

**IN THE MATTER OF THE THOMAS R. BRAIDWOOD, Q.C.,  
COMMISSIONS OF INQUIRY UNDER THE *PUBLIC INQUIRY ACT*,  
SBC 2007, c. 9**

Room 801  
Federal Courthouse  
701 West Georgia Street  
Vancouver, B.C.

April 30, 2009

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PROCEEDINGS AT  
HEARING (DAY 45)

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Commissioner:	T.R. Braidwood, Q.C.
Commission Counsel:	A. Vertlieb, Q.C.
Associate Commission Counsel:	P. McGowan
Counsel for Zofia Cisowski:	W. Kosteckyj, S. Whiteley, S. Parhar

(ii)

Counsel for Government of Canada:	J. Brongers, H. Roberts
Counsel for Vancouver Airport Authority:	D. Stewart, C. Friesen; B. Ergun
Counsel for B.C. Civil Liberties Association:	G. Pastine, S. Dubinsky
Counsel for Government of Poland:	D. Rosenbloom
Counsel for Corporal Benjamin Robinson:	R. Harris
Counsel for Constable Gerry Rundel:	T. Beaubier
Counsel for Constable Bill Bentley:	D. Butcher
Counsel for Constable Kwesi Millington:	R. Hira, Q.C.
Counsel for Public Service Alliance of Canada:	C. Buchanan, B. Matthews
Counsel for City of Richmond:	J. Goulden, M. Kleisinger, G. Trotter
Counsel for TASER International, Inc.	D. Neave, J. Spencer
Registrar:	L.N. Giles
Court Recorder:	P. Kealy, C.V.R., C.M.
Transcriber:	P. Neumann

1  
Dr. John Butt  
Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 Vancouver, B.C.  
2 April 30, 2009  
3

4 DR. JOHN BUTT, a witness,  
5 recalled.  
6

7 MR. MCGOWAN: Good morning, Mr. Commissioner. We'll be  
8 continuing with the evidence of Dr. Butt this  
9 morning. I understand there's some reasonable  
10 prospect that we may finish his evidence by the  
11 lunch hour. The only other witness we have  
12 scheduled today now is Dr. Martz, who will be very  
13 brief. Unfortunately, Dr. Ho couldn't make it  
14 today. We're going to try and see if we can  
15 accommodate him some day next week.

16 If we're close to concluding Dr. Butt, given  
17 that Dr. Martz is going to be so brief, I may  
18 suggest that we just continue this morning until  
19 completed, even if it means sitting a little bit  
20 late this morning.

21 THE COMMISSIONER: Yes, sounds reasonable.

22 Yes, Mr. Neave.

23 MR. NEAVE: Thank you, Mr. Commissioner.  
24

25 CROSS-EXAMINATION BY MR. NEAVE ON BEHALF OF TASER  
26 INTERNATIONAL, continuing:  
27

28 Q Dr. Butt, yesterday I asked you about your  
29 retainer and made -- and referred you to your  
30 handwritten note of the 17th of November. You  
31 recall that, Doctor?

32 A Yes, I do.

33 Q Was there ever a -- any written report produced by  
34 yourself with respect to that particular aspect of  
35 the retainer?

36 A The only written reports are the ones that we've  
37 discussed here.

38 Q And the -- we dealt briefly -- well, we dealt  
39 yesterday with the report of the 14th of April,  
40 that's the one that you signed, completed and  
41 forwarded by courier to Commission counsel before  
42 your holiday?

43 A Yes.

44 Q And that was described in various questions  
45 yesterday as being a draft report; do you recall  
46 that?

47 A Yes.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 Q There's no doubt that when you forwarded that  
2 report, signed, and departed on your holiday that  
3 was the final report?

4 A Yes.

5 Q Did you have any conversations or any other form  
6 of communication with anyone regarding that report  
7 prior to its completion?

8 A I don't think so, no, the -- not about that  
9 report, no.

10 Q Did you send it to anyone else, other than  
11 Commission counsel?

12 A No.

13 Q Now, you've told us about the call from Commission  
14 counsel about adding the Taser issue. Did you  
15 have any conversation with anyone else about that  
16 issue?

17 A No. I might have spoken about the logistics of  
18 the situation with Cathy Stooshnov, but that would  
19 be all. It would be just a matter of how I was  
20 going to get -- there was a bit of a mix-up  
21 because the e-mail isn't work very -- didn't work  
22 very well, but that's the only thing.

23 Q And I want to be clear, Doctor, I'm not speaking  
24 about the mechanics of forwarding the report.

25 A Yeah, that was all there was.

26 Q Thank you. Now, Doctor, yesterday I took you to  
27 your transcript from the presentation that you  
28 provided to Mr. Commissioner in May last, and  
29 discussed briefly with you the first of what you  
30 described as the unanswered questions. And that  
31 is that:

32

33 The first is what is the mechanism of the  
34 fatal collapse in Taser-related deaths?

35

36 A Yes.

37 Q And that for you in May last year was an  
38 unanswered question; is that fair?

39 A Yes.

40 Q And are you aware, Doctor, of any peer-reviewed  
41 medical literature, which has now provided an  
42 answered to the unanswered question?

43 A I am not.

44 Q And indeed nothing has changed in the literature  
45 since May 2008?

46 A To the best of my knowledge.

47 Q And the mechanism -- and you would agree with me,

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 Doctor, that today it's still an unanswered  
2 question, fair?

3 A Yes, I believe it to be so.

4 Q Now, in your evidence yesterday you indicated that  
5 you did not conclude, or have -- and you do not  
6 have the opinion today that Mr. Dziekanski had  
7 cardiomyopathy; is that a fair statement?

8 A Yes.

9 Q And that's based, as I understand it, on your  
10 review of the slides of the tissue from Mr.  
11 Dziekanski's heart; is that fair?

12 A I would say that plus the medical records as I  
13 knew the medical records.

14 Q Then.

15 A As I knew his medical record at the time.

16 Q Yes. Okay. And has that changed in any way with  
17 respect to the medical records that you were shown  
18 yesterday?

19 A It's not plain to me why he took the Metoprolol,  
20 but it's most likely because of a borderline blood  
21 pressure level. That would seem to be what the  
22 record indicates, that the best guess.

23 Q Is your opinion today the same, in that you are of  
24 the opinion that he did not cardiomyopathy?

25 A Yes.

26 Q And does that mean that in your opinion the heart  
27 was healthy, a normal heart?

28 A To the extent that it is known, I believe that the  
29 heart was healthy. There are only really two  
30 issues, whether the chambers of the heart were in  
31 fact dilated to the extent that the heart was  
32 compromised, and again I relate that to the issue  
33 of his apparent lack of symptoms and signs related  
34 to his heart and his medical record. And the  
35 other issue would be whether the conduction system  
36 of the heart had been examined at the microscopic  
37 follow-up, and it was not. So -- and I'm --  
38 that's not a criticism. It's a detailed  
39 examination. But those are the only two issues.

40 Q So putting those issues aside, it would be your  
41 opinion if -- and I want to phrase this properly,  
42 that he had a healthy, normal heart; is that fair?

43 A Yes.

44 MR. NEAVE: Thank you. Mr. Commissioner, do you still  
45 have on your bench Dr. Butt's May 21st  
46 presentation, the transcript that --

47 THE COMMISSIONER: Yes.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 MR. NEAVE: Okay. I'm just going to provide the  
2 witness with a copy.

3 A Thank you.

4 Q Now, Dr. Butt, if I can have you turn to page 14,  
5 please.

6 A Yes.

7 Q And you will see, commencing on that page,  
8 commencing at line 14 and below, a question from  
9 Mr. Commissioner, and I'll read that to you.

10 A I see it.

11 Q And Mr. Commissioner asked you this question  
12 during the course of your presentation:  
13

14 And, Doctor, pardon my voice. Something  
15 seems to have happened to it. Let us assume  
16 for a moment that some members of the police  
17 force in the course of their duty see what  
18 you've described as "excited delirium", that  
19 being exhibited, the group of symptoms you  
20 have described. Now, I take it - or maybe I  
21 shouldn't put it that way - if a Taser is  
22 used, apart from the, I'll call it mechanical  
23 - for want of a better phrase at the moment -  
24 impact on the individual, you do have the  
25 circumstance of a threatening scenario caused  
26 by the use of it, and you do have certainly  
27 the ordinary effect that we all know of  
28 collapsing, the individual and the impact, if  
29 any, on the psyche. Would you think that  
30 maybe those could be a contributing cause to  
31 later death in custody?  
32

33 Do you recall that question from Mr. Commissioner?

34 A Well, I see it here, yes.

35 Q And your -- your response was this:  
36

37 First of all, to answer your question in a  
38 general way, it has been said that any  
39 feature adding to the physical activity of  
40 the individual would make the condition  
41 worse. That is to say, if this is, for  
42 example, a metabolic acidosis problem, then  
43 intense muscle activity generates lactic acid  
44 under what's called anaerobic circumstances  
45 and the condition is worse. So that would  
46 apply to a convulsive movement of the muscles  
47 due to the electric discharge, as well,

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1                   although I can't say with any degree of  
2                   certainty what measure that would add to it.  
3                   But any form of struggle is going to create a  
4                   similar sort of situation.  
5

6                   Do you recall that, Dr. Butt?

7           A        I see it here, yes.

8           Q        And was that a true statement then?

9           A        Yes, I believe so.

10          Q        And is that a true statement today?

11          A        I believe so.

12          MR. NEAVE: Mr. Commissioner, I'm going to take Dr.  
13                    Butt to something he said in his (indiscernible -  
14                    away from microphone).

15                    Oh, sorry, I've given you the wrong document.  
16                    Just hang on. My apologies, Mr. Commissioner,  
17                    just a second.

18                    My apologies, Mr. Commissioner, I'm just  
19                    trying to find the folio that I had.

20                    Mr. Commissioner, my apologies. I have a  
21                    document and I'll put it to the witness. I am  
22                    going to come back to that one in a few minutes.  
23                    For some reason I do not have copies, but I will  
24                    produce them and provide them to you.

25          Q        Dr. Butt, I'm showing you a letter dated the 17th  
26                    of May 2005. It's not that document. And -- or  
27                    is it?

28          A        I think it is.

29          Q        That's the --

30          A        No, I think this is the document.

31          Q        Okay, that's good. All right, thank you. We're  
32                    on the same document. My apologies.

33                    Now, Doctor, you participated as a member of  
34                    the Medical Review Panel with respect to the  
35                    Report of Taser Technology in May 2005; is that  
36                    correct?

37          A        Yes, around that time, before that time.

38          Q        And the document that I've provided to you is your  
39                    letter dated the 17th of May 2005; is that  
40                    correct?

41          A        That's correct.

42          Q        And this was a letter that you were commissioned  
43                    to provide on behalf of the British Columbia  
44                    office of the Police Complaints Commissioner  
45                    dealing with their Taser Technology review?

46          A        Pardon me. Yes, this was, as you see, the  
47                    addressee is the Victoria Police Department, but

6

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 that was the agency that conducted it on behalf of  
2 the B.C. Police Complaints Commissioner, I  
3 believe.

4 Q Thank you. And as you set out in the first  
5 paragraph [as read]:  
6

7 I am a member of the Medical Review Panel  
8 brought together in the autumn of 2004 by  
9 Victoria Police Department on behalf of the  
10 British Columbia's office of the Police  
11 Complaints Commissioner.  
12

13 A Yes.

14 Q And the -- as part of that you then go on to say:  
15

16 The medical panel provided oversight of  
17 medical issues in the review, namely of  
18 medical matters associated with the use of  
19 the Taser, as well as interpretation of a not  
20 uncommonly associated condition called  
21 excited delirium.  
22

23 A Yes.

24 Q And, Doctor, if I can have you then turn over to  
25 the second page.

26 A Yes.

27 Q You'll see under "Review of Interim and Final  
28 Reports".

29 A I do.

30 Q And just so Mr. Commissioner knows, these -- there  
31 were two reports that were prepared, an interim  
32 and a final report, with respect to Taser issues,  
33 correct?

34 A Prepared by the Commission --

35 Q Yes.

36 A By the Victoria Police Department on behalf of the  
37 Commission.

38 Q And as part of in essence in the due diligence  
39 process relating to those two reports, you and Dr.  
40 Hall, amongst others, were asked to provide a  
41 review?

42 A Yes, that's correct.

43 Q And this is your review?

44 A Yes.

45 Q And at page 2 you say this with respect to "Review  
46 of Interim and Final Reports". The first  
47 paragraph under that heading, "More than" -- are

7

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1           you with me, Doctor?

2       A     Yes, I am.

3       Q     [As read]:

4

5           More than one expert in the field of  
6           cardiology and electrophysiology has been  
7           consulted about the issue of the Taser shock  
8           being capable (or potentially so) of  
9           producing the fatal arrhythmia of the heart  
10          called ventricular fibrillation.

11

12       Then you say this:

13

14           There seems to be general agreement that in  
15           but one or two circumstances, most notably  
16           persons with pacemakers, the  
17           electrophysiology of the normal heart would  
18           not be affected by the discharge of the Taser  
19           shock/energy when the weapon is properly  
20           used.

21

22       Have I read that properly?

23

24       A     Yes.

25

26       Q     And that was your opinion in 2005, correct?

27

28       A     It was, yes.

29

30       Q     And is that your opinion today?

31

32       A     I have tried to review the literature since then.

33

34       You know, I don't have a -- I don't have a memory

35

36       for everything that I've read. There have been

37

38       some concerns that have developed since then.

39

40       Q     Let me ask you this, Doctor. Are you aware of any

41

42       peer-reviewed human research which affects the

43

44       opinion that you expressed in this document?

45

46       A     Well, do you want me to cite the exact literature,

47

because I can't do that, but I am -- I am aware

that there are reports in two areas. Certainly

one is the duration of the Taser discharge is one

issue, and the other issue is -- I had it in my

mind here, and I just -- and it just slipped.

It'll come back. Those are the -- that's the main

issue is the extent of the Taser discharge, and

I'm sorry, I've lost the other point.

Q     The extent of the Taser discharge, do you recall

who the authors of that paper were?

A     Well, the gentleman -- when I appeared before the

House of Commons subcommittee in the February of

2008, there was a gentleman, and I think he may

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

- 1           have been here, who is an electrophysiologist who  
2           expressed concerns about this. Now, I can't quote  
3           you chapter and verse, but I know that he had  
4           concerns about this and that I believe he is  
5           published in the area, and I think his name is  
6           Savard.
- 7           Q     Yes. I'm familiar with Mr. Savard. I'm not  
8           familiar with any peer-reviewed publications that  
9           he has with respect to Taser research on humans,  
10          though. Are you aware of that?
- 11          A     Whether it's on humans, I don't think it is on  
12          humans, and you -- did you so qualify your  
13          question, then I apologize for misunderstanding  
14          it.
- 15          Q     And what I --
- 16          A     But, you know, with respect, sir, what kind of a  
17          human experiment do you expect?
- 18          Q     Well, what I'm trying to determine, Doctor, is if  
19          the opinion that you expressed in 2005 is your  
20          opinion today, first.
- 21          A     Well, I told you that, well, basically it is, yes.
- 22          Q     Thank you. So if I understand your evidence  
23          yesterday with respect to the changed report, the  
24          second report.
- 25          A     Yes.
- 26          Q     Where you added the Taser language, that was done  
27          at the request of Commission counsel --
- 28          A     No.
- 29          Q     -- for you -- let me, if I might finish.
- 30          MR. KOSTECKYJ: With respect, Mr. Commissioner, we  
31          spent a great deal of time on that issue  
32          yesterday, and I felt that my friend exhausted  
33          those questions that related to the change in the  
34          report. It was explained both in examination in  
35          chief and then subsequently through lengthy cross-  
36          examination yesterday.
- 37          THE COMMISSIONER: What's the next question, Mr. Neave?
- 38          MR. NEAVE: That the change was done despite the  
39          mechanism of fatal collapse in Taser-related  
40          deaths being unknown.
- 41          THE COMMISSIONER: Yes, go ahead.
- 42          MR. NEAVE: Thank you.
- 43          Q     So at the request of Commission counsel, you add a  
44          comment regarding the Taser --
- 45          MR. MCGOWAN: Well, if I might just interrupt my  
46          friend. He just asked the witness whether it was  
47          at the request of Commission counsel, and the

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 witness answered no. So perhaps he should remove  
2 that qualifier from his question. Other than  
3 that, I have no objection to the question.  
4 MR. NEAVE: I'll do it another way, thank you.  
5 THE COMMISSIONER: I'm waiting to hear the whole  
6 question.  
7 MR. NEAVE: So am I. Why don't I try the whole  
8 question --  
9 THE COMMISSIONER: We're a little bit sensitive here,  
10 you see.  
11 MR. NEAVE: I understand that. Why don't I read the  
12 whole question and then people can have their  
13 pitch.  
14 THE COMMISSIONER: Well, that's what I'm waiting to  
15 have happen.  
16 MR. NEAVE:  
17 Q So at the request of Commission counsel, you add a  
18 comment regarding the Taser, in which you conclude  
19 increasing exertion and stress following the  
20 discharge of the Taser likely contributed to  
21 death, fair?  
22 A That's the statement that you read from the  
23 amended report.  
24 Q Yes.  
25 A That was not at the request of the Commission  
26 counsel. I explained to you yesterday, Mr. Neave,  
27 how that came about.  
28 Q And my recollection of your evidence, and correct  
29 me if I'm wrong, you send off your final report  
30 before you go on holidays to Hawaii.  
31 A Yes.  
32 Q You get a call from Mr. Vertlieb who says, "You  
33 didn't talk about the Taser".  
34 A Mr. Vertlieb did not say that. That was not --  
35 Q Okay, what did he say?  
36 A -- the summary of Mr. Vertlieb's comments, sir,  
37 and I thought -- pardon me, but I thought that I  
38 had made this plain yesterday. Mr. Vertlieb  
39 called me and said to me on the telephone, "John,  
40 you've made a criticism of Dr. Lee's report, but  
41 you haven't come to any conclusion yourself."  
42 Q On what?  
43 A Dr. Lee -- in connection with the role of the  
44 Taser.  
45 Q Thank you.  
46 A I can't imagine that it would be anything else.  
47 Q All right. Accepting that, you then make the

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

- 1 change, correct?
- 2 A I made an addition to the report, yes.
- 3 Q Yes. That wasn't there before.
- 4 A Well, that's what an addition is.
- 5 Q And you did so despite the mechanism of fatal
- 6 collapse in Taser-related deaths being unknown,
- 7 correct?
- 8 A Yes.
- 9 Q You did so despite that you cannot say with any
- 10 degree of certainty what measure any convulsive
- 11 movement of muscles would have to a physical
- 12 response, correct?
- 13 A Yes.
- 14 Q You did so despite your statement that the
- 15 electrophysiology of the normal heart would not be
- 16 affected by the discharge, correct?
- 17 A Yes.
- 18 Q You did so despite that restraint-associated
- 19 deaths are known to have been documented in
- 20 restraint cases since the early 1800s, correct?
- 21 A Pardon me?
- 22 Q Are you aware, sir, that the --
- 23 A Since the early 1800s?
- 24 Q Yes.
- 25 A I'm not aware that the history of these deaths
- 26 goes back that far, no.
- 27 Q When, sir, are you first aware from your review of
- 28 the medical literature of the issue of sudden
- 29 death during restraint being documented?
- 30 A The only historical part of it that I recall is in
- 31 connection with Bell's Mania, and that's the
- 32 earliest reference that I would have. And I'm not
- 33 so sure that that was a restraint-related issue.
- 34 Q And Bell's Mania, as I understand it, is -- is
- 35 what now is commonly referred to as excited
- 36 delirium, and Bell's Mania was first identified in
- 37 about the 1840s; is that fair?
- 38 A That's correct, but I don't know that the Bell's
- 39 Mania issue had to do with restraints. I mean, if
- 40 you're looking at the history of it, I have a
- 41 reference here that might help you, if you want to
- 42 have that.
- 43 Q If you'd like, but I don't think it's necessary.
- 44 A Well, it's from Dr. Di Maio's book.
- 45 Q Okay. In any event, you made the change to your
- 46 report --
- 47 THE COMMISSIONER: Now, excuse me.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1 MR. NEAVE: Addition.

2 THE COMMISSIONER: The addition.

3 MR. NEAVE: Fair.

4 Q Made the addition to your report despite knowing  
5 that restraint-associated deaths had been  
6 documented well before the advent of the Taser  
7 device, fair?

8 A Yes. Oh, yes, for sure.

9 Q And they have been associated with other forms of  
10 restraint, including --

11 A Absolutely.

12 Q -- including hogties, correct?

13 A Absolutely.

14 Q Pepper spray?

15 A Possibly, I mentioned it yesterday. I know that  
16 the -- I know that that has been brought up.

17 Q Defensive batons?

18 A Yes.

19 Q And where the subject has been tackled by police  
20 officers, or others?

21 A Without question. May I -- may I bring up a point  
22 myself here, sir, about your interpretation, and  
23 that is that at no point, either in the statements  
24 that you have reviewed in contrast to the  
25 statement that was added to my report, is there  
26 any form of -- of contradiction.

27 Q And I'll be going through the rest of your report,  
28 Doctor.

29 A Well, you know, the point that you have brought up  
30 you have read to the court and may I -- may I have  
31 the licence to read it again:

32

33 Given this, I believe that the increasing  
34 exertion and stress following the discharge  
35 of the Taser likely contributed to the death.

36

37 Q Yes.

38 A I didn't say it caused it.

39 Q And I realize that, and that's what we're  
40 examining. And you made that statement despite  
41 evidence that Mr. Dziekanski was monitored by a  
42 trained medical responder on three separate  
43 occasions for seven to nine minutes after the  
44 handcuffs were applied, and that person determined  
45 he was breathing and he had a pulse, correct?

46 A Yes.

47 Q Did you know that, Doctor?

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1 A Yes.

2 Q And you would agree that with respect to this  
3 addition, there is no analysis at all with respect  
4 to the basis upon which that statement is made?

5 A In my report?

6 Q Yes.

7 A No, there isn't an analysis in the report. I  
8 believe we did that yesterday.

9 Q Now, Doctor, have you been provided with the  
10 evidence of Mr. Enchelmaier, who gave evidence  
11 with respect to his monitoring of Mr. Dziekanski?

12 A I don't recognize the name, but it's possible that  
13 it was in an electronic form. But I don't have a  
14 paper record of it, to the best of my knowledge.  
15 Mr. Enchelmaier's name I'm not familiar with.

16 MR. NEAVE: Well, let me -- let me help you out. It's  
17 not -- I'm going to provide you with his evidence.

18 Mr. Commissioner, I've got a copy of the 16th  
19 of February 2009, Mr. Enchelmaier doesn't  
20 (indiscernible - away from microphone).

21 THE COMMISSIONER: Excuse me, Mr. Neave, is this not in  
22 the statement of Circumstances?

23 MR. NEAVE: Well, there's specific issues that I wish  
24 to raise deriving from -- from -- it is in the  
25 Circumstances. It's in the Circumstances in -- in  
26 very general terms and, as you'll recall from the  
27 evidence the other day, there was a clarification  
28 with respect to the heart rate on the -- and its  
29 strength on the third check, as compared to the  
30 transcript. I've got no real problem with the --  
31 with my friend's reiteration of that evidence, but  
32 I thought it would be more appropriate with the  
33 witness to take him to what Mr. Enchelmaier  
34 actually said.

35 THE COMMISSIONER: Yes, I can understand that. But you  
36 began the questioning by asking Dr. Butt whether  
37 he's familiar, and you gave the name of the  
38 person.

39 MR. NEAVE: Right.

40 THE COMMISSIONER: Whereas he has testified more than  
41 once that he's looked at the Circumstances.

42 MR. NEAVE: Yes.

43 THE COMMISSIONER: So I'm worried about a confusion  
44 with labels.

45 MR. NEAVE: Okay. And I appreciate that. I'll -- I'll  
46 clean that up.

47 Q Dr. Butt, so you're aware Mr. Enchelmaier is an

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(cont'd)

1 Airport Security person, he's given evidence over  
2 two days in this proceeding, and the issues that  
3 I'm going to take you to are dealing with  
4 Enchelmaier's monitoring of Mr. Dziekanski on  
5 three occasions. Because there's some questions  
6 that I want to ask you that flow out of that.  
7 Okay?

8 A Yes.

9 Q Now, if I can, Doctor, have you first turn up page  
10 91. And just by way of background so you're  
11 aware, as I've indicated and Mr. Enchelmaier's  
12 evidence is clear, that he checked the pulse and  
13 breathing on three occasions in the approximate --  
14 over the approximate ten-minute time before the  
15 arrival of Richmond Fire Department, and that the  
16 last check was about two minutes before that, so  
17 about in the seven- to eight-minute period after  
18 the handcuffs were applied. So dealing first, Dr.  
19 Butt, with what Mr. Enchelmaier had to say on page  
20 91.

21 A Yes.

22 Q You'll see, and this is a discussion for your  
23 information of the first check:

24

25 Q Okay. So describe for the Commissioner as  
26 clearly as you can exactly what you did to  
27 check the carotid pulse, please.

28

29 And Mr. Enchelmaier says this:

30

31 A Okay. I use my two fingers --

32

33 - and a gesture -

34

35 -- my index finger to feel on the neck for  
36 the large artery that runs down the neck, and  
37 I could feel a very strong fast pulse on the  
38 neck.

39

40 And then, Doctor, down to line 21, Mr. Enchelmaier  
41 describes it as:

42

43 A It was a very fast pulse, like somebody had  
44 -- a pulse that you would expect in somebody  
45 that had been running -- strong and fast.

46

47 And he checked it, as you'll see on line 28 for

14

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(cont'd)

1 about ten seconds. Are you with me, Doctor?

2 A I am, yes. Sorry.

3 Q Now, you would agree with me that that evidence  
4 would exclude any issue that Mr. Dziekanski was  
5 experiencing ventricular fibrillation at that  
6 time?

7 A Yes.

8 Q Now, the second check, Doctor, starts at the  
9 bottom of page (sic) 46, and you'll see:

10

11 Tell us about the second check that you made,  
12 please.

13

14 And then over the page Mr. Enchelmaier says this:

15

16 Yeah. The pulse wasn't as fast. It was more  
17 of a person who'd been at rest, a slower  
18 pulse. And again felt a good pulse in his  
19 neck, in the carotid pulse, and breathing was  
20 clear, I confirmed with the RCMP member Monty  
21 that he was -- he was breathing.

22

23 And then the question:

24

25 So after the first carotid pulse did you --  
26 did you communicate any of your findings to  
27 the police?

28

29 And Mr. Enchelmaier says:

30

31 I did. Monty was right there and we spoke  
32 about that.

33

34 And then the question:

35

36 Okay. What did you say to him?

37 A I said "I can feel a pulse." And I'd checked  
38 for the breathing. He confirmed that he  
39 heard breathing.

40

41 You would agree with me, and you'll see again,  
42 Doctor, with respect to that check at line 34, the  
43 reference to the check being on the carotid  
44 artery?

45

A Yes.

46

Q You would agree with me, Doctor, that this check,  
47 which is approximately two minutes later, would

15

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(cont'd)

1 clearly indicate that Mr. Dziekanski was not  
2 experiencing ventricular fibrillation at that  
3 time?

4 A Yes.

5 Q And indeed no other form of arrhythmia, fair?

6 A I think that's a fair enough general statement,  
7 yes.

8 Q Thank you. Now, Doctor, if we can then go to the  
9 third check, and that commences at page 96. And  
10 Mr. Enchelmaier, commencing at line 3 on that page  
11 -- are you with me, Doctor?

12 A Yes.

13 Q "Thank you" -- and the question is:

14

15 Thank you. Now, moving on to the third --  
16 before I do, did you communicate your  
17 findings from that check to anybody?

18

19 And then there's a comment. So clearly we're on  
20 the third check. And then, Doctor, down to line  
21 24 to 26:

22

23 And your recollection about two minutes  
24 before the firefighters arrive, maybe less  
25 than two minutes?

26 A That's correct.

27

28 And then a question, Doctor, at page -- sorry,  
29 line commencing at 35, and there's a question:

30

31 Q Okay. How long was your breathing check?

32 A 30 -- 20, 30 seconds until I could actually  
33 be clear that I had heard and felt breathing.

34 Q Okay. And the pulse check was about the same  
35 as we've seen before?

36 A That's correct.

37

38 And then, Doctor, over the page to page 97, line  
39 2, Mr. Enchelmaier gives this evidence with  
40 respect to his pulse check:

41

42 I noticed that --

43

44 And he says this:

45

46 I noticed that with his pulse it was a slow  
47 pulse, still a clear pulse there in his

- 1                   carotid pulse, again in his neck. And the  
2                   breathing was slow, low breathing, but still  
3                   clearly breathing.  
4
- 5       A       I see it, yes.
- 6       Q       And likewise, Doctor, would you agree that at that  
7                   time Mr. Enchelmaier's evidence would exclude the  
8                   possibility of Mr. Dziekanski being in ventricular  
9                   fibrillation at that time?
- 10      A       Yes, it would seem so.
- 11      Q       And indeed in response to questions yesterday with  
12                   respect to agonal breathing, the existence of the  
13                   pulse would exclude any concept of agonal  
14                   breathing prior or during this interval that Mr.  
15                   Enchelmaier is examining and monitoring Mr.  
16                   Dziekanski; is that fair?
- 17      A       Well, I'd have to give that a bit of thought. I  
18                   mean, the -- I understand what you're saying, but  
19                   I'm not entirely certain that that's the case.
- 20      Q       Well, let me ask you this. Agonal breathing  
21                   occurs when there is no pulse?
- 22      A       Well, that's not necessarily so, no. But, I mean,  
23                   it depends -- since you're using the word "pulse"  
24                   then I would accept it as that. I'd think whether  
25                   it was heartbeat, some form of heartbeat still  
26                   present, I think that that's possible, but I  
27                   understand what you're saying. You're talking  
28                   about a perceptible pulse.
- 29      Q       Yes.
- 30      A       Yeah.
- 31      Q       The evidence is clear that up until about two  
32                   minutes before Richmond Fire gets there, Mr.  
33                   Dziekanski is monitored and is found to be having  
34                   a carotid pulse that is clear in the carotid  
35                   artery in his neck.
- 36      A       Yes, I understand all that.
- 37      Q       Thank you.
- 38      A       The only other issue I wish to clarify is the  
39                   snoring is the agonal breathing, that's your --
- 40      Q       Yes. And perhaps just I'm speaking, and I should  
41                   have perhaps clarified what I was talking about  
42                   agonal breathing, my understanding of agonal  
43                   breathing is it's the death throes of last gasp  
44                   occurring at death in some cases?
- 45      A       I think that's fair enough, but, I mean, the point  
46                   of -- the way it came out yesterday was snoring,  
47                   but I understand what you're saying.

17

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Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1 Q Thank you. And does my manner of description of  
2 agonal breathing in any way change your -- the  
3 answers that we have been discussing?  
4 A No.  
5 Q Indeed, had Mr. Dziekanski been experiencing  
6 ventricular fibrillation, he would not have  
7 demonstrated a perceptible pulse within a very  
8 short time after that arrhythmia started, fair?  
9 A Yes.  
10 Q About ten seconds, is that about right?  
11 A Yes, I think that's fair.  
12 Q Would you agree, Doctor, that there is no support  
13 in the medical literature, in any peer-reviewed  
14 medical literature, for the concept of delayed  
15 ventricular fibrillation from an electrical cause?  
16 A That's generally agreed, yes.  
17 MR. NEAVE: Thank you. Doctor, I'm going to turn now  
18 to your critiques that are outlined in your 17th  
19 of April document.  
20 THE COMMISSIONER: I think maybe we should clear up the  
21 exhibit issue now.  
22 MR. NEAVE: Yes, Mr. commissioner. I'm in your hands.  
23 I'm --  
24 THE COMMISSIONER: Well, it's up to you to tender the  
25 things.  
26 MR. NEAVE: I would like to tender everything that I  
27 put to the witness yesterday.  
28 THE COMMISSIONER: All right. Let's go through it one  
29 at a time. Mr. Giles, what is our last exhibit?  
30 THE REGISTRAR: The last one was 115.  
31 THE COMMISSIONER: And do you have a description of it,  
32 at all?  
33 THE REGISTRAR: It's the General Information Form C  
34 related to Mr. Dziekanski.  
35 MR. NEAVE: Now, my --  
36 THE COMMISSIONER: I think maybe, Mr. Neave, it could  
37 be organized during the break.  
38 MR. NEAVE: That would be helpful, because I must  
39 apologize, you caught me a bit off guard and I  
40 didn't bring all the documents with me. I'll  
41 ensure that I have clean copies that can be filed.  
42 Q Doctor, have you got Exhibit 111 with you, your  
43 final -- or the report of the 17th. Have you got  
44 that, Doctor?  
45 A Yes, I do.  
46 Q Thank you.  
47 A Sorry.

18

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 Q Now, I'm going to first deal with your comments  
2 with respect to -- with respect to Dr. Lee's  
3 report. And that's on page 2.

4 A Yes.

5 Q And it -- what you say there, Doctor, is:

6

7 The cause of death:

8

9

And in quotes:

10

11 "Sudden Death during Restraint" provided by  
12 Dr. Lee is not a medical diagnosis, i.e. it  
13 is not based on anatomical abnormality and/or  
14 clinical information. Dr. Lee's *principal*  
15 *cause of death* is related to circumstances  
16 alone; the only situation cited in his  
17 expression of the cause of death is  
18 "restraint".

19

20 And you then go on to say:

21

22 In my view, this is acceptable when the  
23 report provides an indication of what the  
24 circumstances were, however that is not so in  
25 Dr. Lee's report; at least his comments on  
26 circumstances are not complete regarding  
27 deployment of the conducted energy weapons  
28 (CEW/Taser). The CEW is not mentioned but  
29 the behaviour of Dziekanski is mentioned  
30 presumably after Dr. Lee's own review of the  
31 video.

32

33 Have I read that correctly?

34

A Yes.

35

36 Q And that's your first critique, criticism of Dr.  
37 Lee's report; is that fair?

37

A Yes.

38

39 Q And as I understand it, the objection is in part  
40 to the characterization and specifically with  
41 respect to the cause in -- the principal cause of  
42 death is being restricted to sudden death during  
43 restraint.

43

44 A I don't think that that's so much the issue. I  
45 think the main issue is the lack of link through  
46 the circumstances and an explanation in the report  
47 as to what restraint really means somewhere in the  
report.

1 Q So you're not taking any issue at all, then, if I  
2 hear you, that it's in any way inappropriate under  
3 Part 1 of Dr. Lee's report, "Principal Cause of  
4 Death" to describe it as sudden death during  
5 restraint?

6 A I think I said that yesterday.

7 Q Okay. I just wanted to confirm that.

8 So your -- your critique, then, is more  
9 substantive in nature in the sense that in your  
10 view Dr. Lee failed to provide an adequate report  
11 with respect to describing the circumstances,  
12 linking those circumstances to his finding, to the  
13 principal cause; is that fair?

14 A Yes, that's correct.

15 Q And you're aware, Doctor, as we reviewed -- as we  
16 reviewed yesterday, that in -- that in British  
17 Columbia the medical exam -- that Dr. Lee is not a  
18 medical examiner?

19 A I am.

20 Q And he's not charged with the responsibility of  
21 determining for the purposes of the **B.C. Coroners**  
22 **Act** the who, what, when and how or where of death?

23 A Well, I don't know that goes with the **B.C.**  
24 **Coroners Act** as such, but I think that we  
25 discussed the issue yesterday of the development  
26 of information, and if I accede to your point, I  
27 still have the same opinion as I wrote here. It  
28 may be the protocol or the law, but there are some  
29 things in the circumstances of death that require  
30 mentioning. And if a weapon is involved, then a  
31 reference to that weapon is appropriate. If the  
32 police bring a knife in to the pathologist two  
33 weeks later and they ask the pathologist to  
34 comment upon the knife in relationship to what he  
35 sees on the body, for example, the marks on the  
36 outside of the body, then I'm not sure that that  
37 report wouldn't -- that a report wouldn't be  
38 developed by the pathologist. It has to do with  
39 the weapon, and I'm not sure that the Coroner is  
40 the person that would be correlating the  
41 information. So if the information that was given  
42 to the Coroner, and we could look at that exhibit,  
43 given by the Coroner to Dr. Lee included this,  
44 then I would wonder what they expected.

45 Q Well, let's deal with a couple of points that  
46 arise out of your answer, Doctor. You agree with  
47 me that in Dr. Lee's report, with respect to an

1 analysis of the frontal area of the body, looking  
2 for Taser probe marks, he conducts that analysis  
3 and reports on his findings in the report, fair?  
4 A He mentioned two things on the front of the body,  
5 that's correct.  
6 Q Yes. And in the "Conclusion" section of the  
7 report he specifically makes a comment with  
8 respect to those abrasion marks.  
9 A Yes. I wouldn't mind having the report.  
10 Q Yes, and my apologies. If the witness could have  
11 Exhibit 76, please.  
12 A Thank you.  
13 Q Now, Doctor, for your ease of reference if you  
14 first go to page 3 you'll see there the  
15 description of the various marks that he observed  
16 on the central chest and on the abdomen, under  
17 "Thorax and Abdomen". Are you with me, Doctor?  
18 A Yes, I am.  
19 Q Okay. And then, Doctor, if you go over to the  
20 fifth page, you will see midway down the  
21 paragraph, starting at "A darkened punctuate  
22 abrasion", do you see that?  
23 A I do.  
24 Q So what Dr. Lee says in his commentary is:  
25  
26 A darkened punctuate abrasion on the central  
27 chest is consistent with an electrode from a  
28 Taser.  
29  
30 A Yes.  
31 Q And you know there's -- in probe mode there's two  
32 probes?  
33 A Yes.  
34 Q And then he says:  
35  
36 The other electrode mark is not apparent, but  
37 a couple of punctuate abrasions are present  
38 on the chest and abdomen, and one of these  
39 might be the other Taser mark.  
40  
41 A I see it.  
42 Q So with respect to the application of the Taser,  
43 going back to your issue of the knife, Dr. Lee has  
44 examined the body for Taser probe marks and made  
45 specific comments with respect to them, fair?  
46 A To the probe marks, yes.  
47 Q Yes. It's fair, Doctor, I think that you are not

- 1           aware of the specific process of the fact-finding  
2           that the Coroner and a Coroners Jury does in this  
3           province; is that fair?
- 4    THE COMMISSIONER: Now, Mr. Neave, I hesitate to  
5           interrupt you, but, you know, I'm really in terms  
6           of my mandate not very interested in the duty of  
7           the Coroner or the nature of a report that should  
8           be drafted to the Coroner, or any of those issues.  
9           What I'm interested in, of course, is the cause of  
10          death and what the opinion is on the cause of  
11          death.
- 12   MR. NEAVE: Thank you.
- 13   THE COMMISSIONER: The form of it or how it got here or  
14          anything else, unless it goes to its validity,  
15          quite frankly, is way outside my mandate.
- 16   MR. NEAVE: Fair enough. And I'll be guided by your  
17          comments, Mr. Commissioner, if I can assist you, I  
18          believe.
- 19   Q    Doctor, although you are taking issue with the  
20          finding of cardiomyopathy, you're not taking any  
21          finding with the other signs or physiological  
22          changes with respect to alcohol abuse, are you?
- 23   A    No.
- 24   Q    There's no -- there's no doubt in your opinion  
25          that Mr. Dziekanski is, as Dr. Lee indicated,  
26          having a contributing factor of chronic  
27          alcoholism?
- 28   A    I think that it's fair to put that down, yes. I  
29          mean, I'm not taking away from the point that he  
30          has chronic alcoholism. I do believe that. It's  
31          a -- it's whether it is actually a contributing  
32          factor to the death.
- 33   Q    Thank you. Well, let's talk -- let's talk about  
34          that. And the sense I have from you now that you  
35          are in agreement that sudden death during  
36          restraint is -- is a proper description with  
37          respect to cause of death.
- 38   A    It's one.
- 39   Q    Yes.
- 40   A    Yes.
- 41   Q    And you would agree with me that the specific  
42          causal mechanisms that result in death, as a  
43          result of being restrained, are largely unknown?
- 44   A    They're largely unknown, yes. I mean, there have  
45          been theories, but the precise mechanism is not  
46          known.
- 47   Q    And indeed there's a constellation of factors that

1 can produce the mechanism, or each of which is an  
2 indicia -- or each of which is a factor that can  
3 lead to sudden death in these cases?  
4 A There are a number of factors that more or less  
5 create the situation in which the death occurs.  
6 Q One of those is anxiety?  
7 A Yes, I would say agitation would appear to be the  
8 word.  
9 Q Would it be fair to describe, then, with respect  
10 to your answer, it would be anxiety and with  
11 elements of agitation, physiological stress  
12 factors?  
13 A Physiological stressors?  
14 Q Stress factors, yes.  
15 A Yes.  
16 Q So that would be one of the -- one of the issues  
17 -- one of the stars, if you will, in the  
18 constellation of factors?  
19 A It -- it seems to be a -- you're speaking overall  
20 of --  
21 Q Yes.  
22 A -- the condition which is excited delirium at this  
23 point?  
24 Q No, I'm just speaking firstly with respect to  
25 physiological anxiety and elements of agitation.  
26 A Yes.  
27 Q Outside of excited delirium. We'll come back to  
28 excited delirium.  
29 A Right. I agree.  
30 Q And one of the theories with respect to the effect  
31 of this agitation and physiological stress factors  
32 is that it produces some form of arrhythmia and  
33 sudden death follows? That's one theory.  
34 A Again taken in isolation, I don't think you meant  
35 me to take that in isolation?  
36 Q No, I'm speaking in general terms.  
37 A But you didn't mean me to take the fact that a  
38 person is agitated and they're going to die.  
39 Q No. What I'm asking is the theories that flow  
40 from this -- this factor we're looking at,  
41 anxiety, agitation, psychological stress factors  
42 that result in death.  
43 A That can -- that that -- I'm agreeing to the point  
44 that that can be a contributory factor.  
45 Q Yes. And the mechanism of death in those  
46 circumstances is one theorized to result in some  
47 form, or create an arrhythmia which results in

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(cont'd)

1 death?

2 A Yes.

3 Q One of the other theories is there is a  
4 physiological effect on the brain that results in  
5 the person stopping to breathe, followed by  
6 cardiac arrest.

7 THE COMMISSIONER: Mr. Neave, the difficulty with your  
8 questions is you're isolating this. The doctor  
9 has made it very clear, and I asked him this  
10 yesterday, it's one of three components, each one  
11 being a cluster of components.

12 MR. NEAVE: Yes.

13 THE COMMISSIONER: But there's three clusters of  
14 components, as I understand the evidence of the  
15 doctor. You keep seem to be isolating this all  
16 the time.

17 MR. NEAVE: And I have a reason for doing that.

18 THE COMMISSIONER: Yes, but I think it's misleading,  
19 because it's not what the doctor is saying.

20 MR. NEAVE: Fine, thank you.

21 Q Taking Mr. Commissioner's point, a cluster of  
22 factors. We're talking about one of them,  
23 anxiety, elements of agitation, physiological  
24 stress.

25 A Yes.

26 Q Another one would be the emotional and physical  
27 result of alcohol withdrawal?

28 A In terms of -- in terms of what?

29 Q Of another factor which is a component of this  
30 anxiety, agitation and physical stress that we're  
31 talking about.

32 A Well, I believe that that's so. I mean, you know,  
33 the area that you're getting into here is a bit  
34 psychiatric. I'm aware that there can be deaths  
35 in alcohol withdrawal. I disagree with some of  
36 the comments that have been made about it, but I  
37 agree that there are deaths in alcoholic  
38 withdrawal. I am not entirely certain of what the  
39 mechanisms are, but some of them are likely to be  
40 biochemical.

41 Q Mm-hmm.

42 A Just because the biochemistry of the body becomes  
43 disordered under certain circumstances. I'm not  
44 sure how that's related to the -- the title of  
45 agitation in this particular instance, the  
46 instance being alcohol withdrawal.

47 Q So am I correct in what I'm hearing from you,

- 1           then, Doctor, that where you've got biochemical  
2           changes in the -- that result from, for example,  
3           alcohol withdrawal.
- 4        A     Yes.
- 5        Q     That that as well can form or constitute some  
6           level of agitation, in your term?
- 7        A     Well, I would suspect that that's the case, yes.  
8           I would suspect that, but as I said, you know,  
9           these are things that really confront clinical  
10          medicine, and particularly psychiatry.
- 11       Q     Are they not also important in your review and  
12          your determination in this case with respect to  
13          your determination of the various factors which  
14          are likely contributory to death?
- 15       A     They are, but I mean, may I qualify that by saying  
16          that, you know, the -- my accurate diagnosis of  
17          watching Mr. Dziekanski's behaviour and making an  
18          accurate diagnosis is no better or no worse than  
19          that of Dr. Lee, Dr. Pollanen and Dr. Di Maio.  
20          Each of us is a pathologist, and the number of  
21          cases that I have dealt with that are breathing in  
22          the last 40 years is inconspicuous. And so, as  
23          you pointed out yesterday, my work - you brought  
24          this up, sir - is related to reviews of the  
25          literature, and I also happen to be over 70 years  
26          of age, and so my experience counts. But this is  
27          an area, I repeat, it is an area for psychiatrists  
28          and I think that I might have already said  
29          something about that, in relationship to the term  
30          "excited delirium", and I certainly have mentioned  
31          it in the report.
- 32       Q     Well, let me ask you about that, then, Doctor,  
33          because that is certainly one of your criticisms  
34          of Dr. Pollanen and Dr. Di Maio is their comments  
35          with respect to excited delirium, fair?
- 36       A     Yes.
- 37       Q     And if I was to paraphrase what you're saying and  
38          correct me if I'm wrong, the sense I have from  
39          what you're saying is that there is no place in a  
40          pathology report such as this for excited delirium  
41          to be commented upon in the manner it was in these  
42          reports.
- 43       A     No, I didn't say that, sir.
- 44       Q     Well, what are you saying? What's the basis of  
45          your criticism?
- 46       A     I'm saying that it -- that I think I explained it  
47          in my report quite well, and what I said was that

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Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 the -- may I read the report?

2 Q Yes.

3 A In terms of this -- in terms of this condition.

4 Q I think it's at the bottom of page 3, Doctor.

5 A

6 Nonetheless I believe that caution is  
7 advisable...

8

9 This is from the final paragraph on page 3.

10 Q Yes.

11 A

12 ...about use of the term "excited delirium"  
13 which has developed a significant following  
14 in the forensic pathology community. *Excited*  
15 *delirium* is questioned by those practicing  
16 psychiatry, e.g., its definition etiology and  
17 whether it has a rightful place in the  
18 spectrum of delirium. The American  
19 Psychiatric Association *Diagnostic and*  
20 *Statistical Manual of Mental Disorders*  
21 provides a definition of delirium but not  
22 excited delirium. Excited delirium often is  
23 defined by persons --

24

25 - and this is my point -

26

27 -- who have neither training in nor  
28 experience with aberrant behaviour. In the  
29 textbook "Excited Delirium Syndrome: Cause  
30 of Death and Prevention" Di Maio and Di  
31 Maio --

32

33 - that's the wife and the husband -

34

35 -- state that excited delirium is delirium  
36 involving combative and or violent behaviour.  
37 There is no indication either of the origin  
38 of the term excited delirium or of the  
39 definition of excited delirium. Neither  
40 excited delirium or 'delirium' can be defined  
41 through a post-mortem examination of the  
42 brain, however it may be defined through  
43 diagnosis of signs and symptoms in the  
44 living. Observations of persons who died and  
45 who have had either excited or delirious  
46 behaviour or both are obtained by forensic  
47 pathologists directly or indirectly from

1                    police officers; forensic pathologists are  
2                    rarely if ever in a position to assess  
3                    behaviour and form impressions firsthand  
4                    about the behaviour of the deceased before  
5                    his/her death.  
6

7            Q        Doctor, do you recall giving evidence before the  
8                    House of Parliament?

9            A        Yes. I don't recall it chapter and verse.

10          Q        On 12th of May, let me show you what you said.

11          A        Thank you.

12          Q        Doctor, if I can have you turn to the second page.

13          A        Yes.

14          Q        This is a transcript of your testimony before the  
15                    House of Parliament, correct, on the 12th of May  
16                    -- March 2008, fair?

17          A        March the 12th, 2008, yes.

18          Q        Yes. And over to page 2.

19          A        Yes.

20          Q        About midway down the page.

21          A        Yes.

22          Q        You say this about this issue. You're talking  
23                    about excited delirium:

24  
25                    Without question, I'm sure you have all heard  
26                    of the issue of excited delirium. I feature  
27                    that, as I am certain Dr. Hall will, because  
28                    in the realm of medical practice and  
29                    particularly that of the forensic pathologist  
30                    or the death investigating officer on the  
31                    issue of excited delirium or syndrome, a  
32                    group of syndromes is common and one cannot  
33                    ignore that.

34

35          A        Yes.

36          Q        And indeed, Dr. Di Maio and Dr. Pollanen do  
37                    exactly what you say here, they don't ignore the  
38                    excited delirium and comment fully with respect to  
39                    it. Fair?

40          A        Yes.

41          Q        And you take issue because you are now saying here  
42                    in this report that you have to -- you say:

43

44                    I believe that caution is advisable...

45

46                    And you go on to the passage that you just read.

47          A        I have no problem, sir, with your comments.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1 Q Thank you. Now, let's deal with your critiques of  
2 Dr. Pollanen. At paragraph -- are you, Doctor, on  
3 your opinion, page 3, please?

4 A I have it.

5 Q And you'll see the second paragraph.

6 A Yes.

7 Q You say:

8

9 I am generally in accord with the opinions of  
10 Dr. Pollanen as set out in his report.

11

12 A Yes.

13 Q Is that fair? And is it fair, sir, that where  
14 you're not in agreement with -- with those aspects  
15 of the report, you've described them here, and  
16 that's the ED issue that we've been talking about,  
17 excited delirium issue, fair?

18 A Yes.

19 Q And that -- that's the only issue that you  
20 identify in your report for which you do not agree  
21 with Dr. Pollanen?

22 A That's correct, yes. There's no other issue.

23 Q And is it fair for me to simply say you agree with  
24 the remainder of Dr. Pollanen's report?

25 A Pretty well, yes. You know, I could take a quick  
26 glance at it, but --

27 MR. NEAVE: Well, that may speed things up, quite  
28 frankly. Why -- I'm going to ask you that  
29 question, and I'm going to ask you the same  
30 question with respect to Dr. De Maio's report. If  
31 you could look at both of them, what I would  
32 propose, Mr. Commissioner, is we break shortly and  
33 have --

34 THE COMMISSIONER: Yes, I think we'll break now.

35 MR. NEAVE: Thank you.

36 THE REGISTRAR: The hearing will now recess for ten  
37 minutes.

38

39 (WITNESS STOOD DOWN)

40

41 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

42 (PROCEEDINGS RECONVENED)

43

44 THE REGISTRAR: The hearing is now resumed.

45

46 JOHN BUTT, a witness,  
47 recalled.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 THE COMMISSIONER: Go ahead, Mr. Neave.

2

3 CROSS-EXAMINATION BY MR. NEAVE ON BEHALF OF TASER  
4 INTERNATIONAL, continuing:

5

6 MR. NEAVE: Thank you, Mr. Commissioner. And just for  
7 everyone's information, while we were off line I  
8 spoke to Dr. Butt and told him in general terms  
9 the specific passages that I was interested in,  
10 and his comments on as to whether he had -- he was  
11 in general accord with those points.

12 Q Doctor, you've had the chance now to review  
13 firstly Dr. Di Maio's report?

14 A Yes.

15 Q Okay. Let me assist you. May I have you turn up  
16 page --

17 THE COMMISSIONER: What's the exhibit number?

18 MR. NEAVE: Oh, I'm sorry, Mr. Commissioner, 79.

19 Q Page 7, Doctor.

20 A Yes.

21 Q And the two paragraphs I'm interested in are in  
22 the middle of the page. The first one:

23

24 There is no evidence that use of the TASER  
25 caused the death.

26

27 And then the next paragraph dealing with:

28

29 The only way a TASER could theoretically  
30 cause death directly...

31

32 You've read those?

33 A Yes.

34 Q Do you have any issues with those two paragraphs?

35 A No.

36 Q You would agree with their contents?

37 A Yes.

38 Q And then, Doctor, you'll see on the bottom of the  
39 page, there's a reference to the U.S. Department  
40 of Justice study.

41 A Yes.

42 Q And then over the page Dr. Di Maio sets out five  
43 conclusions.

44 A From that study.

45 Q From that study.

46 A Yes.

47 Q Based on your training, experience and reviews of

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 peer-reviewed medical literature, would you agree  
2 with those conclusions?

3 A Yes. May I point out two things about that?

4 Q Certainly.

5 A One is in item number 2, it says:

6

7 There is currently no medical evidence that  
8 Conducted Energy Devices pose a significant  
9 risk for induced cardiac dysrhythmia when  
10 deployed reasonably.

11

12 And the fifth point doesn't make any sense.  
13 There's a -- there's something wrong with the  
14 fifth point.

15 Q Okay. All right.

16 A

17 Current medical research suggests that the  
18 Conducted Energy Deployment is not a stress  
19 of a magnitude that separates it from the  
20 other components of subdual.

21

22 I don't know what that means.

23 Q Fair. And with respect to point 2, indeed that we  
24 covered in one way that -- the information that's  
25 contained in point 2, that there is -- and for the  
26 record:

27

28 There is currently no medical evidence that  
29 CEDs pose a significant risk for induced  
30 cardiac dysrhythmia when deployed reasonably.

31

32 Is almost what you said in your letter with  
33 respect to your review to the Police Commissioner  
34 on your Review of the Interim and Final Reports in  
35 British Columbia.

36 A That's possibly so. I mean, do you want -- do you  
37 want me to look at that right now?

38 Q No, that's fine.

39 A But I think that's likely so, yes.

40 Q Thank you. And, Doctor, if I can have you turn up  
41 page 9.

42 A Nine, yes.

43 Q And the last summary conclusion of Dr. Di Maio.  
44 Do you agree with Dr. Di Maio's summary?

45 A No, I don't.

46 Q And what aspects --

47 A The main -- this is the last page, the last

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1 paragraph.

2 Q Yes.

3 A But I already said I didn't agree that there was  
4 an alcoholic cardiomyopathy.

5 Q With that exception.

6 A Yeah.

7 Q Do you agree with the rest of the paragraph?

8 A Well, we've been through these points, I think, so  
9 let me just go through them again.

10

11 ...cardiac arrhythmia secondary to the  
12 effects of chronic alcohol abuse; alcohol  
13 withdrawal...

14

15 I expressed some concern about that earlier this  
16 morning in that it's really not clear to me what  
17 the mechanisms are of alcoholic withdrawal and  
18 arrhythmia.

19

20 ...stress from both emotional and physical  
21 results of the withdrawal...

22

23 You know, and I notice that all this is associated  
24 with alcohol, so that every one of these things  
25 here, with the exception of "struggle with law  
26 enforcement" is associated with alcohol. So I  
27 have a difficult time with that. And that isn't  
28 in accordance with the cause of death that was  
29 even submitted by Dr. Lee, which suggests that  
30 alcohol is a factor that did not -- did not  
31 contribute to it in accordance with the World  
32 Health Organization format, which I assume that he  
33 understands. That is, that the Part 2 entries are  
34 not causally related to the Part 1, and Part 1  
35 reads restraint related death.

36 Q Then, Doctor, let's turn to the report of Dr.  
37 Pollanen.

38 A Yes.

39 Q Exhibit 80, Mr. --

40 A Pardon?

41 MR. NEAVE: Exhibit 80, Mr. Commissioner.

42 Q And you've at the break had an opportunity to  
43 review that?

44 A Yes.

45 Q Like you, Dr. Pollanen concludes that there is no  
46 cardiac arrhythmia, fair? He is unable to  
47 determine that.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

1 A Yes.

2 Q Or, sorry, not cardiac arrhythmia, I apologize,  
3 cardiomyopathy.

4 A Cardiomyopathy, yes.

5 Q Yes, I misspoke.

6 A But the arrhythmia issue is also a given. I told  
7 you that you can't detect the arrhythmia --

8 Q Right.

9 A -- at an autopsy.

10 Q Fair. And, Doctor, if we can go to page 10.

11 A Yes.

12 Q And you will see in this report a discussion of  
13 the "Medicolegal issues".

14 A Yes.

15 Q And what Dr. Pollanen says in that paragraph, do  
16 you agree with the five possible variables that  
17 need to be considered as putative causal factors  
18 in the death of Mr. Dziekanski?

19 A Yes. I mean, these are the points that he says  
20 need to be considered. But then the paragraph  
21 beneath that qualifies it, because he says that  
22 there's little evidence, the statement to be  
23 complete about this is:

24  
25 Chronic alcoholism might have contributed to  
26 the agitated state, perhaps by alcohol  
27 withdrawal. There is little objective  
28 evidence to support or refute that  
29 proposition. ...the main medicolegal issue  
30 for [the] discussion [is]...agitated state,  
31 restraint position, and the effects of the  
32 taser.

33  
34 So in other words, he's, you know, reduced the  
35 list of five to basically to three.

36 Q And you agree with -- or let me ask it in this  
37 way: Do you agree with Dr. Pollanen's opinion  
38 with respect to point 1 under -- on page 10, and  
39 I'm talking point 1 "Medicolegal issues", the  
40 entire two paragraphs that we're looking at.

41 A I'm sorry, I lost the last part of your statement.

42 Q Sorry. The two paragraphs that we're speaking  
43 about under "Medicolegal issues" on page 10.

44 A Yes.

45 Q The paragraph starting with "The medical and video  
46 evidence", and the second "I cannot confirm", do  
47 you agree with those comments?

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)

(cont'd)

1 A Yes.

2 Q And, Doctor, if I can then have you turn up page  
3 11, please.

4 A Yes.

5 Q You'll see a heading "3. Effects of the taser"?

6 A I do.

7 Q Do you agree with the -- with Dr. Pollanen's view  
8 with respect to the video evidence in the first  
9 full paragraph before points 1 and 2?

10 A Yes.

11 Q And do you agree, Doctor, with point 1?

12 A Yes.

13 Q And do you agree, Doctor, with point 2?

14 A Yes, I do.

15 Q Now, Doctor, if I can take you to your opinion,  
16 please.

17 A Yes.

18 Q And I am under "Comments and conclusions" at page  
19 5.

20 A Yes.

21 Q And you say this:

22

23 In my opinion, on the basis of the post-  
24 mortem examination one cannot say that Mr.  
25 Dziekanski did not have an arrhythmia before  
26 he died ([admittedly] it would be the same  
27 with every post-mortem examination, whatever  
28 the background of the deceased's illness or  
29 injury.)

30

31 Have I got that correctly?

32 A Yes.

33 Q Would you also agree that on the basis of the  
34 post-mortem examination you cannot say that he did  
35 have an arrhythmia?

36 A No, I can't.

37 Q Doctor, the last portion of your opinion you turn  
38 to the issue, and I'm at the second-last sentence  
39 under "Comments and conclusions":

40

41 As well the death may have had a respiratory  
42 component through restriction of air into the  
43 air passages/lungs.

44

45 A That's correct.

46 Q That's speculative on your part, fair?

47 A It's certainly not based on any autopsy findings.

Dr. John Butt

Cross-exam by Mr. Neave (for TASER International)  
(cont'd)

Cross-exam by Mr. Hira (for Cst. Kwesi Millington)

1 Q And indeed on the evidence that Mr. Enchelmaier  
2 provided the Commission that I read to you --

3 A Yes.

4 Q -- earlier this morning --

5 A Yes, I understand that.

6 Q -- that would be inconsistent with your opinion  
7 there; is that fair?

8 A That's fair.

9 MR. NEAVE: Those are my questions, Mr. Commissioner,  
10 thank you. Thank you, Dr. Butt.

11 Mr. Commissioner, my colleague reminds me to  
12 mark the exhibits. With your leave, I'll gather  
13 them up from my -- from my colleague. They're at  
14 the office and --

15 THE COMMISSIONER: Yes. No, go ahead and do that. I  
16 might say that I have some apprehension about the  
17 personal note of Dr. Butt. I know your use of it,  
18 but I thought that what was said in verbal  
19 evidence adequately described the point.

20 MR. NEAVE: I'm content with that, Mr. Commissioner,  
21 thank you.

22 THE COMMISSIONER: Thank you.

23

24 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE  
25 KWESI MILLINGTON:

26

27 Q Doctor, my name is Ravi Hira and I represent  
28 Officer Kwesi Millington.

29 A Could I ask you to speak up, sir, I'm sorry.

30 Q I beg your pardon, I'll do my best. My name is  
31 Ravi Hira and I represent Officer Kwesi  
32 Millington. Now, you have given evidence and  
33 we've had evidence from Dr. Lee that there were no  
34 anatomical causes of death. You would agree with  
35 that?

36 A Yes.

37 Q And by that you are referring to physical  
38 scientific observable causes of death?

39 A Yes.

40 Q Objective matters, correct?

41 A Yes.

42 Q And you would agree with me that your opinions or  
43 your opinions regarding the cause of death are  
44 based on a subjective view of the video and the  
45 Circumstances document?

46 A The situation as I described in my report, is  
47 developed largely through circumstantial evidence.

1 Q That is --  
2 A I explained that, I think.  
3 Q That is your view of the video and your analysis  
4 of the Circumstances document, correct?  
5 A My own, yes.  
6 Q Now, let's deal with the situation with the  
7 cerebellum. You gave evidence that you expected  
8 it to affect balance, correct?  
9 A Yes, I did.  
10 Q You expected a significant effect on balance.  
11 A Yes.  
12 Q You didn't see any such effect on the video,  
13 according to your evidence?  
14 A I did not. No, I didn't.  
15 Q Were you aware --  
16 THE COMMISSIONER: Excuse me, the videos.  
17 MR. HIRA: I'm sorry, Mr. -- videos?  
18 THE COMMISSIONER: Correct.  
19 MR. HIRA: Yes, I apologize.  
20 Q The videos, correct?  
21 A Yes, including in the -- in the Customs Hall.  
22 Q Oh, I agree, I'm not for a moment --  
23 A Yes.  
24 Q -- delineating the 18 Customs videos or the three  
25 Pritchard videos.  
26 A Right. I understand.  
27 Q Were you aware of reports by witnesses that he was  
28 unsteady on his feet?  
29 A I believe that that might have been in the -- in  
30 the document that was provided me, like the  
31 summary document, I think that might have been  
32 said.  
33 Q Fair enough. Now --  
34 A But, you know, there was some evidence in there  
35 that was within -- within the report itself there  
36 was some evidence that appeared to be  
37 contradictory.  
38 Q Fair enough. Does the atrophy of the cerebellum  
39 affect one's cognitive abilities?  
40 A No.  
41 Q Does it have any effect on thought, thinking?  
42 A No.  
43 Q So it's just a physical aspect?  
44 A It largely has to do with coordination, including,  
45 as I said yesterday, hand movement, fine hand  
46 movement, balance.  
47 Q All right. Now, moving to another point here.

Dr. John Butt

Cross-exam by Mr. Hira (for Cst. Kwesi Millington)

1 We've had evidence that -- from Dr. Lee, that in  
2 the Pritchard videos to the extent that we can  
3 hear Mr. Dziekanski vocalizing --

4 A Yes.

5 Q -- that that indicates that he's breathing. Would  
6 you agree with that?

7 A Yes.

8 Q Now, you gave evidence at the study session of  
9 this Commission.

10 A Yes.

11 Q And I'd like to read to you a portion of your  
12 presentation and ask you whether you've continue  
13 to hold this view and for the record, I'm going to  
14 be reading from page 9, line 46, to page 10, line  
15 17.

16 A I don't have the document, I don't think. Excuse  
17 me a moment, I think I do here. Just a minute.

18 Q This is evidence that you gave on May 21, 2008.

19 A I had it yesterday but I don't know that I have it  
20 again.

21 Q Maybe what we could do is I could -- thank you,  
22 Mr. Neave.

23 A I'm probably -- this probably is it. I think I've  
24 got it now, just a moment. I have it, thanks. I  
25 have it. Sorry. Page what, sir?

26 Q Page 9, line 46.

27 A Yes, I have that.

28 Q To page 10, line 17. You testified:

29

30 Death investigators, emergency department  
31 personnel, nurses, first responders such as  
32 paramedics, have seen in this pattern of  
33 agitation the following types of behaviour:  
34 hyperactivity, notably running around  
35 aimlessly, often shouting; secondly,  
36 agitation, including from lights and the  
37 reflection of lights in glass and mirrors;  
38 thirdly, hyperthermia, which in itself is a  
39 danger, accompanied by sweating, and finally,  
40 one of the problems in terms of responding to  
41 the people, feats of strength, a disposition  
42 to resist force and numbness to pain. These  
43 latter features, of course, create problems  
44 for persons who intend to assist to restrain  
45 the individual, hopefully to bring upon that  
46 individual some form of medical treatment.  
47 But having said that, recall that paramedics

1                   are unlikely to tackle such persons unless  
2                   they have been taken down in the first place  
3                   by police.  
4  
5                   You recall making that -- giving that evidence as  
6                   part of your presentation?  
7           A        Yes.  
8           Q        And are you still of the same opinion?  
9           A        Yes.  
10          Q        Thank you. Now, I'd like to take you to Dr. Di  
11                   Maio's report which, for the record, is Exhibit  
12                   79.  
13          A        I have it.  
14          Q        And I'd like to refer you to page 8, the paragraph  
15                   just beyond the middle.  
16          A        Yes.  
17          Q        That starts "Whenever one gets excited". You've  
18                   read that paragraph; is that not correct?  
19          A        Yes. Yes, I have.  
20          Q        Would you agree with the doctor's comments in --  
21          A        Yes.  
22          Q        -- that paragraph?  
23          A        Yes.  
24          Q        Thank you. I'd now like to take you to page 9 of  
25                   the report. The first full paragraph, "Thus  
26                   anyone engaging in a struggle or strenuous  
27                   activity". You've read that paragraph, have you  
28                   not?  
29          A        Yes, I have.  
30          Q        Would you agree with that paragraph?  
31          A        Do you know, sir, I don't disagree with it, but I  
32                   just can't say that I know that dramatic falling  
33                   levels of potassium issue, and I'd have to leave  
34                   it at that.  
35          Q        So what you're saying --  
36          A        And -- sorry.  
37          Q        Sorry, I'm interrupting. I beg your pardon.  
38          A        Well, no, I wish to go back to your previous  
39                   question, because in your previous question you  
40                   asked me if I agreed with that paragraph, and I  
41                   had, I think, already qualified the fact about  
42                   what alcoholic withdrawal was about. And I'm not  
43                   so sure, to be complete about it, that increased  
44                   levels of catecholamine is a part of alcoholic  
45                   withdrawal. I don't know that, that's all I'm  
46                   saying.  
47          Q        Fair enough.

Dr. John Butt

Cross-exam by Mr. Hira (for Cst. Kwesi Millington)

1 A And I say the same about the potassium. I don't  
2 know that to be true. I'm not disputing it.

3 Q Thank you. And then with respect to the next  
4 paragraph, this case, do you agree with that  
5 paragraph? And I'm at page 9:

6  
7 In this case, the elevated catecholamine  
8 levels due to the struggle...

9

10 A Yes, I mean, it says:

11

12 ...due to the struggle were aggravated by the  
13 effects of alcohol withdrawal and the  
14 probable presence of elevated levels of  
15 catecholamines present as a result of chronic  
16 alcohol abuse and cardiomyopathy.

17

18 Well, I don't know that catecholamines are related  
19 to alcohol abuse. But I don't -- but my reading  
20 does not suggest that there are levels of  
21 catecholamines as a result of alcoholic  
22 cardiomyopathy, which in any event I don't believe  
23 he had.

24 Q So you agree with the paragraph up to the words  
25 "and cardiomyopathy", is that fair?

26 A Well, the possibility of catecholamines in alcohol  
27 withdrawal, or alcohol abuse, I mentioned. I  
28 don't know, I don't know that. I disagree with  
29 the other part of it.

30 Q Fair enough. So what you're saying is I don't  
31 know whether catecholamines are present as a  
32 result of chronic alcohol abuse, and accepting  
33 that to be the case, I don't disagree with that  
34 paragraph, but I do --

35 THE COMMISSIONER: No, counsel.

36 MR. HIRA: If I may finish.

37 THE COMMISSIONER: No, the doctor's made it clear what  
38 he means. If you paraphrase it like that, it's a  
39 very technical subject, and when you paraphrase  
40 it, if there's one word that is different, it  
41 throws out the whole meaning of it. Now, the  
42 doctor has said quite clearly what his view is of  
43 the paragraph.

44 MR. HIRA: Well, let's try it another way.

45 Q You -- your view is that there was no  
46 cardiomyopathy; is that correct?

47 A That's correct.

Dr. John Butt

Cross-exam by Mr. Hira (for Cst. Kwesi Millington)

- 1 Q Your further view -- your further position is that  
2 you don't know whether catecholamines are present  
3 or get elevated -- let's say are present as a  
4 result of chronic alcohol abuse?
- 5 A I know that catecholamines are present as a result  
6 of natural, the regular physiology of the body.  
7 The question is whether they're elevated.
- 8 Q Fair enough. You --
- 9 A And I don't know that.
- 10 Q So what you're saying is you don't know whether --  
11 THE COMMISSIONER: No, counsel, please. He's answered  
12 the question. I am objecting to you rephrasing  
13 it.
- 14 MR. HIRA: Very well, I will move on.
- 15 Q Now, you've heard my friend, Mr. Neave, and you've  
16 read Mr. Enchelmaier's evidence regarding the  
17 monitoring of pulse; is that correct, the three --
- 18 A Oh, yes. Yes, this morning.
- 19 Q Yes. And you've agreed that if the pulse was  
20 present on those occasions, then he likely was not  
21 -- in fact, was not in any ventricular  
22 fibrillation?
- 23 A I agree.
- 24 Q And of course that occurs, that monitoring,  
25 certainly the last -- all three of them, after the  
26 struggle with the police. You're aware of that?
- 27 A Yes. Oh, yes, I'm aware that was taken by the  
28 security guard after the struggle.
- 29 Q Are you prepared to agree with me that in those  
30 circumstances that the struggle was not a cause of  
31 death?
- 32 A No, I'm not prepared to agree with that. No. I  
33 don't -- I mean, that's like -- that's the same  
34 thing, sir, as saying the person pushed the car in  
35 the snow and went in the house and had a cup of  
36 coffee and dropped dead, and it wasn't related to  
37 -- to pushing the car in the snow. I mean, these  
38 things are well known that if there's expenditures  
39 of energy, I -- the one thing that I don't know  
40 for sure that I've talked about is that there's no  
41 pathology to back that up. And that's -- that's  
42 what I don't know.
- 43 Q Thank you. So going back to the questions that I  
44 asked you at the start, there is no objective  
45 evidence to back up the position that the officers  
46 caused the death as a result of the struggle?
- 47 A No, there isn't.

1 MR. HIRA: Thank you. Those are my questions.  
2 THE COMMISSIONER: Do we have any further questions?  
3 MR. MCGOWAN: Yes, Mr. Commissioner, just a couple of  
4 points of clarification.  
5

6 RE-EXAMINATION BY MR. MCGOWAN:  
7

8 Q Dr. Butt, you were taken to a number of statements  
9 and agreed with some of them regarding  
10 specifically the Taser and its ability or its role  
11 in causing death. You recall that?

12 A Yes.

13 Q Okay. I want to just make sure I'm clear on what  
14 your view is of the meaning of -- of those  
15 statements regarding the Taser causing death. Did  
16 you interpret those questions and those statements  
17 to relate to the Taser causing death directly by  
18 inducing ventricular fibrillation?

19 A No.

20 Q Okay. Do you draw a distinction, I take it,  
21 between cause and contribution?

22 A Yes.

23 Q Now, you've been extensively cross-examined and  
24 taken to a number of documents and asked a number  
25 of questions, and you've had a significant amount  
26 of information placed before you.

27 A Yes.

28 Q You've had a chance to consider that information?

29 A Today and yesterday.

30 Q Yes.

31 A Well, I'm smiling because, you know, the  
32 consideration is one thing; the memory is another.  
33 Q Fair enough. Let me ask you this, then. Have any  
34 of the questions you've been asked or any of the  
35 documents you've been taken to in any way altered  
36 the opinion you gave in your report of April 17th,  
37 or your opinion that you gave in examination in  
38 chief?

39 A No, they don't.

40 MR. MCGOWAN: Okay. Thank you, those are my questions  
41 in re-examination.

42 THE COMMISSIONER: Doctor, thank you very much for your  
43 attention to this matter. Your evidence, I might  
44 say, has been very clear and most helpful, and I  
45 thank you so much.

46 A Thank you.  
47

40

Dr. Walter Martz

In chief on qualifications by Mr. McGowan

1 (WITNESS EXCUSED)

2

3

MR. MCGOWAN: Can we just take five minutes to get Dr. Butt off the stand and Dr. Martz organized.

4

5

THE COMMISSIONER: Yes, but each of the minutes should be 60 seconds.

6

7

8

(PROCEEDINGS ADJOURNED)

9

(PROCEEDINGS RECONVENED)

10

11

MR. MCGOWAN: Yes, Mr. Commissioner. The next witness is a Dr. Walter Martz, he's a toxicologist. I expect his evidence to be brief and I am going to suggest we just continue until it's completed. He's the last witness for today.

12

13

14

15

16

Dr. Martz, please have a seat in the witness box at the end.

17

18

THE REGISTRAR: Good afternoon, sir. Before you're seated do you wish to be sworn or affirmed?

19

20

THE WITNESS: Affirmed.

21

22

DR. WALTER MARTZ, a witness, affirmed.

23

24

25

THE REGISTRAR: Would you state your full name, please.

26

A My name is Dr. Walter Martz.

27

THE REGISTRAR: Can you spell your surname.

28

A M-a-r-t-z.

29

THE REGISTRAR: Thank you. You may be seated.

30

Counsel.

31

MR. MCGOWAN: Thank you.

32

33

EXAMINATION IN CHIEF ON QUALIFICATIONS BY MR. MCGOWAN:

34

35

Q Sir, I'm just going to spend a few minutes at the outset going over your education and qualifications. You have a Ph.D. in Chemistry?

36

37

A That's correct.

38

Q That's from Hanover University?

39

A Hanover in Germany.

40

Q Hanover, Germany. And what year did you attain your Ph.D.?

41

42

A Well, the thesis was about Toxic Principles of Brazilian Plants.

43

44

Q Yes. And what year did you complete that?

45

A Excuse me?

46

Q Which year did you complete your Ph.D.?

47

41

Dr. Walter Martz

In chief on qualifications by Mr. McGowan

Ruling

In chief by Mr. McGowan

1 A This was in 1988.

2 Q Okay. And you've worked in the field of chemistry  
3 and toxicology since that time?

4 A That's correct.

5 Q You're presently a member of the Faculty of  
6 Medicine at the University of British Columbia?

7 A That's correct.

8 Q You're not a medical doctor however, correct?

9 A I am not a medical doctor.

10 Q Okay. You presently work as a Senior Scientist  
11 and the Scientific Director at the Provincial  
12 Toxicology Centre?

13 A That's my current position.

14 Q Okay. And it's that position that brought you in  
15 contact with our present case?

16 A That's correct.

17 Q You've had extensive experience and worked in a  
18 number of positions related to chemistry and  
19 toxicology in the past, correct?

20 A Yeah, roughly since I immigrated to Canada I  
21 signed off, like, 4,000 reports, and toxicology  
22 cases. Before there were several hundreds of  
23 testimonies I gave the courts or in writing, in  
24 courts in Germany.

25 MR. MCGOWAN: Okay. Mr. Commissioner, I'm going to  
26 suggest that Dr. Martz be qualified as an expert  
27 in the area of toxicology and the analysis of  
28 toxicological reports.

29 THE COMMISSIONER: Yes, I agree with that.

30 MR. MCGOWAN: Thank you.

31

32 EXAMINATION IN CHIEF BY MR. MCGOWAN:

33

34 Q Sir, your involvement with this case had to do  
35 with the analysis of certain biological samples  
36 provided to you by Dr. Lee through the Coroner's  
37 office; is that correct?

38 A That is correct.

39 Q Okay. And as I understand it, there were two sets  
40 of samples provided to you, initially blood  
41 samples and at a later time some additional tissue  
42 samples?

43 A That's correct. I had a communication with Dr.  
44 Lee and was asking for additional specimens.

45 Q Okay. So there were essentially two sets of  
46 analyses that were done?

47 A That's correct.

Dr. Walter Martz  
In chief by Mr. McGowan

1 Q Okay. And the results of those are summarized on  
2 a single report; is that correct?

3 A Well, actually, I issued two reports. One -- let  
4 me just grab my documentation. One was issued on  
5 October 15th and the other one must have been  
6 issued before. I don't have the correct date with  
7 me.

8 Q Let me ask you this. Does the second report  
9 contain everything that was in your first report,  
10 plus some additional material?

11 A Yes, it's a more comprehensive report with the  
12 add-ons on the tests we did on liver.

13 Q Okay. So for us to look at the results of all of  
14 the tests you did, both the first and second set  
15 of tests, we need only to look at your final  
16 report; is that correct?

17 A That's correct.

18 MR. MCGOWAN: Okay. I'm going to suggest that this  
19 report be marked as the next exhibit, Mr.  
20 Commissioner.

21 THE COMMISSIONER: Yes, the next exhibit.

22 THE REGISTRAR: Marked as Exhibit number 116.

23

24 EXHIBIT 116: Provincial Toxicology Centre,  
25 Toxicology Report for R. Dziekanski

26

27 MR. MCGOWAN:

28 Q Now, sir, before we get into the report, I wonder  
29 if you'd just very briefly explain to the  
30 Commissioner what a toxicologist is, and what you  
31 do in your present role at the Toxicology Centre.

32 A Well, toxicology is the science of adverse effects  
33 of chemicals on living organisms. And, in  
34 general, a toxicologist detects and identifies  
35 foreign chemicals in the body, with a particular  
36 emphasis upon toxic or hazardous substances.

37 Q Okay.

38 A Forensic toxicology is quite literally the  
39 application of toxicology in courts of law.  
40 Normally I testify in Coroners Court, so this  
41 would be my first court different from that. But  
42 basically I have to present the results of our  
43 analytical investigations. Most often this is  
44 understood as the analysis of alcohol, drugs,  
45 medication. Other toxicologists work in the field  
46 of heavy metal, environmental toxicology or other  
47 fields. But we are specialized, or our centre is

Dr. Walter Martz  
In chief by Mr. McGowan

1 specialized in the detection of alcohol, illicit  
2 drugs and medications.

3 Q Okay. And in your current position, you perform  
4 toxicological analysis on samples provided to you  
5 by the Coroners Service; is that correct?

6 A That's correct.

7 Q And that's, as you said before, the role you were  
8 playing when you became involved in this case?

9 A That's correct.

10 MR. MCGOWAN: Now, I'm just going to ask you to perhaps  
11 pull the microphone in a little bit and speak  
12 directly into it so we make sure we're picking up  
13 your voice.

14 Mr. Commissioner, I neglected to mark his  
15 c.v., and perhaps that could be the next exhibit.

16 THE COMMISSIONER: yes, next exhibit.

17 THE REGISTRAR: Exhibit number 117.

18

19 EXHIBIT 117: *Curriculum vitae* for Dr. Walter  
20 Martz

21

22 MR. MCGOWAN:

23 Q Now, speaking generally, sir, the analyses you did  
24 on the blood and tissue recovered from Mr.  
25 Dziekanski's autopsy were designed to detect the  
26 presence of alcohol prescription and illicit  
27 drugs; is that correct?

28 A That's the scope of our examination, yes.

29 Q Okay. And your report sets out the specific  
30 examinations which you completed with respect to  
31 the blood and tissue from Mr. Dziekanski, correct?

32 A Yeah, correct.

33 Q Okay. And with respect to each of the things you  
34 were searching for, the alcohol, illicit drugs and  
35 prescription drugs, there was none detected,  
36 correct?

37 A Well, that's the summary of my report, that we  
38 literally got nothing -- found nothing.

39 Q Okay. And just to be clear, a finding of, as it's  
40 noted here "not detected" or "no drugs detected",  
41 doesn't necessarily mean absolutely nothing.  
42 There is a baseline below which the machinery does  
43 not detect; is that correct?

44 A Okay. Any -- yes, that's correct. Any method we  
45 apply has a so-called limit of detection, and  
46 below this limit of detection we just can't say.  
47 This is true for any equipment that is applied in

- 1 any laboratory in the world, so we know about the  
2 limits of our approach. In a different laboratory  
3 it might be slightly different, but basically we  
4 are able to detect relevant concentrations of  
5 illicit drugs that might be -- might have to be  
6 discussed in the conjunction with the death of the  
7 person.
- 8 Q Okay. Let me ask you first of all about alcohol.  
9 You detected no alcohol in Mr. Dziekanski's body,  
10 correct?
- 11 A That is correct.
- 12 Q Does that mean subject to the limits of your  
13 machinery there was no alcohol in his system at  
14 the time of death?
- 15 A The limit of detection in our system is like 0.02  
16 percent, which is roughly a quarter of the legal  
17 limit.
- 18 Q Okay.
- 19 A The legal limit would be like 0.08 percent.  
20 Physiologically this is an irrelevant  
21 concentration, so that's why this limit of  
22 detection is adjusted at that level.
- 23 Q Okay.
- 24 A We recently changed it to half of it, so 0.01, but  
25 at the time we issued this report, the limit of  
26 detection for alcohol was 0.02.
- 27 Q Okay. So your finding here of not detected with  
28 respect to alcohol means that at the time of death  
29 Mr. Dziekanski's blood alcohol level was below  
30 0.02?
- 31 A That is fair to say, yes.
- 32 Q Okay. And in terms of the effects on the body,  
33 that's an insignificant amount?
- 34 A Well, the effect of such a low concentration would  
35 be sub-clinical. You would not be able to notice  
36 if a person has an alcohol level in that range.
- 37 Q Now, that tells us something about the alcohol  
38 level at time of death. Does it also tell us  
39 anything about drinking history in the hours that  
40 preceded that, the hours that preceded death?
- 41 A Well, the fate of alcohol in our organism is that  
42 it's eliminated through urine and metabolized  
43 through the liver. The total elimination rate  
44 would account for on average, on 0.015 percent per  
45 hour. So within a given period of time you would  
46 be able to get rid of fairly high amount of  
47 alcohol from the blood. The consequence, after a

1 couple of hours we would not be able to detect  
2 alcohol in a blood sample.

3 Q Okay. So a standard elimination rate of 0.015.  
4 A That's the internationally accepted average. The  
5 range would go from 0.01 percent per hour to 0.02  
6 percent per hour.

7 Q Okay. So with the average being 0.05 and to get  
8 some -- put that in context, the legal limit for  
9 alcohol is 0.08?

10 A That's correct.

11 Q Are you able to assist us at all with how 0.015  
12 corresponds to a quantity of alcohol with respect  
13 to somebody who was say 85 kilograms?

14 A You mean I should provide a calculation?

15 Q Yeah, I'm asking if that's something that you can  
16 do, or is it...

17 A Well, normally this is done by a forensic  
18 pathologist.

19 Q Okay, fair enough.

20 A I can give you a ballpark estimate, this is what I  
21 can do.

22 Q I'm looking for a rough comparison to what 0.015,  
23 how that relates to a quantity of alcohol, if  
24 you're able to assist us.

25 A Well, to give you one idea, after one beer --

26 Q Yes.

27 A -- you would not have any alcohol level in the  
28 blood.

29 Q Okay.

30 A So it takes either a lot of beers or several  
31 glasses of wine or several shots of another  
32 alcoholic beverage to have measurable levels of  
33 alcohol in the blood.

34 Q Okay. And to get to the legal limit in an average  
35 sized male, how many drinks would that take the  
36 average size male to get to 0.08, for example, if  
37 you can assist us? If that's outside your area, I  
38 don't want to take you there.

39 A Well, it's definitely outside my area.

40 Q Fair enough, then I won't ask you to go there. I  
41 don't want you to --

42 A Neither was it my area in my former position in  
43 Germany, because this is done by legal examiners,  
44 as was it here, so sorry for that.

45 Q No, that's certainly fine. I don't want to put  
46 you in a difficult situation where you're --  
47 you're guessing or giving us information that

1           you're not certain of.

2           Now, with respect to the drug analyses that  
3           were conducted, would those cover a broad range of  
4           typically found illicit drugs?

5           A    That would cover a broad range.  The -- actually,  
6           the compounds we are able to detect have grown  
7           over the years, so whenever a new drug appears on  
8           the market, we try to get standards and increase  
9           the number of compounds we are able to detect.

10          Q    Okay.  And with respect to prescription drugs, is  
11          there also a broad range of prescription drugs  
12          that would be detected if they were present by  
13          your analysis that was conducted in this case?

14          A    That's correct.  Maybe I have to say the centre  
15          has a dual mandate.  We are not only serving the  
16          Coroners in British Columbia, but we are a  
17          provincial resource for therapeutic drug  
18          monitoring for hospitals and all sorts of  
19          medications that are required for quantitation or  
20          for detection in screening end up in my  
21          laboratory.

22          Q    Okay.  Would the drug testing you were doing have  
23          detected the prescription drug Metoprolol were it  
24          present in the system?

25          A    Well, Metoprolol is a beta blocker, which is used  
26          in the treatment of hypertension -- hypertension,  
27          for example.  This type of medication is normally  
28          not monitored because the physician would just  
29          prescribe it and put the patient on an ECG or some  
30          other diagnostic measure.  He does not require a  
31          level.  Our screenings would have detected  
32          Metoprolol, though, at higher levels, because if  
33          you overdose it, the effect on the heart might --  
34          might be dangerous and the patient might even die  
35          at higher levels.  But we certainly are able to  
36          detect levels in the upper therapeutic range and  
37          higher up.

38          Q    Low level therapeutic doses taken as prescribed,  
39          would that have been detected by your analysis?

40          A    They -- they -- I don't know for sure, but I think  
41          we rarely see Metoprolol or Atenolol as beta  
42          blockers, so they probably escape our attention if  
43          in the lower part of the therapeutic range.

44          Q    Okay.  Now, let me just ask you a general question  
45          about this.  We see blood samples and we see liver  
46          samples.  Is there a reason why both were used to  
47          test here?

Dr. Walter Martz  
In chief by Mr. McGowan

- 1 A Yeah, there is a reason. This was clearly a case  
2 of death in custody, and in those cases the  
3 Coroner typically asks for analysis in two  
4 different specimens, just in order to make sure  
5 that there is no mixing up of samples or  
6 something, so we always look for an alternate --  
7 it could be urine, but urine could not be obtained  
8 in this case. So we did the screening again on  
9 liver.
- 10 Q Okay. And were your findings with respect to the  
11 samples taken from blood and liver consistent with  
12 each other?
- 13 A They were consistent.
- 14 Q Okay. There was no detectable level of alcohol in  
15 either sample?
- 16 A No, there wasn't.
- 17 Q Okay. Now, we see at the bottom, and what appears  
18 to be a third alcohol test, it says "Vitreous  
19 (grey top tube)", what's that?
- 20 A Okay.
- 21 Q The third from the bottom in your list?
- 22 A Vitreous is a liquid that is contained in the eye.  
23 And during autopsy we -- the pathologist would be  
24 able to obtain like two millilitres, one  
25 millilitre from each eye and put it aside because  
26 vitreous is the ideal body fluid to be examined  
27 post-mortem. In blood or organs there might be  
28 post-mortem changes. While the eyeball is sort of  
29 a protected area and the liquid contained is more  
30 stable over the post-mortem interval.
- 31 Q Okay. Did you also check for alcohol in that  
32 sample?
- 33 A That was checked for alcohol, as well, with the  
34 result that there was no -- none detected.
- 35 Q Okay. And I see the last two tests appear only to  
36 have been done, I believe, in the vitreous, and  
37 that's the glucose and the ketones.
- 38 A Yeah, we are --
- 39 Q Tell the Commissioner about those two tests,  
40 please.
- 41 A We are using a dipstick test, which is a little  
42 strip that contains some reagents, and if elevated  
43 levels of glucose or ketones can be detected, then  
44 we forward the specimen to a clinical chemistry  
45 laboratory in order to get a precise result.
- 46 Q Okay. And what specifically are you looking for  
47 there? What's the test determined -- designed,

Dr. Walter Martz  
In chief by Mr. McGowan

1           sorry, to uncover?

2           A     Well, the idea to look for glucose would be to  
3           find out if someone died in the state of -- of a  
4           diabetic coma or some -- some disease like  
5           diabetes. The ketones would help us to identify  
6           alcoholic ketoacidosis, which would be elevated  
7           isolated rather than in a diabetic ketoacidosis  
8           where both would be elevated.

9           Q     Okay. And were those -- those tests were both  
10          negative?

11          A     They were both negative, so one explanation would  
12          be there was no.

13          Q     Okay. Is there any other explanation that's  
14          significant to us here?

15          A     I don't see any.

16          Q     Okay. We see some narrative comments at the  
17          bottom of your report:

18  
19                   No alcohol, prescribed medication or other  
20                   illicit drugs detected.

21  
22          And then you have an add-on:

23  
24                   As per communication with Coroner/  
25                   pathologist, alternate specimen liver was  
26                   also analyzed.

27  
28          Is that your narrative?

29          A     Yes, the background is just frankly the following.  
30          The Coroner is the person who orders the test.

31          Q     Yes.

32          A     So it's not -- I'm not in command, it's not to my  
33          discretion to do a test.

34          Q     Yes.

35          A     It's the Coroner. So I have to get in touch with  
36          him and let him know that I intend or I suggest to  
37          do more than he -- than he ordered in the first  
38          place.

39          Q     Okay. Did you make any suggestions to do tests in  
40          addition to those listed on this report?

41          A     As far as I remember, I had a phone call with Owen  
42          Court, who authorized Charles Lee to release more  
43          specimens.

44          Q     Okay. So all of the tests which you felt needed  
45          to be performed were performed in this case?

46          A     Yeah.

47          MR. MCGOWAN: Thank you, Doctor, those are my

1           questions.  
2

3           CROSS-EXAMINATION BY MS. ROBERTS ON BEHALF OF THE  
4           GOVERNMENT OF CANADA:  
5

6           Q     Dr. Martz, my name is Helen Roberts, I am counsel  
7                 for the Government of Canada. I have only one  
8                 question for you. Dr. Lee testified that he found  
9                 in Mr. Dziekanski's body a severely fatty liver,  
10                and it was his evidence that that indicated recent  
11                drinking. Are you able to tell us for how long  
12                Mr. Dziekanski would not have consumed alcohol in  
13                order to come up with a negative finding as you  
14                did?

15          MR. MCGOWAN: I'm sorry to interrupt my friend. I have  
16                 no problem with the question, I'm just not sure  
17                 it's particularly helpful if we don't have in the  
18                 hypothetical a starting point of a quantity of  
19                 alcohol consumed or a drinking pattern.

20          MS. ROBERTS: Perhaps Dr. Martz can tell me that.

21          Q     I'm just asking if you can tell with certainty  
22                 that after a particular period of time there will  
23                 be no alcohol in the body, no matter how much is  
24                 drunk.

25          A     Well, a general answer would be it depends on the  
26                 level -- on the starting level after the last  
27                 drink. So if someone, for example, had a lot --  
28                 enough alcohol to build up a level of 0.2 percent,  
29                 with an elimination rate of 0.02, as I mentioned  
30                 before, the maximum elimination rate that is  
31                 normally assumed, then it would take nine hours to  
32                 be at the level that is not detectible in my  
33                 laboratory.

34          Q     So if somebody had a quarter of the level that is  
35                 considered the legal limit for driving in this  
36                 province, that would be gone from their body nine  
37                 hours later?

38          A     Yes.

39          Q     All right. So if they had more alcohol than that,  
40                 would it take longer?

41          A     It must be significantly more to find -- to find a  
42                 level at that time. Can you give me some -- some  
43                 timeline you are thinking of, when was it --

44          Q     No, we don't have any timelines.

45          A     Okay. But this is important. This is important  
46                 because the time is the crucial parameter in any  
47                 estimation. Is it ten hours, is it eight hours,

Dr. Walter Martz

Cross-exam by Ms. Roberts (for Government of Canada)

Submissions by Ms. Roberts (for Government of Canada)

1 is it 24 hours? This was a transatlantic flight,  
2 which lasts -- I came back from Germany just two  
3 weeks ago, so it lasts nine hours, plus the time  
4 in the airport. Is there evidence that someone  
5 had a drink in between?

6 Q We have no evidence. Let's go on that assumption  
7 for a moment.

8 A Okay.

9 Q There was no alcohol consumed from leaving  
10 Frankfurt until arriving in Vancouver, and then  
11 there were a number of hours at the Vancouver  
12 Airport. Let's assume there was no alcohol  
13 consumed.

14 A And you would notice if someone is so heavily  
15 drunk aboard a plane, that level is high enough to  
16 be detected hours later. So from my perspective  
17 with my knowledge at the moment, I don't think  
18 that this person had alcohol recently -- had had  
19 alcohol recently.

20 Q Within the preceding 24 hours, say?

21 A Well, 24 hours can't be excluded, because this  
22 requires an almost lethal level initially, like 24  
23 hours. Did you -- sorry, did you ask the  
24 pathologist this question, because I'm more  
25 guessing here than really calculating.

26 Q That's fine. It was just an idea I had. Thank  
27 you, Dr. Martz.

28 A Okay.

29 THE COMMISSIONER: Doctor, thank you very much for the  
30 time you've taken to come. Your evidence is very  
31 much appreciated.

32 A Thank you.

33

34 (WITNESS EXCUSED)

35

36 MR. VERTLIEB: Now, Mr. Commissioner, if you don't mind  
37 just sitting an extra few minutes, please. Ms.  
38 Roberts has a submission she wishes to make about  
39 Officer Rideout, who is on the witness list for  
40 Monday.

41

42 SUBMISSIONS FOR THE GOVERNMENT OF CANADA:

43

44 MS. ROBERTS: To be correct, he's tentatively on the  
45 list for Monday. Commission counsel has asked  
46 Canada to produce Superintendent Wayne Rideout,  
47 who was the officer in charge of the Integrated

1 Homicide Investigation Team during the  
2 investigation of Mr. Dziekanski's death.

3 Commission counsel have advised they wish to  
4 question Superintendent Rideout about four  
5 matters: first, the decision not to immediately  
6 correct some incorrect information given by the  
7 media relations officers to media agencies;  
8 second, the decision as to when Mr. Pritchard's  
9 video was returned to him; third, the decision not  
10 to re-interview the four RCMP members about  
11 differences between their statements and the  
12 Pritchard video, and I don't know whether they  
13 wanted to ask about not re-interviewing any of the  
14 other witnesses, either; and fourthly, whether  
15 Superintendent Rideout was the person responsible  
16 for the three decisions that I've just mentioned.

17 I'm standing here because Canada has a  
18 question as to whether you believe this evidence  
19 would be relevant to your mandate, which is  
20 focused on how Mr. Dziekanski died, not what RCMP  
21 members and officers did after his death.

22 Now, Superintendent Rideout, as the officer  
23 in charge of IHIT, supervised all the IHIT teams,  
24 including the team that investigated Mr.  
25 Dziekanski's death. That team was led by Sergeant  
26 Attew. Superintendent Rideout did not interview  
27 any of the four RCMP members. He did not meet any  
28 of the four RCMP members. He did not attend the  
29 first briefing that you've heard about on October  
30 14th, 2007. He has no first-hand knowledge of the  
31 circumstances of Mr. Dziekanski's death.

32 With respect to the four proposed topics, the  
33 first was the media relations issue. Mr.  
34 Commissioner, you've already heard from Corporal  
35 Dale Carr, who has testified that Superintendent  
36 Rideout made the decision not to have the media  
37 relations officers discuss the evidence, including  
38 not correcting some prior errors, in order to  
39 protect the integrity of the IHIT investigation.  
40 Superintendent would simply come and repeat that,  
41 which would be repetitive. And I suggest that in  
42 further -- further inquiry into his reasons for  
43 that decision would squarely fall outside the  
44 mandate of this Commission.

45 With respect to the second proposed topic,  
46 the return of Mr. Pritchard's video,  
47 Superintendent Rideout has already publicly

1 addressed the reason for the delay in returning  
2 Mr. Pritchard's video, and that was during a press  
3 conference on December 12th, 2008 after the  
4 provincial Crown announced its decision. That,  
5 the text of that press conference is available on  
6 the RCMP website, and Superintendent Rideout at  
7 that time said there were two key reasons why the  
8 investigation team wanted to hold onto Mr.  
9 Pritchard's video. The first was that because it  
10 contained valuable evidence. Our second reason  
11 for retaining the video was to protect the  
12 integrity of witness statements. It was important  
13 that their recollections be based on what they had  
14 actually observed, and not what they might have  
15 seen on the video. Three weeks after the video  
16 was obtained, the Coroner had declared that he had  
17 no further need for it. At this point in the  
18 investigation there was no statutory authority  
19 under the **Criminal Code** to keep the video and as  
20 such it was returned to Mr. Pritchard on November  
21 7th, 2007. It's my submission that that  
22 adequately answers the question.

23 With regard to the third proposed topic, and  
24 that is the question of re-interviewing witnesses,  
25 I do not have instructions on that at this point  
26 in time.

27 And with regard to the fourth topic, yes,  
28 Superintendent Rideout has confirmed that he is  
29 the person who was responsible for these  
30 decisions.

31 You will recall, Mr. Commissioner, that I  
32 made a somewhat similar submission prior to the  
33 production of Sergeant Lemaitre and Dale Carr --  
34 and sorry, Corporal Carr as witnesses. And at  
35 that point in time I believe you indicated that  
36 you were uncertain as to the potential relevance  
37 of their testimony, and given that uncertainty you  
38 wanted to proceed, not knowing whether it would  
39 be, in fact, be relevant or not. When Sergeant  
40 Lemaitre and Corporal Carr did testify, it is my  
41 recollection that on a number of occasions you  
42 indicated that it was difficult to see the  
43 relevance of their testimony. And I appear before  
44 you to again question the relevance of any  
45 testimony about RCMP media statements, especially  
46 given that Superintendent Rideout would simply be  
47 confirming Corporal Carr's evidence about the

1 decision made not to correct the previous errors.

2 As for Mr. Pritchard's video, it is difficult  
3 to understand how the timing of the return of an  
4 exhibit could be relevant to determining the  
5 circumstances of Mr. Dziekanski's death. As I've  
6 just read, the RCMP, Superintendent Rideout,  
7 already provided a public explanation and there  
8 doesn't seem to be any point in having him come to  
9 court to repeat that explanation.

10 So once again I stand before you to ask  
11 whether you believe this proposed testimony would  
12 be helpful to you in writing a report about the  
13 circumstances of Mr. Dziekanski's death, and I  
14 again am here to tell you that if you say yes,  
15 Canada will voluntarily produce Superintendent  
16 Rideout on Monday as requested, to testify about  
17 the media relations issue and the return of Mr.  
18 Pritchard's video, and to identify himself as the  
19 person responsible, and that would all be in  
20 accordance with Canada's voluntary participation  
21 in the inquiry generally and its support for your  
22 work.

23 THE COMMISSIONER: With reference to your first point,  
24 namely the question concerning a decision not to  
25 correct information that has already been given,  
26 this is the point that concerns me. Are you  
27 saying that it is redundant because his evidence  
28 will be the same as the other two officers?

29 MS. ROBERTS: I spoke to Superintendent Rideout. He  
30 confirmed what Corporal Carr had said, is that it  
31 was his decision in order to protect the integrity  
32 of the investigation not to discuss the evidence  
33 in a public forum, and he confirmed it was his  
34 decision.

35 THE COMMISSIONER: All right. Is there any other  
36 submissions?

37 MS. ROBERTS: No, I don't.

38 MR. VERTLIEB: Just for your information, Mr.  
39 Commissioner, Ms. Roberts did ask that we indicate  
40 the reason we thought Superintendent Rideout  
41 should be here. He was, just so you know as well,  
42 he was subpoenaed actually in November, so there's  
43 no new decision concerning him. He's always been  
44 part of the unfolding of the narrative. And just  
45 to remind Ms. Roberts again, your terms of  
46 reference aren't as narrow as she thinks they may  
47 be, because it's not confined, as she would

1 suggest, to simply cause of death. But in point  
2 of fact, the e-mail that went from our office, it  
3 was stating this:

4  
5 We wish to discuss the same matters canvassed  
6 with Sergeant Lemaitre and Corporal Carr by  
7 counsel.  
8

9 And of course that includes all counsel. It's not  
10 our intention to lead evidence regarding the  
11 adequacy of the IHIT investigation.

12 So there's nothing new in what we've been  
13 attempting to do, and with respect to the comments  
14 of Roberts, it's not new to have Rideout and it  
15 flows from the evidence particularly of Corporal  
16 Carr.

17 THE COMMISSIONER: All right. I agree with Ms. Roberts  
18 on points 2, 3 and 4. I cannot see that they  
19 would add anything to these proceedings that we do  
20 not already have, and whether or not they are  
21 within the mandate.

22 With reference to point 1, I think that as I  
23 had indicated before, there has been a certain  
24 amount of criticism, certainly in the press and  
25 also in this room, concerning the decision,  
26 particularly as it relates to correcting  
27 misinformation in the media, and accordingly I  
28 would allow questions revolving around point 1,  
29 but not the other three.

30 Thank you. Monday at 10:00.

31 MR. VERTLIEB: Yes, Monday at 10:00, thank you.  
32

33 (PROCEEDINGS ADJOURNED TO MAY 4, 2009 AT  
34 10:00 A.M.)  
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