

**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.

February 26, 2009

PROCEEDINGS AT
HEARING (DAY 24)

COPY

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Commissioner:	T.R. Braidwood, Q.C.
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Associate Commission Counsel:	P. McGowan
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(ii)

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Counsel for Vancouver Airport Authority:	D. Stewart, C. Friesen; B. Ergun
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Counsel for Constable Bill Bentley:	D. Butcher
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Counsel for TASER International, Inc.	D. Neave, J. Spencer
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1
Cst. Bill Bentley
Cross-exam by Mr. Butcher (for Constable
Bentley)(cont'd)

1 Vancouver, B.C.
2 February 26, 2009
3

4 THE REGISTRAR: Order. The hearing shall resume.
5 THE COMMISSIONER: Good morning all.
6

7 CST. BILL BENTLEY, a witness,
8 recalled.
9

10 THE COMMISSIONER: Witness, may I remind you that
11 you're still under oath.

12 MR. BUTCHER: Mr. Giles, I wonder if the witness could
13 have the exhibit book again, please?

14 THE REGISTRAR: Twenty-nine?

15 MR. BUTCHER: No, the --

16 THE REGISTRAR: Oh --

17 MR. BUTCHER: Your binder of the exhibits.
18

19 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE
20 BENTLEY, continuing:
21

22 Q Firstly, Constable Bentley, I want to ask you
23 this. How often had you received a dispatch to
24 the airport about an intoxicated male throwing
25 furniture and breaking glass?

26 A Never.

27 Q Was there anything about the place where this
28 incident was said to be occurring that caused you
29 more concern than it might if it -- if that call
30 had come in about an incident somewhere else?

31 A Yes.

32 Q Can you tell us about that?

33 A Well, it was an area of the airport where there
34 was a large -- large number of the public would
35 gather to greet people arriving from their --
36 arriving home from their trips, as well as
37 travellers being processed through Customs and
38 travelling through that area.

39 Q Anything else?

40 A No.

41 Q I'm going to ask you to go to Exhibit 40B page 6
42 of 7. There is a transcript there of a broadcast
43 that you made and that is shown as having taken
44 place at 01:42:02.

45 A Sorry? This is Exhibit 40B?

46 Q Yes.

47 MR. BUTCHER: I'm sorry, Mr. Commissioner, this may be

2

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1 another case where different computers have
2 printed out different pages. It's actually page 7
3 of 8 of Exhibit 40B and we're looking at WAV FILE
4 RIP D1-3.

5 THE COMMISSIONER: Yes. I have it at page 7.

6 MR. BUTCHER: Actually, Mr. Commissioner, I am going to
7 go to 40D-1 which is the same transcripts, but
8 with the times added on. I think that's more
9 helpful.

10 Q We've been told by a witness from E-Comm that the
11 first four lines of that transcript -- of the
12 transcript of the broadcast at 1:42:02 are nothing
13 to do with this case. But there is then a note in
14 the transcript attributed to you, I think, 24, and
15 you say --

16 THE COMMISSIONER: Excuse me? What exhibit are you at?

17 MR. BUTCHER: Well, it's marked as Exhibit 40D-1.

18 THE COMMISSIONER: All right. With a few lines at the
19 top?

20 MR. BUTCHER: It's page 6 of 7. It's the middle call.

21 THE COMMISSIONER: It doesn't compare to what I have.

22 MR. MCGOWAN: Mr. Commissioner, my recollection is the
23 original transcript was 40B. I think the
24 transcript with the times was to be marked 40B-1.
25 It may have been marked as "D-1" in error, but...

26 MR. BUTCHER: It's shown in this book as D-1.

27 MR. MCGOWAN: Is it? Okay.

28 MR. BUTCHER: So maybe if there's a -- if Mr.
29 Commissioner, if you have 40B-1 --

30 THE COMMISSIONER: Yes, I have that, and that seems to
31 be the one.

32 MR. BUTCHER: Page 6 of 7.

33 THE COMMISSIONER: All right.

34 MR. BUTCHER: And there is a call -- I don't know, Mr.
35 Giles, does the witness have the original exhibit
36 or the copy? The witness has the original
37 exhibit?

38 THE REGISTRAR: He has the original. Yes.

39 MR. BUTCHER:

40 Q There's a transmission in which you say:

41

42 Richmond Two-Four. Go with the file number,
43 please.

44

45 And then the Richmond dispatch says:

46

47 Three-four-seven-four-eight, three-four-

3

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Bentley)(cont'd)

1 seven-four-eight.

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Can you tell us first what you're doing when you make that request?

A So at that point I'm just outside the secure area. I'm dealing with the witness, Meltzer, setting up to take a statement and I'm just making a few brief notes prior, including that of the file number.

Q I'm going to ask you now, sir, to just have a quick look at your notes and see if you have a time recorded in your notes documenting when you were dealing with Mr. Meltzer.

A So I have the time beside the file number as 0141 hours.

Q And do you have the same file number that is shown in the broadcast recorded in your notes?

A Yes, I do.

Q If you can turn, please, in the exhibit book to Exhibit 17; do you have that?

A Yes.

Q That is a diagram drawn by a witness, Captain Graeme of the Richmond Fire Department, depicting where he said the RCMP officers were located when the Richmond Fire officers attended at the scene. Where were you when the Richmond Fire officers arrived?

A So I was on the public side outside of the IRL area, which is marked as green on this exhibit.

Q Were there more than four RCMP officers present when the Richmond -- when the Richmond Fire arrived?

A No.

Q Does that diagram accurately depict where you were at the time they arrived?

A No.

Q I want to turn now to the period of time depicted in the Pritchard video number 3. You are shown close to Mr. Dziekanski's head area and Corporal Robinson is also very close to his body at that point, correct?

A Yes.

Q Did you have any ability to provide any first aid of any kind to Mr. Dziekanski at that point in time?

A No.

Q Why not?

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- 1 A Because he was breathing.
2 Q What would you have done if he'd stopped breathing
3 while you were present with Mr. Dziekanski?
4 A I would have initiated CPR.
5 Q Do you have Exhibit 46 with you, please?
6 A Yes, I have it.
7 Q I'll ask you to look at the very first photograph
8 in that collection. Are you able to see any part
9 of Mr. Dziekanski in that photograph?
10 A Looks like I can see his legs.
11 Q Where are they?
12 A They're on the left side of the photograph, just
13 in front of the two officers.
14 Q Can you describe how his legs are positioned in
15 that photograph?
16 A It appears that his left leg is over his right
17 leg, as if he's on his side.
18 Q You told Mr. McGowan yesterday about taking some
19 statements after Corporal Robinson had told you to
20 stop investigating, and you told us that the first
21 of those statements was taken because one of the
22 witnesses you'd already spoken to approached you
23 with something to add.
24 A That's correct.
25 Q The second was from -- statement was taken from
26 Adam Chapin, was he an eye witness to any of the
27 events that you'd been involved in?
28 A No.
29 Q You've told us that you were trained to use the
30 Taser whilst you were still stationed at the
31 Richmond City detachment.
32 A Yes.
33 Q Were there any limitations on the availability of
34 Tasers at the city detachment?
35 A There were many CEWs available and I don't ever
36 remember an instant where I went to sign one out
37 and there wasn't one available.
38 Q Between the time that you were trained and the
39 time that you were assigned to the airport, how
40 often did you carry a Taser?
41 A I signed one out every shift.
42 Q Did you ever use it?
43 A No.
44 Q Did you ever take it out of its holster?
45 A No.
46 Q How often did you carry a Taser between the time
47 that you were assigned to the airport and the time

5

Cst. Bill Bentley

Cross-exam by Mr. Butcher (for Constable Bentley)(cont'd)

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

1 of this incident?

2 A I would carry it as often as it was available to
3 sign out, so it might have been once every three
4 shifts.

5 Q Did you ever use it or take it out of its holster
6 during that time period?

7 A No.

8 Q Now, what tools were you given whilst you worked
9 as a Customs officer or CBSA officer?

10 A So we were issued handcuffs, baton and OC spray.

11 Q How many times have you used your OC or pepper
12 spray during your career as a police officer and
13 as a Customs officer?

14 A I've never used my defensive baton and I've used
15 my OC spray once as a police officer.

16 Q When did you first see the transcripts of the
17 interviews that you had provided to the IHIT
18 investigators?

19 A I saw them maybe three to four weeks ago. They
20 were emailed to me by you or someone from your
21 office.

22 Q Was that after this commission had started, to
23 your knowledge?

24 A Yes.

25 MR. BUTCHER: Thank you. Those are my questions.

26 THE COMMISSIONER: Thank you.

27 MR. KOSTECKYJ: Walter Kosteckyj, counsel for Zofia
28 Cisowski.

29

30 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
31 CISOWSKI:

32

33 Q Constable, at the time of this incident, you had
34 been a full-fledged member of the RCMP for six
35 months, correct, approximately?

36 A That's incorrect.

37 Q Well, you had been a member of the RCMP in
38 training at Depot for six months, correct?

39 A Yes.

40 Q And then you were in recruit field training for a
41 further six months, correct?

42 A Yes.

43 Q And so -- and didn't you tell us you had a year
44 and a half service?

45 A Yes.

46 Q So you had been working or entitled to work on
47 your own and completed your recruit field training

6

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 for approximately six months at the time of this
2 incident, correct?
3 A It was approximately, I'd say, about a year that I
4 was on my own. At the time I had about a year and
5 a half of service, just under that.
6 Q Let's talk about recruit field training.
7 A Okay.
8 Q You went through that in the six months
9 afterwards, correct?
10 A Yes, after Depot.
11 Q Yes. And don't you generally work with a trainer
12 during that period of time?
13 A That's correct.
14 Q Okay. And during that time you're also taking and
15 writing exams of some nature or tests, correct?
16 A There's no tests. There's -- at the end of your
17 four-month period they have what's called boards
18 where you sit with rank officers of the Richmond
19 detachment and they ask you a series of questions.
20 If you pass that, and your trainer feels you're
21 capable to be on your own, you're on your own
22 after four months, where you're monitored closely
23 for another two months.
24 Q Okay. And is that what happened with you?
25 A Yes.
26 Q All right. Now, during that period that you were
27 in recruit field training, don't you spend time
28 reviewing and doing exercises and reviewing the
29 operational manual?
30 A Yes.
31 Q And the operational manual, for those of us that
32 aren't familiar with it, is kind of like the Bible
33 for the -- for an RCMP member, isn't it?
34 A You could call it that.
35 Q Yeah. It tells you what to do in certain
36 circumstances.
37 A Yes.
38 Q You're required to follow what is in the
39 operational manual, correct?
40 A Yes.
41 Q It tells you what you have to do, for example --
42 well, just for example, let's say you go to a
43 sudden death and you're not sure of all the
44 procedures or steps to take, you would go back to
45 the office after you've done what you had to do in
46 the field and check the operational field manual
47 and it would tell you who you have to call, who

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 you have to notify, correct?

2 A Generally that's not what you would do. You would
3 normally, if you're uncertain, you'd probably
4 speak with a senior member or speak with a
5 corporal who would advise you. After that, then
6 you would probably refer to the operational manual
7 to gain further knowledge the next time you go on
8 a call like that.

9 Q Yeah. Now, you're aware, are you not, sir, that
10 in a sudden death case, one of the first
11 obligations of a police officer is to notify the
12 next of kin, correct?

13 A Yes, I'm aware of that.

14 Q Okay. Now, we'll get back to that in a minute.
15 Let's talk a little bit about your evidence here
16 today or yesterday. On occasion -- one occasion,
17 I notice, for example, that your memory improved
18 when you were speaking with your counsel, and I'll
19 give you the example. Mr. McGowan yesterday asked
20 you when you made the Code 3 call; do you
21 recollect that?

22 A I recollect on the -- in the sequence of events
23 watching the video when I made it.

24 Q No. The point is Mr. McGowan asked you the
25 question about when you made the Code 3 call and
26 your answer was you weren't sure; isn't that
27 accurate?

28 A Well, I'm not sure of a time. I can point it out
29 on the sequence of videos in between the videos,
30 but as to a time, I couldn't give you that.

31 Q Okay. And then after your counsel asked you, you
32 were able to recollect that you made the call in
33 between the second and the third Pritchard video;
34 is that accurate?

35 A That's accurate, yes.

36 Q Okay. Now, in giving evidence yesterday, I
37 noticed you kept referring to some document you
38 had or some schedule you had put together. You
39 were talking about a timeline. Did you put some
40 timeline together?

41 A My counsel and I, we put together a timeline, yes.

42 Q So in giving your evidence, are you giving us
43 evidence based on -- that timeline, you reviewed
44 video evidence, I take it?

45 A A lot of it is from video evidence, yes.

46 Q And you sat down after the fact and reviewed video
47 evidence and you put together a timeline and gave

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 evidence based on that?
- 2 A Some of the evidence is based on the timeline,
3 yes.
- 4 Q Okay. So while you were giving evidence here
5 yesterday, a lot of that evidence was based on
6 your reconstruction of what occurred, as opposed
7 to what you recall; is that a fair statement?
- 8 A Yes, I guess that's a fair statement.
- 9 Q Yeah. Now, let's talk a little bit about your
10 police training and Depot. I'm assuming that that
11 wasn't so long ago, so you have a pretty good
12 recollection of what you were trained in there for
13 the basics?
- 14 A Yes.
- 15 Q Is it fair to say that you were taught that the --
16 some of the objectives of training were that they
17 wanted you to have pride in yourself and pride in
18 the RCMP and act in a way that was respectful to
19 the image and the history of the RCMP?
- 20 A Of course.
- 21 Q And they gave you lessons about the history of the
22 RCMP and all the good work that the RCMP had done
23 over the years?
- 24 A Yes.
- 25 Q And they talked to you about some of the basic
26 principles of policing and how policing and the
27 profession of policing had evolved?
- 28 A Yes.
- 29 Q And they talked to you about some of those basic
30 principles that were started in England in 1800s
31 and how they were incorporated into all modern
32 police forces; did they tell you about that?
- 33 A Yes.
- 34 Q And they told you that one of the underlying
35 principles is that the use of force is a last
36 resort. They told you that too, didn't they?
- 37 A Yes.
- 38 Q They told you that a police officer is much more
39 respected if he can solve a problem without having
40 to resort to force, correct?
- 41 A Of course.
- 42 Q And they told you that you should exhaust first of
43 all persuasion, and give warning before you move
44 towards taking physical action. That's what they
45 told you, wasn't it?
- 46 A Yes. Situational factors sometimes dictate
47 otherwise, but yes.

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 Q Yeah. But the point is exhaust persuasion and
2 warning and then go to force if, indeed it's
3 necessary, but take those other steps first.
- 4 A If you can take those steps, yes.
- 5 Q Yeah. Now, the other thing they talked to you
6 about is discretion. A police officer within the
7 code of conduct of the police has a lot of
8 discretion and that he should use that discretion
9 wisely. Correct?
- 10 A Yes.
- 11 Q And that was hammered home to you on more than one
12 occasion, and when I say hammered home, it was
13 discussed while you were in that academic building
14 on numerous occasions about the use of discretion,
15 correct?
- 16 A That's correct.
- 17 Q And they also talked to you about the fact that as
18 far as the RCMP model goes, it's a client-based
19 approach, correct?
- 20 A Yes.
- 21 Q And that is that you're supposed to look at it
22 from the point of view of the client because you
23 have a lot of different kinds of people that you
24 deal with?
- 25 A Yes.
- 26 Q For example, you have to be mindful, for example,
27 if you're dealing with a First Nations person, as
28 to what the background, knowledge and so forth of
29 that person is and their cultural background,
30 correct?
- 31 A Yes.
- 32 Q And, in fact, I believe -- do you do a cross-
33 cultural training course while you're in Depot to
34 pick up the different cues in different societies
35 and among different people, people act in
36 different ways?
- 37 A If my memory serves me correct, I believe we did
38 an online course, but it's something that we would
39 often discuss in the classroom, as well.
- 40 Q Yeah. Now, you, prior to this, also had studied
41 criminology, you got a degree in criminology?
- 42 A Yes.
- 43 Q During the course of doing that course in
44 criminology and your study at the RCMP academy,
45 were you ever referred to a book called *Blink*?
- 46 A No.
- 47 Q Were you ever referred to the concept in your RCMP

1 training that when you come upon a scene, one of
2 the things that you're trying to do is create
3 time, time to make decisions? You are trying to
4 take steps to analyze a scene and to create as
5 much time as possible so that you can think out a
6 decision; do you recollect that?

7 A I don't recollect that, no.

8 Q Well, does that accord with the general principles
9 of how you were trained? That you should try to
10 create time in a situation?

11 A Yes.

12 Q Yeah. Now, and you were trained in conflict
13 avoidance and resolution strategies, you did all
14 kinds of things where you were trained where you
15 -- they brought in actors, for example, correct?

16 A Yes.

17 Q And you were trained to speak to those actors and
18 try to resolve conflicts and they gave you
19 situations, for example, like marital discord or
20 spousal arguments, correct?

21 A Yes.

22 Q And the point of it all was -- was to teach you
23 strategies for how to try to resolve conflicts.

24 A Yes.

25 Q Okay. Now, you were also trained in what's known
26 as an operational framework called CAPRA, correct?

27 A Yes.

28 Q And when you were trained in that operational
29 procedure, they talked about the importance of the
30 fact that the RCMP work on a client-centred
31 approach, correct?

32 A Yes.

33 Q And that they emphasized the importance of
34 organizing policing around needs of the community
35 and individual clients, right?

36 A Yes.

37 Q And they tell you that look, sometimes whatever
38 you've heard about the situation, you've got to
39 put yourself into that person's shoes and think
40 about how this situation evolved, right?

41 A Yes, you do your best.

42 Q Yeah. And when you're dealing with a person
43 whether they are a victim, whether they are
44 somebody that is a suspect or a witness, you still
45 use that client-based approach. You treat them as
46 if they're clients, right?

47 A Absolutely.

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(cont'd)

- 1 Q Now, CAPRA, the first letter, "C" stands for
2 client-based, right?
- 3 A Yes.
- 4 Q The second letter, "A" stands for acquire
5 knowledge and analyze the situation, right?
- 6 A That's correct.
- 7 Q And then "3" (sic) stands for -- or "P" stands for
8 partnership, right?
- 9 A Yes.
- 10 Q That's both the partnership with people in the
11 community and it's also partnership in dealing
12 with other members of your team, whoever that team
13 may be, correct?
- 14 A Yes.
- 15 Q And then you have -- "R" stands for response, the
16 response that you take, right?
- 17 A Yes.
- 18 Q And "A" stands for assessment. You assess what
19 you've done so that you can continue to improve in
20 the future, right?
- 21 A Yes.
- 22 Q Now -- and from what I gather, you're taught in
23 this -- they use what they call the integrated
24 problem-based approach; does that sound familiar?
- 25 A Yes.
- 26 Q And they tell you look, the needs of various
27 clients vary. You've got to approach this from a
28 client-based perspective. Be subjective. Put
29 yourself in their place. Right?
- 30 A Yes.
- 31 Q And it's all about solving problems and you do
32 these joint problem sessions and a lot of your
33 time, in fact, you spend more time in that
34 academic building going through -- learning law,
35 learning all of the techniques in problem-solving
36 than you ever do in the gym, in the self-defence
37 gym, don't you?
- 38 A Yes, you do.
- 39 Q Now, I'm told at least currently that you spend
40 about 75 hours in the -- doing self-defence and
41 about 370 hours of your time doing the other; does
42 that sort of accord with what you recollect?
- 43 A I don't know the number of hours, but that does
44 sound about right.
- 45 Q So you spend the largest part of your time while
46 you're at Depot learning all of these integrated
47 techniques and being schooled in this client-based

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 approach, right?
2 A Yes.
3 Q All right. Now, let's talk about what happened on
4 the night of October the 14th.
5 Incidentally, you know that when you use
6 force, the onus is on you to say that you were
7 justified in using it, correct?
8 A Yes. I know we're held accountable.
9 Q No, you know from your operational manual - and it
10 tells you this - that if you use force, you have
11 to -- the onus is on you to be able to explain
12 where and how and why you used it.
13 A Yes.
14 Q And when you were taking statements on October the
15 14th, back at the Richmond detachment, you knew
16 that part of the reason for you giving that
17 statement was because you had to rationalize why
18 you had used the force that you had used with
19 respect to Mr. Dziekanski?
20 MR. BUTCHER: That question, I think, had a mistake in
21 it.
22 MR. KOSTECKYJ: Well, let me correct it.
23 MR. BUTCHER: Excuse me. I think he asked when he was
24 taking statements.
25 MR. KOSTECKYJ: All right.
26 Q Well, look, no, you went back to the detachment at
27 some point, right?
28 A I went back to the sub-detachment, yes.
29 Q The sub-detachment.
30 A Yes.
31 Q You gave a statement to an investigator. You gave
32 a statement to a Corporal Teboul?
33 A Yes.
34 Q When you were sitting there in the detachment
35 after you knew that Mr. Dziekanski was lying dead
36 at the airport, you knew that this statement was
37 going to be your response to why you had used
38 force that night, correct?
39 A Yes.
40 Q And you knew that you were going to have to be
41 justified in using force that night?
42 A Yes.
43 Q And so this statement you knew was your rationale
44 and your justification for what had happened to
45 Mr. Dziekanski and your role and the role of other
46 members in his arrest and his subsequent death?
47 A Yes.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Q All right. Now, when you got the call, you
2 already formed in your mind an opinion that you
3 were going to be in a fight that night, didn't
4 you, sir?
5 A I didn't form that opinion until I had arrived on
6 scene and spoken to the lady from Horizon Airways,
7 as well as done an assessment.
8 Q Well, you know, have you got your statement there,
9 sir, October the 14th, the statement you gave
10 to --
11 MR. BUTCHER: Which page?
12 MR. KOSTECKYJ:
13 Q The first page.
14 A I'm on the first page.
15 THE COMMISSIONER: I can't recall, has this been
16 marked?
17 MR. KOSTECKYJ: I don't know that it has, but...
18 MR. BUTCHER: No, it's not. I didn't ask that it be
19 marked.
20 MR. KOSTECKYJ: It should be --
21 MR. BUTCHER: Neither did commission counsel.
22 MR. KOSTECKYJ: I'm sorry. Do we -- do you have a
23 copy, Mr. Commissioner?
24 THE COMMISSIONER: No, I don't. And --
25 MR. KOSTECKYJ: I will pass one up.
26 THE COMMISSIONER: -- and I think, as I said yesterday,
27 that I think these type of things can be marked,
28 but not for the truth of their contents but as an
29 adjunct to understanding later the evidence given
30 by a witness.
31 MR. KOSTECKYJ: We may have to get another one to mark.
32 I'm sure we can -- I see commission counsel is
33 being of assistance to me there.
34 MR. MCGOWAN: I have an additional copy of the October
35 14th statement.
36 MR. KOSTECKYJ: Sorry, the -- what I passed up,
37 Commissioner, is -- are both statements and the
38 notes of the police officer, because I believe
39 those will -- I think they should both be there.
40 THE COMMISSIONER: All right. We'll -- when we get a
41 decent copy, we'll mark it as the next exhibit.
42 MR. KOSTECKYJ:
43 Q Let me take you to October the 14th, or your
44 statement of October the 14th. Do you have that?
45 A Yes, I do.
46 Q First page. So Constable Teboul says to you give
47 me the details -- do you see that, towards the

14

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 bottom:

2

3

Uh, don't leave anything out. Every detail's important.

4

5

6

A Yes, I see that.

7

Q Okay. And you -- and he goes on to ask you about

8

-- you say about 1:30 the call came in, an intoxicated older male; do you see that? It's toward the bottom of the page. Your answer is:

10

11

12

...of an intoxicated older male...

13

14

A Yes, I see that.

15

Q And then under that you go on that he was:

16

17

...located ...International Arrivals level two at the Vancouver International Airport. Our call stated that the male was, uh, throwing chairs at the glass window, acting in a combative manner.

18

19

20

21

22

Right?

23

24

A Yes.

25

Q So you had formed the opinion that already he was combative?

26

27

A Yes.

28

Q You hadn't attended at the scene yet. You didn't know what was happening, but that was your initial impression, he was combative, right?

29

30

31

A Yes.

32

Q Then you came in and you said:

33

34

When I entered the entrance --

35

36

This is on the second page:

37

38

When I entered the entrance doors, I was approached by a female, she stated that the male was over at the glass window throwing chairs at the window.

39

40

41

42

43

Is that accurate or is that something that you added in?

44

45

A That's accurate.

46

Q Wasn't it the case that the woman pointed towards where things were going and I -- the reason I put

47

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 this to you, sir, is we've talked to the Horizon
2 Air employees.
3 A Yes.
4 Q They don't recollect having a conversation with
5 any police officer.
6 MR. BUTCHER: That's not correct. I've got the
7 transcript if we need to go there.
8 MR. KOSTECKYJ: Okay.
9 Q Well, do you specifically recollect having a
10 conversation with some Horizon employee?
11 A Yes.
12 Q How long a conversation was that?
13 A A few seconds.
14 Q Yeah. At most, right?
15 A Yes.
16 Q 'Cause when you arrived at the airport, your
17 evidence yesterday was you were the last to
18 arrive, right?
19 A Yes.
20 Q You were the last one to walk through the doors in
21 the airport, were you not?
22 A That I'm unsure. There's two sets of doorways, so
23 I believe that the three other officers entered
24 the left side and I entered the right side, all
25 around the same time.
26 Q But they were in front of you to begin with,
27 walking through and into the IRL, correct?
28 A I believe they were, yes.
29 Q And yet you were the first one over the barrier,
30 correct?
31 A Yes.
32 Q So you had to go past them and you had to --
33 because in order to get to be the first one over
34 the barrier, you had to get in front of them?
35 A I believe it was because of the angle that I'd
36 entered the airport, I was -- I wasn't walking
37 faster than them necessarily. I was just closing
38 the distance because of my angle.
39 Q But I'm right on this, you were the last to arrive
40 at the outside doors, correct?
41 A Yes.
42 Q You had no conversations with the fellow members
43 at the outside doors; that was your evidence
44 yesterday.
45 A That's correct.
46 Q In fact, you didn't have any conversation about
47 anything until you were inside and even inside you

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 never had any conversation till after Mr.
2 Dziekanski was down and tasered, correct?

3 A Other than the brief conversation with the Horizon
4 Airlines lady, yes, that's correct.

5 Q Well, and yet arriving last, you're the first over
6 the fence, right?

7 A Yes.

8 Q All right. Now, at some point you told us
9 yesterday that as you were arriving into the area
10 -- well, let's -- actually, let's go on here. In
11 your statement:

12
13 ...the male was uh, just kinda looking at us.
14

15 Right? Do you see that?

16 A What line are we on?

17 Q It's about -- it's about seven lines down.

18 A I see it. Yes.

19 Q Okay. So let's just go through it. You were told
20 by the woman he was throwing chairs at the window:

21
22 We approached the window, it's kinda like a
23 glass divider between the secure side of the
24 airport and the public side. I could uh, see
25 the male on the other side of the glass, on
26 the secure side. This (sic) time we were
27 still on the public side. Uh, the male was
28 uh, just kinda looking at us. From his
29 demeanour he looked like he was uh, waiting
30 to fight.
31

32 That's what you said, right?

33 A Yes.

34 Q So back at the detachment, you had this in your
35 mind that this guy was combative. Now you walk
36 through the door and you're saying this guy looks
37 like he's ready to fight, right?

38 A Yes.

39 Q Now, how far away are you when you make that
40 decision? Is this when you walk through the door
41 and you see him for the first time, his stance,
42 the way he's presenting himself?

43 A It's after my initial -- my brief conversation
44 with the Horizon Airline lady and she points him
45 out to me and as I'm -- and I'm approaching him,
46 yes.

47 Q And yet you tell us a few -- later that when you

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(cont'd)

1 walk through the door, Mr. Dziekanski wasn't an
2 issue at the time, but at this time you thought he
3 was ready to fight. Your first observance of him.
4 A In the back of my mind I thought that there's a
5 good chance that he might start a fight. It was
6 my gut instinct.

7 Q Yeah. And then you said:

8
9 We uh, gained entrance into the secure side.

10
11 And it appeared as if he was -- let's see. Let's
12 make sure I get that right.

13
14 We uh, gained entrance into the secure side.
15 Uh, we were all keeping our distance from the
16 male. Uh, the male again, uh, was just
17 staring at us. And at that point he started
18 looking around. I was like he was looking
19 for a weapon.

20
21 Right?

22 A That --

23 Q That's what you said. That was in your mind, that
24 was the way you were describing this to the
25 corporal that was investigating whether you were
26 using an appropriate force. That's what you told
27 him.

28 A Yes.

29 Q That wasn't right, was it? He wasn't looking for
30 a weapon when you walked through the door.

31 A What I was actually describing in my statement was
32 -- referring to was when he walked over to the
33 desk and he was turning his head side to side. I
34 just hadn't articulated that to the corporal, but
35 that's what I intended to mean.

36 Q Now, let's take -- let's go to page 3 of your
37 statement.

38 A I'm on page 3.

39 Q Okay. And Corporal Teboul, in about the middle of
40 the page, he says:

41
42 Is there any other members that had arrived
43 prior to you there? Or were you the force,
44 the first four --

45
46 And then there's something indecipherable.

47

18

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 We were the first four Police Officers to
2 arrive on scene.

3

4 Do you see that?

5

A Yes.

6

Q

7

 Uh, there was some other, uh, YVR security
8 members that were there. Recognize them by
9 their uniform, but, uh, they were not, they
10 didn't have any involvement with uh, with the
11 male. Everyone seemed to be just uh,
12 standing guard waiting for the Police, uhm,
13 to arrive.

14

15

 See that?

16

A Yes, I see that.

17

Q

18

19

 Also want to point out that uh, when I
20 initially saw the male --

21

22

 So when you initially saw him, you were standing
23 somewhere by where the lady was that worked for
24 Horizon Air; is that fair?

25

A Yes.

26

Q And how far away was that from the secure area?

27

A It's quite a --

28

Q Eight metres?

29

A It's quite a distance. I couldn't give you a
30 distance but it's quite a long ways away.

31

Q Well, judging by this room, was it to the
32 banister? Was it to the first row of seats? Was
33 it further than that?

34

A Maybe it's towards the last row of seats.

35

Q Towards the last row of seats?

36

A Perhaps, yes.

37

Q All right. That's a distance, I would estimate,
38 of probably 80 feet; does that seem right?

39

A That sounds fair.

40

Q All right. Maybe a bit further?

41

A Maybe.

42

Q Actually, judging by my golf game, that's probably
43 about 30 to 40 yards; isn't it?

44

A Perhaps.

45

Q Yeah. Now --

46

THE COMMISSIONER: That's why you miss the pin.

47

MR. KOSTECKYJ: That's exactly right.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Q Now --

2 MR. KOSTECKYJ: Or it could be an issue of skill.

3 Q Now, I also want you to talk about the next part
4 here of the statement:

5

6 Also want to point out that uh, when I
7 initially saw the male, there was all kinds
8 of uh, debrie (sic) around his feet...

9

10 Right?

11 A Yes.

12 Q That's wrong, isn't it?

13 A That's what I remembered at the time.

14 Q Well, look, we can go and look at the video later,
15 and we've got the video and it's in evidence, but
16 there was a cement wall that went around the
17 secure area and the glass then started about two
18 feet up from that cement wall; do you recollect
19 that?

20 MR. BUTCHER: I don't think that's accurate either.

21 MR. KOSTECKYJ: Well, let's go to the video for a
22 second. Let's go to -- any part of the Pritchard
23 video that shows us the glass.

24

(VIDEO BEING PLAYED)

25

(VIDEO PAUSED)

26

27

28 MR. KOSTECKYJ:

29 Q Okay. Right there. Do you see it, sir?

30 A Yes.

31 Q Do you see that there's a cement barricade there
32 that -- the area between the secure and the
33 unsecure area?

34 A Yes.

35 Q Do you see the glass that's there?

36 A Yes.

37 Q And you can see that Mr. Pritchard was standing
38 closer than you were when you first saw Mr.
39 Dziekanski, right?

40 A Yes.

41 Q And with that camera view, you can't see the
42 floor, can you?

43 A Not with that camera view, no.

44 Q And you would have to be awfully tall to be able
45 to see into the room past that cement barrier to
46 see where the broken furniture was, correct?

47 A I couldn't say one way or the other.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Q Well, look, based upon seeing that now --

2 A Yes.

3 Q -- are you prepared to admit, sir, that standing
4 80 or 90 feet away it would have been impossible
5 for you to see the broken furniture? Are you
6 prepared to admit that?

7 A I'm not prepared to admit that. What I provided
8 in my statement at the time, that's what I
9 remember.

10 Q But now that you see where the cement wall is, now
11 that you tell us how far away you were, are you
12 prepared to admit that it's not possible to see
13 into the secure area from that distance to see the
14 floor where the broken chairs were?

15 A I'm not prepared to admit that, because the camera
16 view provides a different view from what I saw
17 that night.

18 Q Okay. How tall are you?

19 A Five-nine.

20 Q All right. Now, Mr. Pritchard was closer than you
21 were?

22 A Yes.

23 Q Okay.

24

25 Also want to point out that uh, when I
26 initially saw the male, there was all kinds
27 of uh, debris (sic) around his feet, uhm, to
28 my understanding that he was smashing
29 computers and chairs, and I noticed that
30 around his feet and that's kind of why, uh,
31 when I looked at the male like it looked like
32 he was ready to fight...

33

34 Right?

35 A Yes.

36 Q So you left the detachment thinking this guy was
37 going to be an issue, you showed up and you first
38 walked in the door, you formed that opinion
39 because you say how he was standing and also
40 because you could see all this broken debris
41 around his feet when you walked in, 80, 90 feet
42 away, correct?

43 A As well as my experience and gut instinct.

44 Q Yeah. Your experience of being a police officer
45 for approximately a year and a half?

46 A As well as I had law enforcement experience with
47 Canada Border Services.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Q Yeah. How much experience did you have there?

2 A Two and a half years.

3 Q Yeah. And generally, I'm guessing that when you
4 had a problem with Canadian Border Services, you
5 called the police.

6 A Depends on the situation.

7 Q Yeah. But generally speaking, isn't that what you
8 did?

9 A There's a use of force situation. There's no time
10 to call the police. And you're trained to deal
11 with it.

12 Q Okay. Let's go to page 19 of your statement.

13 A I'm on page 19.

14 Q Corporal Teboul, the bottom of the page, asks you:

15
16 ...you mentioned in several times that this
17 subject was combative, uh, when you guys
18 arrived there, uhm, and you say that what the
19 observation I guess that he's uh, he grabs
20 the stapler and he, he kind of flicks it over
21 at you guys, it's you and, and whoever's
22 closest to, to ya. What else was he doing
23 ta, to uhm, it would be showing to create of
24 (sic) to conclude that he was combative?
25

26 And then you go on to say:

27
28 It was just his whole, uh, hard to describe,
29 it's just his whole demeanour. You know,
30 we're kind of, I think we, we approached him
31 in kind of a, an open manner...
32

33 Let's just stop there for a sec. Do you see that?

34 A Yes.

35 Q Do you consider the way you entered to be an
36 appropriate way to enter that scene?

37 A I don't see anything wrong with it.

38 Q Well, why was it necessary for you to jump over
39 the barrier? Why didn't you just walk up the
40 aisleway? Why did you have to do the dramatic
41 jump over the barrier thing there? Why was that
42 necessary?

43 A The reason why I did that was due to my
44 unfamiliarity with the airport, and that I was
45 fixated on the subject of complaint, I didn't
46 realize that the barrier went all the way to the
47 glass. I actually thought there might have been

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 an open area near the doorway. So that was a
2 mistake on my part, and I realized by the time we
3 were near the doorway, we had no other option but
4 to jump over the railing to --
5 Q Well, you -- yeah, but there was no immediate
6 urgency to get there to him, was there?
7 A Well, there was no urgency at the time, but I felt
8 that we were dealing with someone who was acting
9 irrationally, so you wanted to be near him or at
10 least engage him as soon as possible.
11 Q Well, did you think that jumping over the
12 barricade might just make him feel a little more
13 nervous?
14 A That's not something that crossed my mind at the
15 time.
16 Q No. But in retrospect, would it have made more
17 sense to approach him in a more casual way, the
18 way you were trained back at depot with all those
19 370-whatever hours of training that you did, which
20 were to consider the subject and to basically
21 create time, in the circumstance. Do you
22 recollect that?
23 MR. BUTCHER: I'm going to object to that question
24 because at this point Mr. Kosteckyj is becoming
25 argumentative, in my submission.
26 THE COMMISSIONER: No, go ahead, Mr. Kosteckyj.
27 MR. KOSTECKYJ:
28 Q So --
29 A I'm sorry, can you repeat the question?
30 Q Yeah. In the 370 hours of training you had all of
31 this time that you did back at Depot, all of these
32 analyses you did, all those little drama plays you
33 did, you were taught to create time in a situation
34 so that you could make better decisions, right?
35 A Yes.
36 Q And if you had taken the time to walk up the aisle
37 instead of jumping over this thing, you would have
38 had more time to analyze the situation?
39 A Perhaps.
40 Q Because -- well, let's see what you did know,
41 'cause you told us yesterday when you walked
42 through the door, you didn't know that he didn't
43 speak English.
44 A That's correct.
45 Q You didn't know that people thought he spoke
46 Russian.
47 A That's correct.

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Q And you've heard the tape and you know that people
2 were yelling that out to you.

3 A That's correct.

4 Q Okay. Now, you talked -- let's go back to the
5 statement.

6 A Okay.

7 Q So we were talking about you kind of -- we think
8 -- we approached him we were there in:

9

10 ...an open manner, like we wanted to help
11 him. You know, we went in there...and we,
12 you know, sort of, you know, I think someone
13 asked him like what's goin' on and right away
14 he started backing up, looking for something
15 to grab, he uses an object, you know, and
16 then, putting that in front of him, he kind
17 of swung it at us. Uhm, it, it's, it's just
18 hard to describe, it's just the way his whole
19 mannerisms were at the time.

20

21 See that?

22 A Yes, I see that.

23 Q So when he's asking you about being combatative
24 (sic) or combative, does this not leave the
25 impression in your mind when you look at this the
26 way that you're telling the story that immediately
27 upon you walking in there, he's looking for a
28 weapon?

29 A It's similar to what I described earlier. Perhaps
30 I didn't articulate it the best at the time
31 because I was tired, but what I was referring to
32 was when he went over to the desk and grabbed the
33 stapler and swung it out at us.

34 Q Now, remember, you knew the purpose of this
35 statement was to explain your use of force, right?

36 A Yes.

37 Q Did you want to leave a false impression?

38 A Absolutely not.

39 Q Were you trying to cover your -- you've heard the
40 CYA principle back at Depot?

41 A Yes.

42 Q That's cover your butt, make sure that you've got
43 everything covered, right?

44 A Yes.

45 Q Well, is that what this was about? You were
46 making sure that you were justified in using force
47 when you were telling this story to Corporal

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Teboul?

2 A There was no cover-up, if that's what you're
3 getting at. I was just being honest and truthful.

4 Q You were explaining to him why you used force.

5 A Yes.

6 Q And then Corporal Teboul says to you:

7

8 Like describe his uh, his stance for me, like
9 what, what is the correct stance...

10

11 And you go on:

12

13 It's kind of like in a, like a, like a, like
14 a triangle stance, his feet are kinda spread
15 apart, you know, kind of a, it, it's not sort
16 of casual, like let's talk stance, it's kind
17 of a stance, you know, more like a, a
18 fighting stance, you know. Uh, his arms were
19 down at his side and uh, yeah, that's all I
20 can remember.

21

22 Well, let's talk about that for a second. So you
23 see this guy, he's got his arms by his side,
24 triangle stance. Are we talking this (indicates)?

25 A It could have been a little wider.

26 Q Yes. So his feet are apart.

27 A Mm-hmm.

28 Q One's not in front of the other. And his hands
29 are down by his sides?

30 A Yes.

31 Q What kind of a fighting stance is that?

32 A To me, I just interpreted that his feet were wider
33 apart than perhaps normal for balance and that at
34 any time his arms could come up and perhaps engage
35 us.

36 Q Yeah. Because your mindset was from the minute
37 you left the detachment, "I'm in for a fight,"
38 right?

39 A It was in the back of my mind to be prepared for a
40 fight.

41 Q Yes. Now, when you walked into the area, there
42 were four of you.

43 A That's correct.

44 Q Was there any reason that one of you couldn't have
45 taken intelligence from the people that were
46 there, actually talked to the complainant? Was
47 there any reason that couldn't have happened?

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 A That could have happened.
- 2 Q All right. Is there any reason that one of the
- 3 four of you couldn't have taken the time to walk
- 4 into the Customs hall and see if anybody there
- 5 recognized this guy?
- 6 A That's a possibility.
- 7 Q There was nothing preventing you from doing that.
- 8 There were four of you. One of you could have
- 9 done that?
- 10 A Again, it's a possibility. I think we wanted to do
- 11 a proper risk assessment before we did that.
- 12 Q You didn't know what you wanted to do 'cause you
- 13 never spoke. And when you say "we" wanted to do a
- 14 proper risk assessment, you never spoke. You had
- 15 no plan. You had no idea. You were just
- 16 approaching. You jumped over the fence, right?
- 17 A Well, part of our training is to do a risk
- 18 assessment before taking further action.
- 19 Q Yeah. I know that's part of your training, but
- 20 you didn't do it.
- 21 A No, we were doing that at the time.
- 22 Q Well, why is it that one of you -- let's just --
- 23 let's just go back here for a sec.
- 24 A Sure.
- 25 Q You walk in the door. You see a guy on the secure
- 26 side of the airport, right?
- 27 A Yes.
- 28 Q He's got his luggage beside him, right?
- 29 A Yes.
- 30 Q Did it ever cross your mind this guy maybe came
- 31 out of the Customs hall? Did it ever cross your
- 32 mind that that was what happened?
- 33 A Perhaps.
- 34 Q Well, if he's over there -- and by the way, he's
- 35 the only one in that area, the secure area, right?
- 36 A Yes.
- 37 Q It's all sealed off. No one else is in there,
- 38 correct?
- 39 A If you're referring to sealed -- it's sealed off
- 40 from the public side, but people can still come
- 41 through from the Customs side.
- 42 Q Right. But one of you could have easily walked
- 43 into the Customs side and said, "Hey, stop. We're
- 44 dealing with something out here. And by the way,
- 45 anybody know this guy?"
- 46 A Perhaps. Usually when we investigate files,
- 47 that's something that we would do after speaking

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 or dealing with the subject of complaint.
2 Q Well, actually, isn't it usual to actually go and
3 talk to the complainant?
4 A It is, if situational factors allow you to do
5 that.
6 Q Well, look, you had all these people standing
7 there on the way in the door. There was no
8 urgency to get there. One of them was the
9 complainant. Why not just say, "Hey, what's
10 happening?" Take some time and figure out what's
11 going on. Why not -- one of the four of you could
12 have easily done that, right?
13 A Well, from the initial radio broadcast that we
14 received, it did sound like the call was urgent
15 and the threat level was fairly high.
16 Q Well, you didn't take -- you didn't drive over
17 there with your sirens on, did you?
18 A No.
19 Q You didn't drive over there with your lights on?
20 A No.
21 Q So you walked in the door and you could see as
22 soon as you walked through the door that there was
23 no threat level, 'cause the guy was on the other
24 side of the barricade by himself behind the glass.
25 A I wouldn't say that, no.
26 Q Right?
27 A No.
28 Q You didn't see that? You didn't see --
29 A Oh, I see that, but I wouldn't say that there's no
30 threat level.
31 Q Okay. Well, let's talk about it.
32 A Okay.
33 Q When you walked through the door --
34 A Yes.
35 Q -- he was there by himself on the secure side
36 behind the glass.
37 A Yes.
38 Q And you had to walk past all the potential
39 complainants to get to him.
40 A Yes.
41 Q And you never stopped to talk to any of those
42 complainants; does that sound like good police
43 work?
44 A Again, I don't think at the time there was time to
45 speak to the complainants. There was a sense of
46 urgency to deal with the subject of complaint
47 first.

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Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 Q There was urgency in your mind because of the
2 mindset that you approached the problem with,
3 instead of you actually analyzing and looking at
4 what was going on there; is that fair?
5 MR. BUTCHER: That surely is argument, Mr.
6 Commissioner.
7 THE COMMISSIONER: No, that's a fair question.
8 A Sorry, I -- can you repeat the question, please?
9 MR. KOSTECKYJ:
10 Q Yes. Why couldn't you -- you had to walk past all
11 these people, right?
12 A Yes.
13 Q Not good police procedure, is it?
14 A I wouldn't say that, no.
15 Q You would say that that's okay police procedure?
16 You walk past all the potential complainants, all
17 the eye witnesses, everyone that can give you
18 information, blow right by them and go into harm's
19 way there potentially?
20 A At the time I think that was -- that was fine.
21 Q That was the decision you made at the time.
22 A Yes.
23 Q But the fact of the matter is you're trained to
24 talk to complainants. You're trained to gather
25 evidence. You're trained to get information; is
26 that -- is that correct?
27 MR. BUTCHER: I'm going to interrupt here, and I
28 haven't for this reason before, but quite often
29 Mr. Kosteckyj's questions contain a whole series
30 of propositions, and it would be much better, in
31 my submission, if he broke them down into smaller
32 bites, so that we know what the real question is
33 that's being asked.
34 THE COMMISSIONER: I think that's a valid comment.
35 MR. KOSTECKYJ: Okay.
36 A Can you ask the question again, please?
37 Q You're trained, CAPRA, "A", assess, right?
38 A Part of CAPRA is also doing a proper risk
39 assessment.
40 Q Well, how can you do a proper risk assessment when
41 you don't speak to a complainant and all the
42 potential complainants are standing right beside
43 you?
44 A Because I felt that I needed to speak with the
45 subject of complaint first and we could speak to
46 the witnesses and gather any important evidence
47 and inquire further information after the fact.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 Q All right. You're going to tell us that you think
2 that's good police work?
3 A For this situation, yes.
4 Q All right. But you will agree with me that the
5 CAPRA model, the "A" stands for assess and for
6 analyze information, and for getting the details
7 about what is going on; is that a fair statement?
8 A It's a fair statement when situational factors
9 allow you to do that.
10 Q All right. Now, when you walked in, you didn't
11 see any broken glass, right?
12 A That's correct.
13 Q And you never found any broken glass, did you?
14 A No, I did not.
15 Q So you knew that that part of the whole report was
16 exaggerated, right?
17 A Yes.
18 Q You've been to all kinds of calls where people
19 call in, a complainant calls in, and makes a
20 complaint and the complaint is overblown,
21 sometimes false, sometimes just plain wrong,
22 right?
23 A That's correct.
24 Q So you, as a matter of course, know that you have
25 to weigh what you hear on the radio with a grain
26 of salt. You listen to it, but you've got to
27 analyze the scene when you get there, right?
28 MR. BUTCHER: Again, there's two questions and I don't
29 know how --
30 MR. KOSTECKYJ: Okay. Well, let me -- let me break it
31 down for you.
32 Q You get lots of calls, and sometimes those calls
33 are embellished, right?
34 A Yes.
35 Q Sometimes those calls are just plain wrong, right?
36 A Yes.
37 Q Sometimes you get people that are trying to cause
38 somebody else embarrassment or injury and they
39 call something in, right?
40 A Yes.
41 Q So what you hear on a radio call isn't the be
42 all/end all and doesn't give you all the
43 information.
44 A Sometimes it does, sometimes it doesn't.
45 Q Yeah. And one of the ways you determine whether
46 the call makes any sense is you assess the
47 credibility of the complainant by talking to them,

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 right?
- 2 A Yes.
- 3 Q All right. Now, when you determined that Mr.
4 Dziekanski couldn't speak English, I mean that
5 must have become apparent to you pretty much
6 within seconds of meeting him?
- 7 A No.
- 8 Q Okay. When did you figure that out? Or did you
9 ever?
- 10 A I don't think I ever figured that out.
- 11 Q Okay. Let's talk for a second about your Taser
12 training. You took that course?
- 13 A Yes.
- 14 Q In that course -- and you took that course shortly
15 before this incident, like within three or four or
16 five months, wasn't it?
- 17 A Yes. It was July 2007.
- 18 Q Okay. Now, in that course, as I understand it,
19 you're supposed to give a warning before you
20 discharged the Taser, if it's appropriate?
- 21 A If situational factors allow you to, yes.
- 22 Q 'Cause what it says in that training -- it says to
23 you warn and tell -- and the warning is something
24 like, "This is a Taser and if you don't stop, I'm
25 going to shoot 50,000 volts into you," something
26 along that nature, isn't it?
- 27 A It's something like that, yes.
- 28 Q Well, what is the warning?
- 29 A I believe the warning is, "Stop, or I will hit you
30 with 50,000 volts of electricity."
- 31 Q Yeah. Now, at the time when Mr. Dziekanski was
32 standing there at the desk with this stapler, you
33 were -- you had your baton drawn, right?
- 34 A Yes.
- 35 Q You were about ten feet away?
- 36 A Yes.
- 37 Q The other members were at a distance back from Mr.
38 Dziekanski, correct?
- 39 A Yes.
- 40 Q His feet were -- were side-by-side?
- 41 A Yes.
- 42 Q His hands were in a position by his side or the
43 stapler was at the ready perhaps at this position?
44 I'm indicating with my elbow in and my hand in
45 front of me at about waist level.
- 46 A Yes.
- 47 Q So he couldn't have thrown the stapler at you from

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 that position easily without changing position?
2 A Not without changing position.
3 Q No. And he couldn't have jumped out with his feet
4 beside you and attacked forward without changing
5 position?
6 A No.
7 Q So there was time to give him a warning, wasn't
8 there?
9 A Ten feet is actually a very short distance.
10 Q That wasn't my question. I asked you whether
11 there was time to give him a warning.
12 A No.
13 Q There wasn't?
14 A No.
15 Q Well, hold it. You didn't even know the Taser was
16 being deployed, did you?
17 A I knew it was deployed when I looked out of the
18 peripheral of my right eye.
19 Q You knew it was deployed when you heard the sound?
20 A I saw the CEW and then it was deployed shortly
21 thereafter.
22 Q It was instantaneous. You heard the sound. Are
23 you trying to tell us now that your memory can
24 tell you that when in the immediate aftermath you
25 gave statements with information which you've
26 subsequently changed?
27 THE COMMISSIONER: Now I think you'd better --
28 MR. BUTCHER: I'm going to object.
29 THE COMMISSIONER: -- reword that.
30 MR. KOSTECKYJ: Okay.
31 Q Well, let's do this.
32 THE COMMISSIONER: I agree with you.
33 MR. KOSTECKYJ:
34 Q At the time, on October the 14th, you gave some
35 statements.
36 A Yes.
37 Q Yesterday you amended the way that that evidence
38 was in some of those statements, correct?
39 A Yes.
40 Q Because you were refreshed by virtue of looking at
41 the video?
42 A Yes.
43 Q Okay. Well, now you were ten feet away.
44 A Yes.
45 Q You had your baton drawn?
46 A Yes.
47 Q If you felt in any danger, you could have used the

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 baton?
2 A Yes.
3 Q You didn't.
4 A Yes.
5 Q So you didn't use the baton because you didn't
6 feel it was justified.
7 A I didn't use the baton because the CEW was
8 deployed and I didn't have to use the baton.
9 Q Yeah. So in that period of time, there was time
10 to give a warning.
11 A I think that's a question you would have to ask
12 the member that deployed the CEW.
13 Q Well, I'm asking you as to whether you felt like
14 you had enough time to say something to Mr.
15 Dziekanski before you started to use the baton on
16 him?
17 A Are you referring to giving the Taser warning?
18 Q No, I'm referring to just you. You -- let's talk
19 about you. You've got this baton. You've got a
20 guy, you say, with the stapler there that's of
21 some danger to you, correct?
22 A Yes.
23 Q You could have deployed the baton, presumably then
24 and there, right?
25 A Yes.
26 Q You didn't do it, so you had enough time to give
27 him a warning before using the baton.
28 A I hadn't decided to use the baton at that point.
29 Q No. Okay. But the point was you had time to give
30 him a warning.
31 A I wouldn't give him a warning for a tool that I
32 wasn't ready to use yet.
33 Q Yes. Let's -- let's talk about the Taser, because
34 you wanted to amend your statement after that
35 statement of October the 14th in the -- by giving
36 a follow-up statement later on, I think on
37 November the 22nd. You gave three statements in
38 total, correct?
39 A Yes.
40 Q You thought that there was some urgency and
41 importance as to getting ahold of the
42 investigators on November the 22nd, correct?
43 A Yes.
44 Q And when had you seen the tape? When had the tape
45 been made public?
46 A I believe it was November 14th.
47 Q Yeah. So about a week before this, right?

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 A You mean a week after?
- 2 Q Sorry, a week after that you gave the statement --
- 3 the -- the video was made public a week before?
- 4 A Yes.
- 5 Q And you saw the news coverage about that video?
- 6 A Yes.
- 7 Q And you were aware that people were saying that on
- 8 the video you could hear the police officers
- 9 talking about, "Is it okay to Taser him?" That
- 10 was the speculation that was going on in the
- 11 press, correct?
- 12 A Yes.
- 13 Q And there was discussion between police officers
- 14 about the use of the Taser, "Do you have the
- 15 Taser," all this stuff about the Taser was coming
- 16 out, police officers talking about it, right?
- 17 MR. HARRIS: Excuse me?
- 18 MR. KOSTECKYJ: That was -- sorry.
- 19 MR. HARRIS: First of all, I object because of multiple
- 20 questions. Secondly, he's putting to this witness
- 21 facts that are not in evidence, facts that are
- 22 clearly wrong and we know by the enhanced sound of
- 23 the video. And in doing so, it creates much
- 24 difficulty for other witnesses that are going to
- 25 come when incorrect facts are being put to the
- 26 witness. I've heard it on a couple of times and
- 27 in my respectful submission, it's inappropriate.
- 28 The fact --
- 29 THE COMMISSIONER: Why don't you try again?
- 30 MR. KOSTECKYJ:
- 31 Q All right. You saw the news reports, correct?
- 32 A I saw some of them, yes.
- 33 Q And you knew that in those news reports, there was
- 34 speculation and it was being said that the police
- 35 officers were saying, "Use the Taser on him," that
- 36 there was some discussion about that?
- 37 MR. BUTCHER: I'm going to object because I fail to see
- 38 the relevance of speculation in news reports.
- 39 THE COMMISSIONER: Well --
- 40 MR. BUTCHER: How does that assist the commission in
- 41 its work?
- 42 THE COMMISSIONER: Well, I've long ago given up trying
- 43 to see where cross-examination is going. Based on
- 44 what we've seen so far, I think the question is
- 45 appropriate.
- 46 MR. KOSTECKYJ:
- 47 Q You saw that on TV, right?

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 A You're referring to news reports?
2 Q Yes.
3 A Yes.
4 Q You -- that -- the type of news report that I was
5 referring you to, the speculation about what was
6 being said between the police officers about the
7 Taser, as they were walking in the door.
8 A Yes, I saw that.
9 Q And it was after that that you decided to come
10 forward and give this statement?
11 A It wasn't after the speculation on the television.
12 It was after I had a chance to watch the video,
13 digest it, think about it, that I realized that my
14 memory was -- had the chance to refresh my memory
15 and then I decided to call the investigator.
16 Q And you said to the investigator, "Yes, I did, but
17 I was only asking about -- asking whether we had
18 the Taser," right? That was your evidence?
19 A Whether one of the members had a Taser on their
20 person, yes.
21 Q Right. Now, was that because of the news reports?
22 Is that why you came forward at that time?
23 A Absolutely not.
24 Q Well, it was because of viewing the video?
25 A The video helped to refresh my memory.
26 Q You knew that there were -- that there were issues
27 being raised about the appropriateness and the
28 decision-making by the police officers respecting
29 the video -- or respecting the use of the Taser?
30 A I knew there was controversy in the media, but
31 that's not why I came forward. I came forward
32 because my memory was refreshed and I wanted to
33 set the record straight with the investigator as
34 to what I remember that night.
35 Q Okay. Well, look. When you -- you said you went
36 to sign out a Taser that night, right?
37 A I checked the gun safe for a CEW, yes.
38 Q Well, you have to sign them out?
39 A Yes.
40 Q Well, didn't you check the book to see who had
41 them signed out?
42 A I don't remember checking.
43 Q Well, wouldn't that have been normal? Because if
44 somebody was changing shift, you might have wanted
45 to go and get it partway through the shift, right?
46 A It would have been normal, yes. I can't -- again,
47 I can't remember whether I checked the log book or

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 not.
2 Q But that would have been normal and a regular
3 procedure for you?
4 MR. BUTCHER: Well, I'm going to object just because
5 that's repeated question and I think there's a
6 collective interest in not repeating questions.
7 THE COMMISSIONER: I'm against you.
8 A Can you repeat the question, please?
9 MR. KOSTECKYJ:
10 Q Yeah. You -- it would have been normal for you to
11 go and check for the Taser, which you said you
12 did, and it would have been normal for you to
13 check to see who signed it out.
14 A By practice, yes.
15 Q Yeah. That was your routine practice. So you
16 knew who had the Tasers by having checked the book
17 through your normal practice, you would have known
18 who had the Tasers out that day.
19 A Sometimes. Sometimes you wouldn't remember.
20 Q Let's talk for a second about the Code 3 call.
21 A Okay.
22 Q You knew that Mr. Dziekanski was unconscious right
23 after -- or you felt that he'd gone unconscious
24 right after the handcuffing?
25 A Shortly thereafter, yes.
26 Q When you called for the ambulance, you thought he
27 was unconscious but still breathing; is that fair?
28 A Yes.
29 Q Well, when someone goes unconscious, are you not
30 required, according to the operational manual, to
31 call for an ambulance Code 3, an emergency?
32 A I'm not sure.
33 Q My understanding is that if you locate a person
34 who is unable to walk and the person cannot be
35 roused by speaking or touching him, you're
36 supposed to check for airway blockage; does that
37 sound right?
38 A Sure.
39 Q You're supposed to check for irregular breathing;
40 does that sound right?
41 A Yes.
42 Q You're supposed to check for an erratic pulse or
43 no pulse?
44 A Yes.
45 Q You're supposed to check Medical Alert bracelets,
46 right?
47 A Yes.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 Q And you're supposed to do a pain stimulus to make
2 sure -- see if the person reacts in any way?
3 You're supposed to do that too, aren't you?
- 4 A Sure.
- 5 Q Well, just so that you feel comfortable with those
6 things, let me pass up the portions of the
7 operational manual which have been produced to us
8 and just review it for me and just confirm for me
9 that that's correct.
- 10 A Sure.
- 11 MR. BUTCHER: I wonder if my friend has a copy.
- 12 A I confirm it.
- 13 MR. KOSTECKYJ:
- 14 Q Those six? All right. Now Can you confirm for
15 me too there that it says to call for a first
16 responder? If any of the conditions in paragraph
17 2 above are there, the person is unconscious, any
18 of those things, you've got to call for an
19 immediate responder, first responder.
- 20 A Yes.
- 21 Q Well, that really means Code 3, doesn't it?
- 22 A I don't know if that means Code 3.
- 23 Q Well, isn't that the prudent thing to do when
24 you've got an unconscious person, you call for a
25 Code 3? Based upon what you're looking at in that
26 operational manual, isn't that what it's
27 suggesting to you?
- 28 A I think it's open to interpretation.
- 29 Q All right. It's open to interpretation as to
30 whether you have to call a Code 3 or not?
- 31 A I believe so, yes.
- 32 Q Well, tell me, did you ever see anybody conduct a
33 pain stimulus on Mr. Dziekanski?
- 34 A No, I didn't.
- 35 Q Because if you had done the pain stimulus you
36 would have noticed presumably whether he was
37 faking or whether he was moving or not or could
38 move, right?
- 39 A Perhaps.
- 40 Q Well, you know what a trap squeeze is?
- 41 A No.
- 42 Q Well, here it says -- it talks about a pain
43 stimulus where you touch the person's ear or
44 something to that effect. Reaction to pressure
45 applied behind the ear. Do you know what they're
46 referring to there?
- 47 A Yes, I do.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 Q Okay. Where is that pressure point?
2 A Do you want me to describe it?
3 Q Yeah.
4 A Right behind the ear.
5 Q You put your thumb right in behind the ear, right
6 up against the person's jawline and into -- and
7 you press there?
8 A Yes.
9 Q And when you do that, a person who's conscious
10 will move, right?
11 A Yes.
12 Q That's why it's called the pain stimulus because
13 you move to pain, right?
14 A Yes.
15 Q No one did that?
16 A No.
17 Q You'll agree with me that in your operational
18 manual it tells you that when you run into an
19 unconscious person, that's part of the procedure
20 you do?
21 A From what I just read, yes.
22 Q Okay. Now, you recollect that on the video we saw
23 you collapse your baton.
24 A Yes.
25 Q And you collapse that baton within a few feet of
26 Mr. Dziekanski's head, correct?
27 A That's correct.
28 Q Well, I'm going to ask you a couple of questions
29 about that. First of all, you're trained in the
30 client-based model to respect your prisoner,
31 right?
32 A Yes.
33 Q Did that seem to you like a respectful move, to do
34 that in the vicinity of his head while he's
35 handcuffed, laying flat down?
36 A I guess at the time I didn't -- that's not
37 something that I was really thinking about.
38 Q You weren't mindful of your responsibility to your
39 client, right?
40 A Well, I was focused on the task of collapsing the
41 baton as soon as I could so I could get to
42 assessing Mr. Dziekanski.
43 Q But you never assessed him.
44 A Yes, I did.
45 Q Well, how did you assess him?
46 A Through observation.
47 Q You never felt his pulse, right?

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 A No.
2 Q You were wearing gloves?
3 A Yes.
4 Q You never took your gloves off?
5 A No.
6 Q Would you say now, sir, in retrospect, that you
7 can see that that was, this collapsing the baton,
8 was disrespectful to your client?
9 A I don't view it as disrespectful, no.
10 Q All right. You know, sir, that a lot of people
11 thought watching the video that that baton was
12 being used to hit Mr. Dziekanski; correct?
13 MR. BUTCHER: I don't need to hear the end of that
14 question to know that's not a proper question.
15 MR. KOSTECKYJ: Okay. Well, let's move on.
16 Q You were making a noise with that baton when it
17 was being collapsed?
18 A It makes a little noise, but when you do it on
19 carpet in this environment, the noise is generally
20 muffled for the most part.
21 Q Well, it didn't collapse easily, so you had to
22 pound it a few times?
23 A Yes.
24 Q He never flinched, did he?
25 A I wasn't paying attention -- pardon me. I wasn't
26 paying attention to him at the time. I was
27 focusing on collapsing my baton, so...
28 Q Well, you've seen the video numerous times now --
29 A Yes.
30 Q -- haven't you? You never saw him flinch, did
31 you?
32 MR. BUTCHER: I don't think that's depicted on the
33 video, with respect.
34 MR. KOSTECKYJ: All right. Well, we'll let the video
35 speak for itself there.
36 A Sure.
37 Q You don't remember him flinching?
38 A When I was collapsing the baton, is that your
39 question?
40 Q Yes.
41 A No.
42 Q That's 'cause you thought he was unconscious,
43 that's why you collapsed it there and then, 'cause
44 you thought this guys done, he's out, he's not
45 going to notice, so I'm just going to do it here.
46 A No, that's not correct.
47 MR. KOSTECKYJ: This might be an appropriate time.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 THE COMMISSIONER: Yes. All right. We'll take the
2 morning break.

3 THE REGISTRAR: The hearing will now recess for ten
4 minutes.

5
6 (WITNESS STOOD DOWN)

7
8 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

9 (PROCEEDINGS RECONVENED)

10
11 THE REGISTRAR: This hearing is now resumed.

12
13 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
14 CISOWSKI, continuing:

15
16 Q Sir --

17 THE COMMISSIONER: Your microphone, Mr. Kosteckyj.
18 MR. KOSTECKYJ:

19 Q Sir, just before the Commissioner came in, I
20 passed back to you the Operational Manual document
21 and I've tagged for you there the provision that
22 talks about medical assistance. Do you see that?

23 A Yes.

24 Q And you'll agree with me, sir, this is what you
25 looked at earlier, that if, among other things,
26 somebody is unconscious, you're to seek medical
27 attention, correct?

28 A Yes.

29 Q And you said that it's up to you or it's
30 discretionary as to whether that would be a
31 regular call or a Code 3. Was that your evidence?

32 A My evidence is that it seems that the policy is
33 open to interpretation.

34 Q All right. Well, looking at the policy, the
35 directions to you as a member, I'm looking at
36 paragraph 2.3 on page 2 of 4. Do you have that?

37
38 If you observe any condition outlined in
39 2.2...

40
41 Do you see that?

42 A Yes.

43
44 ...initiate first responder first aid/CPR and
45 seek immediate medical assistance.

46
47 What does "immediate" mean? Does that mean Code

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 3?

2 A It could mean Code 3.

3 Q Well, immediate, doesn't that give you the sense
4 of urgency?

5 A Yes.

6 Q Yes. Now, let's talk about your observations
7 respecting the breathing of Mr. Dziekanski and his
8 level of consciousness. I'm going to take you
9 back to your statement, sir, the same one, October
10 the 14th. I'm taking you to the very bottom of
11 the first full paragraph of -- this is your -- on
12 page 2 of your statement, and that's the -- where
13 you're giving your narrative. Do you see that,
14 sir?

15 A Yes.

16 Q And at the bottom portion about ten lines up it
17 talks about:

18
19 I was, long struggle but we're finally able
20 to, uh, get the male into handcuffs.

21
22 Do you see that?

23 A Yes.

24 Q
25 Uhm, that point the male, uh, stopped
26 resisting all together.

27
28 Right?

29 A Yes.

30 Q
31 His eyes shut. Like he appeared to go
32 unconscious.

33
34 Right?

35 A Yes.

36 Q It's shortly after that he started to turn blue,
37 correct?

38 A Yes.

39 Q You were asked again at page 9, and I'm looking at
40 the -- your long answer towards the bottom of the
41 page.

42 A I'm there.

43 Q Do you see it? I'm looking at the very last few
44 lines there. You were asked once again about this
45 and you said -- do you see the part about
46 Constable Rundel was the one that was able to get
47 the handcuffs on him?

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 A Yes.

2 Q And then it goes on and it says:

3

4 ...he was struggling with us and uh, that,
5 after he was fully handcuffed that's when he
6 appeared to go unconscious. That's it.

7 Right?

8 A Yes.

9 Q Then again at page 13 it was reviewed with you
10 once again. This is in the first large paragraph
11 in the top third of the page. You were talking
12 about him being taken down. "Constable", the very
13 last line:

14

15 ...Constable RUNDELL (sic) was able to get
16 his handcuffs on the, on the male. And uh,
17 that's when he went out.

18

19 Right?

20 A Yes.

21 Q Now, you said that you heard him breathing. Did
22 you actually hear him or see him breathing?

23 A I heard him breathing and I could see his chest
24 cavity moving up and down.

25 Q When you say you could hear him, what did it sound
26 like?

27 A I think I described it yesterday like someone who
28 was out of breath, who had physically exerted
29 themselves.

30 Q Someone who was out of breath and physically
31 exerted themselves. Did you consider that to be
32 normal breathing?

33 A It didn't strike me as not being normal,
34 considering the male was resisting us heavily for
35 over a minute.

36 Q And did you ever hear his breathing go back to
37 normal?

38 A No.

39 Q And you saw him turning blue shortly thereafter?

40 A Yes.

41 Q You said you'd taken first aid?

42 A Yes.

43 Q That was a requirement of first aid? First aid
44 was a requirement for your job, so you had to go
45 and take the course?

46 A Yes.

47 Q You know about the ABCs of first aid?

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

- 1 A Yes.
- 2 Q "A" being airways, "B" being breathing, and "C"
3 being circulation.
- 4 A Yes.
- 5 Q When you see somebody turning blue, that tells you
6 their circulation isn't right, correct?
- 7 A Yes.
- 8 Q Did you think when you saw him turning blue that
9 maybe it was time to start CPR?
- 10 A No, because he was still breathing.
- 11 Q Yeah. But isn't that one of the things you were
12 taught in your first aid course, when you see
13 circulation being affected and changing, that CPR
14 might be appropriate?
- 15 A It might be appropriate, but like I said, you need
16 to assess, and at that point he was still
17 breathing.
- 18 Q Well, you didn't assess him?
- 19 A Well, I was observing him, which I consider
20 assessing.
- 21 Q Well, one of the things you're supposed to do in
22 your Operational Manual, too, is to continue doing
23 the pressure checks to see if he's coming to,
24 right?
- 25 A Yes.
- 26 Q You never did that. You never saw anybody else do
27 that?
- 28 A The pressure checks, no.
- 29 Q You were convinced, sir, when you walked away and
30 started to take statements, that this man was
31 unconscious and was of no concern to anybody,
32 correct?
- 33 A That's not true.
- 34 Q Well, why did you leave if you thought that he
35 might come to and be a concern to somebody?
- 36 A Because there were many members around him and I
37 felt I was leaving -- being the most junior
38 officer, I was leaving the male in very capable
39 hands.
- 40 Q Well, he wasn't able to -- he was breathing like
41 he had just run a marathon, right? That's your
42 last recollection of his breathing?
- 43 A Breathing like he had physically exerted himself,
44 yes.
- 45 Q He was turning blue?
- 46 A Yes.
- 47 Q He'd been out and his eyes were closed?

42

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 A Yes.

2 Q He hadn't moved, to your notice, and you had felt
3 comfortable enough to collapse your baton and not
4 watch him any longer, correct?

5 A I collapsed my baton before I had really started
6 my assessment on him.

7 Q Okay. Let's just look at page 19 of your
8 statement.

9 A I'm on page 19.

10 Q Do you see your full answer there about, well --
11 the question is:

12
13 Well, before they arrived, like, between the
14 time that these cops and he, he's kinda
15 losing consciousness but he's still
16 breathing, till the time that, that they
17 arrive?

18
19 Do you see that? That's the question.

20 A Yes.

21 Q And your answer is:

22
23 Uhm, not much re... really we're just uh,
24 like I said, we're just kind of monitoring
25 him and just uh, kept thinking that, you
26 know, he might snap out of it and start
27 fighting again so we're just kinda keeping a
28 close eye on, on him and in anticipation that
29 he might become --

30
31 - and you clear your throat -

32
33 -- combative again. But uh, after awhile
34 when we didn't, when there's kinda that feel
35 that he wouldn't uh, you know, become
36 combative, that's when I just kind of just
37 uh, they told me to start taking pictures and
38 interviewing witnesses and I had left the
39 subject alone prior to EHF's (sic) arriving
40 on scene.

41
42 Do you see that?

43 A Yes, I do.

44 Q So you had formed the opinion before you left the
45 scene he wasn't coming to. That's what it says
46 there, isn't it?

47 MR. BUTCHER: I didn't read that.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 MR. KOSTECKYJ: Okay, well --

2 MR. BUTCHER: I'm sorry, that's an objection. Because
3 I don't see how having put the question to the
4 witness, having put the statement to the witness,
5 he could ask that question.

6 MR. KOSTECKYJ:

7 Q Okay. Well, let me ask this question: Do you see
8 this part, "when there's kinda that feel that he
9 wouldn't", just before that:

10

11 But uh, after awhile when we didn't, when
12 there's kinda that feel that he wouldn't uh,
13 you know, become combative, that's when I
14 just kind of just uh, they told me to start
15 taking pictures...

16

17 Do you see that?

18 A I see that, yes.

19 Q Well, hadn't you formed the impression, sir,
20 hadn't you formed the opinion that before you left
21 he wasn't coming to, that's why you said -- that's
22 what I read in that. Do you read that, that way?

23 A I don't.

24 Q What do you understand that to mean?

25 A I read that I didn't think he would start
26 resisting or become combative again. I never
27 thought for a second that he might not wake up or
28 regain consciousness.

29 Q Well, you weren't concerned that he was going to
30 become combative again?

31 A I didn't feel he would wake up and become
32 combative again, yes.

33 Q All right. So if you had been asked at that time
34 by an ambulance driver to take off his handcuffs,
35 you would have felt comfortable doing that?

36 A I guess it would depend on my assessment of
37 Dziekanski at the time I was asked by an ambulance
38 driver.

39 Q Well, at this time. This is after, just before
40 you're leaving. You're ready to go off and take
41 pictures and take statements. The ambulance
42 driver shows up says, "I got to do CPR. I got to
43 check this guy, I need the handcuffs off." Would
44 you have felt comfortable taking them off?

45 MR. HARRIS: I'm going to object. We have had no
46 evidence to suggest, and it's a misstatement to
47 suggest that an ambulance attendant has said to

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 any of the officers present, "We need to do CPR,
2 we need the handcuffs off."
3 THE COMMISSIONER: No, he said "what if".
4 MR. HARRIS: Well, I say, in my respectful submission,
5 that's no alignment with the evidence. It's not
6 helpful when you go down a road of "what ifs", you
7 can "what if" all day long and it's not of
8 assistance and it drags this proceedings on longer
9 than necessary.
10 THE COMMISSIONER: Go ahead.
11 MR. KOSTECKYJ:
12 Q Could you answer that question, sir?
13 A I'm sorry, can you repeat the question again,
14 please?
15 A Yes.
16 Q At that time, this time we're talking about in the
17 statement, right before you left, you had formed
18 the opinion that he wasn't going to become
19 combative, correct?
20 A Yes.
21 Q Ambulance driver shows up right then and there and
22 says to you "I want to assess this guy. I need
23 the cuffs off." Would you have felt comfortable
24 taking the cuffs off?
25 A At that point I probably would have felt
26 comfortable taking the handcuffs off.
27 Q Thank you. Now, let's talk about Mr. Chapin for a
28 second. You remember him?
29 A Yes, I do.
30 Q He was the Canadian Border Services agent who came
31 upon the scene and that you spoke to after you
32 were told to stop taking statements, correct?
33 A That's correct.
34 Q Mr. Chapin told you, did he not, that he had dealt
35 with Mr. Dziekanski just earlier in the evening?
36 A Yes, that's correct.
37 Q And he told you that he had just spoken with his
38 mother, correct, he had been on the phone with his
39 mother not long before, correct?
40 A I don't recall. I'd have to refer to the
41 statement.
42 Q Okay. Well, it's not your statement, but I'm
43 just --
44 MR. HIRA: The witness has asked to be referred to a
45 document that would assist his recollection and
46 enable him to answer the question properly.
47 THE COMMISSIONER: Well --

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

1 MR. HIRA: I would ask that the witness be given that
2 opportunity if Mr. Kosteckyj intends to pursue
3 this issue. I think that's only fair to the
4 witness.
5 THE COMMISSIONER: That's not the question, though.
6 The question did not refer to a document.
7 MR. HIRA: It --
8 THE COMMISSIONER: Now, just a moment now. Put the
9 question again and we'll see.
10 MR. KOSTECKYJ: Yeah.
11 Q When you spoke to Mr. Chapin.
12 A Yes.
13 Q You already told me you recollected that he told
14 you that he had dealt with Mr. Dziekanski earlier
15 in the evening?
16 A Yes.
17 Q Do you recollect him telling you that he had just
18 gotten off the phone recently with his mother?
19 THE COMMISSIONER: Now looking at a note, will that
20 help you or not?
21 A That will help me, yes.
22 THE COMMISSIONER: Yes, go ahead, then.
23 MR. HIRA: There is as well a transcription of that
24 statement, and that's the document I was thinking
25 of.
26 THE COMMISSIONER: No, I'm talking about your own
27 statement.
28 A No, not in the statements in my notebook. If I
29 could be provided with the transcribed statement
30 that I took that night.
31 THE COMMISSIONER: Well, this is when you're speaking
32 to the witness, to this person, Chapin.
33 A If you're referring to the statement -- are you
34 referring to the statement that I took -- I took
35 down?
36 MR. KOSTECKYJ:
37 Q I'm not -- I'm not referring to any statement.
38 I'm referring to evidence that we heard from Mr.
39 Chapin earlier in these proceedings. I'll tell
40 you what I understood him to say. He spoke to a
41 -- he came out from the Customs area and he told
42 us that he had recently gotten off a telephone
43 call with his mother, and he was coming out to
44 look for her son as he was getting off shift, and
45 he ran across the scene and he spoke to a police
46 officer. You're telling us you spoke to Chapin,
47 so I'm presuming you are that police officer.

Cst. Bill Bentley

Cross-exam by Mr. Kosteckyj (for Zofia Cisowski)

(cont'd)

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

1 A I did speak to Chapin. I spoke to many witnesses
2 that night and I don't remember much of our
3 conversation in regards to whether he spoke to Mr.
4 Dziekanski's mother or not. I don't remember
5 that, or him telling me that.

6 Q Because my understanding of his evidence was that
7 he conveyed that to the police officer that he
8 spoke with.

9 A I don't remember that.

10 Q Well, do you remember Mr. Chapin assisting by
11 finding Mr. Dziekanski's documents in his
12 suitcase, knowing where they were and getting the
13 documents so you could identify Mr. Dziekanski?

14 A I don't remember that, no.

15 Q Okay. Did you see any other police officers speak
16 with Mr. Chapin besides yourself?

17 A No.

18 Q Do you recollect how you were able to identify Mr.
19 Dziekanski, who he was?

20 A Because he was pointed out to me by the Horizon
21 Airlines --

22 Q I'm talking about his identity, after the event.
23 You -- his identification, how did you come to
24 find that?

25 A I never identified him. I never looked at his
26 identification.

27 Q Okay. Do you recollect Mr. Chapin telling you
28 that Mr. Dziekanski's mother lived in Kamloops?

29 A No, I don't.

30 Q Do you remember Mr. Chapin telling you that he had
31 only been dealing with this fellow a short while
32 before, an hour or so before?

33 A No, I don't.

34 Q Do you recollect much of anything about your
35 interview with Mr. Chapin?

36 A Very little.

37 MR. KOSTECKYJ: Those are my questions, thank you.

38 THE COMMISSIONER: Thank you.

39 MS. ROBERTS: For the record, Helen Roberts for the
40 Government of Canada.

41

42 CROSS-EXAMINATION BY MS. ROBERTS ON BEHALF OF THE
43 GOVERNMENT OF CANADA:

44

45 Q I just have a few topics to cover with you,
46 Constable Bentley. Mr. Kosteckyj has gone over
47 with you the CAPRA model, and I think you've

- 1 agreed with him that one of the "A"s in CAPRA
2 refers to "Assess", to assess a scene; is that
3 correct?
- 4 A Yes.
- 5 Q All right. Are you given training as to how to
6 assess a scene, what to look for?
- 7 A Yes.
- 8 Q All right. And would I be correct in assuming
9 that one of the things you study is the subject of
10 the complaint?
- 11 A Yes.
- 12 Q All right. Are you familiar with the expression
13 "threat cues"?
- 14 A Yes.
- 15 Q All right. What does that mean?
- 16 A They're basically indicators you look for in a
17 subject to perhaps identify a behaviour.
- 18 Q Can you give us some examples of threat cues?
- 19 A Someone clenching their fist, a wide stance,
20 verbals, what are they saying to you, expression
21 on their face.
- 22 Q All right. Do you still have your statement in
23 front of you, the first one from October 14th?
- 24 A Yes, I do.
- 25 Q And could you turn, please, to page 5.
- 26 A I'm on page 5.
- 27 Q All right. And Corporal Teboul is asking what's
28 your first observation of Mr. Dziekanski, and your
29 answer is:
- 30
- 31 First observation, he wasn't saying anything,
32 he just kind of standing behind the, the
33 doors, staring at us. Arms down, but, uh,
34 something didn't seem right, just based on,
35 you know, all the debris surrounding around
36 him...
- 37
- 38 And then you're interrupted:
- 39
- 40 ...and what all the witnesses were saying.
41 At that point, he appeared to be calm, but
42 uh...
- 43
- 44 And you were interrupted again, and then you were
45 asked a different question before you completed
46 the answer. Have I read that correctly?
- 47 A Yes.

1 Q And is that what you told Corporal Teboul?

2 A Yes.

3 Q And you used the expression "something didn't seem
4 right", were you referring to or could you have
5 been referring to threat cues that you had
6 observed?

7 A Yes.

8 Q And could you refer, please, to page 20 of that
9 same statement?

10 A I'm on page 20.

11 Q And at the top of the page you're describing Mr.
12 Dziekanski's action when he picks up the stapler,
13 and at the bottom of the first paragraph you say:

14
15 Uhm, it, it's, it's just hard to describe,
16 it's just the way his whole mannerisms were
17 at the time.

18
19 Did you make that statement to Corporal Teboul?

20 A Yes.

21 Q Is that also a reflection of when you say
22 "mannerisms", is that also a reflection of perhaps
23 these threat cues that you've been trained to
24 observe?

25 A Yes.

26 Q And have you found it in your job sometimes to
27 reflect back and determine what threat cues led
28 you to a particular conclusion?

29 A Yes.

30 Q Sometimes are these very subtle cues that you pick
31 up on?

32 A Yes.

33 Q And that's something your training has taught you
34 to do?

35 A It's training, but I say a lot of it comes from
36 experience.

37 Q I don't think you've been asked this, and I
38 apologize if I'm covering old ground. When Mr.
39 Dziekanski swung around with the stapler, did you
40 have any concern for your personal safety?

41 A Yes.

42 Q All right. Did you have any concern for the
43 safety of the other officers there with you?

44 A Yes.

45 Q Did you have any concern for any public who might
46 enter the scene?

47 A Yes.

- 1 Q In your training at Depot, do you -- I think
2 you've given this evidence, but just to be clear,
3 do you enact different scenarios to test and learn
4 how to react to them?
- 5 A Yes.
- 6 Q And is that done by way of classroom instruction,
7 by watching videos and having, I think as Mr.
8 Kosteckyj suggested, having actors come?
- 9 A Yes, a lot of it is done with actors.
- 10 Q Are you asked after the event to recount what
11 you've observed or what you did and why?
- 12 A Yes, we're asked to observe what we did and
13 justify why we did it.
- 14 Q All right. Was that a difficult or an easy
15 exercise?
- 16 A I think it's when you're in training it's
17 difficult initially when you're still learning all
18 the principles, but after a while it kind of
19 becomes easier, yes.
- 20 Q All right. In your training are you taught
21 anything about the stress that a police officer
22 can be under in a situation encountering a subject
23 who has been violent or may be violent?
- 24 A Yes.
- 25 Q And have you been taught anything about how that
26 stress affects your observations or ability to
27 observe?
- 28 A Yes.
- 29 Q And what have you been taught about that?
- 30 A That sometimes under stress you don't always hear
31 or see certain things.
- 32 Q Have you been told what that -- why that is, or do
33 you remember?
- 34 A Yes, but I don't really remember, to be honest.
- 35 Q Fair enough. Does the expression "tunnel vision"
36 mean anything to you?
- 37 A Yes.
- 38 Q All right. And what does that mean to you?
- 39 A To me that's when you're focused on a task and
40 perhaps you're not paying attention to other
41 things that are going on around you, whether it be
42 visual or things you hear.
- 43 Q All right. And I think your evidence was, correct
44 me if I'm wrong, that once you entered the airport
45 your focus was on identifying and going to the
46 subject of the complaint, is that correct?
- 47 A Yes.

Cst. Bill Bentley

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

1 Q All right. And once Mr. Dziekanski turned with
2 the stapler in his hand, I think you've given
3 evidence your focus was on the stapler?

4 A Yes.

5 Q And this phenomenon or this inability to observe
6 everything outside your immediate focus, does that
7 also impact on your ability to remember things
8 outside your immediate focus?

9 A Yes.

10 Q So if you're in a stressful situation and you're
11 focused, not only can you not observe things
12 outside that focus, but you can also fail to
13 remember things outside that focus, is that fair?

14 A Yes.

15 MS. ROBERTS: Thank you.

16 THE REGISTRAR: Mr. Kosteckyj, the two statements, did
17 you now wish to have those marked? You mentioned
18 that earlier.

19 MR. KOSTECKYJ: Oh, yes. Thank you, Mr. Giles. Yes,
20 Mr. Commissioner.

21 THE REGISTRAR: The statement of Constable Bill Bentley
22 dated October 14th will be marked as Exhibit
23 number 50. The statement of October 18th will be
24 marked as Exhibit number 51.

25
26 EXHIBIT 50: Copy - Statement of Constable
27 Bill Bentley taken October 14, 2007

28
29 EXHIBIT 51: Copy - Statement of Constable
30 Bill Bentley taken October 18, 2007

31
32 MR. KOSTECKYJ: There were also notes, police officer's
33 notes, and I'm not sure if --

34 THE COMMISSIONER: Yes, the notes will be 52.

35 THE REGISTRAR: The notes will be marked as Exhibit 52.

36 MR. BUCHANAN: Commissioner, Chris Buchanan, counsel
37 for the PSAC. Just with respect to the
38 handwritten notes. They include personal
39 information about the witnesses.

40 THE COMMISSIONER: Oh, all right.

41 MR. BUCHANAN: Addresses and phone numbers.

42 THE COMMISSIONER: All right. Let's take the notes out
43 and have it marked for identification.

44 MR. BUCHANAN: Thank you.

45 THE REGISTRAR: The notes will be marked as letter P
46 for identification.

47

1 P FOR IDENTIFICATION: Copy - Pages from Cst.
2 Bentley's notebook
3

4 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE
5 KWESI MILLINGTON:
6

7 Q Officer, my name is Ravi Hira. I represent
8 Officer Millington. I've got a few questions for
9 you regarding the airport, your notes and
10 statements, threat cues and your ability to assess
11 the situation, and then finally a question
12 regarding one of the photographs that was
13 introduced in evidence through you yesterday. So
14 let's start with the airport.

15 The area that you were dispatched to you
16 understood to be in the meeting area, or the
17 secure area of the airport, correct, one of those
18 two areas?

19 A Yes.

20 Q And when you arrived at the airport, you'll agree
21 with me that Mr. Dziekanski was in the area that
22 you understood to be the secure area, correct?

23 A That's correct.

24 Q And would you agree with me that one of the things
25 that you were considering that was going through
26 your mind were issues dealing with airport
27 security?

28 A Yes.

29 Q And would you also agree with me that that
30 necessitated acting quickly to get the situation
31 under control?

32 A Yes.

33 Q Would you agree with me that you initially tried
34 to do that through officer presence and verbal
35 intervention?

36 MR. ROSENBLOOM: Excuse me, I rise, I apologize to my
37 friend. I haven't been in the proceedings right
38 from the beginning and so forgive me if I make an
39 objection that's improper. I'm troubled as I
40 listen to some of the examinations of late, Ms.
41 Roberts, Mr. Hira, in terms of leading the
42 witness. Now, I recall this often is referred to
43 as friendly cross-examination. The parties that
44 are examining this witness are indeed from the --
45 coming from the same interest, and I invite you,
46 Mr. Commissioner, to inform the parties whether it
47 is appropriate to lead the witnesses in the manner

1 that we are hearing at this point.

2 THE COMMISSIONER: Your point is well taken and I
3 identified this yesterday. I've been a little bit
4 lax on this in order to give scope, mentioning the
5 other day that it went to the weight of the
6 evidence, but your point is well taken. Does
7 anybody wish to make a submission on this point?

8 MR. HIRA: I'm happy to do it the long way. I'm just
9 mindful of time and trying to get to particular
10 points. But I'm happy to do it as I would in
11 chief.

12 THE COMMISSIONER: Well, I -- what I'll suggest is, is
13 that as you well know, based on our experience,
14 that there are leading questions that are quite
15 permissible in order to get to a topic, but once
16 you get to the bedroom...

17 MR. HIRA: **Maves v. Grand Trunk Railroad**, as I recall.

18 THE COMMISSIONER: Yes, indeed. Go ahead.

19 MR. HIRA:

20 Q Now, having been thrown off the track, so to speak
21 - not the railroad track - let's try again.
22 You're at the airport and one of the things you're
23 considering is security, correct?

24 A Yes.

25 Q Could you briefly, because I don't want to dwell
26 on this, deal with the -- summarize the
27 interventions that you undertook with the -- with
28 Mr. Dziekanski.

29 A Well, we attempted to -- are you talking about how
30 we engaged him, and --

31 Q Yes.

32 A Okay. So I initially greeted him.

33 Q I'm not looking for a narrative --

34 A Okay.

35 Q -- again of what happened.

36 A Okay.

37 Q I'm looking at it, I'm seeking it in terms of your
38 training and in relation to the IMIM, so to speak.

39 A Okay. So we used initially officer presence and
40 verbal intervention. Do you want me to continue
41 on?

42 Q Yes.

43 A And when his behaviour escalated to combative, we
44 responded with the appropriate intervention.

45 Q Now, in terms of your training, what, if any,
46 training do you receive with respect to the level
47 of force to use in relationship to the situation

Cst. Bill Bentley

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

1 you perceive regarding the subject?

2 A My understanding is that it's usually a level
3 matching or a force higher than that of the
4 subject.

5 Q So either matching or a level higher than that of
6 the subject, is that correct?

7 A Yes.

8 Q Now, let's move to your notes. You were cross-
9 examined yesterday by Commission counsel regarding
10 a comment in your notes, and I'm going to put this
11 comment to you:

12
13 Subject grabbed stapler and came at members
14 screaming.

15
16 You recall being cross-examined on that?

17 A Yes.

18 Q It's page 3, Mr. Commissioner, the middle of the
19 page, I believe. The entry 0130 hours should be
20 at the top of the page and I've read from the
21 middle, Mr. Commissioner.

22 Now, you gave a statement at about five
23 o'clock that very morning, correct?

24 A Yes.

25 Q And that was a 22-page statement, correct?

26 A Yes.

27 Q You gave another statement on October the 18th; is
28 that correct?

29 A Yes.

30 Q And you gave a third statement, and that
31 statement, I believe, the October 18th statement,
32 spanned three pages.

33 A Yes. I think the October 18 statement was
34 actually almost like two statements in one. We
35 had stopped the statement. I had said something
36 to the investigator, and he started another
37 statement.

38 Q All right. And then on November the 22nd you gave
39 a third statement that spanned many pages, ten
40 pages, correct?

41 A Yes.

42 Q And at any time in those statements did you
43 suggest that Mr. Dziekanski came at the members
44 screaming?

45 A Not to my knowledge.

46 Q Thank you. You were also asked by Commission
47 counsel yesterday that if there was no video and

1 you were testifying based on your notes, words to
2 the effect, what would your evidence be, given
3 your notes? Do you recall being asked that
4 question?

5 A Yes, I do.

6 Q So I'm going to ask you a similar question. If
7 you had your notes and your three statements, what
8 would your evidence be with respect to coming at
9 the members screaming?

10 A It would -- I would refer to my statements, and it
11 wouldn't be that he came at us screaming.

12 Q Thank you. Now, regarding your statements, Mr.
13 Kosteckyj cross-examined you extensively.

14 Sorry, Mr. Commissioner, if I might have a
15 moment. It would help if I looked at the right
16 officer's statement.

17 Mr. Kosteckyj cross-examined you extensively
18 regarding pages 19 and 20 of your October 14
19 statement, suggesting that you were engaging in a
20 cover-up. You recall that line of questioning?

21 A Yes.

22 Q The cover-up in regards to the stapler, correct?

23 A Yes.

24 Q I'd like you -- I'd like to refer you to page 6 of
25 your statement.

26 A I'm on page 6.

27 Q And would you -- I'm going to read to you starting
28 with -- starting just beyond the middle of the
29 page: "Trying to figure out what the" -- read to
30 you just before the middle of the page:

31
32 ...I forget what member engaged him, I know
33 it wasn't me, but it's kind of like a, you
34 know, what's going on.

35
36 Corporal Teboul says: "Yeah." You say:

37
38 Trying to figure out what the situation is,
39 and that's when he sort of backing up towards
40 the desk and then it looked like he was
41 looking for a, some sort of object and uh,
42 that's kind of when his demure changed from
43 being what just appeared to be normal to uh,
44 combative.

45
46 The Corporal then asks:

47

1 Okay. When you said that he was looking for
2 something you gestured with your head, is, is
3 that what he was doing?

4

5

You answered:

6

7

 He was, yeah that's right, he was looking uh,
8 turning his to the right side and then to the
9 left side, and uh, he was, it was, it was
10 like a right, a left and a right, and then he
11 saw the stapler, then he grabbed the stapler
12 and that's when myself and the other members
13 kind of created more distance between, uh,
14 ourselves and the subject.

15

16

Do you recall giving those -- being asked those
17 questions and giving those answers?

18

A Yes.

19

Q And are those answers -- do those answers remain
20 accurate?

21

A Yes.

22

Q So you did speak about the stapler and the method
23 of picking up the stapler in your statement?

24

A Yes.

25

Q And you expanded on that method beyond page 2 and
26 beyond page 19; is that correct?

27

A Yes.

28

Q I'm going to refer you to page 7 of your
29 statement.

30

A I'm on page 7.

31

Q The first lengthy answer with:

32

33

 Uh, he basically he grabbed the stapler...

34

35

Do you see that?

36

A Yes.

37

Q And you continue:

38

39

 ...and he kind of flings it out in front of
40 him and he's kind of holding it...

41

42

Do you see that?

43

A Yes.

44

Q Is this another area in your statement where you
45 set out what you physically saw with the stapler?

46

A Yes.

47

Q Now, you were also cross-examined by Mr. Kosteckyj

1 about whether you made reference to Horizon Air
2 employees. Do you recall that?

3 A Yes.

4 Q I'm going to refer you to page 4 of your
5 statement, and I'm looking at a third of the way
6 down the page. Corporal Teboul -- well, maybe I
7 should start a quarter of the way down the page.
8 You, in your second full answer, you speak of
9 entering the airport into the public side.

10 A Yes.

11 Q And then you go on and say:

12

13 And that's where the female was pointing me
14 in the direction when I was approached by
15 her, when I entered the entrance doors.

16

17 You're asked:

18

19 Okay. Do you know who that female is?

20

21 And you answered:

22

23 Uhm, I believe it was the female that I spoke
24 to later on, uh, I (INDECIPHERABLE) in my
25 notebook, I believe she worked for uh,
26 Harmony Airline.

27

28 You were asked:

29

30 Okay she was, she was an employee...

31

32 And you answered:

33

34 She would be, she was an employee, yeah.

35

36 First of all did you -- were you asked those
37 questions and did you give those answers?

38 A Yes.

39 Q And do they still remain accurate?

40 A Yes, except the female, from my understanding,
41 works for Horizon not Harmony.

42 Q Thank you. And is this the -- the woman that you
43 had a brief conversation with at the -- when you
44 entered the airport?

45 A Yes.

46 Q Now, the third statement that you gave, why did
47 you give it?

- 1 A I gave it because my memory was refreshed from
2 watching the video, and I remembered making a
3 comment to my co-workers as to whether they had a
4 Taser on their person.
- 5 Q Before you gave the third statement had you had an
6 opportunity to see your other statements?
- 7 A No.
- 8 Q Now, you were cross-examined by Mr. Kosteckyj
9 about time and taking time to assess the
10 situation. Do you recall that?
- 11 A Yes.
- 12 Q Regarding this matter and what happened at the
13 airport, what, if anything, can you tell the
14 Commissioner about the time that you had to assess
15 the situation?
- 16 A Well, due to the information that we had received
17 -- sorry, can you repeat the question, please?
- 18 Q You were cross -- part of your training is to
19 assess the situation and respond based on the
20 perceived assessment. Is that a fair statement by
21 me?
- 22 A Yes.
- 23 Q What time did you have to assess the situation in
24 this particular case?
- 25 A There wasn't a lot of time.
- 26 Q And when you say there wasn't a lot of time, what
27 was it that made the time so short? Are you able
28 to tell us whether it was your actions, the
29 actions of Mr. Dziekanski, what was it?
- 30 A It was the actions of Mr. Dziekanski, as well as
31 the fact that it was in an airport setting with
32 lots of members of the public around, that I felt
33 the need that we -- I felt the need that we needed
34 to engage him or speak with him very quickly.
- 35 MR. HIRA: Now, if I could have Exhibit 49, please, Mr.
36 Registrar. I'm going to direct you to Tab 5,
37 photograph 15-20. We'll just wait for Mr.
38 Commissioner to get there.
- 39 Q Now, are you able to see in that photograph where
40 your right arm is?
- 41 A Yes.
- 42 Q Are you able to see your right shoulder -- sorry,
43 your right elbow, I beg your pardon.
- 44 A Yes.
- 45 Q Are you able to see the lower part of your arm,
46 that part proceeding from under your elbow?
- 47 A No.

Cst. Bill Bentley

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

Cross-exam by Mr. Harris (for Cpl. Robinson)

1 Q Are you able to see part of it?

2 A I can see part of it, yes.

3 Q Thank you. Now, I'd like you to focus on Mr.
4 Dziekanski's right shoulder and arm area. Are you
5 able to tell the Commissioner whether or not the
6 arm is bent or hanging down?

7 A It appears that it's bent.

8 Q Thank you. Lastly, just to deal with the point
9 made by my friend, Mr. Rosenbloom, have you
10 discussed any of your evidence, or the questions
11 that I've put to you, with me?

12 A No, I haven't.

13 THE COMMISSIONER: Thank you.

14 MR. HIRA: Those are my questions. Thank you, Officer.

15

16 CROSS-EXAMINATION BY MR. HARRIS ON BEHALF OF CORPORAL
17 MONTY ROBINSON:

18

19 Q Constable, my name is Reg Harris. I'm counsel for
20 Corporal Robinson, who was present that night.
21 Prior to me asking you questions today, have I
22 asked you any questions at all?

23 A No, you haven't.

24 Q All right. Do you have any knowledge of the
25 questions that I'm going to be asking you?

26 A No, I don't.

27 Q All right. Sir, I'd like to take you to firstly
28 your area of response, and I'd like to focus in on
29 questions that you were asked with respect to
30 gaining information from members of the community.
31 I think you'll recall Mr. Kosteckyj asking those
32 general sorts of questions.

33 A Yes.

34 Q All right. When you were responding to this call,
35 did you have an opinion as to whether or not it
36 was an in-progress call or a call that had already
37 concluded?

38 A I got the impression it was an in-progress call.

39 Q And can you briefly tell us the distinction
40 between an in-progress call and a call that's sort
41 of concluded?

42 A A call that's already been concluded would be a
43 call where the offence or the actions taken by the
44 party or parties are done and over with.

45 Q All right. And in progress, in contrast, what
46 would your view be about the actions by the party?

47 A That the actions by the party are taking place as

- 1 you get the call.
- 2 Q All right. And when you arrived at the airport
- 3 that night, was it still your view that the
- 4 incident was still in progress?
- 5 A Yes.
- 6 Q And by the nature of the dispatch and your
- 7 observations of the individuals in the meet-and-
- 8 greet area, did you have an opinion as to whether
- 9 or not the public, that is, the safety of
- 10 individuals might be at risk?
- 11 A Yes, I thought their safety could be in jeopardy.
- 12 Q All right. In a situation where it's an in-
- 13 progress call and you feel that the safety of
- 14 individuals might be at risk, can you tell us
- 15 which is a better practice, to stop and speak to
- 16 people there, or to go and contain the problem?
- 17 A You would want to go and contain or deal with the
- 18 source of the problem first.
- 19 Q And is that because of your duty as an RCMP
- 20 officer to protect the public?
- 21 THE COMMISSIONER: It seems to me that was quite
- 22 leading.
- 23 MR. HARRIS: I appreciate that, Mr. Commissioner. I'm
- 24 mindful of the comments that have been said.
- 25 First of all, my client has some different
- 26 interests than this witness. I know other counsel
- 27 have been asking leading questions. I will do the
- 28 best I can to move --
- 29 THE COMMISSIONER: Well, in this area I don't see any
- 30 conflict.
- 31 MR. HARRIS: Very well.
- 32 THE COMMISSIONER: I mean there may be later on.
- 33 MR. HARRIS: All right. I'll rephrase it.
- 34 Q Why would you go to the problem immediately rather
- 35 than dealing with the -- the public, getting
- 36 questions or answering questions of the public?
- 37 A Because one of our biggest priorities as police
- 38 officers is to protect the public.
- 39 Q You said "one of our biggest priorities". Where
- 40 on the -- from your perspective, does that
- 41 priority land?
- 42 A It would be very high.
- 43 Q Now, we've heard questions about assessment and
- 44 the assessment that an officer brings to an event.
- 45 In this -- in your response to this matter, were
- 46 you assessing, were you conducting assessments?
- 47 A Yes.

- 1 Q All right. And when did those assessments begin?
- 2 A As soon as I arrived on scene.
- 3 Q All right. And when did the assessments conclude?
- 4 A After I was told to go back to the YVR sub-
- 5 detachment.
- 6 MR. HARRIS: All right. Just pardon me one moment.
- 7 Q You recall Mr. Kosteckyj putting to you the
- 8 components of CAPRA during his examination. Do
- 9 you recall that?
- 10 A Yes, I do.
- 11 Q And in part of your response about assessment and
- 12 speaking to people, you seem to indicate that it
- 13 was sort of situational factors depend on whether
- 14 or not you would go and speak to people?
- 15 A Yes.
- 16 Q What would be a situational factor that would make
- 17 that determination?
- 18 A A situational factor would be something that we
- 19 just touched upon, protecting the public.
- 20 Q All right. You were also asked questions about
- 21 someone going forth into the Customs area to make
- 22 inquiries. Do you recall those questions?
- 23 A Yes.
- 24 Q From your perspective was there an opportunity to
- 25 do that?
- 26 A No.
- 27 Q Why not?
- 28 A Based on the information that we had received, I
- 29 felt the threat level was fairly high, and to me
- 30 speaking to Customs is something that you could
- 31 always do after the fact. It was important to
- 32 deal with the subject and then reassess.
- 33 Q Why was it important to deal with the subject?
- 34 A In case his -- it was important to deal with him,
- 35 because based on the information we had received,
- 36 I perceived that he could be a threat to the
- 37 public.
- 38 Q In your belief that he could be a threat to the
- 39 public, did that take into account the things --
- 40 did that -- let me just think how to phrase that.
- 41 Did that involve factoring in the damaged
- 42 furniture that you had seen?
- 43 A Yes.
- 44 Q I'm going to transition for a bit to after Mr.
- 45 Dziekanski had been -- after the Taser had been
- 46 deployed and he was down on the ground and had
- 47 been handcuffed. Or actually, I'll just deal just

Cst. Bill Bentley

Cross-exam by Mr. Harris (for Cpl. Robinson)

- 1 while the handcuffs were being applied. You've
2 been involved in situations where -- have you been
3 involved in situations where more than one officer
4 has, in essence, been involved in the handcuffing
5 of a subject?
- 6 A Yes.
- 7 Q All right. And during those situations is it
8 common that there is discussion between the
9 officers?
- 10 A No.
- 11 Q During the handcuffing of Mr. Dziekanski, do you
12 recall if there was discussions occurring or
13 comments?
- 14 A I think there might have been a comment, like, he
15 has my -- he has my handcuffs, when he was trying
16 to grab them; other than that, no.
- 17 Q Okay. Once Mr. Dziekanski was handcuffed,
18 yourself, Constable Millington and Corporal
19 Robinson were in close proximity to Mr.
20 Dziekanski, and this is the timeframe I'm talking
21 about. Was there any discussion between
22 yourselves at that time that you recall?
- 23 A No.
- 24 Q Is that there was no discussion, or you just don't
25 recall?
- 26 A I don't recall there being any discussion.
- 27 Q From your perspective, was Corporal Robinson
28 monitoring Mr. Dziekanski?
- 29 A Yes.
- 30 Q Can you tell us what you saw to lead yourself to
31 that conclusion, please?
- 32 A I saw him behind Dziekanski on his knees, bent
33 over at the waist. He appeared to be observing
34 him.
- 35 Q And for the entirety of the time that you were in
36 the IRL, did Corporal Robinson generally remain in
37 that position or beside Mr. Dziekanski?
- 38 A Yes.
- 39 Q I believe it's Exhibit 46, the photographs, if
40 they could be put before the witness, please.
- 41 THE COMMISSIONER: Is that 49?
- 42 MR. HARRIS: No, 46.
- 43 THE COMMISSIONER: 46.
- 44 MR. HARRIS: A series of photographs that were taken by
45 the witness.
- 46 THE COMMISSIONER: If I remember rightly, it was taken
47 with the witness's camera but not by the witness.

Cst. Bill Bentley

Cross-exam by Mr. Harris (for Cpl. Robinson)

1 MR. HARRIS: I may be mistaken. One of us is. I
2 thought the witness had taken the first bunch of
3 photos and the last couple were not.
4 THE COMMISSIONER: All right.
5 MR. HARRIS: Perhaps we'll clarify this.
6 THE COMMISSIONER: Yes.
7 A Are you -- sorry, are you referring to Exhibit 49,
8 because if so, I don't have it here.
9 THE COMMISSIONER: No, 46.
10 MR. HARRIS:
11 Q 46.
12 A Oh, my apologies.
13 Q That photograph there, who took that picture?
14 A I took that photo.
15 Q All right. Do you see an RCMP officer in that
16 photograph?
17 A Yes, I see two.
18 Q All right. The officer kneeling down, who is
19 that?
20 A That's Corporal Robinson.
21 Q All right. And is that the general position that
22 you saw him in with Mr. Dziekanski well after the
23 handcuffs were applied?
24 A Yeah.
25 MR. KOSTECKYJ: Once again, Mr. Commissioner, this is
26 getting into the area of leading the witness, and
27 the witness -- since the last admonishment has
28 continued to lead this witness, but...
29 MR. HARRIS:
30 Q Can you comment or inform us as to the duration
31 for which you saw Corporal Robinson in that
32 position?
33 A He was in that position until I left the IRL area,
34 the secure side.
35 Q And prior to your departure from the IRL, that is,
36 to go get the camera and the audio-recorder, can
37 you comment on how his position compares to just
38 before you departed for those items?
39 A I don't recall his position ever really changing.
40 Q In this circumstance your evidence has indicated
41 that you drew your expandable baton. Do you
42 recall that evidence?
43 A Yes.
44 Q All right. At no time -- am I correct that at no
45 time you drew your OC spray?
46 A That's correct.
47 Q Why didn't you draw your OC spray?

Cst. Bill Bentley

Cross-exam by Mr. Harris (for Cpl. Robinson)

1 A Because we were in an indoor setting and there was
2 a risk of cross-contamination.

3 Q Can you please explain what "cross-contamination"
4 is?

5 A Cross-contamination would be when you deploy the
6 spray and the -- the unintended target suffers the
7 effects of it.

8 Q And who in this case would be unintended targets?

9 A It would be the other officers.

10 Q All right. Why -- why was the fact that at
11 indoors, what significance would that have to
12 play?

13 A 'Cause you have little to no airflow, so the OC
14 spray doesn't have a chance to dissipate.

15 Q In this case, Constable, you did not rush at Mr.
16 Dziekanski with your hands empty, correct? And
17 note -- let me rephrase that.

18 THE COMMISSIONER: Excuse me, "did you".

19 MR. HARRIS: All right.

20 Q Did you ever rush at Mr. Dziekanski in an effort
21 to physically control him?

22 A No.

23 Q Why not?

24 A Because I feared for my safety.

25 Q Why did you fear for your safety, sir?

26 A Because he's armed himself with a weapon. And if
27 I try to engage him with just my hands, there's a
28 good chance that I could get hurt.

29 MR. HARRIS: If we could go to the YVR video, please,
30 with the entry view, I guess it's from the entry
31 to the IRL view, sir. Approximately 1:28:02.

32 MR. LUNN: Is that video you're looking...

33 MR. HARRIS: It is. If you could just go to 1:28,
34 please.

35 Q As this is being set up, Constable, I want to draw
36 your attention to the area just left of the totem
37 poles. And if I recall, your evidence is it was
38 your view that you were the last officer to enter
39 into the meet-and-greet area; is that correct?

40 A Yes.

41 MR. HARRIS: All right. Go to 1:28, please. Just look
42 to the left and tell us if you see officers
43 entering there.

44 MR. LUNN: We're at 1:27:59.

45 MR. HARRIS: Certainly.

46

47

(VIDEO BEING PLAYED)

Cst. Bill Bentley

Cross-exam by Mr. Harris (for Cpl. Robinson)

1 MR. HARRIS: Just stop it there for a moment.

2 Q Can you identify who the last officer through the
3 door is?

4 A That's Corporal Robinson.

5 Q All right. And when I directed your attention to
6 the left of the totem poles, did you make any
7 observations of people entering there?

8 A No.

9 Q Would you like it played back? We'll just play it
10 back.

11 A Yeah, if you could play it back, that would be
12 great.

13 MR. HARRIS: Stop it there, please.

14 Q Were you able to see anyone entering to the left?

15 A Yeah, there was two officers.

16 MR. HARRIS: All right.

17

18 (VIDEO STOPPED)

19

20 MR. HARRIS:

21 Q Now having seen that, is it still your view that
22 you were the last officer in? Or let me rephrase
23 it: Does it change your view, now having seen
24 that?

25 THE COMMISSIONER: You know, actually I didn't
26 understand you to say you were the last officer
27 in. I thought you were unsure.

28 A I was unsure. I thought that perhaps I might have
29 been the last officer, but I was not certain.

30 MR. HARRIS: Okay, that's fine. I took it differently.
31 Thank you.

32 Q Now, with respect to your handcuffs being grabbed,
33 is that something that you believe that you made a
34 comment about during the arresting of Mr.
35 Dziekanski, or the handcuffing?

36 A Made a comment about in a statement, or...?

37 Q No, at scene while it was going on.

38 A Yes.

39 Q Why did you do that?

40 A To let the other officers know what's going on.

41 Q Why did you want to let the other officers know?

42 A I think it was -- it's just to express his
43 behaviour, as well as to inform Constable Rundel,
44 because he was also trying to handcuff him at the
45 same time.

46 Q You were asked questions about the Taser warning.
47 Do you recall that?

65

Cst. Bill Bentley

Cross-exam by Mr. Harris (for Cpl. Robinson)

Cross-exam by Mr. Stewart (for Vancouver Airport Authority)

1 A Yes.

2 Q All right. Is the Taser warning always given
3 before a Taser deployment?

4 A No.

5 Q Okay. Can you explain circumstances where the
6 Taser warning may not be given?

7 A When it's not practicable, meaning his behaviour
8 has escalated to the point where he needs to be
9 tasered as soon as possible, there's no
10 opportunity for a Taser warning.

11 MR. HARRIS: All right. Thank you.

12
13 CROSS-EXAMINATION BY MR. STEWART ON BEHALF OF VANCOUVER
14 AIRPORT AUTHORITY:

15
16 Q Constable Bentley, my name is Dwight Stewart. I'm
17 counsel for the Airport. I just want to ask you,
18 I guess, a couple of questions about assessment of
19 consciousness, and then also just a few follow-up
20 questions.

21 Mr. Kosteckyj took you to a passage with
22 respect to a concern that Mr. Dziekanski might
23 become combative again after he was restrained and
24 on the ground.

25 THE COMMISSIONER: Mr. Stewart, you act for the
26 Airport.

27 MR. STEWART: Yes.

28 THE COMMISSIONER: Has this got something to do with
29 your interest with reference to the Airport?

30 MR. STEWART: Yes.

31 THE COMMISSIONER: All right. I have your assurance.

32 MR. STEWART:

33 Q The first is this, just to establish this at a
34 point in time. And I believe I'm correct in your
35 evidence that you indicated that at the point
36 where you called for EHS, that Mr. Dziekanski
37 appeared to be unconscious, correct?

38 A Yes.

39 Q Am I correct that this is, though, moments after
40 Mr. Dziekanski has been, as we see on the video,
41 quite physically active?

42 A Yes.

43 Q Prior to this occasion, have you had the
44 experience where someone had the appearance of
45 unconsciousness, but may not have been
46 unconscious?

47 A Yes.

Cst. Bill Bentley

Cross-exam by Mr. Stewart (for Vancouver Airport Authority)

1 Q And can you describe that for the Commissioner?

2 THE COMMISSIONER: You know, there's no evidence of
3 this.

4 MR. STEWART: If --

5 THE COMMISSIONER: Faking.

6 MR. STEWART: No.

7 Q But, Constable Bentley, was -- was that a thought
8 that crossed your mind in the period in which you
9 continued to make assessments of Mr. Dziekanski's
10 consciousness?

11 A Can you repeat the question, please?

12 Q Do you recall thinking about that, that night,
13 with respect to Mr. Dziekanski?

14 A That -- I don't understand where you're going with
15 the question. Whether he'll wake up or regain
16 consciousness?

17 Q In -- whether he had just surrendered to the
18 arrest and was not indeed unconscious.

19 A That was in my thoughts, yes.

20 Q All right. If I could take you to page 17 of 22
21 of your October 14, 2007 statement.

22 A I'm on page 17.

23 Q And I'll take you just to the very sort of bottom,
24 the passage. Corporal Teboul says:

25
26 Uhm, so once he's cuffed, he sort of calms
27 down? Like how long does it, how long does
28 it take for him to calm down and to stop
29 fighting and resisting after he's
30 (INDECIPHERABLE)?
31

32 And you respond:

33
34 Uh, seconds, so, initially I didn't realize
35 he was uh, he was unconscious. I thought he,
36 he had just fought until he was handcuffed
37 and then he knew that he was restrained and
38 he had just stopped, and then that's when I
39 looked over at him and could see that his
40 eyes were closed and uh, and the, at, that's
41 happened before in other files where they
42 just uh, they're kinda just acting when they
43 just close their eyes and, you know, so we
44 didn't know if he was actually unconscious or
45 not, that's why we were monitoring his vital
46 symptoms and there was still a pulse.
47

Cst. Bill Bentley
Cross-exam by Mr. Stewart (for Vancouver Airport
Authority)

1 Is that an accurate description of your thought
2 process that night?

3 A Yes.

4 Q I'm not in any way suggesting that that's what was
5 happening, but that was a thought that went
6 through your mind, correct?

7 A Yes.

8 Q Am I also correct that at some point after this
9 you -- you had some interaction with Corporal
10 Robinson, whether it was a perception that Mr.
11 Dziekanski might come to?

12 A Yes. It's not something that we really discussed.

13 Q If I could have you just turn back to the page
14 before, page 16 of 22. And it's the last -- it's
15 the full paragraph with your response. In the
16 middle it confirms you call for EHS. You said:

17
18 ...routine, but then his skin, (clears
19 throat), started turning like a bluish colour
20 so I upgraded it to uh, to code three.
21

22 And this is -- and this is the portion that I'll
23 see if it triggers a recollection.
24

25 And uh, we just, I know Corporal ROBINSON and
26 I just, could, I kept seeing him checking for
27 his pulse, monitoring his uh, vital signs and
28 uh, there's, I remember there's some point
29 where Corporal ROBINSON thought that he was
30 gonna come to again and start fighting. We
31 were all kind of, we were kind of holding on
32 to him in anticipation that he would, uh, you
33 know, wake up or whatever was going on, I
34 don't, we didn't know if he was acting or
35 not, whether he's, he's going to come to his
36 senses and start fighting again, so we're all
37 kind of just preparing for that. And uh,
38 waiting for EHS to arrive on scene.
39

40 Does -- first, well, does that trigger
41 recollection for you now of -- of that perception
42 of the situation while you're waiting for EHS to
43 arrive?

44 A Yes, it does help to refresh my memory. I
45 believe --

46 MR. KOSTECKYJ: With -- sorry.

47 MR. STEWART: Sorry.

Cst. Bill Bentley

Cross-exam by Mr. Stewart (for Vancouver Airport Authority)

1 MR. KOSTECKYJ: With respect, I still don't see where
2 the Airport has an interest in this line of
3 questioning.

4 THE COMMISSIONER: No, I don't either. I'm trying to
5 rely on counsel's assurance, but I'm having a hard
6 time with it.

7 MR. STEWART: It specifically relates to the fact there
8 were a number of questions asked of Airport
9 personnel with respect to their perception of the
10 situation and their ability to make assessments or
11 their perception of the consciousness or level of
12 consciousness of Mr. Dziekanski. I think in
13 fairness to the Airport personnel, if the RCMP
14 members who are right adjacent to Mr. Dziekanski,
15 even though they've taken every precaution and
16 they've called for EHS based on the appearance
17 that Mr. Dziekanski is unconscious, that there's
18 still then some uncertainty in their perception of
19 the level of consciousness of Mr. Dziekanski.

20 THE COMMISSIONER: Well, that's certainly remote;
21 conceivable, I suppose. But you want to draw an
22 inference that because someone else thought the
23 same as your client thought, that that supports
24 what your client thought. Is that it?

25 MR. STEWART: Yes.

26 THE COMMISSIONER: All right. I guess there's some
27 kind of a link.

28 A Can you repeat the question?

29 MR. STEWART:

30 Q Does my reading that passage of the statement that
31 you gave on October 14th, 2007 trigger a
32 recollection of -- of what you recall in that --
33 that moment when Corporal Robinson thought that
34 Mr. Dziekanski was going to wake up?

35 A Yes. I believe, from my memory, that Corporal
36 Robinson made some -- a comment to some effect
37 that he might come to.

38 THE COMMISSIONER: While there's a pause, was that
39 before or after you noticed him turning blue?

40 A It was before he was turning blue.

41 MR. STEWART:

42 Q That description that you offered on October 14th,
43 2007, that was accurate?

44 A Yes.

45 MR. STEWART: Okay. And those are my questions, thank
46 you.

47

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
2 GOVERNMENT OF POLAND:

3
4 Q Constable Bentley, my name is Don Rosenbloom and I
5 represent the Government of the Republic of
6 Poland. Firstly, Officer, I'm curious, you've had
7 16 months to reflect on this incident. Do you
8 still believe that you and your fellow officers
9 conducted themselves appropriately on the night in
10 question?

11 A Yes.

12 Q If you had the opportunity, is there anything you
13 would like to take back in terms of how you and
14 your fellow officers conducted themselves that
15 evening?

16 MR. BUTCHER: I'm just going to object. I'm going to
17 ask that it be clear as to whether the question is
18 directed to anything that this officer did, or the
19 officers collectively, because those are two
20 separate questions, with respect.

21 MR. ROSENBLOOM:

22 Q I ask the question as to whether you believed that
23 either yourself or any of your fellow officers, in
24 your opinion, handled things inappropriately?

25 A I don't believe we did, no.

26 Q All right. Now, Officer, I have listened to your
27 testimony yesterday and today in connection with
28 the moments, those precious moments when Mr.
29 Dziekanski and you and your fellow officers were
30 at the luggage on first contact with Mr.
31 Dziekanski. Having heard your evidence, do I
32 understand you to say that you interpreted as an
33 act of defiance or an act of non-cooperation when
34 Mr. Dziekanski moved away from the luggage towards
35 the counter?

36 A Yes.

37 Q Yes. And we have heard testimony prior to you
38 giving evidence from your fellow Officer Rundel,
39 of a command having been spoken by Corporal
40 Robinson to Mr. Dziekanski. The command was,
41 "No," when Mr. Dziekanski, according to the
42 evidence, was maybe heading -- motioning towards
43 or heading towards his luggage. Did you hear that
44 command?

45 A I don't recall hearing that command.

46 Q All right. But what you did observe is that Mr.
47 Dziekanski was calm on your first contact?

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 A Yes.

2 Q But that as he turned around heading towards the
3 counter, would you agree with me he shrugged his
4 shoulders and put his hands up in the air with his
5 palms wide open?

6 A Yes.

7 Q And it was that conduct of him turning his back on
8 you, heading towards the counter, that you
9 interpreted as resistance or non-cooperation or
10 defiance?

11 A Yes.

12 Q All right. Now, Officer, I'm going to suggest
13 something to you. I'm going to suggest to you
14 that Mr. Dziekanski was in fact ordered by one of
15 you, one of the four officers, to head over to the
16 counter by way of sign language by having pointed
17 to the counter. Do you recollect that happening?

18 A No.

19 Q You don't. Well, I would invite you to look at
20 the video with the rest of us, and if the
21 Commission can provide footage starting at the
22 luggage area. And maybe I'm the only one that
23 doesn't understand what I see on the video, but I
24 invite you to clarify my interpretation.

25 A Sure.

26 Q Thank you.

27 THE COMMISSIONER: Do you want it in slow motion?

28 MR. ROSENBLOOM: If I may first ask that it be done in
29 normal motion, and then, Officer, you and I can
30 discuss whether you would be more comfortable in
31 seeing it in slow motion. Maybe we should
32 indicate for the record where we're at in frame
33 number.

34 MR. LUNN: We're at 3:40.

35 MR. ROSENBLOOM: 3:40, all right. If we can run it to
36 the point where he's at the counter.

37

38 (VIDEO BEING PLAYED)

39

40 MR. ROSENBLOOM: All right, thank you very much. Now,
41 let's stop there for a moment.

42 Q And incidentally, Officer, if you want to see it a
43 second time or a third time or the fourth time. I
44 looked at it about ten times last night just to
45 confirm what I, at least, was seeing. Do you see
46 any of the officers pointing towards the counter?

47 A Yes.

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

- 1 Q And who do you see pointing towards the counter?
2 A Corporal Robinson.
3 Q Okay. Is this the first time you made that
4 observation?
5 A You're talking about today, or when I saw the
6 video?
7 Q I'm asking whether at this moment, today, this is
8 the first time that you have noticed that one of
9 your officers was in fact pointing towards the
10 counter.
11 A No.
12 Q When did you first notice that?
13 A I noticed that when I watched the video for the
14 first time.
15 Q And so you have been mindful of that information
16 or that observation since that time?
17 A Yes.
18 Q Okay. Now, let's -- how did you interpret that
19 observation?
20 A I interpret that observation as Mr. Dziekanski had
21 turned around, thrown up his arms, began to walk
22 away from us and because he's being defiant,
23 Corporal Robinson is now ordering him to the desk
24 or to put his hands on the desk.
25 Q Well, that's very interesting, Constable. I would
26 now like to freeze-frame, if we can go back to the
27 initial period. Now, Officer, before we freeze-
28 frame and go sequentially, I'm going to suggest to
29 you after you've looked at this, that the fact is
30 that Constable Robinson is seen with his arm
31 lifted in what appears to be a pointed posture,
32 prior to Mr. Dziekanski even turning away from his
33 luggage.
34 I'd now like to do it freeze-frame, please.
35 I apologize, but I'd like you to go back
36 before that. I'm sorry.
37 All right. We can start here.
38 Before we go on, with your pointer, or
39 whatever it's called, can you point out who the --
40 the officer to the extreme left -- we see yourself
41 and Constable Millington closest to Mr.
42 Dziekanski?
43 A Yes.
44 Q Then to the left we see another individual. Can
45 you identify that individual? Is it not Constable
46 Rundel?
47 A I believe it's Constable Rundel.

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 MR. ROSENBLOOM: All right. May we just continue with
2 the sequence, frame by frame.
3 Okay. Let's stop right there for a moment.
4 Q Now, at this moment in time we see Mr. Dziekanski
5 still at his luggage and not in any way attempting
6 to -- to defy your authority; is that correct?
7 A Yes.
8 Q Okay. Now, do we see in the far left side -- I
9 wish I could operate this thing. I've been --
10 THE COMMISSIONER: There's another one of those around.
11 MR. ROSENBLOOM: I think the battery's out. In any
12 event, maybe with your -- thank you very much.
13 Q Now, do we see an arm out in a horizontal
14 direction at that moment, what appears to be the
15 arm of an officer?
16 A Yes.
17 Q And that this --
18 THE COMMISSIONER: No, excuse me. Excuse me. What
19 frame are we at?
20 MR. LUNN: This is 3:39.
21 THE COMMISSIONER: Thank you.
22 MR. ROSENBLOOM:
23 Q All right. Now, at this moment, in terms of your
24 viewing of the frame, are you able to say whose
25 arm that might be?
26 A It looks like it will be either Corporal Robinson
27 or Constable Rundel's.
28 Q Fair enough. Now, do you recollect during this --
29 these moments, Constable (sic) Robinson's arm
30 coming out at that point?
31 A At the time I don't remember it.
32 Q No. Have you since recollected that in fact that
33 happened?
34 A No.
35 MR. ROSENBLOOM: No. If we can carry on a frame or two
36 more.
37 Q Do we not continue to see Mr. Dziekanski calm and
38 at his luggage?
39 A Yes.
40 Q Do we not see Constable (sic) Robinson's arm
41 angled even in a more horizontal direction?
42 A Yes.
43 Q I will agree with you that you can't see his
44 finger pointing, but does it not appear to you
45 that it is easy to interpret that at that point
46 one of those two officers is pointing in a
47 direction towards the counter?

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 A Yes, perhaps.
2 Q Perhaps? What else -- what other interpretation
3 would you make to that frame?
4 MR. BUTCHER: I'm going to object to that. I'm going
5 to object to that question because that's really
6 asking for speculation at this point.
7 THE COMMISSIONER: No, I'll allow the question.
8 A Again I can only speculate that he's pointing his
9 finger. I can't say for sure, because I can't see
10 his hand.
11 MR. ROSENBLOOM: All right. Let's continue with the
12 frames. A couple more frames.
13 Q You agree the arm is still extended?
14 A Yes.
15 MR. ROSENBLOOM: Okay. If we can carry on.
16 Let's stop there for a moment.
17 Q That appears to be where Mr. Dziekanski's sort of
18 a bit approaching his luggage, leaning towards his
19 luggage slightly?
20 A Yes.
21 MR. ROSENBLOOM: Okay, carry on.
22 Stop there. All right. And this frame,
23 frame number...?
24 MR. LUNN: This is 3:41.
25 MR. ROSENBLOOM:
26 Q 3:41. We have Mr. Dziekanski shrugging, as I
27 described it, with his arms up in the air?
28 A Yes.
29 MR. ROSENBLOOM: And then what do we see happening
30 next? Let's carry on with the frames. And at
31 this point, I'm sorry, I apologize -- well, sorry,
32 yes, back up two, please.
33 Q A little difficult, but you do still see the frame
34 of -- excuse me, the arm of one of the two
35 officers in an outright, although not totally
36 horizontal position?
37 A It's not horizontal, but you do see the arm.
38 Q Yes. And it is -- it's certainly angled up in the
39 air, out in the air -- excuse me, poorly put. You
40 see the arm certainly reached out?
41 A It's away from his body.
42 MR. ROSENBLOOM: Yes. Carry on.
43 Stop, please.
44 Q Now, do you see an arm of an unidentified police
45 officer now, and I'm pointing to what appears to
46 be an officer's shirtsleeve?
47 A Yes, I see that.

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

- 1 Q Yes. And is it not likely that that is the same
2 arm as the individual's that we saw in the earlier
3 frames with the arm out, pointed?
4 A Yes, it appears that way.
5 MR. ROSENBLOOM: Yes, carry on, two frames.
6 Do we not continue to see -- this is frame
7 number...?
8 MR. LUNN: 3:42.
9 MR. ROSENBLOOM: 3:42
10 Q Do we not continue to see the arm out?
11 A Yes.
12 Q In a pointed manner?
13 A Yes.
14 MR. ROSENBLOOM: Carry on a few frames.
15 Okay. Let's stop there for a moment. Frame
16 number?
17 MR. LUNN: Same, still at 3:42.
18 MR. ROSENBLOOM: Okay.
19 Q You would agree with me, Officer, as we make the
20 observation now, not only is the arm out close to
21 horizontal to the ground, but the finger is
22 pointed. Do you see one finger pointed, what
23 appears maybe to be the index finger?
24 A Yes.
25 MR. ROSENBLOOM: Yes. Now, let's stop there for a
26 moment.
27 Q Do you have any recollection of any of this
28 happening in your presence that day?
29 A Are you referring to the finger pointing, or...
30 Q To one officer's arm pointed and outright.
31 A No.
32 Q This is your first observation of what I'm drawing
33 to your attention?
34 A I observed it when I first saws the video and I
35 remember hand gestures being made, but
36 specifically as to Corporal Robinson pointing his
37 finger on the night of, I don't recall that.
38 Q Does it surprise you to observe what you're now
39 seeing?
40 A Not really, no.
41 MR. ROSENBLOOM: No, it doesn't? All right. I'll
42 carry on with that questioning a little later. If
43 you can carry on with the frames.
44 All right, stop for a moment.
45 Q There continues to be that outright arm with the
46 finger pointing, but we can't tell whose arm it
47 is, can we?

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

- 1 A No.
- 2 Q It's pretty obvious it's one of two officers,
3 correct?
- 4 A Yes.
- 5 MR. ROSENBLROOM: Okay. Carry on, let's -- to maybe one
6 or two more. Thank you.
7 Now, stop there for a moment.
- 8 Q Does it become obvious that the arm in question is
9 that of Corporal Robinson?
- 10 A Yes.
- 11 MR. ROSENBLROOM: Yes. Then just in slow motion to the
12 finale.
13 All right. Stop for a second.
- 14 Q Does it not appear that Corporal Robinson
15 continues to have his arm outright as we approach
16 -- excuse me, as you officers approach the
17 counter, and that would be frame number...?
- 18 MR. LUNN: This is 3:44 now.
- 19 MR. ROSENBLROOM: 3:44.
- 20 Q Do you agree?
- 21 A I'm sorry, can you repeat the question?
- 22 Q Yes. Do you agree that from your observation of
23 slide 3:43 -- sorry?
- 24 MR. LUNN: 44.
- 25 MR. ROSENBLROOM:
26 Q 3:44, that Corporal Robinson appears to still have
27 his arm outright?
- 28 A Yes, that's correct.
- 29 Q As if pointing?
- 30 A Yes.
- 31 MR. ROSENBLROOM: Yes. Just carry on, thank you.
32 Thank you.
- 33 Q Now, having made these observations today, do you
34 join me in agreeing that Constable (sic) Robinson
35 appeared to have pointed his -- taken his arm and
36 pointed in the direction of the counter before Mr.
37 Dziekanski turned around and left his luggage?
- 38 A No.
- 39 Q You don't. I took you through an earlier sequence
40 of frames of the footage, and I thought you did
41 acknowledge that you observed Constable Robinson's
42 arm outright at a stage before Mr. Dziekanski made
43 his move away from the luggage.
- 44 A What I observed was that his arm was outright
45 initially and then it was lowered, not right to
46 his body, but it was -- it wasn't horizontal
47 originally. And that's when Dziekanski made his

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 movement away, and that's when Robinson re-raised
2 his arm out to point. So it's unclear to me
3 whether he was -- what he was doing at that time.
4 Q Officer, are you suggesting in your viewing of the
5 earlier frames when we see an officer, it turns
6 out to be Corporal Robinson, with his arm
7 outright, that he was doing something other than
8 pointing in the direction of the counter?
9 A No, I believe he was pointing. I don't know if it
10 was at the counter or not, but what I'm saying is
11 I don't know if he was pointing at the time that
12 Dziekanski made his movement away from us, because
13 his arm was lowered.
14 Q I'm sorry, I'm having trouble with your testimony,
15 and maybe I'm the only one in this room having
16 trouble with it. But I want to ensure that
17 everyone understands your testimony. I took you
18 through the early frames of this sequence, and you
19 saw the arm, I believe, you testified that you saw
20 the arm outright, although you can't see the wrist
21 and hand of the officer in question, correct?
22 A Yes.
23 Q And it was in a pretty upright, or what I'll call
24 perpendicular angle, correct?
25 A Yes.
26 THE COMMISSIONER: Horizontal.
27 MR. ROSENBLOOM: Pardon me?
28 THE COMMISSIONER: Horizontal.
29 MR. ROSENBLOOM: Oh, it's horizontal. Excuse me, not
30 perpendicular, horizontal.
31 Q Now, at that moment do you -- can you tell me what
32 comes to your mind as any possible purpose that
33 Constable Robinson would have to having such a
34 posture, other than to be pointing somewhere?
35 A I don't know of any other purpose.
36 Q Okay. And that being the case, would you agree
37 with me that it is clear from this video that
38 prior to Mr. Dziekanski leaving his luggage --
39 leaving his suitcases and turning around, that
40 clearly an officer, who turned out to be Corporal
41 Robinson, did indeed direct him to that counter?
42 A To me it's speculative, because like I mentioned
43 earlier, his arm was horizontal initially, then it
44 moved down to his side, and then it moved back up.
45 Q Oh, does it move back -- down to his side?
46 A Well, not right down to his side, but it moves
47 down. So whether he's pointing the entire time, I

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 can't see because of the camera angle.
2 Q Well, Officer, in looking at this, and I invite
3 you to do it again in slow motion, would you agree
4 with me that what appears to be an arm outright at
5 a parallel direction or angle, that there is a
6 slight movement down, but that it continues to be
7 in a fairly horizontal posture throughout the
8 frames leading up to the counter?
9 A I don't believe so. If we want to go back to the
10 frame and revisit it, we could.
11 Q And would you do so, and would you please tell the
12 operator to stop the video where you think there
13 is a significant change in direction of the arm.
14 A Sure, if we could do that in slow motion, please.
15 Stop.
16 Q And what do you believe we see now?
17 A Well, from the angle of his arm and his shoulder,
18 it looks like he's pointing to the ground or to
19 the luggage.
20 Q Now, I have trouble with that. Where do you see
21 that? Maybe with your pointer...
22 A I see the top of his arm right --
23 Q Yes.
24 A -- I see the top of his arm right there
25 (indicating).
26 Q Yes.
27 A And the bottom of his arm right there
28 (indicating).
29 Q Yes.
30 A So to speculate as to where his arm is pointing,
31 it's pointing down as either to the ground or to
32 the luggage, to point to the desk. To me it would
33 have to be over here, more horizontal. That's
34 what I'm speculating.
35 Q Let's carry on with a few more frames.
36 A Sure.
37 You see, his arm is even lower at this point.
38 Can you stop it there, please.
39 Q Are you -- with your pointer, why don't you show.
40 A The top of his arm is right there (indicating).
41 The bottom of his arm is there (indicating).
42 Q All right.
43 A So he's pointing down to the luggage, if I was to
44 speculate.
45 Q Fine, carry on.
46 A And now it's being raised as he walks away and
47 throws up his arms.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 MR. ROSENBLOOM: And what, if we can stop at this
2 frame, which is frame number...?

3 MR. LUNN: This is 3:42.

4 MR. ROSENBLOOM:

5 Q How do you interpret what Corporal Robinson is
6 doing in pointing towards the counter at that
7 moment?

8 A I interpret him as giving him an order, or using
9 body language or pointing to direct him somewhere.

10 Q Precisely. Giving him an order. And the order is
11 for him to move to the counter, do you not agree?

12 A The order is to move to the counter after he's --
13 I perceive it as him ordering him over to the
14 counter after he's thrown up his arms and walked
15 away from us.

16 Q Well, but he's complying with the order. You
17 testified that the order is to move over to the
18 counter. Has he complied with that order?

19 A I'm uncertain whether he's complied with that
20 order because his behaviour, to me, changed before
21 Corporal Robinson directed his arm to the counter.
22 So from what I'm seeing, Corporal Robinson is
23 reacting to Dziekanski's behaviour.

24 Q Constable, I'm asking --

25 THE COMMISSIONER: Is this a -- is this a good time to
26 break for lunch?

27 MR. ROSENBLOOM: Any time, thank you.

28

29 (VIDEO STOPPED)

30

31 THE REGISTRAR: The hearing is now adjourned until 2:00
32 p.m.

33 MR. HIRA: Or is it till 1:30?

34 THE COMMISSIONER: Yes, 1:30, sorry.

35 THE REGISTRAR: I'm sorry, to 1:30.

36

37 (WITNESS STOOD DOWN)

38

39 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

40 (PROCEEDINGS RECONVENED)

41

42 THE REGISTRAR: Order. This hearing is now resumed.

43

44 CST. BILL BENTLEY, a witness,
45 recalled.

46

47 MR. ROSENBLOOM: Thank you.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
2 GOVERNMENT OF POLAND, continuing:
3

4 Q Officer, over the lunch hour, did you discuss your
5 evidence with anybody?

6 A (Microphone off). No, I did not.

7 Q Thank you. Now --

8 A (Microphone turned on). Okay, thanks.

9 Q Now, you had the opportunity, after this incident,
10 during the later morning hours of the 14th of
11 October, to discuss the event with the -- your
12 fellow officers who had attended at the scene?

13 A Are you referring when we went back to the sub-
14 detachment or --

15 Q You went back to the sub-detachment and you
16 gathered there, awaiting the investigators from
17 IHIT?

18 A Yes.

19 Q And you discussed the events that had transpired
20 that -- during that incident?

21 A I don't -- there was some discussion, as to what,
22 I don't recall.

23 Q Are you suggesting to me, Officer, that today you
24 have no memory of what you discussed with your
25 fellow officers before IHIT arrived?

26 A Yes.

27 Q You have no memory?

28 A All I -- all I can say I remember is when our
29 member rep, Corporal Mike Ingles, attended, there
30 was discussion as to what's called a duty to
31 account, which I'm not familiar with, as well as
32 providing statements. That's what I remember.

33 Q Well, the staff representative was presumably
34 informing you of the processes that you would be
35 facing as there had been an in-custody death?

36 A Yes.

37 Q All right. But are you telling us, today, that
38 you have no memory of you and your fellow officers
39 at the sub-detachment before IHIT arrived and
40 before the staff representative arrived, of
41 discussing the events that had just transpired and
42 each officer's version of those events?

43 A Yes, that's what I'm saying, I don't remember.

44 Q Now, you're saying you don't remember the details
45 of a conversation or you don't remember whether
46 there was even any discussion among the officers
47 about the events that had transpired?

- 1 A I'm saying I don't remember if there was any
2 discussion with fellow offers (sic) -- officers
3 about the events that transpired.
- 4 Q All right. Now, at any time up to today, in fact,
5 have any of the other officers informed you that
6 there was a command given by Corporal Robinson for
7 Mr. Dziekanski to move over to the counter?
- 8 A No.
- 9 Q Have you ever discussed the events of that day
10 with Corporal Robinson after the 14th of October?
- 11 A There's been discussion about the incident, more
12 about our emotions surrounding the incident after
13 the fact. In terms of our involvement, there
14 hasn't been discussion.
- 15 Q So let me make myself very clear. Is it your
16 testimony that since leaving YVR's terminal and
17 heading back to the sub-detachment, you have no
18 memory of ever discussing with Corporal Robinson
19 the events in question and comparing your version
20 against his version?
- 21 A What I do remember is we did have what's referred
22 to as a critical incident debrief, where we all
23 told our version of the events that transpired
24 that evening.
- 25 Q All right. Before going down to that nook and
26 cranny, can I assume that that process you're
27 speaking of was not with legal counsel present?
- 28 A Yes.
- 29 Q Was -- the answer is -- was --
- 30 A Sorry, pardon me. There was no legal counsel
31 present.
- 32 Q I'm very interested in that process. When did
33 that take place and who was present?
- 34 A I don't remember the date. I believe -- it was
35 several weeks after the incident. I don't
36 remember the date.
- 37 Q All right. Was it on only one occasion?
- 38 A Yes.
- 39 Q And who was assembled for that meeting?
- 40 A There was us four members. There as a force --
41 force psychologist. There was Corporal Nikki
42 Basra, I believe she's a MEAP Rep. There was
43 another corporal from the traffic section of
44 Richmond. His name -- I forget his name. Those
45 are all the members I can remember being present.
- 46 Q All right. Now, during that meeting, and let's
47 nail down approximately when did that meeting take

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 place. Did you say about two weeks after?

2 A I believe it was longer. It might have been after
3 the video was aired, but I can't nail down a date,
4 I'm sorry.

5 Q And is it your testimony that that is the only
6 occasion that you recollect where you and Corporal
7 Robinson compared notes, for want of a better
8 term?

9 MR. BUTCHER: I'm going to object to that term, because
10 there's certainly no suggestion that they compared
11 notes.

12 MR. ROSENBLOOM: Well, I didn't use the term "notes" as
13 in the notepad.

14 Q Is it the only occasion that you recollect where
15 you and Corporal Robinson compared your versions
16 of the events of the night in question?

17 MR. HARRIS: Well, I'm going to object to that. The
18 fact that they -- the fact that two people may be
19 in a room talking about an incident they
20 experienced does not automatically lead that
21 there's a comparison going on, and I think the
22 characterization from my friend carries with it a
23 stench of some sort of wrongdoing, and in my
24 respectful submission it's wrong to put it in
25 those -- frame it in that context without any
26 underlying support.

27 MR. HIRA: I think with a little bit more skill, Mr.
28 Rosenbloom may be able to get to where he wants
29 to. I just think he's got to lay a little bit
30 more groundwork before he adds adjectives to his
31 questions.

32 THE COMMISSIONER: I'm sure Mr. Rosenberg (sic) will
33 take that into account.

34 MR. ROSENBLOOM:

35 Q (Microphone off). Constable, in terms of the
36 meeting in question -- (microphone turned on).
37 I'm sorry. In terms of the meeting in question,
38 you've informed us who was in attendance.

39 A Yes.

40 Q During that meeting, was there a discussion among
41 your fellow officers as to their respective
42 version of events?

43 A Everyone gave their version of the events. There
44 was no discussion amongst members, they just told
45 their side of the story. That was it.

46 Q And in the course of listening to your fellow
47 officers provide their version of events, was

1 there a, at any time, the belief by you that there
2 were errors being made in terms of your version?
3 A No.
4 Q At any time during this meeting in question, did
5 you learn from any of the three other officers
6 that there had been a command given by Corporal
7 Robinson for Mr. Dziekanski to move over to the
8 counter?
9 A I don't recall.
10 Q Isn't it something that, had it been said, it
11 would be likely you'd remember today?
12 A Not necessarily.
13 Q It's a significant fact, isn't it, Officer?
14 A Well, a lot of things happened in such a short
15 amount of time. Everyone has their own version of
16 events, so it's hard to remember everything.
17 Q Did you learn anything new at that meeting that
18 you didn't already know about the events of that
19 night by listening to your fellow officers?
20 A No.
21 Q And is it your testimony that other than this
22 meeting that we've just spoken about, you had no
23 other communication with Corporal Robinson since
24 the 14th of October regarding the night in
25 question?
26 A Yes.
27 Q You're saying in the affirmative, you had no other
28 communication?
29 A As I mentioned earlier, we've talked about the
30 night. However, it's more surrounding our
31 wellbeing and our feeling; it's not in regards to
32 our actions or involvement in what took place.
33 Q All right. So it is your testimony that other
34 than the meeting that took place as you described,
35 of the officers present with staff representative
36 and so on, you have no recollection of any other
37 discussions with Corporal Robinson of a
38 substantive nature relating to the events of the
39 night?
40 A Yes, that is my evidence.
41 Q And is that the same -- would you give the same
42 answer if I asked you about the two other officers
43 involved?
44 A Yes.
45 Q You had no communication with them?
46 A Yes.
47 Q If we can just focus for another moment on the

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 moments where Mr. Dziekanski moves away from the
2 luggage towards the counter. If, indeed, he was
3 ordered by Corporal Robinson to head over to the
4 counter, would you not agree with me that his body
5 language of shrugging, as I put it, with arms up
6 in the air, would be clearly interpreted as an act
7 of resignation and compliance?
8 A Could you repeat the question, please.
9 Q If, indeed, Corporal Robinson did order Mr.
10 Dziekanski over to the counter, would you not
11 interpret Mr. Dziekanski's body posture of
12 shrugging, putting his arms up in the air and
13 walking away as being an act of compliance and
14 cooperation?
15 MR. BUTCHER: I'm going to object to that because,
16 again, it's asking for speculation.
17 THE COMMISSIONER: No, it's not asking for speculation.
18 I think he should go ahead.
19 A Perhaps.
20 MR. ROSENBLROOM:
21 Q Perhaps? Perhaps not?
22 A I just think it's open for interpretation. It
23 could be read that way. I can't give a definitive
24 yes.
25 Q Well, officer, this is a precious time for all of
26 us, including you. It affords you the opportunity
27 to inform us what other possible interpretation
28 could be given to that gesture in the context of a
29 command or order to go over to the counter.
30 A I don't know.
31 Q You don't?
32 A No.
33 Q So I assume you have no other interpretation to
34 provide?
35 A No.
36 Q You don't?
37 A No.
38 Q All right. You said, yesterday, in your testimony
39 - and please correct me if I have in any way
40 misstated your evidence - that as you arrived at
41 the airport and you observed the debris on the
42 ground, that you had, in your opinion, reasonable
43 and probable grounds for arrest; was that your
44 testimony?
45 A After the subject of complaint had been pointed
46 out to me and I saw the debris on the ground, I
47 believe I had reasonable and probable grounds to

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- 1 make an arrest.
- 2 Q Okay. something I've always been very curious
- 3 about with this incident, when you did arrive in
- 4 the presence of Mr. Dziekanski with your fellow
- 5 officers, you've already testified that he was
- 6 calm; correct?
- 7 A Yes.
- 8 Q Why didn't you arrest him at that moment?
- 9 A Well, that's something where you usually like to
- 10 speak with someone, have a chance to sort of build
- 11 that rapport and gather further information and
- 12 insight, if possible, before you make that arrest.
- 13 Q Were you, in your opinion, building rapport during
- 14 that moment?
- 15 A We were trying to, yes, or I was trying to.
- 16 Q How were you trying to?
- 17 A Well, when I initially greeted him, I was trying
- 18 to spark up a conversation to lead to perhaps
- 19 other conversation.
- 20 Q Was it important for you to build up rapport at
- 21 the point where you had reasonable and probable
- 22 grounds to arrest?
- 23 A It wasn't important to me. To me, he was
- 24 arrestable. I just like to be a little more
- 25 diplomatic in the way I do my policing.
- 26 Q You'd agree with me that had you chosen to cause
- 27 an arrest at that moment that it would have been
- 28 extremely easy to do with a compliant subject?
- 29 A If he stayed compliant, yes.
- 30 Q Yes. And he was compliant as he was in your
- 31 presence around the luggage?
- 32 A When we initially greeted him and -- yes. Yes,
- 33 that's a fair statement.
- 34 Q We then have heard testimony about the first
- 35 incident of deploying the Taser. Is it your
- 36 testimony that you were aware during these moments
- 37 that there was a second Tasing?
- 38 A Yes, I was aware -- I was aware there was a second
- 39 Tasing.
- 40 Q And you were aware of that fact because you heard
- 41 the second deployment?
- 42 A I was aware of that fact because I heard Corporal
- 43 Robinson say, "Hit him again," and I guess I made
- 44 the assumption that a second Tasing was
- 45 launched.
- 46 Q Do you recollect the instant when the second
- 47 Tasing took place and where Mr. Dziekanski was

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

- 1 positioned?
- 2 A My recollection -- my recollection at the time was
3 that the second Tasering was when he was standing
4 up. However, after watching the video, I believe
5 the second Tasering was when he was on the ground.
- 6 Q Yesterday, Officer, in my cross-examination of
7 your colleague, Constable Rundel, evidence was put
8 before the inquiry that the first cycle of
9 deployment of the Taser was six seconds. You
10 don't have reason to dispute that, do you?
- 11 A No, I don't.
- 12 Q And further, during that cross-examination, the
13 operator of the video was able to provide the
14 Commission with the six-second sequence from the
15 moment of Tasering to the lapse of six seconds.
16 If I informed you that that -- that video
17 presentation yesterday showed that Mr. Dziekanski
18 was on the ground at the conclusion of six
19 seconds, that wouldn't surprise you now, would it?
- 20 A No.
- 21 Q And so you would join me in agreeing that, with
22 review of the video, a second Tasering took place
23 when Mr. Dziekanski had already collapsed to the
24 ground?
- 25 A Yes.
- 26 Q And you've already testified that you were in
27 error, previously, with some of your IHIT
28 interviews about the fact that Mr. Dziekanski
29 didn't require you officers to bring him to the
30 ground, he collapsed on his own?
- 31 A Yes.
- 32 Q And as he collapsed on his own, it was pretty
33 obvious that he had lost voluntary control of his
34 body, obviously?
- 35 A Yes.
- 36 Q And so you would agree with me, would you not,
37 sir, from your observation, that if in fact it is
38 correct that the second Tasering took place when
39 he already failed to the ground, the second
40 Tasering was not necessary?
- 41 A Can you repeat the question, please.
- 42 Q Yes. Would you agree with me that if it is
43 correct that this second Tasering took place after
44 he fell to the ground, then the second Tasering
45 was unnecessary?
- 46 A Yes, perhaps.
- 47 Q Just perhaps?

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1 A When I watch -- when I remember the incident and I
2 replay it in my mind, I remember Corporal Robinson
3 saying, "Hit him again." From my memory, I
4 remember Dziekanski still standing at the time.
5 I'm just wondering if it took time from the
6 command to the second Tasering -- I'm wondering if
7 it took time from the command before the second
8 Tasering occurred where the officer -- when the
9 officer started the Tasering Dziekanski had
10 already fallen to the ground. I don't know if I'm
11 making sense there.

12 Q Well, Officer, the fact is, is it not, that on the
13 instant of the first Tasering it is obvious that
14 Mr. Dziekanski has lost physical control of his
15 body and is in the state of collapse; do you
16 agree?

17 A Yes.

18 Q Do you agree then, sir, that your evidence that
19 you have given at this inquiry and the evidence
20 that you gave by way of statement to IHIT, that he
21 was "fighting through it" or "trying to fight
22 through it" is the expression I believe you used,
23 is totally erroneous?

24 A I don't believe that's erroneous.

25 Q Well, okay, let me invite you to clarify the
26 situation. You did use the term "fighting through
27 it"; correct?

28 A Yes.

29 Q Now, I'm not experienced in these matters, but I
30 assume "fighting through it" means that while
31 being Tasered you are trying to overcome the
32 effects of 50,000 volts into your body and that
33 you're going to come out in a combative way; is
34 that what you mean by --

35 THE COMMISSIONER: Not 50,000 volts in his body.

36 MR. ROSENBLoom: Fifty thousand volts delivered towards
37 his body.

38 THE COMMISSIONER: All right.

39 MR. ROSENBLoom: Thank you.

40 A Repeat the question, please.

41 Q Yes, thank you. I'm suggesting to you that -- is
42 it your suggestion, I should say, is it your
43 suggestion that while Mr. Dziekanski -- after Mr.
44 Dziekanski was Tasered on the first instance,
45 there is any obvious observation you can make
46 that, in fact, he was doing anything of a
47 voluntary nature?

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1 A What do you mean by "voluntary nature"?

2 Q Meaning that he had some control of the
3 musculature of his body from that moment on.

4 A I don't know whether he had any voluntary control
5 over his body, but it was the expression on his
6 face as well as the screaming and the way he did
7 it that made me believe he was trying to fight
8 through it.

9 Q I have such trouble with this, I'm sorry.

10 MR. BUTCHER: I'm going to ask my friend to kindly
11 refrain from commentary about this.

12 THE COMMISSIONER: "I'm having trouble with this"?
13 That's pretty ordinary.

14 MR. BUTCHER: Well, with respect, my friend is
15 editorializing as he's going through.

16 THE COMMISSIONER: Oh, I'm against you, I'm afraid.

17 MR. ROSENBLOOM:

18 Q I am inviting you to join me in agreeing that from
19 the moment of the application or deployment of the
20 Taser it was obvious Mr. Dziekanski was affected
21 by the Taser and was on his way down?

22 A It's my belief that he was affected by the Taser,
23 that he was fighting through -- trying to fight
24 through the effects of the Taser, however, the
25 effects of the Taser caused him to fall to the
26 ground.

27 Q Well, I don't want to spend all day on this, but
28 when you say he was fighting through or attempting
29 to fight through it, at no time did you believe
30 that, in fact, he was going to successfully fight
31 through it, did you?

32 A Perhaps.

33 Q During those six seconds?

34 A Yes.

35 Q What observation did you make of him during those
36 six seconds to cause you to conclude that there
37 was a possibility he would actually succeed?

38 A Again, because of the screaming he was making, the
39 expression on his face and the fact that I had
40 just gone through my Taser training, I had been
41 Tasered myself and had seen many of my coworkers
42 fight through it, or at least try to fight through
43 it, so I could -- I could see that in him.

44 Q Is screaming an act of -- or an incident of
45 fighting through something, or is screaming the
46 result of the pain inflicted by the application of
47 the Taser?

- 1 A Well, it could be both. It's how you interpret
2 it.
- 3 Q Now, you became -- you knew, at the time, there
4 had been the second Taserings, you've testified to
5 that?
- 6 A Yes.
- 7 Q Did you, at any time, become aware of a third,
8 fourth or fifth attempted Taserings prior to the
9 proceedings of the last few days?
- 10 A No, I was only aware of the other Taserings when
11 Crown released their statement.
- 12 Q Right. Did that come as a surprise to you?
- 13 A It came as a surprise because I was under the
14 belief that he was only Tasered two times.
- 15 Q Yeah. And at no time, up until the Crown made
16 their announcement in December, I believe the 12th
17 of last year, did any of your fellow officers
18 inform you of those facts?
- 19 A Not that I can recall.
- 20 Q You spoke a few minutes ago about having been
21 Tasered yourself.
- 22 A Yes.
- 23 Q Were you ever Tasered twice on the same incident
24 in the same moment?
- 25 A No.
- 26 Q Were you ever Tasered more than once?
- 27 A No.
- 28 Q During the course that was given by, I believe it
29 was, a fellow officer, a Corporal of the Richmond
30 detachment; have I got that right?
- 31 A That's right.
- 32 Q Yes. Did he ever demonstrate on one of the fellow
33 officers a multiple Taserings?
- 34 A No.
- 35 Q Did you learn during that course as to whether
36 there was any consequences, medically, to a
37 multiple Taserings?
- 38 A My understanding is that a multiple Taserings may
39 be hazardous and should be avoided unless
40 situational factors dictate otherwise.
- 41 Q That's interesting. I wonder if you could explore
42 -- expand on that answer. What do you recollect
43 from your training of the Taser course, which was
44 a three-day course? I forget.
- 45 A It was a two-day course.
- 46 Q Two-day course. What do you recollect as to the
47 instruction of the medical consequences of

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1 multiple Taserings?

2 A I don't recall the consequences.

3 Q So you don't recollect your instructor informing
4 you that it was inadvisable to do a second
5 Taserings, that it was even more inadvisable to do
6 a third or a fourth or a fifth Taserings during the
7 same incident?

8 A I recollect being taught that it should be
9 avoided. As to the medical consequences, I don't
10 recall.

11 Q Did the instructor ever explain to you why it
12 should be avoided?

13 A He might have, but I don't recall.

14 Q And so you are informing me, are you, that on the
15 day in question, the 14th of October, from your
16 instruction, you knew it would be inadvisable for
17 multiple Taserings, but you did not ever get
18 instructed about the medical consequences of it;
19 is that correct?

20 A I'm not saying I didn't get instructed. I'm
21 saying I don't recall.

22 Q The RCMP OM Policy, under Deployment - I hope I'm
23 referring correctly to the document - I believe
24 that Mr. Sikorsky taught, and it was referred to
25 by my learned friend in his cross-examination this
26 morning. Do you know what I'm referring to?

27 A Yes.

28 Q And in that document, would you agree with me, at
29 page, that it reads, under Deployment Conducted
30 Energy Weapon:

31
32 Multiple deployment or continuous cycling of
33 the CEW may be hazardous to a subject.
34 Unless situational factors dictate otherwise,
35 do not cycle the CEW repeatedly not more than
36 15 to 20 seconds at a time against a subject.
37

38 This was the course you took, was it not?

39 A Yes.

40 Q And so presumably you went into the incident on
41 the 14th of October knowing that that was the
42 directive in the handbook?

43 A Yes.

44 Q During the course, was it ever discussed what kind
45 of medical consequences might take place if a
46 person did experience multiple Taserings?

47 A I don't recall.

1 Q In terms of officers being Tasered for training
2 purposes, have you ever heard of any officer of
3 the RCMP being Tasered on three or four or five
4 occasions?

5 A No.

6 Q When you had pinned Mr. Dziekanski to the ground
7 and you were attempting to secure him in
8 handcuffs, did you ever observe Constable
9 Millington come up to the Dziekanski -- to Mr.
10 Dziekanski and do the push stun mode on him?

11 A No.

12 Q Can you explain why you would not observe -- have
13 observed that when you were right present at Mr.
14 Dziekanski during those moments?

15 A Because I was focusing on my task, which was to
16 try and get Mr. Dziekanski in restraints.

17 Q Yes. In the information tendered yesterday
18 through my cross-examination of Constable Rundel
19 about downloading time of the Taser, I believe the
20 documents show that the third, fourth and --
21 excuse me, second -- excuse me, third, fourth and
22 fifth attempted Taser has accumulative time of, I
23 believe, 21 seconds. Now, assuming that I don't
24 mislead you with the evidence of yesterday, how is
25 it possible that over a 21-second period you did
26 not observe Constable Millington with the push
27 stun mode of application of the Taser?

28 MR. HIRA: The difficulty with the question is that
29 perhaps the groundwork hasn't been laid. He would
30 need to first establish through this witness that
31 this was being applied in push stun mode and then
32 proceed on from there.

33 THE COMMISSIONER: Yeah, I agree with you that so far
34 we don't know what mode it was in for the
35 Tasing. We do have the first, probably the
36 second, but not the rest.

37 MR. ROSENBLOOM: That being the case:

38 Q Officer, if there is evidence tendered after you
39 leave the hearing that the third, fourth and fifth
40 application of the Taser was in the push stun
41 mode, do you have any explanation as to why you
42 would not have observed that being done?

43 A Again, because I was focused on my task.

44 Q At any time, Officer, did you observe Corporal
45 Robinson with his knee down imposed on the neck of
46 Mr. Dziekanski?

47 A No.

- 1 Q And is the answer, "No," throughout your
2 observations of the Corporal he did not do it, or,
3 "No," you don't remember?
4 A No, I did not observe it.
5 Q Now, I want to move into an other area which
6 relates to the medical side of this incident. You
7 told us you had a first-aid course, Level 1?
8 A Yes, basic.
9 Q And that included CPR training?
10 A Yes.
11 Q Ever done a CPR?
12 A In the field?
13 Q In the field.
14 A No.
15 Q Ever done it in class?
16 A On a dummy subject, yes.
17 Q Before you -- or at the time that you joined the
18 sub-detachment, which I believe was only a month
19 before this incident; correct?
20 A Yes.
21 Q Yes. During those first couple weeks, were you
22 given an orientation program about the airport,
23 its rooms, its medical facilities?
24 A We were given an orientation for one day. A lot
25 of things were shown to us. As to where the
26 medical facilities are, if that's where you're
27 getting at, I don't recall.
28 Q Okay. Let me deal with it step by step. Firstly,
29 in terms of that orientation, were you given some
30 kind of sensitivity course about the fact that you
31 would be encountering the general public and that
32 some of that -- some of those individuals would be
33 foreigners who didn't speak English?
34 A During this airport course?
35 Q Yes, when you were at the airport and were
36 introduced to your fellow officers and given some
37 kind of orientation?
38 A No.
39 Q In terms of the medical side, were you informed
40 about the emergency rescue services that the
41 airport provided, what's known as ERS?
42 A I wasn't really familiar with it, per se. I knew
43 there was identifiable people that were first-aid
44 responders at the airport, but that's pretty much
45 what I knew.
46 Q And you knew them to be firemen?
47 A Not firemen. I believe there's actually specific

1 people that weren't firemen that were first-
2 aid/CPR trained.

3 Q I see. I know nothing about that. Tell me more
4 about what you knew about it. Are these first
5 responders that work out of the ERS office?

6 A I believe so, yes.

7 Q I see. So it was your understanding that there
8 were firemen and there were people with a higher
9 level of first response medical training?

10 A Yes.

11 Q And were you provided with information about how
12 to contact that office in the event of an
13 emergency?

14 A No. My understanding would be that we would go
15 through either YVR operations or dispatch.
16 They're kind of the middlemen for most things.

17 Q Were you informed, on your orientation, as to the
18 location of the defibrillators at the airport?

19 A I don't remember.

20 Q You don't remember. So is it your testimony that
21 on the night in question of the 14th of October,
22 you have no memory whether you knew where the
23 defibrillators were located?

24 A On that night I had no idea where they were
25 located.

26 Q But did you know there were defibrillators at the
27 airport?

28 A No, I did not.

29 Q I'm not in any way wanting to embarrass you, but
30 did you know, on the 14th of October, the purpose
31 of a defibrillator?

32 A It's for the purposes of CPR, to my understanding,
33 to help resuscitate somebody.

34 Q Did you get informed, during orientation, as to
35 the location of oxygen support?

36 A No.

37 Q Did you, during orientation, get informed about
38 the location of airbags and masks?

39 A I don't recall.

40 Q I believe you mentioned yesterday that in the
41 trunk of the police cruisers are first-aid boxes;
42 did I understand that correctly?

43 A Yes.

44 Q And without wanting to take up an awful lot of
45 time, very briefly, what does one find in these
46 boxes?

47 A I've never opened one in the vehicle. They're

- 1 small first-aid boxes. Assuming they would have
2 medical supplies.
- 3 Q All right. Did any of the officers bring one of
4 those boxes into the presence of Mr. Dziekanski,
5 that you recall?
- 6 A No.
- 7 Q All right. Now, you've testified that shortly
8 after being handcuffed Mr. Dziekanski appeared to
9 become unconscious?
- 10 A Yes.
- 11 Q And you also observed a discolouration of his
12 skin, he turned blue in his face; correct?
- 13 A Yes.
- 14 Q And did you know that condition to be described as
15 cyanosis?
- 16 A No.
- 17 Q All right. But through your first-aid training,
18 you knew there was significance to that
19 observation, didn't you?
- 20 A I knew something was wrong. As to what, I don't
21 know.
- 22 Q Well, you knew something was wrong. Were you
23 instructed in first-aid or do you recollect being
24 instructed in first-aid that to observe the
25 discolouration of skin to a blue colour was a
26 serious medical matter?
- 27 A I knew it was a serious medical matter.
- 28 Q You were taught, were you not, that it spoke to an
29 oxygen deficiency in the blood system?
- 30 A Yes.
- 31 Q And you were taught, were you not, that on such an
32 observation one had to be to the highest level of
33 prudence in attending to that patient, or patient
34 or subject?
- 35 A Yes.
- 36 Q Yes. And you were taught that with such an
37 observation the individual in question was under
38 medical distress?
- 39 A Yes.
- 40 Q Yes. And because you made that observation of the
41 discolouration of skin, you phoned back to the
42 dispatcher to upgrade your first call for an
43 ambulance to a Code 3 call; correct?
- 44 A That's correct.
- 45 Q Because you were concerned, at that point, having
46 made the observations you made?
- 47 A Yes.

- 1 Q Yes. And having made those observations, having
2 called for Code 3, did you, at that moment, and
3 when first response came by way of the fire
4 department, have any communication with your
5 fellow officers regarding your observations?
6 A I don't recall.
7 Q You don't recall. Officer, you were concerned at
8 that moment about the medical state of Mr.
9 Dziekanski, weren't you?
10 A Yes.
11 Q In fact, you were very concerned about it at that
12 point, weren't you?
13 A I was concerned, yes.
14 Q Well, you were so concerned that you initiated a
15 Code 3 call through dispatch?
16 A Yes.
17 Q Did you, at any time, inform your fellow officers
18 that Mr. Dziekanski was turning blue?
19 A I don't remembers specifically telling them.
20 Q Now, you also spoke of his breathing. You would
21 agree with me, as you've described the breathing
22 in response to questions asked by my learned
23 friends, that the breathing was laboured
24 breathing, wasn't it?
25 A You could call it that, yes.
26 Q Now, having put two and two together, that there
27 was discolouration of the skin to a bluish colour,
28 there was a state of unconsciousness, and there
29 was laboured breathing, having observed those
30 three indicators, what did you conclude regarding
31 Mr. Dziekanski's condition?
32 A I concluded that there was a medical emergency,
33 that he appeared to be in -- I concluded that
34 something was wrong.
35 Q Well, it's a little more than something was wrong.
36 Would you not agree with me that the man's life
37 was imperilled at that moment based upon your
38 observations?
39 A I didn't -- I didn't think his life was in peril.
40 I knew he was in medical -- I knew something was
41 wrong, but I didn't think there was -- he was in
42 peril.
43 Q Well, in terms of something wrong, it wasn't a --
44 that something wrong was something of great
45 significance to you, wasn't it?
46 A I was very concerned, yes.
47 Q It was a very, very serious matter at that point,

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- 1 wasn't it?
- 2 A Yes.
- 3 Q and I'm speaking of the moments after handcuffing,
4 soon after handcuffing, when you've called
5 dispatch for a Code 3.
- 6 A Yes.
- 7 Q Now, you have testified, and I'm happy to lead you
8 to your statements given during the 14th of
9 October and then subsequent statements, but maybe
10 we can speed it up. You have said in -- you've
11 stated in your statements to IHIT, that you were
12 concerned that maybe this man was acting when he
13 became unconscious. Now, if you feel that I'm
14 misleading what was your testimony in the
15 statements and what you've already said in
16 testimony today, I'm happy to put those statements
17 to you.
- 18 A No, I remember saying that.
- 19 Q Yes. And having said that, Officer, I'm troubled
20 how one could have possibly come to the conclusion
21 that Mr. Dziekanski might have been acting it out
22 when you observed a discolouration of skin to
23 blue, how could that possibly be part of an acting
24 out of a state of unconsciousness?
- 25 A What you just said there is incorrect. When he
26 initially went unconscious I thought that perhaps,
27 the back of my mind, it might be an act. When his
28 skin started turning blue I didn't think it was an
29 act.
- 30 Q Well, you have testified that he got handcuffed,
31 and if I heard your testimony correctly, it was
32 very shortly after being handcuffed that you
33 observed the bluish colour. In fact, I think you
34 testified to that this morning.
- 35 A Yes.
- 36 Q Shortly after being what, a matter of 15 seconds,
37 30 seconds?
- 38 A Yes.
- 39 Q All right. So you gave statements to the IHIT
40 people. In fact, you've testified here that you
41 were concerned that maybe he was acting it out.
- 42 A That's before he turned blue.
- 43 Q Oh, so you are saying during a period of only 15
44 to 30 seconds did you believe that he was maybe
45 acting it out?
- 46 A Yes.
- 47 Q Okay, can you just give me a moment, please.

1 A Sure.

2 Q Would you agree with me in the statements given to
3 IHIT that you never suggested that your concern
4 about him acting was just for a matter of 30
5 seconds?

6 A Sorry, can you repeat the question, please.

7 Q Yes. Would you agree with me, in the statements
8 that you provided to IHIT that at no time did you
9 suggest that your concern about him acting was
10 limited to the first 30 seconds of the -- after
11 handcuffing?

12 A I was never asked.

13 Q So it's your testimony here that for maybe 15 or
14 30 seconds you thought he might be acting out --
15 or acting up -- or acting out, I should say, and
16 then from that moment on you realized, having
17 observed his discolouration, that this was a
18 serious matter and that, indeed, he was truly
19 unconscious?

20 A Yeah, I think the timeline is even shorter. From
21 going over my evidence, I think the first or
22 second call is 12 seconds, so I only made that
23 inference with maybe the first five to 10 seconds
24 that he was unconscious that I thought he was
25 acting.

26 Q You've testified that you left the area where Mr.
27 Dziekanski was located at a point in time, and
28 went off to do other tasks in the reception area?

29 A Yes.

30 Q Officer, did it occur to you that it didn't make a
31 great deal of sense to be looking for evidence
32 regarding an act of public mischief when you had
33 an individual in the medical state that you
34 observed?

35 A I don't feel that it didn't make sense.

36 Q Why is that? You do concede, do you not, that the
37 man was in a state of serious medical distress
38 when you made those observations?

39 A Yes.

40 Q Why, in that situation, would you then feel it
41 incumbent upon yourself to leave the individual
42 that is in the state of medical distress to start
43 interviewing witnesses about an incident of public
44 mischief?

45 A The other members were around Dziekanski, as well
46 as the YVR -- gentleman from YVR operations. I
47 felt there was enough people that were more than

1 capable of monitoring and looking after
2 Dziekanski. I never for a second thought that he
3 would later become deceased.

4 Q Well, you knew, from your first-aid course, that
5 the observations you made that night were the
6 precursor or could be the precursor of cardiac
7 arrest?

8 A Yes.

9 Q And so understanding that, you also knew, from
10 your first-aid background, that if there was an
11 incident of cardiac arrest, there was a very
12 limited window of opportunity to resuscitate an
13 individual and bring them to life?

14 A Yes.

15 Q Yes. And you knew that time was, therefore, of
16 the essence?

17 A Yes.

18 Q And you knew, from your training, that in a
19 circumstance where an individual went into cardiac
20 arrest, you had maybe five to six minutes for that
21 window to provide the first medical response with
22 CPR to avoid either brain damage or death?

23 A I didn't recall the timeline. I knew there was a
24 window, but in terms of the timeline I didn't
25 recall.

26 Q Well, let's try to narrow it down. Did you know
27 that -- did you believe that window to be anything
28 more than five or six minutes?

29 A No.

30 Q So knowing that fact and seeing what you observed,
31 did you not anticipate that there was a likelihood
32 that this man would require serious medical
33 attention?

34 A Repeat the question, please.

35 Q Okay, I'll actually do it in another way. Would
36 you agree with me, having made the observations
37 you made, that there was reason to anticipate that
38 this man might well require CPR and other
39 emergency medical care?

40 A Yes.

41 Q And knowing that, or concluding that, did you not
42 also recognize that you cannot - or I suggest to
43 you - you cannot carry out CPR with a man who is
44 handcuffed behind his back?

45 A Can you repeat that again, please.

46 Q Yes. Did you not also know, at that time, that
47 one cannot carry out CPR on an individual when

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

- 1 handcuffs remain on their arms behind their back?
2 A I didn't know that.
3 Q Are you telling us, today, from your CPR course,
4 that you can imagine being able to carry out the
5 CPR procedure with handcuffs behind their back?
6 A To me that's not an ideals situation, but I wasn't
7 aware that the handcuffs had to be removed.
8 Q Okay.
9 A Ideally, they should be removed.
10 Q Fair enough. So knowing ideally that they should
11 be removed and knowing what you knew of this man's
12 medical distress, why did you not initiate the
13 removal of his handcuffs in anticipation of what
14 might happen?
15 A I guess because he continued to breath heavily and
16 I -- I suspected that his condition might improve.
17 Q Suspected that it might improve?
18 A Yes.
19 Q And suspected that it might not improve?
20 A Perhaps.
21 Q And in a situation of life and death, doesn't one
22 always want to side on the arm of prudence?
23 A You should, when you can.
24 Q And you've already informed me that time was of
25 the essence or could be of the essence, if he went
26 into cardiac arrest?
27 A Yes.
28 Q You knew that you had updated the call with
29 emergency services to Code 3?
30 A Yes.
31 Q You knew that, I assume from experience, that EHS,
32 when they arrived, would want to do an assessment?
33 A Yes.
34 Q You knew that the proper posture for assessment
35 was to have him on his back?
36 A Yes.
37 Q You knew that in the event of cardiac arrest, CPR
38 would be initiated?
39 A Yes.
40 Q You knew that defibrillators might be necessary?
41 A Yes.
42 Q You never called the YVR staff or anyone else at
43 that airport that evening to go and get a
44 defibrillator and have it ready?
45 A Well, there was a YVR staff member right beside
46 me.
47 Q Right. And so did you turn to him and say, "Sir,

1 would you please run off and get a defibrillator?
2 I'm not concerned -- I'm concerned about what I'm
3 observing"?

4 A I didn't do that, no.

5 Q Why?

6 A I recognized him as being someone in YVR Ops
7 Management and I assumed that he would take the
8 initiative and perhaps call the first-aid
9 responders from the airport.

10 Q Perhaps?

11 A Yes.

12 Q But you're the one person that at least took the
13 initiative by phoning your dispatch to upgrade to
14 Code 3. Didn't you feel you had a continuing
15 responsibility to at least make everybody
16 answerable to get the proper tools at the site in
17 the event that the man went into cardiac arrest?

18 A Repeat the question, please.

19 Q Yes. Having taken the initiative to upgrade the
20 call to Code 3, didn't you feel it appropriate
21 that you made the other individuals around you
22 answerable by asking whether things were being
23 done that you felt were appropriately -- or should
24 appropriately be taken at that point?

25 A I guess because I was the most junior officer I
26 thought that would be an initiative perhaps they
27 would take upon them -- amongst themselves.

28 Q Meaning Corporal Robinson?

29 A Corporal Robinson or the YVR Ops gentleman.

30 Q But you never spoke to them in that respect?

31 A I don't remember speaking to them, no.

32 Q Were you surprised at that time that there wasn't
33 more activity going on in terms of bringing the
34 tools of the trade to that site so that everyone
35 could be prepared for a possible downturn in his
36 condition?

37 A I've called for Code 3 on many situations and the
38 ambulance always arrives very quickly. I guess I
39 made an assumption that it wouldn't take the
40 ambulance as long as it did to arrive there.

41 Q Right. But in the course of waiting of the
42 ambulance, had Mr. Dziekanski had his handcuffs
43 removed and flipped over to his back, would you
44 agree that that would have been more favourable to
45 his long-term -- to his long-term medical
46 condition?

47 MR. BUTCHER: Well, I'm going to object to that -- I'm

1 going to object to that question, because we're
2 heading into an area of medical expertise rather
3 than the officer's knowledge, with respect.
4 THE COMMISSIONER: No, I think we're talking about
5 common sense here. I'll allow the question.
6 A I guess that would be an ideal situation, yes.
7 MR. ROSENBLOOM: Yes.
8 Q And you have witnessed first response and
9 emergency attendants provide care where they strip
10 the clothing off the front of the body?
11 A Repeat the question.
12 Q You have observed, through your policing,
13 probably, emergency personnel attending at a scene
14 and removing very quickly towards CPR by placing
15 the subject on his back and stripping the front of
16 the clothing so they can get access to the chest?
17 A I haven't seen that out in the field, no.
18 Q No? But you knew that to be common, did you not,
19 from life's experience?
20 A Yes.
21 Q Yes. And furthermore, I believe you've testified
22 that Mr. Dziekanski, during this time, was in a
23 recovery position; is that correct?
24 A Minus the hands being above the head.
25 Q Yes, other than that. In other words, he wasn't
26 flat with his tummy flat to the ground?
27 A Yes.
28 Q Okay. I'm instructed that if I venture into
29 dangerous territory here my friends will jump on
30 me if I'm in error because I haven't been here for
31 the -- throughout the hearing, that there's
32 testimony before this proceeding by Richmond Fire
33 First Response, that, in fact, they did not find
34 him in the recovery position but, rather, his
35 tummy flat to the ground?
36 MR. BUTCHER: Well, that may be, but the evidence is
37 that this witness had left the scene probably
38 about eight minutes before Richmond Fire arrived
39 on the scene, and so I'm not sure if he can give
40 any evidence about what happened between that time
41 and the time of Richmond Fire arriving, other than
42 what was seen in -- other than what he might have
43 seen when he took the photographs.
44 Q Well, to the extent I agree with my learned
45 friend, I'm not asking you for what was his
46 posture when you were absent from the scene, of
47 course not.

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Cross-exam by Mr. Rosenbloom (for Government of Poland)

1 A Mm-hmm.

2 Q I'm asking you when you observed Mr. Dziekanski
3 leading up to you leaving the area before Richmond
4 Fire arrived, was Mr. Dziekanski flat on his
5 tummy?

6 A No.

7 Q So if there is evidence before this Commission by
8 Richmond Fire that they found him flat -- his
9 tummy flat to the ground, you can't explain that,
10 obviously?

11 A No.

12 Q All right. Now, there is evidence before this
13 inquiry, and again, I venture into dangerous
14 territory because I was not present for this
15 testimony, but I believe there's testimony before
16 this inquiry that Richmond Fire and Rescue arrived
17 at the scene, requested of your fellow officers to
18 have the handcuffs removed and that they were
19 refused that request. Are you aware of that
20 testimony?

21 A Yes.

22 Q Were you surprised to hear about that testimony?

23 THE COMMISSIONER: I don't know how helpful this is.

24 MR. ROSENBLUM: Point taken, thank you.

25 Q Had you been present when Richmond Fire arrived
26 and had you been requested to remove those
27 handcuffs, would you have done so, unless ordered
28 otherwise by your superior?

29 A I guess it would depend on my assessment of
30 Dziekanski at the time.

31 Q Well, I'm speaking of your assessment of Mr.
32 Dziekanski at the time you last observed him.

33 A I probably would have removed them.

34 Q And you would have removed them?

35 A Probably.

36 Q Why only probably? What possibly could have
37 caused you to do otherwise?

38 A I guess if there's any indicators that he might
39 awaken or come to.

40 Q But we've gone way past that, Officer. You did
41 continue to observe a discolouration and you've
42 testified that at no time did that change; is that
43 correct?

44 A That's correct.

45 Q So accepting your evidence, is there -- could
46 there possibly have been any reason why you would
47 have refused to remove the handcuffs?

1 A No, I don't think so.

2 Q You state in your interviewed with IHIT that you
3 observed Constable (sic) Robinson continuing to
4 take pulse; is that right?

5 A That's actually incorrect.

6 Q Yes, but you did state that, did you not?

7 A Yes.

8 Q Yes. And it's incorrect to what extent? How do
9 you want to recant on that?

10 A It's actually -- when I refer to him taking the
11 pulse, I actually meant the YVR operations
12 gentleman. It wasn't Corporal Robinson.

13 Q And am I right that you've testified that you only
14 observed the YVR gentleman do it on one occasion?

15 A Yes.

16 Q Do you or did you know of the training and first-
17 aid that the YVR employees brought with them on
18 that evening?

19 A No.

20 Q So why were you in any way relying in part on
21 their assessment of the situation?

22 A I guess my assumption was, working at an airport,
23 standard first-aid and CPR would be a requirement,
24 so they would at least have the same level that I
25 do, if not higher.

26 Q Did you at any point turn to this YVR gentleman,
27 or anyone else for that matter, and ask that the
28 Airport Emergency Services be called and attend?
29 You surely knew they were closer.

30 A I never asked.

31 Q You knew they would be closer?

32 A I didn't know if -- I didn't know their -- I
33 didn't know their location.

34 Q But, Constable, you surely knew they were at the
35 airport, did you not?

36 A I knew they were at the airport, yes.

37 Q And you knew that it was unlikely that the
38 ambulance or, for that matter, Richmond Fire,
39 would be at the airport?

40 A Yes.

41 Q And so knowing that, surely did you not recognize
42 that it was likely that there'd be faster medical
43 response by having -- inviting the Airport First
44 Response Team to the scene?

45 A That's not something I thought of at the time.

46 Q This morning you were questioned, I believe by Mr.
47 Kosteckyj and maybe others, why you didn't spend a

1 little time interviewing some of the witnesses to
2 the event before moving in to the scene where Mr.
3 Dziekanski was standing. You did walk by security
4 officers in yellow uniforms, when you walked into
5 the secured area, as you were walking into the
6 secured area?
7 A Yes.
8 Q You saw them there?
9 A Yes.
10 Q Now, talking about reliability of evidence, did it
11 cross your mind, as you were approaching this
12 scene and seeing Mr. Dziekanski there, to at least
13 speak to the security officer who was standing so
14 close to the scene?
15 A Again, I thought it was important to deal with the
16 subject of complaint first. We could always go
17 back to security and gather more information if
18 necessary.
19 Q Gather more information? The only information you
20 had were the dispatch tickets; correct?
21 A Yes.
22 Q And you didn't feel it advisable to be updated by
23 having even a 10-second conversation with the
24 security officer who was right there to observe?
25 A Again, I thought it was important to deal with the
26 subject of complaint before speaking to security.
27 Q I want to go back for a moment to the medical, if
28 you don't mind. You did not check his pulse;
29 correct?
30 A That's correct.
31 Q You did not check his airwaves?
32 A That's correct.
33 Q You did not carry out the pain stimulus procedure
34 you spoke about?
35 A That's correct.
36 Q Do you recall any of your fellow officers doing
37 any of that? And I'm speaking of fellow officers,
38 not YVR.
39 A I don't recall them -- any of them doing that.
40 Q So you don't recall any of your fellow officers
41 checking the airwaves of the ABC of rescue?
42 A No.
43 Q And you were trained in first-aid that where a
44 person is unconscious there is a concern that a
45 tongue can obstruct the air passage at the throat?
46 A Yes.
47 Q And you would agree with me, would you not, that

1 it would be appropriate in these circumstances to
2 actually check the airwaves to determine whether
3 indeed there might be suffocation by the tongue?
4 A Because I heard him breathing loudly and seeing
5 his chest cavity moving up and down, I didn't feel
6 it was necessary to check his breathing for
7 obstruction.
8 Q Well, his breathing was laboured breathing;
9 correct?
10 A Yes.
11 Q So laboured breathing means not normal breathing.
12 A I thought it was normal under the circumstances,
13 that he -- as he had just resisted us handcuffing
14 him for over a minute.
15 Q But it -- there -- did you hear any snoring?
16 A I didn't recognize it as snoring. To me it was
17 breathing. No, I didn't hear snoring.
18 Q This heavy breathing carried on throughout the
19 time of your observation?
20 A Yes.
21 Q Did you consider it advisable to at least check
22 the airwaves?
23 A Again, I didn't think it was necessary, so I
24 didn't.
25 Q Now, you speak of observing Mr. Dziekanski's
26 chest; correct?
27 A Yes.
28 Q I have trouble understanding this, so I want you
29 to explain it for me. He's lying on his tummy, on
30 his stomach?
31 A On his stomach? He's not lying on his stomach.
32 Q Well, where you're doing these observations of
33 him, he's lying face down.
34 A He's on his side.
35 Q On his side, because of the recovery position.
36 And so as he lies on his side, he's wearing
37 clothing?
38 A Yes.
39 Q Are you seriously suggesting that with clothing
40 that he was wearing you could observe movement of
41 the chest?
42 A Yes.
43 Q would it not have been more prudent to take off
44 his shirt and coat that he was wearing that night,
45 to make that observation?
46 A If I needed to make that observation, but I could,
47 like I said, see his chest moving up and down.

Cst. Bill Bentley

Cross-exam by Mr. Rosenbloom (for Government of Poland)

Cross-exam by Mr. Butcher (for Cst. Bentley)(cont'd)

1 Q Now, I asked you previously whether you observed
2 any of your fellow officers carrying out an airway
3 check, pain stimulus check, breathing and so on
4 and you said, "No." Did you ever observe this YVR
5 employee doing any of those interventions other
6 than the pulse check?

7 A No.

8 Q Lastly, Constable, faced with the video footage,
9 will you now acknowledge that you and your fellow
10 officers fell far short of prudent conduct in how
11 you handled this incident?

12 A No.

13 MR. ROSENBLROOM: Thank you.

14 THE COMMISSIONER: All right, we'll take a 10-minute
15 break.

16
17 (WITNESS STOOD DOWN)

18
19 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
20 (PROCEEDINGS RECONVENED)

21
22 THE REGISTRAR: Order. The hearing is now resumed.

23
24 CST. BILL BENTLEY, a witness
25 recalled.

26
27 MR. BUTCHER: Mr. Commissioner, I understand that
28 nobody else has questions and I have a few
29 questions in re-examination.

30 THE COMMISSIONER: All right.

31
32 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CST. BILL
33 BENTLEY, continuing:

34
35 Q The first is in this area, constable. You were
36 asked by Mr. Kosteckyj a number of questions that
37 suggested that you thought from the outset that
38 Mr. Dziekanski was going to be combative and
39 throughout this first interview described him only
40 as being combative to the investigators. Do you
41 remember that in Mr. Kosteckyj's examination?

42 A Yes.

43 Q Can I please take you to that first statement that
44 he was referring you to, and particularly to take
45 you to page 6 of your October 14th statement.

46 THE COMMISSIONER: I'm sorry, you're at Exhibit 50, are
47 you?

1 MR. BUTCHER: I'm sorry, I am not writing the exhibit
2 numbers down as fast as -- page 6.

3 Q This is a part of the statement that was not put
4 to you. About two-thirds of the way down the
5 page, you are describing your first involvement
6 with Mr. Dziekanski, and you tell the interviewing
7 officer this:

8
9 ...the door opened and uh, I forget what
10 member engaged him, I know it wasn't me, but
11 it's kind of like a, you know, what's going
12 on. ...

13
14 Trying to figure what the situation is,
15 and that's when he sort of backing up towards
16 the desk and then it looked like he was
17 looking for a, some sort of object and uh,
18 that's kind of when his demure changed from
19 being what just appeared to be normal to uh,
20 combative.

21
22 Q Have I read that correctly?

23 A Yes.

24 Q And from that we can see that you did tell the
25 investigators that Mr. Dziekanski was at first
26 what you described as normal and his demeanour
27 changed?

28 A Yes.

29 Q I'm not sure if this has been covered yet, but
30 Mr. Kosteckyj asked you some questions about the
31 RCMP medical assistance policy. Can you tell us
32 how long, how much time passed between the time
33 that you noticed Mr. Dziekanski was unconscious
34 and the time that you made the first call for EHS
35 assistance?

36 THE COMMISSIONER: I'm sorry, you mead Code 3, do you?

37 MR. BUTCHER: No, the first call for EHS assistance.

38 Q As I understand it, you were aware that he was
39 unconscious when you made the first call?

40 A Yes.

41 Q How much time passed between your learning of that
42 condition and the first call to EHS?

43 A As soon as I noticed he's unconscious, I called
44 for EHS. So whatever that -- maybe a second.

45 Q Would it be fair then to say that you sought
46 immediate medical assistance upon learning that?

47 THE COMMISSIONER: You're not supposed to be leading,

1 you know.

2 MR. BUTCHER:

3 Q I'll ask the question this way. Paragraph 2.3 of
4 the --

5 THE COMMISSIONER: The answer: "As soon as I noticed
6 he was unconscious."

7 MR. BUTCHER: I'm content with that.

8 Q Mr. Rosenbloom asked you about this critical
9 incident debriefing. Do you remember who it was
10 who called you to that meeting?

11 A I think it was arranged by the members' rep, Mike
12 Ingles, Cpl. Mike Ingles.

13 Q Do you have any understanding of the purpose of
14 that process, the critical incident debriefing?

15 A My understanding is it's more of a mental health
16 exercise to kind of tell your version of events
17 and let your emotions out.

18 Q You made mention of a person who had a role of
19 being a MEAP member or a MEAP person. Can you
20 tell us what that is?

21 A I believe there was two people that were MEAP
22 reps, Cpl. Nikki Basra and than another traffic
23 services corporal from Richmond. I can't remember
24 his name. The MEAP is, I believe -- it's an
25 acronym. I believe it stands for Member/Employee
26 Assistance Program and it's basically to -- it's a
27 program designed to help members with any personal
28 or professional problems they might be going
29 through.

30 Q Mr. Rosenbloom also asked you about whether or not
31 you communicated your observation about seeing the
32 change in skin colour in Mr. Dziekanski to the
33 other members. Can you please tell us who was
34 present when you made that observation and how far
35 away they were from Mr. Dziekanski.

36 A I remember Cpl. Robinson was directly in front of
37 me behind Dziekanski's back. So he's very close,
38 a couple of feet. The YVR Ops gentleman was
39 standing around his head, again a couple of feet
40 from me. I believe Cst. Rundel was around his
41 feet area, again a couple of feet from me. And I
42 don't remember Cst. Millington's position.

43 Q Are you trained to use a defibrillator or to use
44 oxygen?

45 A No.

46 MR. BUTCHER: Mr. Commissioner, I have one more area of
47 re-examination. Since the morning, we have

1 arranged for the stills to be printed from the
2 sequence of the events that were reviewed by Mr.
3 Rosenbloom with this witness when Cpl. Robinson is
4 pointing his arm. I've not had an opportunity --
5 I've not shown them to the witness. I've not
6 spoken to him about his evidence. I'm wondering
7 if I could be given leave to speak to the witness
8 about these photographs before leading -- asking
9 him a few questions about them.

10 THE COMMISSIONER: Anybody want to comment on that?

11 MR. ROSENBLUM: I object. Surely it's not proper in
12 re-examination to have the opportunity to discuss
13 with your witness or client testimony that he has
14 given. And so if my learned friend has
15 appropriate questions of re-examination, they can
16 be done by way of the sequence of frames that were
17 provided to the Commission on the screen.

18 MR. BUTCHER: What I was proposing was to ask the
19 witness, as I did with the other set of stills,
20 whether there were particular stills that would
21 assist him in describing what was happening during
22 those moments.

23 THE COMMISSIONER: I don't want to be too strict in
24 this, but firstly, I do not think that you should
25 be speaking to the constable before you ask the
26 questions.

27 MR. HARRIS: Sorry, Mr. Commissioner. I can't hear you
28 back here.

29 THE COMMISSIONER: I say firstly, I don't think you
30 should interview him once again before you ask
31 questions. Second of all, on the material upon
32 which you wish to ask the questions, this is
33 rebuttal or reply type evidence, and that being
34 so, it should indeed be a reply, which means to
35 say you should use the material that is afoot.
36 Now, whether or not that's practical and whether
37 or not it's fair, I think it is because the frames
38 can be stopped one at a time. So if you wish to
39 examine on the film as presented, go ahead, and it
40 can be stopped frame by frame.

41 MR. BUTCHER: Are you saying, Mr. Commissioner, that
42 the witness should not be permitted to see the
43 stills of the same frames? With respect, they're
44 much easier to identify for the record.

45 THE COMMISSIONER: Let me have a look at them.

46 MR. BUTCHER: Again what's happened is -- and I'm
47 thinking that the numbers -- you'll see these are

1 8, 9 and 10. I'm thinking but don't know that
2 that refers to each second of the part of the tape
3 that has been downloaded into this format. I
4 don't know if Commission counsel know that's what
5 those numbers refer to.

6 MR. MCGOWAN: I can't assist on that.

7 THE COMMISSIONER: I have to say that I think what we
8 saw on the screen is much clearer than this.

9 MR. BUTCHER: Then I'm not going to go to that area.

10 Those are my questions.

11 THE COMMISSIONER: Thank you very much. Just before
12 you say anything, I have actually one question I'd
13 like to ask. Constable, it was brought out
14 through the questioning that you heard of course
15 when you were responding to this call various
16 information and you told us about that. Now, one
17 of the things you were told was that the person
18 that was breaking the chair or table was
19 intoxicated. Do you remember that?

20 A Yes.

21 THE COMMISSIONER: Now, I understand you to have
22 described to us how at one point when you
23 approached Mr. Dziekanski you said certain things
24 to him, like "How are you, bud" or whatever those
25 words were.

26 A Yes.

27 THE COMMISSIONER: Were you close to him when that
28 occurred?

29 A When I was engaging him?

30 THE COMMISSIONER: Yes.

31 A Fairly close, yes.

32 THE COMMISSIONER: Were you able to smell any liquor on
33 his breath?

34 A No, I couldn't smell liquor on his breath.

35 THE COMMISSIONER: All right. Thank you. Go ahead.

36 MR. MCGOWAN: Yes, Mr. Commissioner. This is going to
37 be very brief. The first is perhaps just a
38 procedural matter. If I understood, there had
39 been an intention to mark the various statements
40 given by this officer and there were three of them
41 referred to but I think only two were marked.
42 Subject to any comments any of my friends have,
43 perhaps the third should be marked to complete the
44 set.

45 THE COMMISSIONER: We didn't mark the notes because
46 there were personal things in them and we marked
47 them for identification.

1 MR. MCGOWAN: Yes. No, I'm not concerned about that.
2 Perhaps Mr. Giles could assist with the dates of
3 the statements that were marked to this point.

4 THE REGISTRAR: Exhibit Number 50 is the statement of
5 October 14th and Exhibit Number 51 is October
6 18th. That's the only two exhibits that I have.

7 MR. MCGOWAN: Thank you. There's also a November 22nd
8 statement which I believe was referred to. So
9 perhaps I should pass up a copy of that and have
10 it marked subject to any comment.

11 THE COMMISSIONER: Yes, all right.
12

13 RE-EXAMINATION BY MR. MCGOWAN:
14

15 Q Officer, I just have a couple of brief questions
16 for you. I think I understood your evidence
17 correctly that on the night of the incident you
18 believed there to have been two Taser deployments;
19 is that right?

20 A Yes.

21 Q And I believe you told the Commissioner that the
22 first you heard that there were more than two
23 Taser deployments was at the time of the Crown
24 counsel press release when they announced their
25 charge approval decision; is that right?

26 A Yes.

27 Q Now, you told the Commissioner about a critical
28 incident debriefing you attended.

29 A Yes.

30 Q And all four of the officers were there, were
31 they?

32 A Yes.

33 Q And I think you told your counsel that it was an
34 opportunity for each of the officers to give their
35 version of events and I think you told Mr.
36 Rosenbloom that in fact each of the officers did
37 give a version of events. Did I hear you
38 correctly?

39 A Yes.

40 Q Tell me this, then, officer. At the critical
41 incident debriefing, did Cst. Millington when he
42 gave his version of events tell you that he
43 deployed the Taser two times or more than two
44 times on the evening with Mr. Dziekanski?

45 A I don't recall.

46 MR. MCGOWAN: Thank you.

47 A Thank you.

111
Cst. Bill Bentley
Re-exam by Mr. McGowan

1 THE COMMISSIONER: Mark that as the next exhibit.
2 THE REGISTRAR: The statement of November 22nd will be
3 marked as Exhibit Number 52.

4
5 EXHIBIT 52: Copy - Statement of Cst. Bill
6 Bentley taken November 22, 2007
7

8 MR. VERTLIEB: So, Mr. Commissioner, that brings us to
9 the end of the evidence for this week. There is
10 one matter that arose in the course of Mr.
11 Rosenbloom's discussion with the witness.

12 THE COMMISSIONER: Just a moment. Maybe we should
13 excuse the witness. Constable, thank you very
14 much for coming in --

15 A Thank you.

16 THE COMMISSIONER: -- and giving us assistance.
17

18 (WITNESS EXCUSED)
19

20 MR. VERTLIEB: There's been mention for the first time
21 in these proceedings of a critical incident
22 debriefing. This has not come to Commission
23 counsel's attention in any way prior to this
24 discussion between Mr. Rosenbloom and the witness.
25 And this is not in any way to cause any concern
26 towards my friends, Ms. Roberts and Mr. Brongers.
27 They've been very helpful and we are very
28 confident that they've given us the material they
29 have. But having now heard this, I'm going to ask
30 for immediate production of all information
31 relating to this debriefing. We want to know if
32 there are notes of this and how it was arranged
33 and what was said. It's the very first time that
34 reference to that has been made in any way in all
35 of the months leading up to us being here. So I
36 would ask that that be produced, and hopefully
37 that can be done within the next couple of days so
38 that when Officer Millington is here for Monday
39 morning, all counsel will have a chance to have
40 that material.

41 THE COMMISSIONER: Ms. Roberts, do you have any comment
42 to make?

43 MS. ROBERTS: We don't have any instructions on whether
44 to produce this material or not. In fact, I don't
45 know that there is material. But we'll certainly
46 make inquiries and get back to Mr. Vertlieb about
47 it.

1 THE COMMISSIONER: Well, thank you very much.

2 MR. BUTCHER: Mr. Commissioner, I have one other brief
3 matter. I've spoken to my friend, Mr. Rosenbloom,
4 about my application.

5 THE COMMISSIONER: Yes, indeed.

6 MR. BUTCHER: And as I understand it, Mr. Rosenbloom
7 will take no issue with the order going in from
8 this Commission in the form that I've sought, in
9 the form of the motion. Given his and my
10 understanding that it is a very limited order that
11 there be no transmission of any material, subject
12 to any further order of yourself or of a judge of
13 the Supreme Court after the Commission has --

14 THE COMMISSIONER: Let's just get it precisely, now.
15 I'm reading your notice of application. No
16 official transcripts. Now, you don't mean copies,
17 as I remember. So this is all official documents,
18 in other words the marked exhibits here. So
19 they're transcripts, video tapes, audio tapes or
20 other records of the Commission.

21 MR. BUTCHER: It's the original record of the audio
22 tapes, the certified transcripts prepared by the
23 reporting service, the exhibits. And I don't know
24 who owns the television tapes.

25 THE COMMISSIONER: Well, lot's of luck with that.

26 MR. BUTCHER: No, no. Not the television tapes
27 outside. But I don't know whether this is a
28 Commission --

29 THE COMMISSIONER: No, they're not a Commission. The
30 press were allowed in under the circumstances that
31 you see.

32 MR. BUTCHER: What I'm interested in, obviously, is the
33 prevention of the transmission of anything that
34 could be used in evidence as opposed to something
35 that could be used as news, if you understand the
36 difference.

37 THE COMMISSIONER: Well, I think my order -- and I'll
38 speak to Mr. Rosenbloom in a moment -- should be
39 limited to the documents marked as exhibits.

40 MR. BUTCHER: Well, with respect, it would be my
41 position that the certified court reporter's
42 transcripts are also part of the process of the
43 Commission that you have control over and have the
44 ability to --

45 THE COMMISSIONER: What do you say about that, Mr.
46 Rosenbloom?

47 MR. ROSENBLUM: I have no idea if the Commission has

1 control over the official transcripts, to be quite
2 frank.

3 THE COMMISSIONER: I'm wondering myself.

4 MR. ROSENBLUM: No idea. I think maybe the safest way
5 to do this -- my learned friend is correct that in
6 respect to my client, I've received instructions
7 generally to agree to the order. However,
8 firstly, it's not a matter of only my consent.
9 It's the interest of all parties. The fact that
10 my learned friend is concerned, as I gather, about
11 the transmission of evidence to my client, the
12 Government of Poland, I respect that. But
13 firstly, I think it requires obviously input and
14 consent from all counsel to this proceedings.

15 Secondly, to speed the process up, I suggest
16 that my learned friend draft the order as he feels
17 it appropriate. We will all look at it and speak
18 to it if there's any matter of concern. In fact
19 he can seek in his order that there be signature
20 of consent of all parties.

21 MR. BUTCHER: I'm certainly content to do that.

22 THE COMMISSIONER: Well, I appreciate that suggestion
23 and that will be -- I must say, counsel, that I'm
24 very pleased that we were able to handle this
25 whole matter, including today and yesterday's
26 evidence, in such an expedient manner. I take it,
27 then, ten o'clock on Monday?

28 MR. VERTLIEB: Yes, Mr. Commissioner. Thank you.

29 THE COMMISSIONER: Thank you very much.

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(PROCEEDINGS ADJOURNED TO MARCH 2, 2009, AT
10:00 A.M.)