Um-hum.

10 Q -- investigating citizens for criminal
11 offences, I'm suggesting that you would agree with
12 me, sir, that those unique tools, those special
13 tools which have costs associated with them, are
14 generally used more often in PSU than they are in
15 a regular investigation; correct?

16 A I wouldn't necessarily concur with
17 that, that we have, you know, that we go and treat
18 policemen more aggressively in investigation is
19 what I'm sort of getting from your comment.

20 Q I'm not suggesting aggressively. Let
21 me take a step back. I am guessing that if you
22 take a regular investigation, not involving a
23 police officer, you, as a police officer yourself,
24 would like to have every available tool at your
25 disposal to investigate an offence; correct?

1 A Correct.

2 Q You would like to be able to, on day
3 one, as soon as the criminal offence is reported
4 to you, immediately go out and interview
5 witnesses, and all witnesses; correct?

6 A Well, as time dictates, yeah.

7 Q And you'd like to do it as quick as
8 possible?

9 A Yeah.

10 Q And you'd like to use any tool that
11 might be available to you. If you had the ability
12 to get DNA testing done immediately at the
13 Winnipeg Police Service Police Station, and there
14 was no cost issues, and there was no manpower
15 issues, and there was no availability of access,
16 you'd do it immediately; correct?

17 A Depending on the investigation, what's
18 required.

19 Q Assuming it's relevant?

20 A Yeah. I mean, you like to do
21 things -- I mean, you can't do everything at once.

22 Q Right.

23 A And things take time, investigations
24 take time.

25 THE COMMISSIONER: Excuse me, you're

1 saying you treat all investigations, whether
2 police or outside the force --

3 THE WITNESS: Equally.

4 THE COMMISSIONER: -- the same?

5 THE WITNESS: Yeah.

6 THE COMMISSIONER: Do the best you
7 can?

8 THE WITNESS: Right.

9 THE COMMISSIONER: Let's move on.

10 BY MR. LABOSSIERE:

11 Q Now, my learned friend did ask you
12 some questions as to the differences of
13 investigations between police and citizens. And
14 I'm talking about the process now,
15 Mr. Commissioner, not necessarily the steps that
16 you take. And one of the differences that my
17 learned friend pointed out to you was that when
18 you investigate police, you have a preamble where
19 you give some cautions to police officers who are
20 witnesses; correct?

21 A Yes. And that preamble is read in, or
22 a preamble is also read in for civilian witnesses.

23 Q And the reason you do that, sir, is
24 because the information that you're gathering,
25 whether it's a criminal investigation or a

1 regulatory investigation, may have two purposes
2 for a police officer; isn't that right? It may be
3 used in the furtherance of the criminal
4 investigation, but it also may be used for
5 disciplinary purposes; isn't that fair?

6 A The criminal investigation, if it
7 could be viewed as twofold, depending, I mean, you
8 have to substantiate the criminal investigation.
9 If it isn't substantiated but there's enough
10 evidence to proceed on a regulatory charge, then
11 that may be the case. But the criminal matter
12 always takes precedence, and you investigate that
13 through to fruition and then assess it at that
14 point.

15 Q And my point is, the difference, sir,
16 is, for example, if you're investigating an
17 employee of Safeway for an alleged assault, you as
18 the Police Service wouldn't be furnishing that
19 employee's employer, Safeway, with a copy of your
20 investigative file; correct?

21 A No.

22 Q But when you're investigating police,
23 you happen to also be the employer, so the
24 employer also gets a copy of that file, correct?

25 A We house the files in the Professional

1 Standards Unit, yes.

2 Q And it may, if the circumstances are
3 appropriate, it may be used internally to
4 discipline a member; isn't that fair?

5 A It could be, yes.

6 Q And that's the prime reason that there
7 are cautions given to police officers, who happen
8 to be employees, who come in and are interviewed
9 by your unit; correct?

10 A Correct, to allow them the opportunity
11 to speak with the WPA for advice.

12 MR. LABOSSIERE: Okay. Now,
13 Mr. Commissioner, I'm just noting the time is
14 12:30, I'm comfortable in proceeding, but I did
15 note you said you wanted to stop at 12:30 today?

16 THE COMMISSIONER: You've already
17 preempted my direction. Keep going. Let's get it
18 done.

19 BY MR. LABOSSIERE:

20 Q My learned friend also asked you
21 questions in connection with budget pressures,
22 that might not have been the words that he used,
23 but essentially he was suggesting that sometimes
24 you make decisions to delay interviews to ensure
25 that you aren't bringing officers off duty into

1 your office where they'd have to get paid;
2 correct?

3 A We don't specifically delay them. If
4 we needed to talk to somebody on a day off, we'd
5 do it if, you know, the circumstance dictated.
6 We'd typically schedule interviews around the work
7 schedule that members are involved with at the
8 time, and that includes days, evenings and night
9 tours. Typically, we don't interview on night
10 shift. In this instance, we did.

11 Q And you'd agree that that's no
12 different than meetings with Crowns on regular
13 police investigations, you'd try and schedule
14 those when you're working?

15 A Yes.

16 Q And sometimes that involves not
17 meeting right away, for example, or not conducting
18 interviews because people are on holidays?

19 A It could, yes.

20 Q And you mentioned it, and I want to
21 raise it again, and we talked of, and my learned
22 friend asked you about what he was referring to as
23 the 24 hour notice. You try and give some notice
24 to employees that they are going to be interviewed
25 and they should have an opportunity to speak to

1 WPA or anyone else.

2 If you had any concerns with
3 contamination of evidence, or a negative impact on
4 your investigation because of that delay, you
5 would go interview them as soon as possible, and
6 you would disregard that if it was a concern,
7 would you not?

8 A Well, it's not a disregard, it's -- I
9 don't know if I'd use that word.

10 Q I'm not trying to be critical, I'm
11 just suggesting, if you felt that there was any
12 risk to your investigation in waiting a day, a
13 week or two weeks, you would do it sooner,
14 correct?

15 A As I said, we did do it on, you know,
16 very infrequently, and it did take place once that
17 it sticks in my mind that we had to speak with
18 somebody before they went home that day. And
19 there were a number of processes and phone calls
20 that took place on it.

21 Q Now, my learned friend also asked you
22 near the end of your examination, sir, about the
23 PSU protocol. And he attempted to draw a
24 distinction between regulatory investigations and
25 criminal investigations. And if I got his

1 suggestion -- I am not suggesting it's even his --
2 but he put to you that, would you say that the
3 protocol, and I assume he means the caution and
4 the preamble and so on, would you say that,
5 assuming you could do it for regulatory, that
6 perhaps on the criminal side you should deal with
7 it a little bit differently? And I assume what he
8 meant by that is maybe you shouldn't be giving
9 those cautions. And if I misunderstood that -- is
10 it fair to say it's not that cut and dried, it's
11 not always either a regulatory or a criminal?

12 A The cautions on the statement or on
13 notification on the statement? I'm not sure.

14 Q Well, let's say the caution on
15 initially the notification?

16 A Yeah. The notification, I mean --

17 Q They are the same, are they not?

18 A Yes, yes.

19 Q And the caution when you have the
20 person in, in the interview, are the same?

21 A Yes.

22 Q And my point was, sir, that it's very
23 difficult for Professional Standards Unit to
24 specifically, in every occasion, make a
25 determination as to whether it is solely

1 regulatory or solely criminal. Sometimes they can
2 do that, but not always. Isn't that fair?

3 A Most of the time you have the
4 assessment that it's one way. I mean, we look at
5 it as a criminal matter first, and then the regs
6 secondly.

7 Q But you have acknowledged that,
8 particularly with police officers, a criminal
9 allegation in many cases may well have employment
10 consequences; correct?

11 A Well, certainly for the subject
12 officer.

13 Q Right. Now, my learned friend spoke
14 to you a little bit about the suspension hearing;
15 do you recall that?

16 A Yes.

17 Q And I'm not sure we have spoken about
18 it before, and perhaps the Commissioner should be
19 aware, it's called a suspension hearing, but there
20 isn't evidence called and cross-examine and
21 witnesses or anything like that, is there?

22 A No. My understanding is that there's
23 representatives from the Winnipeg Police
24 Association and the executive of the Service, you
25 read in a brief, and then they deliberate and a

1 decision is made.

2 Q It's essentially a meeting where you,
3 when you were in Professional Standards Unit,
4 would come in and you would advise the Chief of
5 Police and his designate and the Winnipeg Police
6 Association what the nature of the charges are?

7 A I don't believe that the chief sits in
8 on the meeting.

9 Q And essentially, you are establishing
10 that there is a -- it's the fact of the charge
11 itself which is of prime concern?

12 A The details of it, and as has been
13 entered now, a brief.

14 Q But you're certainly not determining
15 at that hearing whether there's any merit to the
16 charges, it's just that there is a charge, it's
17 going to be dealt with, and in the circumstances
18 you need to decide whether any employment should
19 be altered in any way?

20 A And that's a decision at the executive
21 level, not one by me.

22 Q Absolutely. Now, you also gave some
23 evidence, sir, in connection with Sergeants
24 Humniski and Anderson and the approach that they
25 made initially to Inspector McCaskill, which

1 ultimately resulted in them coming into
2 Professional Standards Unit. And as I understand
3 it, sir, and I want to be clear, they approached
4 the Service?

5 A That's my understanding, yes, they
6 came into the executive offices with Inspector
7 McCaskill.

8 Q They didn't wait for PSU to send in a
9 notice that they wanted to be --

10 A No.

11 Q -- that they were going to be talked
12 to. And it was clear to you that they had
13 imparted that the entire shift wanted to come in
14 and tell their stories?

15 A That's what my notes indicate.

16 Q And although there was a delay
17 initially in the interviews, I think we heard
18 today it was initially going to be March 1st, this
19 then was a few days later, that wasn't at the
20 insistence of the members themselves?

21 A No.

22 Q That was a decision that PSU made at
23 the time?

24 A Yes.

25 Q Because you would agree with me, sir,

1 that the members all were very interested in
2 coming forward; correct?

3 A That was the indication.

4 Q And we've heard today that even some
5 came to the interviews with receipts and so on?

6 A That's the understanding, yes.

7 Q They certainly, to your knowledge,
8 weren't trying to hide anything as to their
9 involvement?

10 A I had no contact with any of them, so
11 it certainly didn't appear that way.

12 Q Your investigators certainly didn't
13 tell you that?

14 A No.

15 Q Now, my learned friend asked you
16 generally about these investigations that PSU
17 conducts, and that you conduct, and suggested to
18 you that you take the information that you get and
19 you build on that interview. And that may open up
20 new questions or new avenues of investigation,
21 correct?

22 A Yes.

23 Q Sometimes that might mean bringing
24 different people back a second time. Would you
25 agree with that?

1 A It could.

2 Q Now, in this case, at the outset of
3 the investigation, and we've seen all the
4 statements that were taken by PSU at the time, by
5 the officers. You would agree with me that it
6 appeared that the information that was being
7 provided to you as to the amount of drinking on
8 the night in question was fairly consistent.
9 Would you agree with that?

10 A How do you mean in the amount of
11 drinking that was going on?

12 THE COMMISSIONER: Isn't that for me
13 to determine from the evidence?

14 MR. LABOSSIERE: And what I want to
15 ask him is whether he may have taken, and whether
16 his unit may have taken a different approach if
17 certain things happened that I wanted to put to
18 him.

19 THE COMMISSIONER: Put it to him.

20 BY MR. LABOSSIERE:

21 Q So, for example, sir, and I'm not
22 asking for you to comment on whether everybody
23 said two or three or four, but there was certainly
24 no suggestion by the individuals that came forward
25 that were police officers, to PSU, that a number

1 of them were intoxicated; correct?

2 A Correct.

3 Q And when PSU interviewed the
4 individuals from Branigan's, there was nothing in
5 the statements provided by the Branigan's
6 witnesses that contradicted that at the time;
7 correct?

8 A That's correct.

9 Q And, for example, if after
10 interviewing all the police officers, Chelsea
11 O'Halloran came in and said, you know, I was their
12 server, and approximately 15 of them were very
13 drunk, and said things like certain officers had a
14 certain amount of alcohol which far exceeded what
15 they had divulged to you, I take it, sir, that
16 your investigators at the time may well have made
17 the decision to call the police officers back and
18 put those suggestions to them?

19 THE COMMISSIONER: You don't have to
20 put that question, I mean, it's pretty obvious.
21 You're repeating the same stuff. It's pretty
22 obvious that they would have done the best
23 investigation they could in the circumstance.
24 Let's move on.

25 There is no suggestion you didn't try

1 to do the best investigation you could?

2 THE WITNESS: No. And I concur, that
3 if we'd have had the evidence that was presented
4 at this hearing from Ms. O'Halloran that it would
5 have changed the tact.

6 MR. LABOSSIERE: Mr. Commissioner, I'm
7 glad you're saying that. The reason I'm asking
8 these questions is because certainly my perception
9 is that the suggestion is being made by others
10 that perhaps it wasn't as thorough an
11 investigation as possible.

12 THE COMMISSIONER: Mr. Paciocco.

13 MR. PACIOCCO: I will be questioning
14 Detective Sergeant Girard, who did the
15 investigation, and I will be pointing out areas of
16 conflict in the evidence that I detected, that to
17 the point where it should at least be put to him,
18 and I will be asking him questions that are
19 intended to determine whether the investigation
20 was as thorough as it should have been.

21 THE COMMISSIONER: Well, this officer
22 didn't conduct the investigation.

23 MR. PACIOCCO: Not that I understand.

24 THE COMMISSIONER: He only got the
25 information from Detective Girard. We will

1 adjourn now until 2:00 o'clock. Is that enough
2 time, counsel?

3 THE CLERK: All rise. This Commission
4 of Inquiry will take the luncheon recess.

5 (Proceedings recessed at 12:41 p.m.
6 and reconvened at 2:00 p.m.)

7 THE CLERK: All rise. This Commission
8 of Inquiry is now reopened.

9 MR. LABOSSIERE: Thank you,
10 Mr. Commissioner.

11 BY MR. LABOSSIERE:

12 Q Inspector Poole, my learned friend
13 Commission Counsel spoke to you about an entry in
14 your notes, and I don't need to take you to it
15 unless you would like to see it, but it related to
16 a reference to Sean Black and civil liability. Do
17 you recall that reference?

18 A Yes.

19 Q And my learned friend suggested that
20 perhaps you were concerned personally about Sean
21 Black's civil liability. And as I understand your
22 answer, sir, and just to make it crystal clear,
23 the reason you were calling Mr. Minuk was to
24 determine whether or not you ought to be
25 interviewing Sean Black as a suspect in a criminal

1 matter; is that right?

2 A That's correct, we wanted to ensure
3 his status.

4 Q And after speaking with Mr. Minuk, it
5 was determined that he would be a witness?

6 A Correct.

7 Q Now, my learned friend also asked you
8 a series of questions in connection with concerns
9 that you might have as an investigator, as to
10 collaboration of witness, if you will. And that
11 may not have been the word that he used, I'm not
12 trying to put words in his mouth, but essentially
13 highlighting concerns that any investigator has
14 that witnesses may talk to each other before the
15 police have an opportunity to talk to them. Do
16 you remember those questions?

17 A Yes.

18 Q And that exists whether it is an
19 investigation of police officers or an
20 investigation of regular citizens; isn't that
21 right?

22 A It can, yes.

23 Q And unless somehow you are able to,
24 immediately upon finding out about the incident,
25 taking all of the available witnesses, separating

1 them, and essentially quarantining them, you can
2 never guarantee there isn't collaboration, isn't
3 that right?

4 A I would agree with that.

5 Q And you would agree with me that it is
6 rarely realistic to do that in a situation where
7 there are a lot of witnesses; is that fair?

8 A The only time I've seen something like
9 that is at a major incident where a number of
10 witnesses are present, and they are brought into
11 the station for interview and they are separated.

12 Q And that's a situation where you are
13 able to access the witness immediately after the
14 incident occurs?

15 A Yes.

16 Q Correct?

17 A Yes.

18 Q Now, you would agree with me, sir,
19 there is no evidence or suggestion, and none was
20 made to you by your investigators that there was
21 collaboration between the witnesses that was of
22 concern to the investigation?

23 A No, there was nothing brought to my
24 attention in that regard.

25 Q And no suggestion was made to you by

1 your investigators -- and let me just ask, you
2 would be briefed, would you not, from time to time
3 about the status of the investigation?

4 A Yes.

5 Q And you would be briefed from time to
6 time as to how the interviews were going?

7 A Yes.

8 Q And any areas of concern would be
9 brought to your attention, you would hope?

10 A Yes.

11 Q And your investigators did not suggest
12 to you or bring to your attention that there was a
13 concern that police officers were being less than
14 forthright with their answers?

15 A No.

16 Q And no suggestions were being made to
17 you by your investigators that police officers
18 were somehow trying not to give all of the
19 information they have?

20 A No.

21 Q In fact, as far as you knew from your
22 investigators, police officers who were
23 interviewed participated voluntarily; correct?

24 A Participated voluntarily in what?

25 Q They weren't compelled to come in,

1 they actually initiated the approach?

2 A It was brought forth -- ultimately,
3 once we knew names, they would have been compelled
4 to come in and speak with us, but they did come
5 forth as a group with two representatives, yes.

6 Q And they didn't come with lawyers?

7 A I don't know if any of them came in
8 with counsel or not, that would be noted by the
9 investigator, I would assume.

10 Q You are not aware of any doing that?

11 A I can't remember.

12 Q And no suggestions were made to you
13 that there was some concern that evidence was
14 being coordinated somehow between the officers?

15 A No.

16 Q In fact, as you understood it, the
17 police officers came forward and gave everything
18 that they could?

19 A That's my understanding.

20 MR. LABOSSIÈRE: Thank you sir, those
21 are my questions.

22 THE WITNESS: Thank you.

23 BY MR. WEINSTEIN:

24 Q Sir, let me, as far as your notes, let
25 me have a wild guess that they were made at the

1 time or shortly thereafter?

2 A Certainly, they were.

3 Q And what does shortly thereafter mean?

4 I have never asked any police officer. What does

5 shortly thereafter mean to you? I'm not asking

6 you to talk about others, but what does shortly

7 thereafter mean? I'm just curious?

8 A Well, in here, I mean, I made notes,

9 and then if I went back to the office, if I didn't

10 have these particular things, I would have scribed

11 a number of points down on return to the office.

12 In my mind, that would have been shortly

13 thereafter.

14 THE COMMISSIONER: I'm also concerned

15 with shortly thereafter, because one of your

16 officers testified that if you don't make them

17 shortly thereafter, and I think he said shortly

18 thereafter meant within a day -- because officers

19 don't make notes when they go home at night for

20 some reason -- then they never make notes. If

21 they don't make it shortly thereafter, they never

22 make notes after that, because the courts don't

23 allow them to refer to the notes unless they were

24 made shortly thereafter. Now, Mr. Weinstein was

25 kind enough to show me how it is done in Manitoba,

1 but is that your understanding? Is that how
2 officers are trained, that unless they make them
3 within a day or within the next day, they never
4 make them?

5 THE WITNESS: That wouldn't be my
6 understanding, no.

7 THE COMMISSIONER: Good, okay.

8 MR. WEINSTEIN: Thank you.

9 BY MR. WEINSTEIN:

10 Q Now, you had some contact with Chief
11 Bakema, correct?

12 A Some contact, yes.

13 Q And one of the contacts, and this is
14 early on when you knew that two police officers
15 wanted to come in to PSU, you contacted Chief
16 Bakema, talked about is it okay to liaise with
17 Marty Minuk, correct? Do you recall that, sir?

18 A Correct.

19 Q And also you discussed PSU
20 interviewing these two. You recall that?

21 A Yes.

22 Q And according to your notes, he had no
23 problem with you liaison -- being the liaison with
24 Marty Minuk. And from your notes I believe it
25 reads he was grateful for your assistance in

1 interviewing these two; correct?

2 A Yes, sir.

3 Q In other words, it is not as though he
4 expressed a lack of concern about investigating
5 that aspect of this incident; correct?

6 A No, not at that point in time, no.

7 Q Yeah. At no time did he appear
8 disinterested in him, or his department, or your
9 department doing that part of the investigation;
10 correct?

11 A The follow-up on --

12 Q Yeah, the drinking?

13 A Not that I'm aware of.

14 Q Well, you talked to him.

15 A Other than -- yeah, and I'm just
16 trying to think, other than it being a resource
17 issue.

18 Q Yeah. But, in any event, he at no
19 time tried to dissuade you or your PSU from doing
20 that, nothing like that?

21 A No.

22 Q He was -- he was more than happy that
23 you people should do that part of the
24 investigation; correct?

25 A Yes.

1 Q And part of the problem -- or not
2 problem, part of the reason, perhaps a big part of
3 the reason was East St. Paul did not have the
4 resources. And you knew that, correct?

5 A Correct. And there were obviously a
6 lot of other conversations between other people at
7 a higher level that lead to the ultimate decisions
8 being made --

9 Q Yeah.

10 A -- and direction to us.

11 Q This was even discussed at a higher
12 level, that East St. Paul probably doesn't have
13 the adequate resources to interview these people,
14 correct?

15 A Correct.

16 Q So it wasn't just your opinion, it was
17 the higher-up's in your department, correct?

18 A Well, I don't know if we implied that,
19 or if it was just general discussion and an
20 agreement made at that point.

21 Q But certainly there was discussion,
22 higher up than you in your department, that East
23 St. Paul did not have enough resources to do that,
24 correct?

25 A I can't speak to the conversations

1 between my executive and Chief Bakema. I'm not
2 sure what exactly was said, that's all.

3 Q But certainly there was no reluctance
4 from the higher-ups to have PSU, as opposed to
5 East St. Paul, do the investigation; is that fair?

6 A That's fair.

7 Q Okay. And in fact, shortly
8 thereafter, Chief Bakema, from your notes, I
9 believe this was related to Doug Webster, asked
10 you people formally to do the investigation;
11 correct?

12 A That portion of it, yes.

13 Q That portion, I'm not talking about
14 any other portion, and that's what we are talking
15 about today, that portion of the investigation;
16 correct?

17 A Yes.

18 Q And he was never reluctant or
19 unconcerned about that part of the investigation;
20 correct?

21 A Not as far as I'm aware.

22 Q Why I ask you this, because I'm not
23 sure why, but my learned friend put to you, and
24 this is found at volume Q-1, Mr. Commissioner, tab
25 Q-1.89.b.9. That's that morning briefing that you

1 weren't at.

2 A Okay.

3 Q With Doug Webster, I believe that was
4 his notes, and that's found at 2988,
5 Mr. Commissioner, in volume Q-1. You were not at
6 the briefing, as you told Commission Counsel. And
7 he put to you, and I stand corrected, I'm not sure
8 it was put to Mr. Bakema, he put to you, this is
9 Webster writing about what Corrine Scott might
10 have said:

11 "Conversation with Harry Bakema
12 yesterday, did not seem concerned
13 about establishing driving history..."

14 Okay. I will finish,

15 "...as evidence to drive impaired
16 charge."

17 Correct? That was not your impression from your
18 dealings with Chief Bakema, was it?

19 A That's not what -- that's not what I
20 got from any conversation in particular.

21 Q Thank you. And as a matter of fact,
22 and I believe this was shown and is part of what
23 you've already indicated, but at volume Q-2, tab
24 Q-2.89.b.36, this is to you from Webster, a memo,
25 interoffice memorandum dated -- is there a date --

1 March 2nd. And just reading the middle paragraph:
2 "At that time we discussed the
3 importance of evidence to establish
4 the drinking history of this member
5 leading up to the incident. Chief
6 Bakema indicated that his resources to
7 pursue this aspect of the
8 investigation were limited and
9 requested WPS assistance."

10 Okay. Now, you made Marty Minuk aware early on
11 that PSU was going to conduct this part of the
12 investigation, correct?

13 A Yes.

14 Q You were doing it to assist East St.
15 Paul's investigation; correct?

16 A Yes.

17 Q Okay. So we are not just talking
18 about an investigation about regs or breach of
19 regs. Bakema is asking you people to conduct that
20 part of the investigation; correct?

21 A Yes.

22 Q And as far as lack of resources, we've
23 heard evidence that in 2005, PSU had more members
24 than all of the East St. Paul Police Department.
25 Would you have known that?

1 A I'm not aware of what strength they
2 have.

3 Q All right. So you had some contact
4 with Mr. Minuk, and we are talking, he is now the
5 special prosecutor, correct? He is the one that's
6 going to conduct the prosecution of this case.
7 Okay?

8 A Yes.

9 Q And at no time did he express to you
10 any hesitation about your unit, PSU, doing that
11 part of the investigation; and that you are clear
12 of?

13 A Yes.

14 Q Okay. Now, my learned friend asked
15 you and you were shown or referred to exhibit 183,
16 found in volume Q-2.89.b, I think page 20. That
17 was that suspension hearing memo or report?

18 A Yes, sir.

19 Q You have that in front of you?

20 A I do.

21 Q And my learned friend kept saying you
22 didn't have the paramedics' report, appear to have
23 the paramedics' report at this time, correct? You
24 remember that line of questioning?

25 A Yes.

1 Q And we know from the evidence we've
2 heard, at most the paramedics could tell us is the
3 smell of liquor. You weren't here, but I'm
4 telling you what we've heard. I want you to take
5 a look on the front page, tell the Commissioner,
6 or for the record, read out what symptoms of
7 impairment are written down there? I believe
8 there is four.

9 A On page --

10 Q Page 2?

11 A It says:

12 "On arrival at the station, a second
13 officer also noted the odour of liquor
14 on Constable Harvey-Zenk's breath.
15 The following signs of impairment were
16 noticed by this officer; strong odour
17 of liquor on his breath; unsteady on
18 feet; glassy, bloodshot eyes."

19 Q At the time of the suspension hearing,
20 whoever is conducting that suspension hearing
21 knows there is an odour of liquor on Mr. Zenk's
22 breath; correct?

23 A Yes.

24 Q Now, you and I have had several
25 dealings in the past, correct --

1 A Yes, sir.

2 Q -- dealing with police officers. Am I
3 correct, if my memory serves me that on occasion
4 the PSU reports on a police officer, on the
5 investigation of a police officer, have been sent
6 out of province to another police department to
7 review your investigation. Am I correct in my
8 memory?

9 A There were I believe the Manitoba
10 Avenue incident, and I'm trying to think of the
11 second one, but it is not coming to my mind.

12 Q All right. There is at least two that
13 have gone out in the last little while; correct?

14 A That would have been early 2000s.

15 Q Okay. Are you not aware that the
16 Dumas matter, the shooting that we just had an
17 inquest on, were you aware that that was also sent
18 out of province?

19 A I don't know about sent out of
20 province or not, I know that investigations of
21 that type, I believe, go to the RCMP for review.

22 Q All right. RCMP then. And my
23 recollection is when those reports came back,
24 having been reviewed, basically the opinion was
25 that the investigation was thorough by your

1 department; correct?

2 A On the Professional Standards Unit
3 ones I can speak to.

4 Q Right, and that's all I'm asking you,
5 on the ones that you investigated, police
6 officers, on occasion they have been reviewed by
7 the RCMP here, or out of province, and it has come
8 back and you've done "a good job"?

9 A Yes, sir.

10 Q Now, for the benefit of the
11 Commissioner, who unfortunately is not from
12 Manitoba, most of the policing in Manitoba is done
13 by the RCMP; correct?

14 A Yes, like rural policing, yes.

15 Q Portage la Prairie, all of the rural
16 communities other than Brandon, as I recall, East
17 St. Paul, are done by the RCMP?

18 A I believe there is Winkler and that
19 region down there, a number of -- Altona have
20 their own police services.

21 Q Okay. But the larger centres, say
22 Portage la Prairie, Thompson, The Pas, that's all
23 RCMP?

24 A Yes.

25 Q Plus a majority of Manitoba

1 communities, correct?

2 A Yes.

3 Q And they investigate their own,
4 correct?

5 A The RCMP do, yes.

6 Q Okay. You have never been asked -- I
7 think you have been asked this -- you have never
8 been, or PSU, asked to investigate a RCMP officer
9 in Manitoba?

10 A Not in my time in the unit, not that I
11 recall, no.

12 Q And that was what, six, seven years,
13 sir?

14 A Seven years.

15 MR. WEINSTEIN: If I may just have a
16 moment, Mr. Commissioner?

17 THE COMMISSIONER: Yes.

18 MR. WEINSTEIN: I believe those are my
19 questions, Mr. Commissioner. Thank you.

20 THE COMMISSIONER: Thank you.

21 MS. HANLIN: Mr. Commissioner.

22 BY MS. HANLIN:

23 Q Inspector Poole, the regulations of
24 the Winnipeg Police service apply to members of
25 the service, is that correct?

1 A That's correct.

2 Q It applies to their conduct and their
3 duties?

4 A Yes.

5 Q And under the regulations, member
6 means a peace officer, is that correct?

7 A Yes. I just had to think about
8 civilian members for a minute, but, yes.

9 Q And the responsibilities and
10 obligations under the regulations apply to peace
11 officers, whether they are on duty or off duty; is
12 that correct?

13 A Yes.

14 Q And these responsibilities and
15 obligations under the regulations don't end when
16 the work day is over?

17 A No.

18 Q And under the regulations, any member
19 identified as a witness in the investigation of an
20 unlawful act, and that would include a criminal
21 act, shall answer questions asked of them by
22 investigating officers; is that correct?

23 A Yes.

24 Q Investigating officers would include
25 Professional Standards Unit?

1 A Yes.

2 Q Failure to do so, to honestly answer
3 these questions, can result in suspension or other
4 disciplinary action; is that correct?

5 A Yes.

6 Q So the obligation to answer questions,
7 and the disciplinary consequences that can arise,
8 apply whether the officer is on duty or off duty;
9 is that correct?

10 A Can you say again?

11 Q The obligation to answer questions to
12 Professional Standards Unit, and the disciplinary
13 consequences that could apply if they don't, that
14 would apply whether the officer is on duty or off
15 duty?

16 A When whatever incident occurred that
17 took place, yes.

18 Q So it is the status of a peace officer
19 that's important, not whether one is on duty or
20 off duty; is that correct?

21 A Yes.

22 Q So this would be a reason for members
23 to contact their association for advice, because
24 there are repercussions, and it is associated with
25 their peace officer status, so they might want

1 some advice about that?

2 A Are you saying as witnesses or as --
3 as a respondent officer?

4 Q As witnesses?

5 A Well, I mean, as a witness, you would
6 think that you are a witness, but it is -- then
7 there may not be any repercussions. But I suppose
8 as the investigation evolved, there may be
9 something that could put someone in jeopardy say.

10 Q But if they didn't respond
11 appropriately as witnesses, there could be
12 repercussions?

13 A That's correct, yes.

14 Q And civilian witnesses can refuse to
15 be interviewed by the police, and that would be
16 without any consequence to them, obviously?

17 A As in any investigation, yes.

18 Q And a civilian witness can talk to
19 whoever they want before an interview, and an
20 officer would not be able to lawfully prevent
21 that; is that correct?

22 A Yeah, yes.

23 Q And if Winnipeg Police Service members
24 were not told of the opportunity to contact the
25 association before interviews, they could do so

1 anyway, they could contact the WPA anyway?

2 A What they do before they come to see
3 us, or before they become aware of the
4 investigation, it is on them and it is up to them.

5 Q If I can just turn to the
6 investigation; you weren't actually involved in
7 the investigation, but you had an overseeing role?

8 A Yes.

9 Q Now, any receipts that would have been
10 held by Harvey-Zenk relative to his alcohol
11 consumption -- following the accident, was
12 Harvey-Zenk ever in the custody of Professional
13 Standards Unit?

14 A No.

15 Q It would be reasonable to think that
16 if he had a receipt from Branigan's, it would be
17 with him?

18 A That would be a reasonable assumption,
19 yes.

20 Q It would be in his vehicle possibly,
21 or his pockets, or his wallet, or something of
22 that nature?

23 A Could be.

24 Q And you obviously never had the
25 opportunity, after he was arrested, for you or any

1 of the PSU officers to search him or his vehicle?

2 A No.

3 Q The civilian interviews took place on
4 March the 11th. What was the purpose of those
5 interviews?

6 A Just further input as to what had
7 taken place, what had taken place that night. The
8 civilian interviews would have been the staff at
9 the restaurant; right?

10 Q Right?

11 A Correct.

12 Q And if they had given conflicting
13 versions, you testified that you would have -- the
14 Professional Standards Unit would have looked
15 further into what the members were saying?

16 A Certainly, the opportunity is there,
17 depending on conflicting information, to have
18 people back in for another interview.

19 Q Would one of the purposes of
20 interviewing the Branigan's staff to be to look
21 for conflicting versions, whether or not there
22 would be something different?

23 A Not that I'm aware of, it would be
24 just for again, the truth.

25 Q In your notes, exhibit 137, page 64 of

1 your notes, page 2931 of the Q-1, you have a
2 notation that you contacted Marty Minuk?

3 A Um-hum.

4 Q And updated him on the progress thus
5 far. It says:

6 "Interviews of the past week,
7 Branigan's aspect starts today."

8 A Yes.

9 Q Was there any complaint or comment
10 from Mr. Minuk that Professional Standards Unit
11 shouldn't be doing the Branigan's interviews?

12 A No, not that I'm aware of.

13 Q You would have noted it if you had
14 heard that?

15 A I believe so.

16 Q And if you can turn to page 68,
17 please? That would be 2933 -- 2933 of Q-2, or
18 Q-1, sorry. You have a notation on March the 9th
19 that you made a call to Chief Bakema at East St.
20 Paul?

21 A Yes.

22 Q You briefed him on the interviews thus
23 far, along with what else is taking place, you
24 have a comma, "Branigan's"?

25 A Yes.

1 Q So you would have briefed him on the
2 Branigan's interviews that were yet to take place?

3 A Yes, the aspect that we are looking at
4 a couple of different people from that venue.

5 Q Again, did you have any complaint from
6 Chief Bakema that Professional Standards Unit
7 shouldn't be doing the Branigan's interviews?

8 A Not that I'm aware of, no.

9 Q And you would have noted that?

10 A I believe so.

11 Q Now, in your role as acting inspector,
12 you would have reviewed Sergeant Girard's
13 supplementary report, is that correct?

14 A That's actually the Staff Sergeant's
15 role, but it was sort of dual at the time. And
16 our inspector may have, in fact, been back by the
17 time this report was due to be signed off.

18 Q Okay. Did you read Girard's -- did
19 you read his supplementary report?

20 A I signed it off, yes.

21 Q And I won't go through them, but there
22 are several notations in there where Harvey-Zenk
23 is seen with a glass in his hand, or a beer in
24 front of him, or some indication that he had some
25 alcohol consumption at Branigan's?

1 A Yes.

2 Q Would you agree with that? And then
3 in Officer Roxburgh's report, and that's at
4 exhibit 187, you would have signed off on that as
5 well?

6 A Yes.

7 Q And you would have read it?

8 A Yes.

9 Q And in that report, at page 1 of your
10 report, I don't know if you have that, exhibit
11 187?

12 A Yes.

13 Q Q-2.89.b.18, there is a notation that
14 Mikawoz believes that Harvey-Zenk was drinking
15 beer?

16 A Yes.

17 Q On page 3 there is a notation that
18 Williams sat at the same table as Harvey-Zenk, and
19 indicated that Harvey-Zenk was consuming beer.
20 Page 4, a notation that Nechwediuk said
21 Harvey-Zenk had a beer in front of him, and also
22 said that Harvey-Zenk was definitely not
23 intoxicated. So you were getting information that
24 Harvey-Zenk is drinking. It is not as though
25 people were saying he wasn't, is that correct?

1 A By the looks of the statements, yes.

2 Q And that's consistent with what the
3 Branigan's staff, Chelsea O'Halloran, had to say?

4 A At the time, yes.

5 Q As a general approach when
6 interviewing witnesses, when you are obtaining a
7 statement from a witness, whether it is a civilian
8 witness or police witness, is there a fairly
9 consistent approach?

10 A In Professional Standards Unit
11 investigations or across the board?

12 Q Across the board or -- well, in
13 Professional Standards Unit investigations?

14 A Well, Professional Standards Unit
15 investigations, our process is to audio tape all
16 interviews as well. There is a preamble that's
17 read in, as I mentioned before. So audio taping
18 our statements would be one difference from the
19 general side of investigations.

20 Q But would you, in terms of whether or
21 not to take an aggressive approach to a witness,
22 or a skeptical approach to a witness, would that
23 vary depending on whether or not it is a civilian
24 witness or a police witness?

25 A No.

1 Q It would depend on what the witness is
2 telling you?

3 A We would hope, with a witness, that
4 aggressiveness isn't going to get you anywhere in
5 a statement. You, again, are asking them to tell
6 us their story at that point in time.

7 Q And you would listen to that story
8 with a critical ear; is that correct?

9 A Yeah, yeah.

10 Q With other evidence that you have
11 heard in mind?

12 A I would, yes.

13 Q When Professional Standards Unit
14 investigators are working within Professional
15 Standards Unit, they are not working with other
16 Winnipeg Police Service Officers?

17 A Not, as I say, unless it is -- we had
18 a TA program, temporary assignment of sergeants
19 into the unit. Other than that, no, unless there
20 is something in particular going on where other
21 members had to be in our offices.

22 Q I'm just checking my notes,
23 Mr. Commissioner.

24 In terms of investigations, is there a
25 difference between whether or not it is a

1 regulatory investigation or a criminal
2 investigation, is there a different approach
3 that's taken?

4 A Only in the dealings with the
5 respondent or suspect officer.

6 Q Okay. But in terms of gathering
7 evidence?

8 A No.

9 Q It is the evidence that determines
10 whether it is a regulatory offence or a criminal
11 offence?

12 A Well, not so much the evidence, but
13 the allegation.

14 Q And whether or not the evidence --

15 A And whether the evidence supports it.

16 Q The memorandum at exhibit 186 of
17 volume Q-2, that was the memorandum from Deputy
18 Chief Webster, that's at page 3068?

19 THE COMMISSIONER: I'm sorry, I can't
20 hear you.

21 MS. HANLIN: Page 3068,

22 Mr. Commissioner.

23 BY MS. HANLIN:

24 Q Now, that memorandum, Inspector Poole,
25 is in response to your email, which is at exhibit

1 182, is that -- does that accord with your
2 recollection where you are sending an email to
3 Deputy Chief Webster?

4 A I believe so, yes.

5 Q And I believe that Mr. Paciocco was
6 indicating that he couldn't find a copy of a
7 memorandum for that?

8 A I believe so.

9 Q Okay. But that memorandum is your
10 understanding of what your response to the email
11 was?

12 A Yes. I didn't have a copy of this in
13 my notebook.

14 MS. HANLIN: Okay. Thank you, those
15 are my questions.

16 THE WITNESS: Thank you.

17 BY MR. PACIOCCO:

18 Q You are almost done, Inspector, I'm
19 going to be very brief. I just wanted some
20 clarification with respect to the question asked
21 by Ms. Hanlin regarding your notation relating to
22 the Branigan's leg of the investigation. It is at
23 page 68 of your notes, sir. And this is
24 March 9th --

25 A Yes.

1 Q -- 2005, two days before the
2 Branigan's interviews actually occurred. Could
3 you read the passage that you have referred to in
4 your testimony with Ms. Hanlin?

5 A "Call to Chief Bakema at East St.
6 Paul Police. Briefed on interview
7 thus far along with what else is
8 taking place, Branigan's."
9 Relate Chief Ewatski is to be briefed by me this
10 afternoon. I asked for anything else that may
11 have added to the report we already have.
12 Statement of witnesses to be faxed.

13 Q All right. Do you have a clear
14 recollection of what that reference to what is
15 taking place, "what else is taking place,
16 Branigan's" refers to, sir?

17 A Just that, at this point all I can say
18 is that I would be surmising it was in regards to
19 the witness, civilian witnesses from the
20 Branigan's Restaurant.

21 Q And it is in the context of a note in
22 which you are briefing him on interviews along
23 with what else is taking place, sir, so you would
24 be communicating to him that you are going to do
25 this, is that a fair --

1 A I would believe so, yeah.

2 Q Because there is some issue as to how
3 this came about with Detective Sergeant Girard in
4 his interview, and we are trying to get to the
5 bottom of exactly why the civilian witnesses were
6 approached by the Professional Standards Unit. Do
7 you know whether this was something that was
8 requested by Chief Bakema, or were you advising
9 him that this was a decision that had been taken?

10 A To interview the staff there?

11 Q Yes?

12 A It would just be a matter of course
13 for our investigation, side of the investigation.

14 Q And that would be, I take it, because
15 you felt that the scope of the investigation
16 dealing with Mr. Harvey-Zenk's activities on the
17 evening before would require not only police
18 witnesses, but also civilian witnesses?

19 A Yes. Yes.

20 Q And that would happen in the context
21 of any Professional Standards Unit investigation
22 of police officers, that if there were civilian
23 witnesses, you would also be dealing with them?

24 A Certainly.

25 Q I understand. Sir, and this should be

1 addressed, I suppose, to Mr. Commissioner and the
2 balance of counsel. We did receive some
3 disclosure from the administrative file from the
4 Winnipeg Police Service today. I'm going to, for
5 the sake of completeness, put in some documents as
6 exhibits. And I do apologize to all counsel that
7 they have not been disclosed. I don't believe
8 they raise new matters that are going to require
9 anyone to come up and re-interview, but I just
10 went through the documents as the questions were
11 being asked and just discovered these.

12 The first document is a witness
13 preamble document that's used for police staff,
14 from the Professional Standards Unit, containing
15 the types of information that we see in every one
16 of the interviews that occurred in this case,
17 coupled with a second page, which has a cautionary
18 regulatory warning, or a cautionary criminal
19 warning, that I take it at some point in the
20 interview may be given, depending upon how the
21 information is coming out, sir?

22 A I would have to see it to --

23 Q It is on its way.

24 THE CLERK: Exhibit number 189.

25

1 (EXHIBIT 189: PSU witness preamble
2 document police/staff two pages)

3 THE WITNESS: Yes, this would be read
4 in at the commencement of every interview.

5 BY MR. PACIOCCO:

6 Q Would the full document be read in at
7 the commencement of every interview or just page
8 one, sir?

9 A I only have one page.

10 Q Were there not two pages there?

11 THE CLERK: I thought they were two
12 separate -- sorry, I thought they were a copy.

13 MR. PACIOCCO: If they could be
14 attached together, I do apologize.

15 BY MR. PACIOCCO:

16 Q You now have a two-page document?

17 A Yes, sir. This looks like it may have
18 changed from the time that I was there, but
19 certainly, if we would read in page one, and if
20 somebody's status changed during the course of the
21 investigation, or through the course of the
22 interview, we would stop and read this in.

23 Q So the second page contains additional
24 cautions to individuals when -- and you are
25 imagining from the context and your experience in

1 the unit, when something develops during the
2 interview to require a very direct warning, it is
3 provided?

4 A Yes, it happens very infrequently, but
5 it had happened once.

6 Q Sir, I'm going to hand up another
7 document of the same nature, it is called "Witness
8 preamble non-police," and the only observation
9 that I'm going to make about that document is that
10 it contains some of the information about the
11 police preamble, but not all of that information,
12 and there is no caution here with respect to
13 whether an individual may have criminal, civil or
14 administrative implications.

15 THE CLERK: Exhibit 190.

16 (EXHIBIT 190: PSU witness preamble
17 non police)

18 BY MR. PACIOCCO:

19 Q And, sir, the final document that I'm
20 just going to put in, and this will be it, we have
21 now a response from Doug Webster to your email in
22 which you are asking whether he would have any
23 objection to you meeting with Chief Bakema to
24 discuss the findings. And that was your email of
25 May 6th, 2005, at 8:11 a.m. At 10:32 you received

1 a response that simply says:

2 "Jim, I have no objections to you
3 meeting with Chief Bakema."

4 What we saw, sir, and we went through this, it
5 didn't happen until July at some point, sir?

6 A That's correct.

7 MR. PACIOCCO: If that would be made
8 an exhibit?

9 THE CLERK: Exhibit 191.

10 (EXHIBIT 191: Email response from
11 Doug Webster, May 6, 2005 at 10:32)

12 MR. PACIOCCO: Unless there are
13 matters that other counsel believe arise out of
14 those three exhibits, I think you are going to be
15 finished, sir.

16 THE WITNESS: May I be excused,
17 Mr. Commissioner?

18 THE COMMISSIONER: You certainly may.
19 Don't take any exhibits with you.

20 THE WITNESS: No, sir.

21 MR. PACIOCCO: And counsel can be
22 advised that exhibits 189 to 191 will be
23 photocopied and distributed to counsel, if the
24 inspector doesn't take them with him.

25 The Commission would like to call

1 Detective Sergeant Girard to the stand, please?

2 ROGER JOSEPH GIRARD, having first been
3 duly sworn, testified as follows:

4 BY MR. PACIOCCO:

5 Q Good afternoon, Detective Sergeant.

6 A Good afternoon.

7 Q I promise I am not going to ignore you
8 for long, but I do have to ignore you for a minute
9 to make this more efficient, because there is a
10 large number of exhibits that I want to have filed
11 in order to facilitate your testimony, sir.

12 I'm going to ask the clerk, I have
13 asked her to pull all of the interviews done by
14 the Professional Standards Unit as part of its
15 investigation, that have not already been made
16 exhibits in this case. For the sake of the
17 record, and for the information of counsel
18 present, the documents will be going in commencing
19 with exhibit 192, I believe, Madam clerk?

20 THE CLERK: Yes.

21 MR. PACIOCCO: 192 will be the
22 interview with Constable Kapka, found at book
23 F-1.35.h.

24 (EXHIBIT 192: F-t.35.h, Transcript
25 PSU interview of Constable Kapka)

1 MR. PACIOCCO: Exhibit 193 will be the
2 interview with Constable Mikawoz at tab F-2.35.u.

3 (EXHIBIT 193: F-2.35.u, Transcript
4 PSU interview of Constable Mikawoz)

5 MR. PACIOCCO: Exhibit 194 will be the
6 interview with Constable Guyot found in F-2.35.v.

7 (EXHIBIT 194: F-2.35.v Transcript
8 PSU interview of Constable Guyot)

9 MR. PACIOCCO: Exhibit 195 will be the
10 interview with Constable Williams, found at
11 F-2.35.w.

12 (EXHIBIT 195: F-2.35.w, Transcript
13 PSU interview of Constable Williams)

14 MR. PACIOCCO: Exhibit 196 will be the
15 interview with Constable Marnie Nechwediuk found
16 at F-2.35.x.

17 (EXHIBIT 196: F-2.35, Transcript PSU
18 interview of Constable Marnie
19 Nechwediuk)

20 MR. PACIOCCO: Exhibit 197 is the
21 interview with Constable Swanson found at
22 F-2.35.o.

23 (EXHIBIT 197: F-2.35.o, Transcript
24 PSU interview of Constable Swanson)

25 MR. PACIOCCO: Exhibit 198 is the

1 interview with Constable Neumann found at
2 F-2.35.k.

3 (EXHIBIT 198: F-2.35.k, Transcript
4 PSU interview of Constable Neumann)

5 MR. PACIOCCO: Exhibit 199 is the
6 interview with Constable Veldman found at
7 F-2.35.q.

8 (EXHIBIT 199: F-2.35.q, Transcript
9 PSU interview of Constable Veldman)

10 MR. PACIOCCO: Exhibit 200 is the
11 interview with Constable Buors found at F-1.35.d.

12 (EXHIBIT 200: F-1.25.d, Transcript
13 PSU interview of Constable Buors)

14 MR. PACIOCCO: Exhibit 201 is the
15 interview with Constable Haddad found at F-1.35.f.

16 (EXHIBIT 201: F-1.35.f, Transcript
17 PSU interview of Constable Haddad)

18 MR. PACIOCCO: Exhibit 202 is the
19 interview of Constable Schneider found at tab
20 F-2.35.m.

21 (EXHIBIT 202: F-2.35.m, Transcript
22 PSU interview of Constable Schneider)

23 MR. PACIOCCO: Exhibit 203 is the
24 interview, it has actually been put in as exhibit
25 188, the one I'm looking at, so 203 would be

1 Constable Bauer found at F-1.35.b.

2 (EXHIBIT 203: F-1.35.b, Transcript of
3 PSU interview of Constable Bauer)

4 MR. PACIOCCO: And 204 would be the
5 statement of the wellness officer, Sergeant Paul
6 Isaak, found at F-2.35.t. If those could all be
7 made exhibits, Madam clerk.

8 THE CLERK: Yes.

9 (EXHIBIT 204: F-2.35.t, Transcript of
10 PSU interview of wellness officer,
11 Sergeant Paul Isaak)

12 MR. PACIOCCO: And while the clerk is
13 processing those, I purport to begin, because I
14 won't be making reference to some of them at all,
15 and none of them for the next few minutes.

16 BY MR. PACIOCCO:

17 Q Thank you, Detective Sergeant, for
18 your patience. I understand back in February of
19 2005, you were with the Winnipeg Police Service
20 Professional Standards Unit and you held the rank
21 at that time of Detective Sergeant?

22 A Yes.

23 Q And you did that for how long, sir,
24 how long were you with the Professional Standards
25 Unit?

1 A Three years.

2 Q Currently, sir, what is your post?

3 A I'm a sergeant in charge of B-2
4 platoon in division 16.

5 Q Before going to the Professional
6 Standards Unit, I understand from practice that
7 you would have been a police officer with the
8 Winnipeg Police Service in some other capacity?

9 A Yes.

10 Q And how much experience did you have
11 before going there, sir?

12 A My first 11 years were spent in
13 uniform, predominantly in the North End of the
14 city. Then I went to youth division, Division 21,
15 for a total of four years. Two years I spent in
16 the child abuse unit, two years in the high risk
17 offenders unit. And at that time I received my
18 first promotion and was asked to go to
19 Professional Standards Unit.

20 Q Sir, you came to interview quite a
21 number of officers in connection with the
22 Harvey-Zenk investigation?

23 A Yes.

24 Q Had you ever worked with any of them,
25 sir?

1 A I don't believe I worked directly with
2 any of them. There was a few officers I knew a
3 little bit better than others. Constable Lloyd
4 Swanson, I knew to talk to here and there, but for
5 the most part, most of them I didn't know very
6 well at all.

7 Q There were a number, I take it from
8 your response, that you would recognize and know
9 who they were?

10 A Yes.

11 Q And you may have exchanged words with
12 them from time to time?

13 A Yes.

14 Q I don't mean angry words in any sense,
15 but you would have talked to them from time to
16 time?

17 A Yeah. It was a time that I had been
18 out of uniform for a while so. When I was in
19 uniform, I would see people and I would know just
20 about everybody that I bumped into. But then when
21 you leave uniform, there is a lot of new hirings
22 and there is a lot of people you don't know.

23 Q I understand that you didn't know
24 Derek Harvey-Zenk?

25 A No, not at all.

1 Q Sir, we are aware from the testimony
2 of Inspector Poole that you had a very minor role
3 on the 25th of February, 2005, in assisting in
4 getting the firearm that had been assigned to
5 Derek Harvey-Zenk as a result of reports about his
6 well-being, and that was really your only
7 involvement, I understand, on the 25th of
8 February?

9 A Yes.

10 Q And it wasn't until the 28th of
11 February that this file or this case became a
12 bigger feature in your life, sir?

13 A Yes.

14 Q I understand that early in the morning
15 of February 28th, you received a uniform from
16 Chief Bakema of East St. Paul, as well as a report
17 package?

18 A That's correct.

19 Q And you had been instructed to go and
20 secure that or obtain that?

21 A Yes.

22 Q I'm going to take this opportunity to
23 make your notes, sir, an exhibit in this matter.
24 In fact, actually, I think they already are.

25 THE CLERK: 171.

1 BY MR. PACIOCCO:

2 Q They are exhibit 171, and I know you
3 probably have a copy of your notes in front of
4 you, sir?

5 A Yes, I have my original notes with me,
6 actually.

7 Q Okay. They are found at tab
8 Q-1.89.b.3 -- no, that's not correct, I apologize.

9 THE CLERK: B.3.

10 MR. PACIOCCO: B.3, yes.

11 BY MR. PACIOCCO:

12 Q Sir, you received, I understand, an
13 investigative package when you went to the East
14 St. Paul Police?

15 A I received a narrative report, yes.

16 Q And you did that in order, I
17 understand, to assist you in giving you a starting
18 point in coming to grips with what had happened?

19 A Yeah. At the time I believe we were
20 asked to deliver it to the fifth floor to our
21 executive office.

22 Q So you would not have read the package
23 at that time, sir?

24 A I may have skimmed over it, but if I
25 remember correctly, I think it was in an envelope.

1 Q You said it was in an envelope?

2 A If it was, I wouldn't have opened it,
3 because I believe I went from there straight to
4 the fifth floor.

5 Q We have heard evidence that at 9:30 in
6 the morning, formal steps were taken to begin an
7 investigation with the Professional Standards
8 Unit. And the document in question is exhibit 181
9 in these proceedings, and I'm going to have the
10 clerk show it to you. It is found in book
11 Q-2.89.b.26.

12 Sir, what you have in front of you is
13 a memo at 9:30 ultimately authorizing the
14 investigation by then Detective Sergeant Poole?

15 A Okay.

16 Q And so at the time you picked up the
17 documents at East St. Paul, there had not been a
18 formal decision yet taken to commence an
19 investigation, sir?

20 A I don't know. I was just asked to go
21 and pick up the package.

22 Q Okay. And you were asked to pick up
23 the package, and as I indicated, you received a
24 package. And I take it, sir, you are not in a
25 position to tell us what was in that package

1 because it may have been in an envelope?

2 A I don't -- I don't remember for sure
3 if it was in an envelope or not. I did have
4 access to it later, once I was assigned to it,
5 they did give me a copy of it.

6 Q Okay. And I understand that it
7 contained some incident reports in connection with
8 the Harvey-Zenk matter that had been prepared by
9 the East St. Paul?

10 A Yes.

11 Q Sir, you also received the uniform?

12 A I received a box with, apparently, it
13 was a uniform in it.

14 Q Were you advised that it was a
15 uniform?

16 A I was told it was a uniform, yes.

17 Q And what else were you told, sir?

18 A That was about it, that was about it.

19 Q Sir, I understand that you were
20 assigned to work on this file at approximately
21 1:20 on the 28th of February?

22 A At 11:20, my partner, Sergeant Pearson
23 and I were assigned.

24 Q And that document assigning you is
25 exhibit 171 in these proceedings -- that's in your

1 notes, sir, at page 2865. It was pretty clear to
2 you at that time, sir, that this was a
3 Professional Standards Unit investigation into the
4 conduct of any of the officers who were present at
5 the time?

6 A Well, I was advised that we were
7 assisting East St. Paul with part of their
8 investigation.

9 Q And, sir, are you confident, based on
10 your memory today, that that was the purpose of
11 the investigation at the time that you went and
12 began your assignment, sir? Because I know that's
13 what you indicated to Mr. Clifford in your
14 testimony, but we've heard evidence from Detective
15 Sergeant Poole that it was not until the next day
16 that the request had come through to assist East
17 St. Paul in connection with the criminal
18 investigation. And the first contact with East
19 St. Paul occurred later on the 1st of March, when
20 two officers, sergeants, from the unit that
21 Harvey-Zenk was in came forward with information.
22 So, initially our information, sir, was that this
23 was an investigation that was being conducted in
24 to whether there were any service issues relating
25 to other issues, or other officers.

1 A Okay. My understanding was that it
2 was at 11:20 I was assigned the file, and it was
3 to be written under the particular PSU number, and
4 at that time I was provided the report from East
5 St. Paul and I reviewed it.

6 Q And the PSU number, sir, is there any
7 way that you can decode that number in terms of
8 whether it is an internal regulatory investigation
9 or a criminal investigation, sir?

10 A Typically an investigation into a
11 potential breach of regulations would begin with a
12 R, and a criminal would be a C. I just have PSU
13 05-017, but in this particular case it would have
14 been a C.

15 Q Sir, I understand from earlier
16 testimony, and also from your earlier interview,
17 that typically where it is a criminal case that's
18 being undertaken by another police force, the
19 Professional Standards Unit will stand off, or
20 won't get involved in the investigation for fear
21 of basically stepping on the toes of the
22 predominant criminal investigation, sir?

23 A This is the first time it came up for
24 me, but I would imagine that that is how it should
25 be done.

1 Q This is essentially the first time in
2 your career that you had experience actually
3 participating in a criminal investigation in
4 association with another police agency, and being
5 assigned to focus on the actions of one of your
6 officers, sir?

7 A Yes.

8 Q Sir, what information do you have as
9 to how the PSU got involved in actually conducting
10 an investigation in association with the East St.
11 Paul Police?

12 A I'm not sure I understand what you
13 mean, like how it came about?

14 Q Yes. Do you have any firsthand
15 information about that or --

16 A I just recall somebody saying that
17 Chief Bakema had contacted, and I don't know
18 whether they contacted the service or our unit in
19 particular, and had requested assistance.

20 Q Sir, I'm going to show you exhibit
21 186. And what you have in front of you, sir --
22 and for the lawyers in the room, it is at tab
23 Q-2.89.b.36, page 3068 -- what you have in front
24 of you is an interoffice memorandum that was sent
25 to Staff Sergeant Poole by Deputy Chief Webster

1 entitled "Request for Assistance from East St.
2 Paul Police." And it is dated March 2nd, 2005,
3 the day after you were assigned to the
4 investigation, sir.

5 A Okay.

6 Q And you will notice that in the third
7 paragraph there is a direction from Deputy Chief
8 Webster:

9 "I am directing that the Provincial
10 Standard Unit pursue this aspect of
11 the investigation with the appropriate
12 communication to Chief Bakema and in
13 consultation with the special
14 prosecutor assigned to the case."

15 And the preliminary paragraph indicates the
16 importance of drinking history of the members
17 leading up to the incident, and recounts Chief
18 Bakema's concerns about resources to pursue this
19 aspect of the investigation being limited, and
20 requesting the assistance of the Winnipeg Police
21 Service. So that document effectively, I take it
22 you would agree, confirms that it is on March the
23 2nd, when there is a formal request on the part of
24 the Professional Standards Unit to start foraging
25 into the criminal side of things?

1 A Okay. I would agree with that.

2 Q And we had testimony from Detective
3 Sergeant Poole at the time, now Inspector Poole,
4 that there was some concern on his part about
5 making sure that if your investigation was going
6 to start dealing with the alcohol consumption
7 issues of Mr. Derek Harvey-Zenk, that you had to
8 be careful and certainly had to notify Chief
9 Bakema of any actions that might be taken.

10 So, sir, you would agree then, based
11 on what you've seen today, that effectively your
12 first hours of involvement in this file were not
13 as part of an association with the criminal
14 investigation, but were rather an internal matter
15 dealing with the Professional Standards Unit and
16 the conduct of the officers?

17 A Well, all I can tell you is what I was
18 told on that day, on the Monday, February 28th,
19 was that this file was being assigned to me. And
20 when I received the report of East St. Paul --
21 now, whether it had officially gone through the
22 proper channels, I don't know, obviously it
23 appears that it didn't for another day or two at
24 least. But at that time I was under the
25 impression that I was assigned to the file and, in

1 fact, there had been some arrangements made to
2 receive some documentation from Inspector
3 McCaskill in the North End.

4 Q Yes. And I think, sir, there is no
5 question that you were assigned to the file. The
6 issue is, what was the nature of the assignment
7 that you had. Were you investigating the Winnipeg
8 Police Officers who were in the presence of Derek
9 Harvey-Zenk that evening and may have themselves
10 somehow contravened a service regulation, or were
11 you actually participating along with East St.
12 Paul in a criminal investigation?

13 A Well, we wouldn't have been looking at
14 a regulatory investigation at that point, because
15 those typically are held in abeyance until the
16 criminal investigation is concluded by whomever
17 may be doing that.

18 Q Yes, sir.

19 A I'm really not sure what to say here,
20 because, like I said, I was assigned to the
21 matter, that was my understanding on that day.
22 And then when the sergeants contacted us from the
23 fifth floor, that's when we began the interviews.
24 My understanding was that we were to look at -- to
25 try to determine where Constable Harvey-Zenk was

1 and who he was with in the hours prior to the
2 accident.

3 Q All right, sir. So the investigation
4 then, when you are assigned it, would involve you
5 familiarizing yourself with as much information as
6 you can from the file that you've picked up at
7 that time, and you would have read that file, sir?

8 A I would have read the narrative
9 report, yes. And I should point out that had the
10 two sergeants not contacted us from the fifth
11 floor, we may not have actually started anything
12 that day. It was quite unexpected that we
13 received a phone call that they were wanting to
14 come over and see us right away.

15 Q Yes. But you were already assigned as
16 investigator of the file, and there had been a
17 formal decision taken to conduct an investigation.
18 So it may not be that you started your work that
19 day, but you were already on the case?

20 A Yes.

21 Q And you arranged for the -- or were
22 provided with other documents, you have indicated,
23 and that would be the overtime and the early --
24 the EDL, is it, slips?

25 A I don't think we received it that day.

1 Arrangements were made to get them.

2 Q Yes, sir.

3 A I have a notation that I would pick
4 them up the next day. And I received -- yeah, on
5 Tuesday, March the 1st, is when I attended to
6 District 3 at 14:45 hours and received those
7 slips.

8 Q Yes. So it would be the first day
9 that you were assigned to the investigation, so
10 you did manage to get them within a few hours of
11 your seeking them, sir?

12 A Yes, I believe it was the next day
13 that we actually obtained them.

14 Q Sir, you had received information at
15 some point about a house party, and perhaps
16 drinking event, or an event that occurred in a bar
17 where alcohol was available, Branigan's, sir?

18 A Yes.

19 Q When did you receive that information?

20 A I believe that was as a result of the
21 first interviews that we conducted with Sergeant
22 Humniski and Patrol Sergeant Anderson.

23 Q Sir, there is a notation of Detective
24 Sergeant Poole's, which is at page 50 of his
25 notes, which have been put in as an exhibit. They

1 are at Q-1.89.b.4. And these are notes taken by
2 Detective Sergeant Poole earlier in the day, sir,
3 prior to the arrival of the officers. And if you
4 look at page 50 of his notes, sir, in the upper
5 left-hand corner, it may be caught under the
6 staple, or page 2197 on the bottom. You will see
7 the last entry is:

8 "Detective Sergeant Roger Girard
9 advised info as to the party prior to
10 collision was at Constable Sean
11 Black's residence in Birds Hill area."
12 Do you see that entry, sir?

13 A Um-hum.

14 Q So you may have been made aware
15 verbally before the two police sergeants came down
16 to the station?

17 A Yes, if Inspector Poole says that,
18 then, yes.

19 Q Detective Sergeant, at the time that
20 you were working in the early hours of this
21 investigation, all you really had was some fairly
22 basic information in the incident reports that had
23 been furnished to you, and you have managed to
24 acquire the EDL slips for members of the shift,
25 and you had some information that there was a

1 house party. Was that basically about it?

2 A Yeah.

3 Q You had information from the incident
4 report that a car had flown by Mr. Shaw's vehicle
5 and collided with another vehicle, sir, but you
6 didn't have any information about whether it had
7 attempted to stop, or brake, or whether it
8 traveled any distance without failing to respond,
9 or the road configuration. You basically really
10 at that point didn't have many details about how
11 the accident happened?

12 A I believe, when I summarized the East
13 St. Paul narrative that I had, at least the part
14 that I had that was completed up to that point, I
15 believe there was mention that -- let me just
16 double check here. I had the information that one
17 of the witnesses indicated that a vehicle went by
18 him at a high rate of speed, and this witness
19 reported that he did not see any brake lights
20 prior to --

21 Q I see. So you had that information
22 available to you?

23 A Um-hum, yeah.

24 Q And you, of course, took the time to
25 try and familiarize yourself as much with the

1 information that you had as you could, sir.
2 Before you begin interviews, I take it you like to
3 have as much information as you can get?

4 A I like to.

5 Q You like to reflect and prepare a
6 strategy for how to approach the witnesses, sir?

7 A My partner and I didn't talk a lot
8 about strategy in this one, a lot of it seemed to
9 be happening quickly, particularly with Sergeant
10 Humniski and Patrol Sergeant Anderson, it was very
11 short notice to begin those interviews. So we
12 thought, let's start with them and see what we
13 have and take it from there.

14 Q Okay. So, even though normally, I
15 take it, you would want to have some time to
16 reflect, under ideal conditions, and decide
17 exactly how you are going to approach an
18 interview, in this case it came on you much more
19 quickly than you expected, sir?

20 A Yeah. You are correct, we are always
21 thinking a little bit about how we are going to go
22 about it, but at that point, like I say, it came
23 as quite a surprise that people wanted to come and
24 see us immediately.

25 Q And, sir, you certainly understood,

1 based on the information you did have, this was
2 going to be a very serious case, whether your
3 involvement was going to be from a regulatory
4 perspective or a criminal perspective, this
5 involved a horrendous accident and the loss of
6 life of an individual?

7 A Very serious.

8 Q And under ideal circumstances, I take
9 it, you would have liked the opportunity to really
10 gather yourself and organize yourself before
11 commencing that investigation?

12 A Yeah, at least have some opportunity
13 to discuss with my partner about it, yeah.

14 Q I'm going to examine in general terms
15 with you, sir, what might go into a criminal
16 investigation that would really be thorough and
17 well done, sir, one that you might really be
18 satisfied with at the end of the day. And I'm
19 going to ask you whether you agree with the
20 propositions that I'm going to put forward to you,
21 sir.

22 You would -- one of the things you
23 would want to do, I take it, is consider potential
24 problems with the reliability of witnesses?

25 A Yeah.

1 Q And you would want to take into
2 account anything that might be a motivation or a
3 pressure on witnesses to provide incomplete
4 information, or heaven forbid, in some cases even
5 false information?

6 A I am sorry?

7 Q You would want to take into account
8 any motivations or pressures that might be on
9 witnesses that could cause them to provide
10 incomplete information, or perhaps even false
11 information?

12 A Yeah, more so with civilian witnesses.
13 With the police witnesses, my assumption is that
14 they are coming in and they are going to tell me
15 the truth.

16 Q And what do you base that assumption
17 on, sir?

18 A Well, the way that I would deal with
19 it if I was called as a witness.

20 Q Okay. So you sensed that others would
21 come in, as police officers, and they would be as
22 conscientious and committed to their oath as you
23 are?

24 A Yes.

25 Q You would also want to look at the way

1 the evidence that they are furnishing you fits
2 with other evidence that you have available to
3 you, sir?

4 A Yes.

5 Q And you want to try and perhaps test
6 their evidence according to the other information
7 you have?

8 A Yeah.

9 Q In this case, sir, you did have
10 information when the interviews began that there
11 had been an unexplained accident, sir?

12 A Um-hum, yes.

13 Q You had information about alcohol
14 consumption by Derek Harvey-Zenk that was being
15 alleged?

16 A Yeah. There was mention that Sergeant
17 Carter and one other officer had observed, or
18 Sergeant Carter for sure had observed signs.

19 Q And you had information that there was
20 a smell of alcohol in the vehicle?

21 A I don't recall if that was in there or
22 not. I know that Constable Woychuk had said he
23 detected a slight smell, and then upon attending
24 the station, Sergeant Carter stated that he
25 observed signs and formed the opinion and arrested

1 him.

2 Q Signs including unsteadiness?

3 A Yes.

4 Q Flush faced, red glassy eyes,
5 slurring, the classic signs had been described by
6 Carter?

7 A I don't recall all of the signs, but
8 he did mention about unsteady on feet, having
9 observed him walk a distance. But I don't, off
10 the top of my head, I don't remember exactly what
11 he said. But there were signs there.

12 Q And you would have harkened to those
13 when you read the report?

14 A Yes.

15 Q And you also had information that
16 Derek Harvey-Zenk had refused to provide a sample
17 of his breath, sir?

18 A Yes.

19 Q And you did have evidence that the
20 accident seemed not to have an apparent
21 explanation for it, based on how it was described
22 in the reports?

23 A There was a little bit of
24 contradiction, from what I recall, about the fact
25 that one of the first officers didn't mention

1 anything about any smells or anything like that.

2 Q Yes, sir.

3 A And then in Constable Woychuk's
4 involvement, it was a slight smell, and then to
5 what we discussed with Sergeant Carter.

6 Q So you were attending to the
7 inconsistencies and progression of the evidence
8 that you were reading in the report?

9 A I just thought it was a little odd.

10 Q I know that it was a strategy of
11 yours, I take it, and correct me if I'm wrong,
12 with Constable Black, that you wanted to acquire a
13 bit more information before actually interviewing
14 him, because at one point you indicate that you
15 want the witnesses to start coming down, but not
16 him right away?

17 A I wanted to get some information from
18 other officers prior to speaking to him.

19 Q So, it really is an appropriate
20 investigative technique, and one that should be
21 undertaken, to try and make sure that you examine
22 how consistent the evidence you are getting is
23 with the information that you have, sir?

24 A Yes.

25 Q You are going to, of course, search

1 for relative information. And in this case,
2 you're objective was to find out whether Derek
3 Harvey-Zenk had, in fact, acted in a way that was
4 not only discreditable, but criminal. Did he --
5 how much alcohol did he consume? Was he
6 intoxicated? Were there others from the Winnipeg
7 Police Service who may have acted improperly under
8 the circumstances?

9 A Well, at that time I was thinking more
10 about determining about Constable Harvey-Zenk.

11 Q We had evidence earlier from Detective
12 Sergeant Poole that he was also concerned, and
13 particularly concerned in the early days of the
14 investigation, with the possibility that other
15 members of the Winnipeg Police Service may not
16 have conducted themselves consistently with their
17 regulatory requirements at the time that they were
18 with Harvey-Zenk. Is that inconsistent --

19 A In what way?

20 Q Well, sir, we didn't go into details
21 with it, but there were some issues that arose,
22 for example, relating to whether or not
23 appropriate safeguards had been put in place, and
24 whether or not -- issues that I put to witnesses
25 in the past, such as the two sergeants, as to

1 whether as supervising sergeants they behaved
2 responsibly under the circumstances, where a large
3 group of officers under their charge go out into
4 the community, and issues like that, sir?

5 A Right.

6 Q But you don't remember that being on
7 your mind at the time that you were conducting the
8 investigation?

9 A Well, information did come forward
10 from the officers that there was one individual
11 who was quite intoxicated and they did take care
12 of him. They made sure he didn't drive and he was
13 conveyed home.

14 Q I'm thinking more generally, sir,
15 about the purpose of the investigation as opposed
16 to that specific nugget of information?

17 A I wasn't really thinking about any
18 regulatory matters at that time, because, as I
19 said, the regulatory investigation is held off
20 until the criminal matters --

21 Q Let's focus, sir, on Harvey-Zenk, and
22 your focus then was on his activities prior to the
23 accident?

24 A Determining where he was, yeah.

25 Q And you soon learned that he was at

1 Branigan's, that he was in attendance at that
2 location in the early hours of the morning?

3 A Yes.

4 Q And, sir, I take it a good
5 investigation would involve becoming familiar, if
6 you could, with the locations where events
7 happened?

8 A Yeah.

9 Q You attempt to identify the setting so
10 that you can relate to the information that you
11 are getting from individuals, and situate it, and
12 see whether it fits the physical place and --

13 A With setting, you are referring to the
14 interior of the room?

15 Q Yes, I am?

16 A I suppose, yeah.

17 Q You might want to confirm the layout
18 of the tables, for example? In this case, there
19 were a lot of questions about who was where and
20 who was with who, and you might want to know
21 exactly how the room was set up, sir?

22 A If I recall correctly, most people had
23 a pretty good idea where they were sitting in
24 relation to him.

25 Q So you depended on those individuals

1 to give you the information, sir, you didn't go
2 down to Branigan's early on in the investigation
3 in order to familiarize yourself with the setting
4 and take photos or dimensions or anything like
5 that?

6 A No.

7 Q Look at the size of the tables; none
8 of that?

9 A No.

10 Q And, sir, you would also agree that --
11 and we will get into this in more detail later --
12 that one of the things that an investigator might
13 do in a case like this is try and get business
14 records from the institution to see what the
15 patterns of consumption were and whether they can
16 attribute any alcohol to the subject officer?

17 A I guess it depends on the
18 circumstances that you have.

19 Q Okay. We will look at that later,
20 sir. What about Officer Black's residence? You
21 also learned early that he went there. Did you
22 ever ask Officer Black whether you could go and
23 see what his place was like, or get him to sketch
24 out the dimensions or anything, to get an idea
25 what that setting was like, sir?

1 A No.

2 Q I know that one of the things you
3 would want to look at, of course, is who was
4 there. And I know that you did accumulate a
5 comprehensive list of police officers who were at
6 Branigan's that night, and at Officer Black's.
7 And you did make efforts to determine when they
8 were there, and how long they were there, sir.
9 And those were things that, of course, you would
10 have needed to do to properly conduct your
11 investigation?

12 A Yes.

13 Q And, sir, I would take it that a good
14 investigation would also involve trying to
15 coordinate their evidence to see whether there is
16 a fit to it, whether the information you are
17 getting from one officer contradicts the evidence
18 you are getting from another, or whether it is
19 consistent?

20 A Yes.

21 Q You would want to ask those witnesses
22 about their relevant observations about alcohol
23 consumption?

24 A Yes.

25 Q You would want to try and find out

1 what Harvey-Zenk drank at each location, sir?

2 A Yes.

3 Q You would also, I take it, want to
4 know the level of alcohol availability. I know
5 that there is tremendous availability at
6 Branigan's, but you would also try to situate the
7 level of availability at Black's house, what was
8 being served, how much alcohol?

9 A Yeah, he told me what he had put out.

10 Q Where was it put, and what other
11 alcohol may have been present? I know you asked,
12 did people bring alcohol, was there other alcohol
13 in the house, could people have accessed it,
14 things like that, sir?

15 A Yeah, I didn't ask that, though.

16 Q And you want to do that because you
17 want a sense of possibilities, what could have
18 happened, what was the level of consumption?

19 A I didn't want to know what could have
20 happened, I wanted to know what did happen.

21 Q I understand that, sir, but in order
22 to situate the testimony that you are given, it is
23 certainly helpful to understand how much alcohol
24 is available and where it can be retrieved from.
25 And in order to cover off the possibilities before

1 you can get to the conclusion as to what did
2 happen, you want to get as much information as you
3 can about alcohol?

4 A Okay.

5 Q Do you agree? Because if you don't, I
6 need to know.

7 A Well, I'm just not sure what it is you
8 are --

9 Q It is not a trap, I'm going to be very
10 direct with you later.

11 A I want to make sure I understand. Are
12 you suggesting that maybe there was some other
13 alcohol that may have been consumed, somebody may
14 have found some and consumed it, that they weren't
15 telling us about?

16 Q I'm suggesting you would want to
17 canvass those possibilities.

18 A I suppose so.

19 Q You would want to know about the
20 location and manner of service of the alcohol,
21 where was it coming from, and how were people
22 getting it, so that you could try and see whether
23 they are giving you consistent answers between
24 themselves?

25 A I suppose.

1 Q You certainly are interested in what
2 was consumed by Harvey-Zenk?

3 A Yes.

4 Q That's the key that you are really
5 looking at. It would involve asking people
6 directly what observations they made of him
7 consuming?

8 A Yes.

9 Q And if individuals did associate him
10 with alcohol, you would try and find out what kind
11 of alcohol it was?

12 A Yes.

13 Q If it is beer, you might want to go
14 further and find out whether it is a bottle,
15 whether it is in a glass, whether it is a pint,
16 whether it is a particular brand? You would want
17 those details, wouldn't you, sir, so you can
18 assess the consistency in the accounts that you
19 are receiving?

20 A I suppose. I didn't go into that
21 detail, though.

22 Q Let me put it to you this way. If one
23 person says, I saw him with a beer in front of him
24 and it was a Labatt's Blue bottle, and somebody
25 else says I saw him with a beer in front of him

1 and it was a pint in a glass, you know that it is
2 not the same beer. If two people say they saw a
3 beer in front of him, it could be the same beer.
4 You would agree it is pretty important
5 information?

6 A It could be, yes.

7 Q And you would also try and determine
8 the quantities, or range of quantities of alcohol
9 that he may have consumed?

10 A Yes.

11 Q If people are going to talk about his
12 consumption, he might start out with one or more
13 than one, a few, lots, how often was the server
14 coming back, you would want to get as much detail
15 as you could, sir, in terms of the frequency with
16 which he may have been drinking?

17 A Yes.

18 Q And you also, I noticed, asked
19 questions about the consumption of others?

20 A Yes.

21 Q And I agree, sir, with you,
22 implicit -- your implicit message that it is
23 important to find that out for a variety of
24 reasons.

25 A Yeah.

1 Q Including whether they are in a
2 position, by virtue of their own consumption, to
3 offer you helpful information?

4 A Yes.

5 Q And also perhaps to get a measure of
6 what the evening was and what the party was like?

7 A Yes.

8 Q You were getting information about it
9 being a sedate or quiet affair. You wanted to
10 make sure you had the goods to determine whether
11 that would be an accurate picture, sir?

12 A Yeah.

13 Q And you would -- I take it a good
14 investigation would include perhaps looking for
15 confirming evidence, if there are receipts or
16 other documents that could validate the
17 information that you are receiving.

18 A Or independent witnesses, yes.

19 Q Sorry?

20 A Or independent witnesses.

21 Q So you are going to look for something
22 that validates it. If you have an independent
23 oral witness, sir, and you have a record as well,
24 you might want to get the record, just to make
25 sure, because it may not have the same frailties

1 of memory and something that is tangible?

2 A Potentially, but not always.

3 Q You would want to know where
4 Mr. Harvey-Zenk was at all relevant times, if you
5 could, relative to the witnesses, sir?

6 A Like where he was seated in relation
7 to other people?

8 Q Yes?

9 A Sure.

10 Q And whether he interacted with them at
11 all?

12 A Yes.

13 Q And you would want to know that to
14 assess the opportunity of witnesses to make
15 relevant observations of him?

16 A Yes.

17 Q And you would want to try and pin down
18 the witnesses too, in terms of where they were, so
19 you can see whether they had access to information
20 about what he might have been doing?

21 A Yes.

22 Q And you would want to know when they
23 were there and for how long?

24 A Yes.

25 Q And whether they moved around. You

1 would want to, as I say, try and track
2 Harvey-Zenk's movements, where he was sitting and
3 for how long and who he was with?

4 A Yes.

5 Q And you would check out the
6 consistency of the information you have been
7 furnished. If one witness says that he was
8 sitting with Mr. X, and Mr. X says he wasn't
9 sitting with Harvey-Zenk, then that's something
10 that --

11 A I would look for contradictions, yes.

12 Q Yes. And as I say, you would look for
13 interaction with Harvey-Zenk, not just where he
14 was sitting, but you would ask witnesses whether
15 they had any dealings with him, whether they had
16 conversations with him, what they can recall about
17 the time that they spent with him, sir?

18 A Yes.

19 Q And you received information, fairly
20 early on, that there was a bit of a lineup process
21 going on at check-out time?

22 A Um-hum.

23 Q And you would have considered the
24 possibility that people may have spent time with
25 him there, and asked specifically whether they

1 were lined up with him, or in a group or cluster
2 with him at that time?

3 A Yes. I hadn't considered that, but,
4 yes, I should have.

5 Q And you would want to look at, of
6 course, his state of sobriety. It is the heart of
7 the issue that you are ultimately canvassing, sir?

8 A Yes.

9 Q And you would have witnesses give you
10 their ultimate conclusion as to whether they noted
11 signs of impairment, as you did?

12 A Yes.

13 Q Sir, I think you would also want to be
14 interested in their opportunity to observe,
15 whether they noted specific indicia, did they have
16 an opportunity, for example, to observe him walk?
17 Did they have conversation with him? Did they
18 have an opportunity to see his small motor
19 function, paying bills, getting things out of his
20 wallet, things that might give you a better
21 impression whether they are truly in a position to
22 give an opinion. And if they do give an opinion,
23 whether it is one that ultimately should be
24 credited.

25 Do you agree that a full investigation

1 would include those types of inquiries?

2 A Yes, yeah.

3 Q And, sir, you indicated that Sergeant
4 Anderson and Sergeant Humniski showed up
5 unexpectedly at the Professional Standards Unit.
6 You learned this about 4:24 in the afternoon on
7 March 1st, sir, shortly after you have been
8 assigned this case?

9 A Yes.

10 Q What did you learn of their
11 intentions, sir?

12 A They wanted to come over and tell us
13 about that evening and the following, and the
14 morning.

15 Q They were, I think the expression was
16 "eager to come to talk to us" is an expression
17 that you have used, sir?

18 A Yes.

19 Q Is that something that normally
20 happens in Professional Standards Unit
21 investigations, that witnesses are eager to come
22 talk to you?

23 A No.

24 Q I think you told Mr. Clifford that is,
25 in fact, rare?

1 A Yes. We usually don't have problems
2 getting them in for interviews, but as far as them
3 contacting us prior, it doesn't happen very often.

4 Q And in fact, you learned that it
5 wasn't just those two sergeants who were anxious
6 to come in and tell their story, the whole shift,
7 according to the information you received, was
8 anxious to come?

9 A According to the sergeants, yes.

10 Q Any thought to why they were so keen
11 to do that, sir?

12 A Just what Humniski and Anderson said,
13 that they were anxious to set the record straight.

14 Q And you also commented to Mr. Clifford
15 that you felt that they just wanted to be leaders,
16 as leaders of the platoon, and show the example by
17 coming in and --

18 A That was my feeling of it, yes.

19 Q And I think you agreed when
20 Mr. Clifford suggested to you that there probably
21 really wasn't much of a need for example here,
22 because there was already information given to you
23 that the whole shift was basically anxious to come
24 in and tell their story?

25 A I'm sorry?

1 Q I'm saying you had information that
2 the whole shift was anxious and eager to come in,
3 so you probably really didn't -- they didn't
4 really need an example to be set by the sergeants?

5 A That's the information that I was told
6 by them, that the platoon was eager, but I didn't
7 know that from the rest of the members.

8 Q But, given your approach to evaluating
9 the credibility of officers, you didn't have any
10 question that they were eager, sir, that the whole
11 platoon was eager, having been told it by these
12 officers?

13 A No, I had no doubt.

14 Q And, sir, you understood that there
15 had been a shift briefing in connection with the
16 tragedy of the death of Crystal Taman, and the
17 situation that Harvey-Zenk was in, and the
18 Professional Standards Unit was actually going to
19 be conducting an investigation was one of the
20 topics?

21 A Yes, my understanding was that it was
22 the normal shift briefing, and that the inspector
23 was going to attend and have some discussion.

24 Q Yes. And we had a witness testify
25 that Sergeants Humniski and Anderson, the

1 expression he used was "flipping back," they were
2 flipping back and forth, telling the assembled
3 officers the questions they could expect to be
4 asked by the Professional Standards Unit. Do you
5 have any observations on the propriety of someone
6 going forward and alerting witnesses to the
7 questions that they can expect when they are
8 approached by investigators, sir?

9 A Whether I think it is correct or not?

10 Q Yes?

11 A I don't think it is correct, but it is
12 going to happen. And whether Sergeants Humniski
13 and Anderson, whether they initiated it or whether
14 the officers just spoke amongst themselves.

15 Q The information that we had was that
16 it was those two officers in particular who had --

17 A Okay.

18 Q -- a formal discussion with the group
19 at the assembled briefing, and were indicating the
20 kind of questions that they would be asked.

21 A Okay.

22 Q We --

23 A That's the first I have heard of it.

24 Q We were also told, in fairness, that
25 the shift members were told to be truthful and it

1 was a serious matter, when they got in to see you.

2 Sir, did you give any consideration to
3 whether Sergeants Humniski and Anderson had an
4 interest in the outcome that should have caused
5 you perhaps to be a bit guarded about the
6 information you were going to receive?

7 A Well, I don't know them personally,
8 but I know them by reputation, Sergeant Humniski
9 more than Sergeant Anderson. I just expected that
10 they were going to come and tell me the truth
11 about what had happened.

12 Q Did you turn your mind to the fact
13 that those officers, through the information that
14 you were gathering very quickly, had been at the
15 two gatherings, and that if they were not
16 responsible affairs, that this could possibly not
17 only reflect badly on those two supervisors, but
18 possibly even create employment difficulties for
19 them?

20 A You know what, I didn't think of that.
21 My partner and I spoke about a number of different
22 issues during the investigation and, no, we didn't
23 discuss that.

24 Q Did you ever consider the pressures
25 that officers might feel about the reputation of

1 the police force and, you know, maybe cared deeply
2 about the Winnipeg Police Service and how it is
3 viewed by the public, and might be embarrassed by
4 disclosures about the way police officers might
5 have behaved, even if they didn't do anything
6 criminal?

7 A I mean, whether the average rank and
8 file officer considers that, I don't know. I
9 think that definitely, once you move up the ranks
10 a little bit, you probably are more aware of that
11 and have it more in the forefront of your mind.

12 Q I'm asking whether you turned your
13 mind as to whether this could be a pressure on
14 some of the officers that you interviewed?

15 A I didn't think of it at that time, no.

16 Q In fairness to Sergeant Humniski, he
17 was basically of the view that he wanted the truth
18 to come out through his testimony, he was saying,
19 and the rumours that are even today around this
20 event are causing him to become -- he used the
21 term "angry." He is concerned about the
22 reputation of the Winnipeg Police Service and he
23 was defensive of it, and I'm not saying that in a
24 critical way of him, sir. But you never
25 considered whether that desire to maintain the

1 repute of the Winnipeg Police Service might have
2 put some pressure on the officers to play down
3 what those events may have been like at Branigan's
4 and Black's?

5 A No, I expected that they were going to
6 come in and tell me what they knew of it.

7 Q You then, I take it, never really took
8 into account the possibility that some of these
9 individuals may be worried about their own civil
10 liability, or the liability of their associates,
11 their shift mates who they work with and are no
12 doubt friends with and care about, would that
13 not --

14 A Certainly. But, again, my position
15 has always been that I will interview the officers
16 assuming that they are going to tell me the truth,
17 and if contradictions or things of that nature
18 come up, then I will address those, but I'm not
19 going to assume the worst at the beginning.

20 Q Sir, certainly if contradictions come
21 up and they catch your attention, I have no doubt
22 that you would do that, sir, but I'm wondering
23 whether or not, as an officer and investigator
24 sitting back here thinking, you might not agree
25 that if you enter into the exercise with that kind

1 of, I will call it a healthy skepticism, you are
2 more apt to see problems as they emerge?

3 A In hindsight, I would have to agree
4 with you. At the time, I wasn't thinking that
5 way.

6 MR. PACIOCCO: It is now 3:32,
7 Mr. Commissioner. It is an opportune time for a
8 break?

9 THE COMMISSIONER: Yes.

10 THE CLERK: All rise.

11 THE COMMISSIONER: 15 minutes.

12 (Proceedings recessed at 3:32 and
13 reconvened at 3:45 p.m.)

14 THE CLERK: All rise. This Commission
15 of Inquiry is now reopened.

16 THE COMMISSIONER: Sergeant Girard, I
17 just have a few questions, if you could help me to
18 understand something?

19 THE WITNESS: Yes, sir.

20 THE COMMISSIONER: You indicated that
21 you approached this task assuming that the police
22 officers would tell the truth?

23 THE WITNESS: Yes.

24 THE COMMISSIONER: Yeah. There are 20
25 in a platoon?

1 THE WITNESS: Well, it depends on the
2 division.

3 THE COMMISSIONER: Did you ever
4 consider the kind of pressure that would be placed
5 on an officer, by the very dynamics of being a
6 member of a platoon, to come forward and say, yes,
7 I saw one of my colleagues drinking heavily?

8 THE WITNESS: Yeah, I thought about
9 it.

10 THE COMMISSIONER: Sorry?

11 THE WITNESS: I thought about it, yes.

12 THE COMMISSIONER: Wouldn't that cause
13 you to be cautious in the way that you conducted
14 the investigation?

15 THE WITNESS: Well, firstly, I wanted
16 to find out what everybody had to say, and then
17 take it from there. And if there were
18 contractions and if there were things that should
19 be re-examined in a subsequent interview, then my
20 partner and I were going to do that.

21 THE COMMISSIONER: Don't you think
22 that's doing it backwards? By getting them up to
23 tell you whether anybody was drinking, and then
24 not expecting them to contradict one another, how
25 do you expect to find inconsistencies?

1 THE WITNESS: Well, with the staff at
2 Branigan's, for example, I know at the house party
3 that would have been a more difficult task, but
4 with the civilian -- any time, in my time in
5 Professional Standards Unit, any time that we had
6 access to an independent civilian witness, that
7 was usually the turning point of the
8 investigation.

9 THE COMMISSIONER: I see. And we know
10 that initially she did not express the view that
11 there was excessive drinking.

12 THE WITNESS: She told me that in her
13 opinion no one was intoxicated when they left
14 Branigan's.

15 THE COMMISSIONER: And, of course, you
16 have heard subsequent to that that she said there
17 were?

18 THE WITNESS: Yes, some of them.

19 THE COMMISSIONER: Some of the
20 officers were, and she explained the reasons why
21 she gave that testimony. All right. Thank you
22 for your help.

23 THE WITNESS: You are welcome.

24 BY MR. PACIOCCO:

25 Q We will canvass those issues with this

1 witness in more detail at a later point,
2 Mr. Commissioner.

3 You were telling us about the
4 interview that you ended up conducting with
5 Sergeants Humniski and Anderson, that was
6 unexpected on the first day of your assignment,
7 sir. I understand from your notes that you have
8 recorded the amount of time that the interviews
9 took?

10 A Yes.

11 Q And at page 2866 of our book, which is
12 at tab Q-1.89.b 3, page 2866, it would be page 52
13 of your notes, it records that your interview with
14 Sergeant Humniski was effectively 20 minutes, from
15 1536 to 1556?

16 A Yes.

17 Q And then you also had an interview
18 with Anderson, which at page 53 of your notes, or
19 2867 of the book, also reflects a 20 minute
20 interview, 1702 to 1722, sir?

21 A Yes.

22 Q Do you feel your interviews with
23 Anderson and Humniski were adequate, sir?

24 A Well, I don't go into an interview
25 sort of pre-determined as far as how long it will

1 take. My partner and I discussed it, we heard
2 them out as to what they had to say. We asked the
3 questions that we could think of at the time. It
4 is a matter of course that we check with each
5 other, basically anything else, Con, whatever, and
6 that was that.

7 Q You were, of course, inquiring into
8 Derek Harvey-Zenk's alcohol consumption as your
9 primary focus?

10 A Well, initially with these interviews
11 it was that, but it was also, where were they. At
12 that point we didn't know for sure where they
13 where and who he was with. So we were trying to
14 determine a witness list. And as part of that, of
15 course, the consumption.

16 Q Are you aware, sir, that you did not
17 ask Sergeant Anderson about whether he saw
18 Harvey-Zenk drinking alcohol at Branigan's?

19 A I would have to refer to what I put in
20 the summary of his --

21 Q Sir, we are going to be going through
22 a lot of things in the notes, and I want to be
23 fair to you, and you feel free to confirm or check
24 anything you need it. But I can indicate to you
25 in my read of the Anderson interview, there is

1 nowhere where you ask him whether he saw
2 Harvey-Zenk drinking alcohol at Branigan's.

3 A Okay. If you are saying that then --

4 Q You didn't ask Sergeant Anderson where
5 he was relative to Harvey-Zenk at Branigan's, as
6 you did with many of the other witnesses?

7 A No, I was concerned in finding out
8 from them if they could tell me how much he had to
9 drink.

10 Q But you didn't ask where they were
11 relative to him, and you didn't ask Anderson how
12 much alcohol Harvey-Zenk drank at Branigan's?

13 A Right.

14 Q You didn't ask either Anderson or
15 Humniski who Harvey-Zenk was sitting with at
16 Branigan's?

17 A No.

18 Q You didn't ask either of them how much
19 alcohol was consumed by others at Branigan's?

20 A No. At that point I was concerned
21 about, what can you tell me about the gathering,
22 and in particular, about what Derek Harvey-Zenk
23 consumed.

24 Q Do you not think that perhaps given
25 that your early expectations were fairly modest in

1 terms of what information you were seeking from
2 those witnesses, that you shouldn't have had them
3 back at some later point when you had more
4 information where you could question them further,
5 sir?

6 A Probably to do with what occurred at
7 the Black residence, but not for Branigan's, no.

8 Q You wouldn't bring them back to ask
9 about Branigan's?

10 A No. Because I had a civilian witness
11 that told me there was nobody was intoxicated when
12 they left.

13 Q All right. We are going to look at
14 what the civilian witnesses told you later, sir,
15 but just as a bit of a taster, you had information
16 from Chelsea O'Halloran that at least two
17 individuals there drank eight beer, according to
18 her description, even in that early interview?

19 A Yes. And I was concerned about the
20 fact that one of them she thought might be Derek
21 Harvey-Zenk.

22 Q Yes. And I don't notice any of the
23 officers anywhere talking about consuming eight
24 beer at Branigan's?

25 A No.

1 Q And you also had information from
2 Darcey Gerardy that he had concerns about officers
3 drinking and driving?

4 A I believe he said he had concerns
5 about two or three, and he was assured that they
6 were getting a ride.

7 Q And you certainly didn't come up with
8 two or three officers who were impaired, based on
9 the interviews that you conducted, sir?

10 A No. But, again, I guess I put too
11 much stock into what Ms. O'Halloran was telling
12 me, because she told me that in her opinion, no
13 one was intoxicated.

14 Q You had evidence from Rodrigo Bravo,
15 that there were seven or eight cars left, maybe
16 six or seven, I would have to check to be precise,
17 but it was either six or seven, or seven or eight
18 cars left in the parking lot when he came to work
19 the next morning, which would have been after
20 Anderson and Harding left, and McLure and Fudge
21 left. So there were still cars there from
22 individuals who he attributed coming from the
23 Branigan's institution, sir?

24 A But we would have no way of knowing
25 whether those vehicles were from those officers or

1 not.

2 Q Yes. And, sir, if you had no way of
3 knowing it, it wouldn't be something that you
4 should disregard, would it be, sir?

5 A Well, as I said, I mean, when I had a
6 civilian witness tell me, the person that served
7 them all night, give me the evidence that she did,
8 I just didn't think to pursue it any further on
9 the Branigan's end of things.

10 Q Sir, we will come back to that. At
11 10:15 you left a copy of your interview memo for
12 McCaskill, advising him to advise the members on
13 the next day, sir, or was it later that night?
14 You had secured a list of --

15 A Yes, that would have been March the
16 1st, the Tuesday morning at 10:15. That's when --
17 I guess that's when I spoke with him.

18 Q And you were going to use the process
19 of sending notices to the police officers to
20 attend, sir?

21 A Yes, that's the standard.

22 Q Yes. And I'm going to take you, if
23 you would, through the assistance of the clerk, to
24 a document we have not yet filed. It is in volume
25 Q-2.89.b.37, Q-2.89.b.37 at page 3069.

1 THE CLERK: Exhibit 205.

2 (EXHIBIT 205: Q-2.89.b.37, Winnipeg
3 Police Interoffice memo to Constable
4 B. Neumann)

5 BY MR. PACIOCCO:

6 Q Sir, what you have in front of you is
7 an interoffice memo, and it is just an example.
8 We have been laterally furnished by the Winnipeg
9 Police Service with all of the notices that went
10 out in connection with this case, but this is just
11 an example of the interoffice memo or notices that
12 is provided to witnesses. Is that what you have
13 in front of you, sir?

14 A Yes.

15 Q And this is one addressed to Constable
16 B. Neumann, and I note there is probably an error
17 on the date, but the essentially the information
18 is accurate inside in terms of what that is, sir?

19 A Yes.

20 Q You send one to divisional commanders
21 rather than to individual officers, and the
22 divisional commanders will take care of them being
23 disseminated to the officers as a matter of
24 course, sir?

25 A Yes. I believe they provide it to the

1 shift supervisor, and the supervisor would serve
2 the memo.

3 Q Okay. Sir, I'm going to take you
4 through this document later, but I want to come
5 back to the fact that you are involved in an
6 investigation now on matters that ordinarily would
7 have been investigated by another police force.
8 Do you -- what was your understanding as to why
9 the Professional Standards Unit was being asked to
10 conduct this investigation?

11 A I'll just see if I can find it here --
12 if I remember correctly, I believe it was Chief
13 Bakema requested it. And whether it was due to a
14 manpower issue on their part, or I remember
15 thinking at the time that if a member of the East
16 St. Paul Police showed up at an officer's home,
17 and that officer says, sorry, I have nothing to
18 say to you, as a witness, there is really not much
19 they can do, whereas under our rules and
20 regulations, they are duty bound to come in and
21 provide the information that they may have to us.

22 Q So your evidence is you were thinking
23 in part that it would be an advantage to have the
24 Winnipeg Police Service do the investigations
25 because you have powers of compulsion over the

1 officers that East St. Paul does not?

2 A Yes.

3 Q Sir, at this point very early in the
4 investigation, when you first spoke to Anderson
5 and Humniski, you must have realized that it
6 really wasn't necessary to have powers of
7 compulsion exercised in this case?

8 A Yes, that's right.

9 Q These officers were keen to come
10 forward?

11 A Yes.

12 Q And I think more importantly, you
13 would agree with me that if a police officer from
14 the Winnipeg Police Service, who may have material
15 evidence to give, refused to talk to the East St.
16 Paul Police, that the Winnipeg Police Service
17 executive would take steps to ensure that that
18 officer cooperated, sir?

19 A They may have. I guess, I don't know,
20 that's above my rank.

21 Q Well, I'm just asking you whether or
22 not you wouldn't find it discreditable for a
23 police officer to behave as some civilians might,
24 and say "I'm not cooperating?"

25 A Yeah, for sure.

1 Q Finally, sir, I'm going to take you to
2 a passage that appeared in the interview of
3 Constable Azaransky, and you will find this in
4 exhibit 166, and it is at F-1.35.a.

5 THE CLERK: Are you sure it is 166?

6 MR. PACIOCCO: I think it is F-1.35.a,
7 and I gave you an exhibit number, that number
8 could certainly be wrong.

9 THE CLERK: Yes, sorry.

10 BY MR. PACIOCCO:

11 Q And I'm going to read from your
12 comment to Constable Azaransky, beginning on page
13 870. Constable Azaransky, at the end of his
14 interview, says to you at line 13:

15 "I just have a question about, I
16 guess, my attendance. I guess I'm
17 here as a police officer governed by
18 rules and regulations to assist the
19 PSU in an investigation."

20 And you say to him:

21 "We actually spoke about this with
22 Constable Black as well. The way this
23 worked out, normally we don't have
24 supervisors and people coming to us
25 and saying, we want to come and see

1 you right away. Normally, the process
2 is that we send out letters and we
3 have people come in at a
4 pre-designated date. This
5 circumstance is a little different. I
6 think that because everybody wanted to
7 come forward and tell us their
8 involvement, the issue quite frankly
9 hasn't come up as to anybody saying,
10 no, I don't want to talk to you about
11 this. Technically you guys are
12 witnesses to this strictly because of
13 the inquiry that the East St. Paul
14 Police have asked the service to make.
15 Constable Azaransky: Sure.
16 Sergeant Girard: That being where he
17 was and who he was with prior to the
18 incident. So, yeah, to answer your
19 question, you are here as a witness.
20 If anybody would have brought up a
21 concern as to, you know, am I being
22 forced, or I feel like I'm being
23 forced or whatever, then we certainly
24 would have to sit back and think about
25 whether -- I don't know if we would

1 compel somebody."

2 Those are your words, sir?

3 A Yes.

4 Q What were you saying to him?

5 A Well, I think I was just addressing
6 his question as to whether he would be compelled.
7 And I think that what I meant by, "I don't know
8 that we would compel somebody," that we would have
9 to sit back and talk with their staff sergeant
10 about it, and figure out how we were going to do
11 it. I had never been in a position before where I
12 had to actually order somebody or, you know,
13 compel them to come in, or order them and say, you
14 have to come in and see us. I wasn't familiar
15 with that process.

16 Q Your ultimate phrase is, I don't know
17 that we would compel somebody. At this point you
18 are saying that you don't even know the compulsion
19 power that may have existed would have been used?

20 A Yeah, I think it probably would be
21 more accurate to say that I didn't know the
22 process. It was a poor choice of words on my
23 part, I guess, with Constable Azaransky. But I'm
24 certain that once my partner and I -- if that
25 situation had come up, there would be no doubt

1 that they would be compelled to come in. I just
2 wasn't aware of the process or how we would have
3 to go about that.

4 Q All right. So at the time that you
5 were speaking to Constable Azaransky, you weren't
6 clear as to what would be done. But now with more
7 experience and looking back on it, you are sure it
8 would have been done? You weren't misleading him
9 at all, you just didn't know at that point?

10 A No, I didn't know the process. Like I
11 said, it was a poor choice of words on my part. I
12 probably could have been a little bit more clear
13 with him as far as it being the process.

14 Q Okay. I just put it to you because
15 you had said that one of the things that had gone
16 through your mind was, hey, we can compel these
17 guys and East St. Paul Police can't, and it just
18 struck me as incongruous that you were saying
19 there that you don't think you would compel
20 anybody?

21 A I can understand why you would say
22 that.

23 Q So now you are ready to go, in your
24 own mind, on the investigation on March 2nd, when
25 you come into work. You are all set to go. You

1 have already had your discussions, you have sent
2 off the notices to McCaskill, or at least you have
3 asked McCaskill to assist you in getting the
4 officers there. You have got the roster.

5 You were prepared to interview
6 Mr. Nolet first, according to the note that you
7 have at page 2872 at the top, it would be page 58
8 of your interview.

9 "The first interview will be Constable
10 Nolet and whoever he was working with
11 so long as it is not Constable Black."
12 Do you see that there, sir?

13 A Yes.

14 Q You tried to arrange it, and I
15 understand that there is some feeling on the part
16 of Inspector McCaskill that, look, hold back,
17 don't send anybody over right now, we have got to
18 do other things. Can you tell the Commissioner
19 exactly what happened in that conversation with
20 then Inspector McCaskill?

21 A Okay. I contacted him at 1845 hours
22 and I asked that Constable Nolet be the first
23 officer sent down. And he advised me that he was
24 unsure if anyone on the shift knows that we would
25 be interviewing, and if there was anyone that

1 wants to contact the police association first, we
2 would have to allow 24 hours for that. And that
3 he would call me back after the meeting with the
4 shift, once he assesses the mood.

5 Q Okay. So you are basically being told
6 that, look, hold off, I know you are ready to go,
7 but you have got to give these officers, or we are
8 going to give these officers 24 hours?

9 A Yeah. I guess he is concerned for the
10 people in his division, he wants to make sure, I
11 guess, that they understand what is going on and
12 have an opportunity to contact the association.

13 Q And I understand that Detective
14 Sergeant Poole was consulted as a result of that?

15 A Yeah, I spoke with Staff Sergeant
16 Poole about it immediately, and we decided that we
17 would deliver the letters to Inspector McCaskill
18 and begin the interviews the following night.

19 Q Okay. So you basically were put back
20 a day in terms of what you expected to happen when
21 you initially contacted McCaskill?

22 A Yes.

23 Q So, you were following now the
24 internal procedures that are normally in place, or
25 the protocol that's normally in place for PSU

1 investigations, even though you are assisting East
2 St. Paul in their criminal investigation?

3 A Yes. It is important that we remain
4 consistent in how we deal with the officers.

5 Q Why is that, sir?

6 A For the credibility of the unit. I
7 mean, there had been a process that was brought
8 into place long before I became part of the unit,
9 and when I started there, and there was a manual
10 that we read through, and in discussions with the
11 members that were there, they just said, it is
12 really important that we stay consistent with how
13 we deal with each officer. We are not going to
14 start making exceptions on different cases.

15 Q So even though this was an exceptional
16 case, really unprecedented case, where you are
17 actually conducting part of a criminal
18 investigation in conjunction with another police
19 force for an alleged crime that happened in their
20 jurisdiction, the decision is taken not to breach
21 that practice?

22 A Well, actually, in essence, we did,
23 because normally we would try to give them up to
24 30 days notice, and that was the standard that I
25 would always -- I would have to take a look first

1 off at my calendar and see what dates that my
2 partner and I had available, because we were each
3 carrying our own files. So we would have to find
4 some dates that would accommodate both of us to do
5 the interviews, and then we would have to look at
6 the work schedule to try and find a day, usually a
7 day shift that we'd get somebody in, because we
8 worked just straight days. Unless it was an
9 exceptional circumstance, we wouldn't be on
10 overtime for these interviews. So quite often we
11 were looking at minimum three to four weeks down
12 the road. So in that case, this was very unusual
13 because we did get them in much quicker than that.

14 Q Would you look three to four weeks
15 down the road in connection with a criminal
16 allegation, sir, or just for a regulatory matter?

17 A Both. For witness interviews, and
18 even for the suspect interviews, we usually made
19 them in advance, because we had a number of files
20 that we would be juggling.

21 Q So you would coordinate the times with
22 the shift supervisors to correspond with their
23 schedule, their work schedule?

24 A No. We had access to the work
25 schedule on-line, so we would just look -- we

1 would first and foremost find a date that we could
2 both do it. And then we would do up the memo, and
3 make sure that the date that we had picked was a
4 day that they were working day shift, or maybe
5 they could start early on an evening if we needed
6 to do that. And then we would send the memo out
7 for service.

8 Q I know that even with respect to
9 holiday time for the officers, this is something
10 that you try to take into account when scheduling?

11 A Yeah. Quite often we would get some
12 word back from the shift supervisor, we would get
13 the memo back saying that they were on holidays
14 and --

15 Q Constable Bauer, for example, in this
16 case, I don't know if you recall, but he was
17 supposed to come in on the 18th of March, and
18 ended up coming in at the end --

19 A Yeah, I believe he was on a holiday,
20 yes.

21 Q And this practice involved giving a
22 standard warning, the police warning that we've
23 seen in the earlier testimony of Sergeant Poole,
24 where you caution officers that the evidence or
25 information in the interview could be used in

1 criminal, civil, or administrative proceedings?

2 A Yes, it is part of the form letter.

3 Q And it is included in the form letter
4 that we opened up a little while ago, sir?

5 A Yes, it is.

6 Q And that provides them with
7 information that you will try and schedule it at a
8 time when they are at work?

9 A Typically, we would have the date in
10 the memo, the pre-set date. And then if there is
11 a conflict for them, then they would get ahold of
12 us and we would reschedule.

13 Q Is it fair to say, given the practices
14 and the way these interviews are conducted, that
15 the process of dealing with police officers is
16 different from the way that civilian interviews
17 would be conducted in other forms of police
18 investigations?

19 A Yes. But I have interviewed civilian
20 witnesses where we try to set up a date, and they
21 either cancel it, or whatever. But generally
22 speaking, yeah, typically we would be having
23 civilians in a little quicker.

24 Q Yeah. And you don't provide civilians
25 with notice periods to go and consult with anyone.

1 In fact, a good investigative technique is to try
2 to get them in as soon as you reasonably can?

3 A Yes.

4 Q And you don't typically provide
5 civilians with cautions about potential criminal
6 use or civil use of their statements?

7 A No, but the officers as well are bound
8 by our regulations, so we need to make sure that
9 they understand that, you know, that they have the
10 time to consult with the association because of
11 that.

12 Q You seemed at the time to think that
13 this was a good approach?

14 A It was the approach that had been in
15 place for some time, and I didn't have any problem
16 with it, no. I followed the procedures that were
17 set.

18 Q And Staff Sergeant Poole, you record,
19 also agreed that it was a good approach?

20 A Again, I don't want to speak for him,
21 I don't know whether he thinks it is good or not,
22 but that is just what was in place.

23 Q I just interpreted your note, and
24 correct me if I am wrong, at the bottom of page
25 2872 where you talk about, spoke with Sergeant

1 Poole about this immediately. I mean, obviously
2 you felt it was something that had to be --

3 A I thought you were talking generally
4 about the whole process.

5 Q No, I mean in this case.

6 A Yes, he agreed that it would be a good
7 approach.

8 Q And he said it would be a good
9 approach, according to your notes, to give people
10 time to contact the Winnipeg Police Association
11 and "let things soak in re interviews"?

12 A Yes.

13 Q That phrase "soak in," sir, is that
14 your own expression, or do you think that's an
15 expression that you received from Staff Sergeant
16 Poole?

17 A Probably my own expression.

18 Q What did you mean by it?

19 A Well, just that it was a very tragic
20 event, and I mean, let's face it, most people
21 don't become involved in something like this.
22 Even on the job, I mean, in my 20 years, maybe a
23 dozen, you know, times, maybe a few more. It is
24 just something unusual, particularly something
25 that would involve one of their shift mates.

1 Q So what has to soak in?

2 A Just the fact that all this has
3 happened and they are now going to be a witness to
4 it, and they have to come and see us about it.

5 Q Again, sir, I would suggest to you
6 that that's not typically a concern when it comes
7 to trying to get a quick answer from civilian
8 witnesses, and strike while the iron is hot when
9 it comes time to get their statements?

10 A Can you repeat that?

11 Q I'm going to suggest to you, sir, that
12 giving witnesses time to have something soak in is
13 not typically a consideration with lay witnesses?

14 A No. However, in this case there is a
15 provision in there where we do have to provide
16 them with 24 hours notice minimum.

17 Q I know that, sir, but you are talking
18 about things soaking in, and I'm really trying to
19 get to the bottom of what you had in your mind
20 when you said, give them time to let things soak
21 in?

22 A Well, I don't -- just to come to terms
23 with everything that has happened on their
24 platoon, because it was such a tragic incident.

25 Q Just by way of example, Garth Shaw,

1 who was an eye witness to this accident, was
2 interviewed that same night by the East St. Paul
3 Police?

4 A Um-hum.

5 Q And really, although that's an
6 isolated case, I think you would agree with me
7 that's pretty standard, you don't give soak in
8 times for witnesses even when they see the most
9 horrendous things?

10 A The intention of this wasn't to give
11 them "soak in time," if that is what you are
12 suggesting.

13 Q Sir, I'm just reading your note and I
14 want you to tell us what you meant by it. That's
15 all.

16 A This delay was going to happen,
17 whether I agreed with it or not. That was just a
18 phrase that I put in there, because the enormity
19 of the issue, I mean, it is not every day that one
20 of your shift mates becomes involved in something
21 like this. So, yeah, that was just -- and yeah, I
22 don't know, to be honest with you, exactly what I
23 meant about that, I don't know. But that's what
24 I'm thinking now, is that it was just a matter
25 sort of to come to terms with everything that had

1 happened in that period.

2 Q Okay. So all of that took place on
3 March 1st. March the 2nd, the next day, sir, you
4 are at the office at 2115 hours, your notation
5 shows "at office" on the -- this would be actually
6 March 2nd, page 60 your notes?

7 A Yes, 2115 hours.

8 Q And you make a call to Division 3 and
9 speak to Sergeant Humniski to arrange interview
10 crews to be sent down?

11 A Yes.

12 Q And you indicate here that you don't
13 want Sergeant Black until tomorrow night?

14 A Yes.

15 Q And again, we referred earlier to your
16 desire to try and find out a bit more before you
17 actually interviewed him, sir?

18 A Yes.

19 Q And then you conduct a briefing with
20 your investigative team at 2136 hours?

21 A Um-hum.

22 Q And what took place during that
23 briefing, sir?

24 A I think it was just to bring Sergeant
25 Roxburgh and Detective Sergeant Epp up to speed a

1 little bit, let them have a look at the East St.
2 Paul Police report, and to just discuss some of
3 the things that we wanted to get from the
4 officers, just to bring them up to speed.

5 Q Okay, sir. And I didn't notice any
6 detailed notes on your part as to this briefing,
7 but if you are given document at Q-1.89b.6,
8 Q-1.89.b.6, page 2948 of volume Q-1, page 2948.
9 These are notes that you are going to be receiving
10 from Detective Sergeant Epp, who I understand was
11 one of the members who was going to be working on
12 this project with you?

13 A Yes, for that one night anyway.

14 THE CLERK: Exhibit 206.

15 (EXHIBIT 206: Q-1.89b.6 Notes of
16 Detective Sergeant Epp)

17 BY MR. PACIOCCO:

18 Q And I understand the involvement of
19 Detective Sergeant Epp and Roxburgh was limited to
20 that one evening. They conducted some of the
21 interviews for you because you had a lot of police
22 officers coming down?

23 A Yes.

24 Q And at 2145 hours, Detective Sergeant
25 Epp records that there is a briefing in the lunch

1 room on the Thursday evening, and records the
2 Thursday evening, which would have been the date
3 of the -- leading up to the events that resulted
4 in the charge.

5 "Details of EDL time, left Branigan's
6 at Leila till when, what happened
7 after? Who at Black's? What was the
8 food, alcohol. Derek Harvey-Zenk?
9 Where sat in, who paid, method..."

10 Do you know what that word would be, sir, after
11 the word method, after the slash?

12 A I can't -- I don't know.

13 Q Then you have the term:

14 "Observations, Sean's alcohol, food?
15 Observation, condition of everyone,
16 brought alcohol."

17 And then he records it is a request from East St.
18 Paul.

19 Sir, that's as close as I could find
20 to an investigation plan where a list of topics
21 and functions that you would engage in are set
22 out. And so I take it this is a description of
23 what you think needs to be done, or what somebody
24 at that meeting thinks needs to be done during the
25 investigation, sir?

1 A Yes. Now, whether this was everything
2 that was discussed, I don't know. Detective
3 Sergeant Epp may have marked down things on her
4 own that she thought of. I don't know that.

5 Q Yes. And it wouldn't be fair to
6 expect you to adopt all of that, but I just wanted
7 to find out whether that is consistent with your
8 recollection of what took place --

9 A These would have been at least some of
10 the topics that we discussed, yes.

11 Q So you never had a formal strategy
12 document that had been prepared, setting out what
13 it is you are going to be looking for and what
14 each team should be doing, sir?

15 A No.

16 Q And the interviews then commence, sir.
17 You and your team ultimately interviewed a large
18 number of police officers. And I going to ask you
19 just generally, do you feel, with the benefit of
20 hindsight, that those interviews were thorough and
21 probing?

22 A No, probably could have been a lot
23 more direct and gone into more detail with them.
24 There was some of them that, obviously, their
25 involvement wasn't quite as much as others, such,

1 you know, people that left earlier and whatnot.
2 But for a number of them, yeah, we could have been
3 a little more thorough.

4 Q Now, you call Constable Kapka down,
5 you can see at 2243, at page 2875 of your notes,
6 he is called and he is taken into room number one
7 with Sergeant Pearson, and you explain the
8 process, and Constable Kapka views the preamble.
9 And you would explain it to him?

10 A Yes.

11 Q And you do this before the recorder
12 would be turned on, sir?

13 A Yes.

14 Q And the recorder goes on at 2252 and
15 it is off at 2311. And so that interview takes
16 approximately 19 minutes, sir.

17 And that interview, if I can take you
18 to the interview itself, it is at one of the
19 exhibits that was filed at the commencement of
20 your evidence today. It is exhibit 192. It is at
21 F-1.35.h. And I know the quality can't always be
22 measured in length of time, sir, but I'm just
23 going to make the observation that this interview
24 is 19 pages long, including both the cover page
25 and the Official Examiner's certificate at the

1 back. So it is 17 pages of material, sir. And
2 you have for the first three pages a long preamble
3 of things that need to be cleared before the
4 actual interview begins. Would that be fair, sir?

5 A Yes.

6 Q You introduce yourself, you introduce
7 Sergeant Con Pearson, who is with you, you
8 indicate you are both members of the Professional
9 Standards. You indicate it is an interview with
10 Jacek Kapka regarding a Professional Standards
11 unit file. You get him to spell his name. You
12 remind him that in accordance with policy, this is
13 being recorded on the Olympus DS4000 digital
14 recorder. You give a little bit of background,
15 you have been speaking with shift supervisors,
16 with Inspector McCaskill to arrange this, you sent
17 a memo and gave a very brief description of what
18 this was about. And you tell him it is concerning
19 Constable Harvey-Zenk.

20 "In the memo it was said that we would
21 arrange the interviews through the
22 shift supervisor. So we have
23 contacted your supervisor tonight and
24 he said, yeah, we will send down these
25 two officers down first. You arrived

1 a short time ago. We met you,
2 explained the preamble. You didn't
3 have any questions. Is that an
4 accurate account?"

5 And he confirms it. And you say:

6 "Your normal voice is fine, it is a
7 pretty good microphone. It is our
8 practice to ensure that members
9 understand their status when being
10 interviewed. And I remind you that
11 you are being interviewed as a
12 witness."

13 A That's correct.

14 Q "This statement may be used in any
15 criminal, civil or service proceeding
16 or it may not be used in any
17 proceeding at all."

18 So you go through the protocol. Then you ask
19 whether there are any threats or promises that may
20 have influenced the statement. And you asked
21 whether there was anything said by anyone who
22 would have influenced what he might say. And you
23 then engage in an exchange over whether it is
24 being video recorded. But all of those
25 conversations take place before you get to the

1 questions themselves, sir.

2 So correct me if I'm wrong, but I
3 notice of all of the interviews -- it is probably
4 about three pages of them consist of the protocol
5 that you go through, sir?

6 A Okay, yeah.

7 Q So you have that 19 minute interview
8 with him. And you also have an interview with
9 Mikawoz at the time, I understand. He comes in
10 with Kapka, but I take it you didn't interview
11 Mikawoz, that this was done by the other team that
12 was there?

13 A Yes.

14 Q And certainly they arrive at 2243, and
15 you escort both officers out at 2311, so Mikawoz
16 was there no longer than Kapka was; correct?

17 A Yes. I don't have a time, 2311 is
18 when the recorder was turned off. I don't have a
19 time when we escorted them out, but it would have
20 been shortly after that.

21 Q Okay. At 2327 you get a call from
22 Officers Guyot and Harding downstairs, right?

23 A Yes.

24 Q And they come up, and the time is not
25 clear as to how long they were there, but the

1 recorder is on at 2344, and you get an interview,
2 state the preamble, and at 2350 the recorder is
3 off after 16 minutes. Do you know whether that
4 was for Guyot or Harding?

5 A That would have been for Constable
6 Harding -- Constable Harding, because he was in
7 room number one, which was the room that we were
8 using.

9 Q Okay. So Harding has a 16 minute
10 interview, and at 2355 you escort Guyot and
11 Harding to the first floor. Then you have
12 Constable Williams and Michalik coming in. And
13 the times are not clear from the notes as to who
14 goes when, but nine minutes of recorded interviews
15 are shown from 0011 to 0020, and then the recorder
16 is off. So whoever that was that was interviewed,
17 it was a nine minute interview, sir?

18 A Yes. That would have been, I believe
19 we interviewed Constable Michalik. I will confirm
20 that for you.

21 Q Okay. And then Constable T.J. Spruyt
22 and Constable Nechwediuk come in at 0044, and you
23 are in room number one with Sergeant Pearson and
24 Spruyt at 0049. The recorder goes on at 0052 and
25 do you the preamble. Are you able to indicate

1 from your notes, because mine aren't all that
2 clear, what time the interview concludes?

3 A 0108.

4 Q 0108, so that interview is a 16 minute
5 interview, sir?

6 A Um-hum.

7 Q And I have recorded here that at 2882
8 you have Constable McLure coming in for an
9 interview. I missed some, sir. If you go back,
10 if you would, to page 2880, you have Constable
11 Nolet coming in for an interview, sir?

12 A Yes.

13 Q And he is interviewed between what
14 time and what time?

15 A 1742 we turn the recorder on, and the
16 recorder was turned off at 1801.

17 Q So again we have, in that occasion we
18 have an interview of about 19 minutes, sir?

19 A Yes.

20 Q And then the next page you will see
21 Constable McLure comes in, 2219. Actually she
22 calls. Does she come by for that interview, sir?

23 A Yes, I believe she showed up a little
24 later at 2307.

25 Q Okay. We are going to come back to

1 the discussion about Constable Black and Azaransky
2 and how they get their time changed to later. But
3 she comes in and she is being interviewed at 2310,
4 and her recorder goes off at 2334. So you have
5 basically a 24 minute interview there?

6 A Yes.

7 Q Then I notice you have in your notes a
8 four day lull before interviews commence again?

9 A Okay.

10 Q And I imagine that's because the
11 platoon shift is off, sir?

12 A Well, it would have been over the
13 weekend, that would have been two days, and
14 possibly because they were off, yeah.

15 Q Okay. And then March 7th, the
16 interviews continue, and you bring, you have
17 McKillop shown in your notes at 9:45, sir?

18 A That's a separate matter, actually,
19 that should have been covered.

20 Q Thank you. All right. Then you, on
21 that day you attend at Branigan's and you conduct
22 some investigation there that we will come back to
23 later, sir. The next interviews that you conduct
24 with Police Service members are on March 11th.
25 Sir, you have interviews that are occurring at

1 page 2893. Can you indicate who is shown there,
2 sir?

3 A I don't have those page numbers in my
4 book.

5 Q Page 19. Mine are not legible, sir.

6 A On March 11th, the Friday, it would be
7 0825, Constable Veldman.

8 Q What page is that on your notes, sir?

9 A The heading is on page 3 -- but the
10 comment he -- on page 4 of my notes, in my second
11 book.

12 Q All right. We don't -- okay, so it is
13 over on page 3. Okay. I see where you are. You
14 are at the bottom of page 2888 in our book.

15 And how long does that interview last
16 with Veldman?

17 A It looks like ten minutes.

18 Q 1828, is it to --

19 A 0828 to 0838.

20 Q All right, ten minutes. And then you
21 have an interview with Sergeant Black on this
22 date, now current Sergeant Black, and that occurs
23 at 1136 to 1205. He is just under 30 minutes,
24 sir?

25 A Yes.

1 Q And then you have an interview with
2 Azaransky, he is just under 26 minutes, on the
3 next page, sir?

4 A Yes.

5 Q You have an interview with Jules
6 Buors. How long does his interview take?

7 A It looks like eight minutes.

8 Q And you learn that Norbert Bauer is in
9 Mexico?

10 A Yes.

11 Q And then, sir, what we have as page 19
12 of your notes, you have an interview with Haddad?

13 A Yeah.

14 Q And how long does that one take, sir?

15 A Seven minutes.

16 Q You have an interview with Fudge.
17 What about that one?

18 A Looks like 10 minutes.

19 Q Gord Schneider?

20 A Nine minutes.

21 Q And you have an interview with
22 Constable Toews?

23 A Yes. That would have been eight
24 minutes.

25 Q And then you have an interview with

1 Norbert Bauer subsequently. And that interview,
2 sir, takes place at page 2903, or page 37 of your
3 notes?

4 A Yeah, nine minutes.

5 Q And that's a nine minute interview,
6 sir.

7 Mr. Commissioner, it is now 4:30, it
8 is evident that I'm not going to finish this
9 witness today. That's a good place to break.

10 THE COMMISSIONER: All right. I take
11 it we are not sitting tomorrow? Monday, at --
12 have we got a lot of work next week?

13 MR. PACIOCCO: We have a tremendous
14 amount of work next week.

15 THE COMMISSIONER: Let's compromise
16 and start at 9:15 on Monday. All right. Thank
17 you.

18 THE CLERK: All rise. This Commission
19 of inquiry stands adjourned until 9:15 on Monday
20 morning.

21 (Proceedings adjourned at 4:30 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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