

**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.

January 19, 2009

PROCEEDINGS AT
HEARING (DAY 1)

COPY

McEachern & Associates
2390 Kensington Avenue
Burnaby, B.C. V5B 4E2
Phone: (604) 299-3595; Fax: (604) 299-3545
Toll-free: 1-866-366-2202

**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.

January 19, 2009

**PROCEEDINGS AT
HEARING (DAY 1)**

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

(ii)

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

1
Opening remarks by the Commissioner

Vancouver, B.C.
January 19, 2009

1
2
3
4 THE REGISTRAR: The Braidwood Commission of Inquiry is
5 now open. Commissioner Braidwood is presiding.
6 Please be seated.

7 THE COMMISSIONER: Well, good morning, everybody, and
8 welcome to this hearing. My name, as you know, is
9 Thomas Braidwood and I am the sole Commissioner
10 appointed under the **B.C. Public Inquiries Act**.

11 With me today are my Commission Counsel, Art
12 Vertlieb, Q.C., and Associate Commission Counsel,
13 Patrick McGowan.

14 I expect that all of you and many people
15 indeed around the world have seen the video
16 recording of the incident at the International
17 Vancouver Airport in October of 2007, during which
18 an officer of the Royal Canadian Mounted Police
19 used a conducted energy weapon against Mr. Robert
20 Dziekanski, and he died within minutes.

21 Public reaction to the events at the airport
22 was immediate and intense. At a more general
23 level, concern was expressed about the deployment
24 and use of conducted energy weapons by policing
25 bodies within British Columbia.

26 In response to this public concern, the
27 Provincial Government through the offices of Wally
28 Oppal, the Attorney General, appointed me to
29 conduct two separate inquiries under the new
30 **Public Inquiries Act**.

31 The hearings that begin today will inquire
32 into and report on the death of Mr. Dziekanski.
33 My mandate has three aspects: to provide Mr.
34 Dziekanski's family and the public with a complete
35 record of the circumstances of and relating to his
36 death; next, to make a complete report of the
37 events and circumstances of and relating to Mr.
38 Dziekanski's death, but not limited to the actual
39 cause of death; and lastly, to make
40 recommendations that I consider to be necessary
41 and appropriate.

42 At this point I would like to pause
43 momentarily to speak directly to Mr. Dziekanski's
44 mother, Zofia Cisowski. It is significant that my
45 first mandate is to provide you and your family
46 with a complete record of the circumstances of and
47 relating to your son's death. As a parent I can

2
Opening remarks by the Commissioner

1 imagine nothing more terrible than losing a son or
2 a daughter. As we embark upon these solemn
3 hearings, may I express my profound condolences
4 for your loss. Please be assured that I and the
5 members of our Commission team will make every
6 effort to provide you with a complete record of
7 what happened that night in the hope that it will
8 assist you in finding some closure and peace.

9 The hearings that begin today are what
10 lawyers call evidentiary hearings. By that I mean
11 that witnesses will testify under oath or
12 affirmation as to the events at the airport, and
13 they will be subject to cross-examination by
14 counsel for individuals or agencies that I have
15 approved as official participants in these
16 proceedings.

17 While these hearings appear to be a trial, I
18 will make it very clear that this is not a trial.
19 No one is charged with any offence, and I am not
20 authorized to make findings of civil or criminal
21 liability. Having said that, the legislation
22 under which I operate does authorize me to make
23 findings of fact based on the evidence I hear and,
24 if appropriate, I may make findings of misconduct
25 against a person or make a report that alleges
26 misconduct by a person.

27 The other inquiry that I was appointed to
28 conduct instructed me to inquire into and report
29 on the use of conducted energy weapons by police
30 officers, sheriffs and provincial corrections
31 officers and to make recommendations on two
32 matters: the appropriate use of conducted energy
33 weapons by such persons in the performance of
34 their duties, and the appropriate training or
35 retraining of such persons in their use of
36 conducted energy weapons.

37 As many of you know, we conducted three weeks
38 of public hearings last May and June and our
39 Commission researchers conducted wide-ranging
40 studies into these matters. My report on that
41 aspect of the matter is nearing completion and I
42 hope to deliver it to the Attorney General in the
43 very near future.

44 I now invite Mr. Vertlieb, Commission Counsel
45 to indicate how he intends to proceed.
46
47

1 OPENING STATEMENT BY MR. VERTLIEB:

2
3 MR. VERTLIEB: Thank you very much, Mr. Commissioner.

4 What I would like to do at the outset is just
5 introduce the members that are here before you,
6 starting with Associate Counsel Patrick McGowan.
7 Behind Mr. McGowan is Dolores Holmes. Beside Ms.
8 Holmes is Jessica McKeachie, who has been
9 assisting us, as you know, with research, and Dr.
10 Leo Perra, the Executive Director of your
11 Commission team.

12 Now, moving, Mr. Commissioner, to the various
13 lawyers for the participants as ordered by you and
14 in no particular order, but let me just introduce
15 if I may, Mr. Commissioner, representing Mrs.
16 Cisowski is Walter Kosteckyj, and Mr. Kosteckyj is
17 with an assistant from his office, Sarah Whiteley,
18 and she is assisting him here today. Thank you,
19 Mr. Kosteckyj.

20 Mr. Commissioner, representing the Government
21 of Canada, my colleague, Jan Brongers, and Ms.
22 Helen Roberts. Mr. Brongers will focus more on
23 the members of the Canadian Border Services
24 Agency, which is the Customs/Immigration side, and
25 Ms. Roberts will be dealing more with the members
26 of the Royal Canadian Mounted Police.

27 Next representing Corporal Robinson, Corporal
28 Benjamin Robinson, our colleague, Mr. Reg Harris.
29 Mr. Harris is for Corporal Robinson.

30 Next, for Constable Kwesi Millington is Ravi
31 Hira, Q.C., and with Mr. Hira is Brendan Morley.
32 Thank you.

33 Next, representing Constable Bill Bentley is
34 Mr. David Butcher. Mr. Butcher, thank you.

35 And next representing Constable Gerry Rundel
36 is Mr. Ted Beaubier, a colleague of ours from
37 Nanaimo. Thank you.

38 Now, representing the Vancouver Airport
39 Authority is Mr. Dwight Stewart, and with Mr.
40 Stewart is Ms. Cherisse Friesen. And Mr. Stewart
41 and Ms. Friesen will look after the Airport
42 Authority throughout the conduct of these
43 proceedings.

44 Next, Mr. Commissioner, on behalf of the
45 Public Service Alliance of Canada, or PSAC as they
46 are often called, is Mr. Chris Buchanan and with
47 him is Mr. Brett Matthews, and these two gentlemen

1 will be dealing with the employees, some of the
2 employees of the Canadian Border Services Agency,
3 as members of that union.

4 Next representing TASER International, Inc.
5 is Mr. David Neave and with Mr. Neave is Ms.
6 Jennifer Spencer, and you may recall Mr. Neave and
7 Ms. Spencer because they were often before you
8 when you were doing your earlier hearings.

9 Next is on behalf of the Government of Poland
10 Mr. Donald Rosenbloom. Mr. Rosenbloom is here
11 today and will be visiting with you at differing
12 points in the proceedings on behalf of the
13 Government of Poland. Thank you.

14 Next for the City of Richmond is Mr. James
15 Goulden. Mr. Goulden is here next to counsel, and
16 with Mr. Goulden is Michael Kleisinger, and also
17 Mr. Geoffrey Trotter. Thank you. Now, we say the
18 City of Richmond, but their interest is for the
19 Richmond Fire Department, which is of course part
20 of the City of Richmond, thank you.

21 And then finally representing the B.C. Civil
22 Liberties Association is Ms. Grace Pastine, and
23 with her is Sara Dubinsky who is articulated with Ms.
24 Pastine.

25 That, Mr. Commissioner, introduces the
26 counsel and the parties representing the
27 participants according to orders that you have
28 made granting participants status.

29 Now, before getting into the evidence, I wish
30 to make the following comment to you, Mr.
31 Commissioner.

32 As Commission Counsel, I speak for myself and
33 my colleague, Mr. McGowan, in saying that we will
34 do everything possible to get to the truth and to
35 bring you the evidence necessary to assist you in
36 your important task. I can assure you that I will
37 approach this in a truly independent and non-
38 adversarial way, keeping in mind that the most
39 important objective is to do everything possible
40 to get to the truth surrounding these events.

41 I recognize that in some circumstances it may
42 be necessary to conduct a thorough examination of
43 some of the witnesses that will be coming here
44 before you. I also recognize, Mr. Commissioner,
45 that it may even be necessary to cross-examine
46 some of the witnesses, but it will always be with
47 a view to ensure that we help you to get to the

1 truth surrounding these events. We are therefore
2 not on any side of this event, and we will do
3 everything possible to ensure the smooth flow of
4 the evidence in the proceeding.

5 In serving you in this way, we want you to
6 know that we have had the complete cooperation of
7 all of our colleagues, and there has been a very
8 good atmosphere of cooperation and respect shown
9 by all the members of the legal teams assembled
10 here before you. For this we are appreciative and
11 we do thank all of our colleagues.

12 In dealing with the areas of evidence, we
13 have, Mr. Commissioner, wherever possible
14 attempted to accommodate the schedules of the
15 various witnesses to cause as little disruption as
16 possible, recognizing that people have come here
17 out of their lives and in a voluntary cooperative
18 way. Obviously we can't in every way accommodate
19 the individual needs, but we will do our best
20 throughout.

21 With that being said, Mr. Commissioner, I
22 would like to tell you the areas of evidence that
23 we will be focusing on during the next number of
24 weeks, and this will not be a comprehensive
25 review, it will simply be to outline some of the
26 significant and anticipated areas of evidence.

27 Now, the first area will be that relating to
28 the two flights that Mr. Dziekanski took. First
29 from Katowitz in Poland to Frankfurt, that was a
30 short flight on a Boeing 737, a smaller plane.
31 That flight was about an hour and a half, that's
32 all. And the second flight is the lengthy flight,
33 Frankfurt to Vancouver, and that flight was on
34 Condor Airlines and that was about a ten-and-a-
35 half hour flight.

36 The evidence relating to these two flights
37 will be brief, and because of the logistics
38 involved, two of the witnesses will be
39 teleconferenced from Germany after the first
40 witness, Ms. Hewer, who is here today to speak to
41 you.

42 Now, the second area of evidence that we will
43 cover will deal with Mr. Dziekanski from his
44 arrival in the Customs Hall to the time he left
45 the Customs Hall. And this, Mr. Commissioner, is
46 a timeframe of approximately 4:00 p.m. on the 13th
47 of October, to approximately 12:45 a.m. on the

1 14th. Now, the plane lands about 3:30 and it's
2 about four o'clock that Mr. Dziekanski is actually
3 down in the Customs Hall after getting off the
4 plane.

5 The area of evidence that you will hear then
6 in that timeframe relates principally to Canadian
7 Border Services Agency employees, and that will
8 deal with employees on the Customs side and on the
9 Immigration side. We have had the benefit of
10 interviewing many of the employees who had
11 dealings with Mr. Dziekanski, either by speaking
12 with him or observing him or helping him in some
13 way as he was going through the process of Customs
14 and Immigration, keeping in mind that he had
15 already received permission to come to Canada and
16 become a resident here.

17 With that evidence we have camera footage
18 taken by the Canadian Border Services Agency, and
19 I want to just tell you that the amount of that
20 video has been pared down by the CBSA employees.
21 What they did at the outset is they went to their
22 cameras and took evidence where they saw Mr.
23 Dziekanski, and that evidence will be put before
24 you. That's the best evidence that is available
25 during the timeframe that he was actually inside
26 the Customs area. We will call a member of that
27 agency to tell you about what he did in terms of
28 video and we will play that for you.

29 Now, during the same timeframe, and now we
30 are talking 4:00 p.m. to 12:45 a.m., we are going
31 to lead evidence about dealings that people had
32 with Mrs. Cisowski and a gentleman named
33 Hutchinson from Kamloops, who drove Mrs. Cisowski
34 to Vancouver, and their interaction with people at
35 the airport as airport hosts and also Canadian
36 Border Services Agency employees. So during the
37 timeframe 4:00 p.m. into the evening there were
38 attempts by Mrs. Cisowski and Mr. Hutchinson to
39 find out the location of Mr. Dziekanski, and we
40 will have evidence of people who dealt with those
41 two individuals during that timeframe. So that's
42 the section of evidence that's about 4:00 in the
43 afternoon to approximately 12:45 a.m.

44 Now, the next area of evidence that we're
45 going to deal with is the timeframe from Mr.
46 Dziekanski's leaving Customs Hall up to and
47 including the arrival of the RCMP and their

1 interaction with him. That part of the case will
2 deal with eyewitnesses who saw him and dealt with
3 him, who will be people such as Securiguard
4 employees, people who are at the airport to simply
5 meet others, and this will be an area of evidence
6 of about 30 to 45 minutes. And this will be the
7 people that would include Mr. Pritchard with the
8 video, who will be coming by affidavit evidence.
9 But that will be a section of the evidence before
10 you. That will include evidence of when he was in
11 what's called the International Reception Lounge,
12 where he would be still behind doors that had a
13 level of security, and including time when Mr.
14 Dziekanski was actually out in the meet-and-greet
15 area, which is a totally unsecured area. There
16 will also be, as I mentioned, Securiguard and
17 eyewitness evidence. There will be some employees
18 of another airline, Horizon Air, who made
19 observations. These are people totally
20 unaffiliated with any of the participants here
21 today.

22 Now, the next area of evidence will be the
23 evidence of the RCMP officers who were involved in
24 the incident with Mr. Dziekanski, and that will be
25 the four RCMP officers you've heard about earlier
26 as participants.

27 The next area will be the post-tasering
28 medical response. So this will be the area of
29 evidence that deals with what the RCMP did after
30 Mr. Dziekanski was tasered. It will deal with
31 what the YVR employees did in terms of dealing
32 with this gentleman. It will include evidence
33 from the Richmond Fire Department who were the
34 first responders to actually come to Mr.
35 Dziekanski, and shortly after the B.C. Ambulance
36 Service personnel arrived, and they will tell you
37 what they did and their observations.

38 The next area of evidence will be the RCMP
39 initial response and subsequent investigation
40 following the death of Mr. Dziekanski, and this is
41 the area that will deal with the investigation to
42 collect exhibit evidence, interviews taken, and
43 their dissemination of information to the
44 community about what transpired. Those are the
45 first six areas.

46 I wish to move now to area number seven,
47 which will be expert evidence relating to the

1 death and circumstances surrounding the death of
2 Mr. Dziekanski, and this would be from independent
3 experts.

4 UNIDENTIFIED SPEAKER: (Inaudible - off microphone).

5 THE COMMISSIONER: You can discuss this later with Mr.
6 Vertlieb.

7 UNIDENTIFIED SPEAKER: Thank you, Mr. Commissioner.

8 MR. VERTLIEB: Thank you, Mr. Commissioner, happy to do
9 so.

10 Then the final area that we would propose to
11 cover before you is the post-incident equipment
12 and personnel modifications, and this is to allow
13 participants to explain to you what they have done
14 as a consequence of the tragic events that took
15 place at the Vancouver Airport. And we will
16 anticipate you will hear certainly from the YVR
17 organization about the numerous changes they've
18 made, and any other changes that any of the other
19 parties wish to discuss consequent upon this
20 event.

21 Now, I just wish to touch upon the order of
22 examination, which is tentative, because we still
23 need to deal with some of this. But the approach
24 will be as follows: Commission counsel, either
25 myself or Mr. McGowan, will take the witness
26 through the evidence. If that witness is
27 represented by counsel, that lawyer would then go
28 next. And then the tentative order would be Mr.
29 Kostecky on behalf of Mrs. Cisowski, and then the
30 Government of Canada, and then YVR, the Public
31 Service Alliance of Canada, TASER, Poland,
32 Richmond and the Civil Liberties Association.
33 Now, we need to perhaps spend some time later this
34 afternoon just dealing with the order for the RCMP
35 individually, but that's the general approach that
36 we've adopted. There will then be the opportunity
37 for the lawyer for the witness, if that witness is
38 represented, to re-examine, and there will be the
39 opportunity for Commission counsel to re-examine.
40 And we have also always had it understood that if
41 any of the other lawyers wish to re-examine, they
42 are at liberty to apply to you accordingly.

43 Now, in terms of the days of sitting, this is
44 reflected on the website for your Inquiry, but we
45 are scheduled to sit Monday through Thursday. We
46 are scheduled through to the end of February. The
47 hours of sitting that we've tentatively booked are

1 10:00 to 12:30 and 2:00 to 4:00. We recognize
2 that there will be days when we finish early, and
3 that will be an opportunity then for all the
4 lawyers to deal with any matters that come up.
5 And in the course of doing all of this --

6 THE COMMISSIONER: And maybe some days sitting late.

7 MR. VERTLIEB: Yes, if we need to, thank you.

8 And in the course of all this, we've had Mr.
9 Chris Freimond, who is the media representative,
10 and he has of course been asked by you and others
11 to extend all the courtesy possible to media, and
12 we believe that's been done. And also extend full
13 courtesy to all the witnesses, and we are
14 confident that's been done.

15 So I have concluded in the opening comments,
16 Mr. Commissioner. I wish to thank all my
17 colleagues, as I said earlier, and we look forward
18 to having an atmosphere of cooperation that will
19 allow us to get through the many witnesses that
20 are scheduled.

21 Now, that being said, Mr. Commissioner, for
22 the morning session we have three witnesses that
23 we believe we can get through with today. First
24 will be Ms. Christiane Hewer, who was on the
25 airplane with Mr. Dziekanski, and then we have the
26 two airline attendants who were in charge of the
27 flights, the one from Katowitz and the one from
28 Frankfurt. They are in Europe, and because of
29 time constraints we have asked all of our counsel
30 to allow us to get through those three witnesses,
31 particularly the two gentlemen in Europe, because
32 they are nine hours ahead, and we hope to be able
33 to do that this morning.

34 We have one last witness lined up for today,
35 and that is a greeter at the airport who first
36 dealt with Mr. Dziekanski when he got into the
37 Customs Hall, and that would be someone who is a
38 part of the YVR organization.

39 So if we may, then, Mr. Giles, would you
40 please page Ms. Hewer, Ms. Christiane Hewer.

41 THE COMMISSIONER: Counsel, reflecting on what has been
42 said, I must say thank you very much for your
43 cooperation, and I must say that on my part, and I
44 know on behalf of counsel here, we'll do all we
45 can to accommodate your needs as this matter
46 progresses. We are quite aware of the fact that
47 you also have practices to run, and yet on the

10
Christiane Hewer
In chief by Mr. Vertlieb

1 other hand I am very anxious to get with this as
2 efficiently and completely as I can. Yes.

3 MR. VERTLIEB: I know Ms. Hewer is here, Mr.
4 Commissioner, so we're just trying to -- she's
5 waiting outside.

6 Thank you. Ms. Hewer, would you please come
7 forward. And our witness box, Ms. Hewer, is right
8 there.

9 THE REGISTRAR: Good morning. Would you remain
10 standing, please. Do you wish to be sworn or
11 affirmed? Sworn is on the Bible and affirmed is
12 not.

13 THE WITNESS: Affirmed, please.

14 THE REGISTRAR: Affirmed.

15
16
17
18

CHRISTIANE HEWER, a witness,
affirmed.

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

20 A My name is Christiane Hewer.

21 THE REGISTRAR: Thank you, you may be seated.

22 A Thank you.

23 THE COMMISSIONER: Ms. Hewer, thank you very much for
24 coming. We know that this might be -- is probably
25 a nervous time for you with everybody sitting here
26 looking at you, but believe me, we're just trying
27 to get at what happened that day.

28 A Mm-hmm.

29 MR. VERTLIEB: Thank you, Mr. Commissioner.

30
31
32

EXAMINATION IN CHIEF BY MR. VERTLIEB:

33 Q Ms. Hewer, for the record, would you spell your
34 last name.

35 A Hewer, H-e-w-e-r.

36 Q Now, I'd like to just deal briefly with your
37 background.

38 A Mm-hmm.

39 Q You are born in Germany.

40 A That's right.

41 Q Tell us when you came to Canada, please, when was
42 that?

43 A I immigrated to Canada in 1984.

44 Q And where did you come to when you came to this
45 country?

46 A I landed in Calgary and I spent the first two
47 years in Calgary, and I've been living in

1 Vancouver since 1986.

2 Q You still have friends and family in Germany?

3 A That's right, yes.

4 Q And you regularly go back to visit?

5 A I do. I now go back every year just about since
6 my mother is over 80 and doesn't want to do the
7 trip any more, so I go once a year to visit my
8 family.

9 Q You are a librarian here in our community?

10 A That's right, I am.

11 Q Thank you. Let's then move to a discussion of
12 your flight back to Vancouver on Condor Airlines
13 from Frankfurt to Vancouver.

14 A Mm-mm.

15 Q And we're talking about a flight that took place
16 in October of the year 2007.

17 A Mm-hmm. Yes.

18 Q Tell us about your own background that day. Where
19 had you been and what time did you arrive at the
20 airport and get on the plane, more or less?

21 A Well, it had -- it was the end of one of my annual
22 vacation trips. I usually go for about a month.
23 And it had been planned that way at that time,
24 because I knew the plane was going to be rather
25 empty, and I kind of enjoy that situation. So I
26 couldn't tell you when exactly I left, well, the
27 plane left Frankfurt, but it was around midday or
28 afternoon or so. I just know I don't do early
29 mornings any more, so that we can exclude. But
30 it, yeah, the flight was -- well, anyway, continue
31 asking on.

32 Q Tell us about the flight. What do you remember
33 about the flight?

34 A Well, like I said, it was a wonderful flight,
35 everybody's dream. One out of four seats booked.
36 The plane was basically three-quarters empty.
37 What can I say? We've all been in the air. We
38 all know what that means, right, good air, fast,
39 good service, relaxed atmosphere, clean toilets,
40 and that was the atmosphere. It was a very calm,
41 relaxed flight, happy people. I had four seats to
42 myself, everybody else had at least two, you know,
43 and many people, all the four seats were taken on
44 by individuals, the whole row along the whole
45 length of the plane. So it's hard to imagine,
46 maybe. Unfortunately, it doesn't happen too
47 often.

1 Q Tell us about your recall of the gentleman who we
2 now know to be Mr. Dziekanski, and the reason we
3 have asked you to come here to the Commissioner.
4 Tell us about what you remember of that gentleman.

5 A First of all, I want you to know when I came back
6 on that October the 13th and I think the news
7 about Mr. Dziekanski broke on the 14th or so. And
8 at first I did not make any connection with him.
9 I did not -- I guess there were no photos out that
10 day or the next days or so, and all I saw were
11 blurry little things. I couldn't -- I didn't make
12 the connection. I even thought that Mr.
13 Dziekanski had been on another flight, actually.
14 Because I am of -- I am of the belief to my
15 understanding there is also a Lufthansa flight, or
16 was on that day, so I didn't know, right, that I
17 had seen him.

18 I was only -- I was contacted by the RCMP, I
19 don't know how much after the event, and they
20 pointed out to me that Mr. Dziekanski had been on
21 my plane; not only this, I had been sitting very
22 close to him, in his vicinity. And of course that
23 started my memory going, right? Then I started
24 remembering things and it clicked, yeah, he was
25 one of two gentlemen, single gentlemen I remember
26 that I kind of checked out at the beginning of the
27 flight, you know, because they were -- we all had
28 booked seats, but of course, you know, I think
29 before the plane even took off, everybody spread
30 through the plane. But I had sort of looked
31 around for, you know, maybe somebody to talk to a
32 little bit or so, spend some time, you know, pass,
33 you know, the hours or so. And I remember looking
34 at these two individuals, and thinking no, you
35 know, they weren't -- like I decided against, you
36 know, starting a conversation with either Mr.
37 Dziekanski or this other gentleman I remember.

38 Q Tell us what you remember about Mr. Dziekanski.
39 A Well, like I said, I checked him out a little bit
40 like one does with, you know, in that situation.
41 And the reason I didn't start talking to him was
42 because he just seemed a little, how should I say,
43 provincial, you know. He didn't -- I figured
44 Eastern European, and by his clothing and body
45 language look, you know, the whole thing, and I
46 decided that probably he wouldn't be able to talk
47 to me anyway. And then I thought, oh, he was --

1 would be the kind of person who maybe makes funny
2 inferences by a woman coming up and, you know,
3 starting a conversation, that sort of thing. And
4 he seemed, well, I think I told you on the phone,
5 the expression I used originally was "hick-y", you
6 know, he seemed hick-y, a bit hick-y.

7 Q Did you speak with Mr. Dziekanski at all?
8 A No, I never did.

9 Q Do you have any recollection of what he did on
10 that flight for the ten-and-a-half hours or so?
11 A Well, you have to imagine here I am in my four
12 seats, and Mr. Dziekanski is probably over there
13 where you are sitting, this lady (indicating Court
14 Reporter). You know, there is -- okay, no there
15 was one more seat here and he was in the seat one
16 over, so he was even closer to me.

17 Q So perhaps --
18 A In two, two seats.

19 Q So perhaps eight to ten feet away?
20 A Yeah. Yeah, something like that. Yeah. So you
21 know what, I couldn't help but kind of be aware of
22 him occasionally. It was a ten-hour flight. One
23 goes through all sorts of phases, reading, movies,
24 sleeping, you know, walking around, bathroom
25 trips, you name it, right, that's the sort of
26 exciting things during a flight. And I saw him
27 repeatedly, yes, you know.

28 Q Do you remember if he watched a video?
29 A I remember he did all sorts of things, mostly
30 sleeping. He watched the movie, or at least
31 partially. I saw, I looked around, you know, and
32 I saw him watching the movie. Then I saw him
33 sleep a lot, you know. I saw him sleeping, and he
34 was totally calm, I mean, he was -- there was no
35 reason for me to -- you know, it was just more I
36 looked around and I happened to see him because he
37 was there, you know.

38 Q You said he was totally calm.
39 A Calm, yeah, there was no reason, he didn't attract
40 any attention, you know, he was totally
41 inconspicuous there on his seat, just like
42 everybody else kind of, you know.

43 Q Were there any problems at all on that flight that
44 you remember?
45 A No. No problems whatsoever. I remember it was a
46 fantastic flight, you know. Like I said, it was
47 everybody's dream.

1 MR. VERTLIEB: Now, Ms. Hewer, those are the questions
2 that I wish to ask you.

3 A Mm-hmm.

4 MR. VERTLIEB: There are many other lawyers here and
5 some -- some of my colleagues may wish to ask you
6 questions, so please just bear with us.

7 A Okay.

8 MR. VERTLIEB: As I said, and for the first few
9 witnesses, the order that we have tentatively, Mr.
10 Commissioner, would be the order that would allow
11 for the new lawyers for the RCMP to follow the
12 Government of Canada. But Mr. Kosteckyj would be
13 the first witness and my colleagues are aware of
14 the order after that.

15 THE COMMISSIONER: Yes, counsel.

16 MR. HIRA: Just briefly, Mr. Commissioner.

17 THE COMMISSIONER: Could you identify yourself, please.

18 MR. HIRA: Ravi Hira, appearing for Officer Millington.
19 We have been granted participant status on
20 Thursday. We received disclosure late Friday
21 afternoon. Obviously there is a lot of work that
22 we have to do. We are asking for an indulgence
23 here that would permit us four lawyers that
24 represent these officers to cross-examine last.
25 We don't even have a witness statement from Ms.
26 Hewer. It would be most -- it would be more
27 efficient at this stage.

28 THE COMMISSIONER: I can see no reason to upset the
29 order that has been outlined by counsel. So
30 accordingly we will follow that at the present
31 time.

32 MR. HIRA: Thank you, Mr. Commissioner.

33 THE COMMISSIONER: Mr. Kosteckyj?

34 MR. KOSTECKYJ: I have no questions for this witness.

35 THE COMMISSIONER: Thank you. Any other counsel?

36 Madam, thank you very much for your trouble.

37 MR. BUTCHER: Sorry, Mr. Commissioner, I have just a
38 couple, if I may.

39

40 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE
41 BILL BENTLEY:

42

43 Q Ms. Hewer, according to the records that we have
44 received from the airline, you were scheduled to
45 be seated in seat 16H.

46 THE COMMISSIONER: Excuse me, counsel, would you
47 identify yourself, please.

1 MR. BUTCHER: Sorry. I am David Butcher. I appear for
2 Constable Bentley.

3 Q You were scheduled to be seated in 16H. Do you
4 remember if you sat in the seat that you were
5 given at the -- at the airport?

6 A I am almost positive I did not sit in that
7 assigned seat.

8 Q Do you know if you sat towards further to the
9 front of the aircraft or further to the back of
10 the aircraft from that seat?

11 A No. I stayed in the vicinity of my assigned seat,
12 but I believe my assigned seat was in one of the
13 rows by the windows, right? And when I checked
14 out the situation on the plane, right, that there
15 were that many available seats, I moved close to
16 one of the -- I moved to one of the four of the
17 centre rows, right, but in the vicinity. So close
18 by, maybe just the next one over or one to the
19 front, one to the back, that sort of thing.

20 Q Do you remember if this fellow that you were
21 describing was further to the front of the
22 aircraft or towards the back of the aircraft from
23 the seat that you took?

24 THE COMMISSIONER: Well, let's be clear. The witness
25 has said just a little bit in front of her --

26 A Yeah. Yeah, exactly.

27 THE COMMISSIONER: -- and over to the left.

28 A He was over that way to the front.

29 MR. BUTCHER: Okay.

30 A So basically you can imagine I didn't see very
31 much of him, only when I got up and, you know,
32 then.

33 Q So he was further to the front of the aircraft
34 than you were?

35 A Well, yeah, one row over, right? One -- yeah, one
36 row over.

37 Q Was he -- when you say one row over, was he
38 sitting by the window?

39 A Yeah, he was sitting by the window.

40 Q And you were sitting in the aisle seat in the
41 middle?

42 A Yes.

43 Q And how many rows in front of you are you saying
44 he was?

45 A I remember one, maximum two, because it was really
46 very close. He was the closest person to me.
47 There was another guy on the other side, this

1 other gentleman. Really, we were so spread out,
2 you know.

3 MR. BUTCHER: Thank you, those are my questions.

4 A Mm-hmm.

5 THE COMMISSIONER: Yes, counsel.

6 MR. NEAVE: Thank you, Mr. Commissioner. David Neave,
7 for the record.

8

9 CROSS-EXAMINATION BY MR. NEAVE ON BEHALF OF TASER
10 INTERNATIONAL, INC.

11

12 Q Madam, do you recall or notice any smell of
13 alcohol on Mr. Dziekanski's breath?

14 A But then I -- I also wouldn't have. I was never
15 that close to him.

16 Q And I expect, given your seating position that you
17 referred to, you wouldn't have observed Mr.
18 Dziekanski eating any meals, or -- or taking any
19 beverages of any sort; is that correct?

20 A I didn't keep track of that, no. No.

21 MR. NEAVE: Thank you, those are my questions.

22 A Mm-hmm.

23 THE COMMISSIONER: Thank you very much.

24 Thank you very much for your trouble.

25 A You are very welcome.

26

27 (WITNESS EXCUSED)_

28

29 MR. VERTLIEB: Now, Mr. Commissioner, the next two
30 witnesses are through teleconference. And we have
31 been asked to stand down while those arrangements
32 are made. So perhaps we could take a few minutes.

33 THE COMMISSIONER: All right. We'll take a few minutes
34 break. Let me know when you're ready.

35 Very well, we'll now recess for about five
36 minutes.

37

38 (PROCEEDINGS ADJOURNED)

39 (PROCEEDINGS RECONVENED)

40

41 THE REGISTRAR: This hearing is now resumed.

42 THE COMMISSIONER: Yes.

43 MR. MCGOWAN: Yes, Mr. Commissioner, the next witness
44 is Mr. Jesus Fernandez Gonzalez. He is attending
45 today by telephone conference. We also have
46 present a German interpreter who will need to be
47 sworn. So perhaps Mr. Giles could take care of

1 that, as well.

2 THE REGISTRAR: I understand you wish to be affirmed?

3 THE INTERPRETER: Yes.

4

5

6

KARIN REINHOLD, German
interpreter, affirmed.

7

8 THE REGISTRAR: Thank you. Would you state our name,
9 please.

10 THE INTERPRETER: My name is Karin Reinhold.

11 THE COMMISSIONER: Thank you very much, Ms. Reinhold.

12 MR. MCGOWAN: Yes, Mr. Commissioner, and just before
13 the witness who is on the telephone is sworn, also
14 on the telephone conference is Mr. Lawrence
15 Mullins, he is an North American counsel for
16 Lufthansa Airlines and he is here as an observer
17 and as counsel for Mr. Gonzalez.

18 THE COMMISSIONER: Yes, all right.

19 MR. MCGOWAN: Mr. Registrar, I wonder if we could swear
20 the witness, please. He is on the telephone.

21

22

(TELECONFERENCE COMMENCES)

23

24 THE REGISTRAR: Witness, can you hear me?

25 MR. MULLINS: I'm sorry, just hold on one second. I am
26 going to conference him in now, okay?

27 THE REGISTRAR: Thank you.

28 MR. MULLINS: I have Mr. Fernandez on the line.

29 MR. MCGOWAN: Yes. Mr. Fernandez, can you hear me?

30 THE WITNESS: Yes, I can hear you, sir.

31 MR. MCGOWAN: Okay. Speaking to you now, my name is
32 Patrick McGowan. I am one of the counsel for the
33 Commission. A registrar, Mr. Giles, is going to
34 speak with you momentarily, and either have you
35 swear or affirm. Would you prefer to swear on the
36 Bible, sir, or would you prefer to affirm to tell
37 the truth?

38 THE WITNESS: I swear on the Bible, but could you speak
39 a little bit louder, because it's difficult to
40 understand you, sir.

41 MR. MCGOWAN: Certainly. Can you hear me now?

42 THE WITNESS: A little bit better.

43 MR. MCGOWAN: Sir, if I move up close to the microphone
44 here, is that -- can you hear me better?

45 THE WITNESS: I hear you now perfectly, sir.

46 MR. MCGOWAN: Okay. Is my voice projecting okay?

47 THE WITNESS: Yes.

Jesus Fernandez Gonzalez
In chief by Mr. McGowan

1 MR. MCGOWAN: We'll have you sworn now, sir.

2

3

JESUS FERNANDEZ GONZALEZ, a
witness, sworn:

4

5

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

7

A Jesus Fernandez.

8

THE REGISTRAR: Jesus Fernandez?

9

A Yes.

10

THE REGISTRAR: Thank you.

11

EXAMINATION IN CHIEF BY MR. MCGOWAN:

12

13

14

Q Mr. Fernandez, you live in Germany?

15

A Yes.

16

Q Okay. You are an employee of Lufthansa Airlines?

17

A Exactly.

18

Q How long have you worked for them, sir?

19

A 17 years.

20

Q Okay. And what's your current position with
Lufthansa Airlines?

21

A I am Purser. I am the chief flight attendant on
board.

22

23

24

Q Okay. And how long have you acted as a purser,
sir?

25

A Five years.

26

27

Q Okay. So in October of 2007 you were a purser?

28

A Yes.

29

Q Okay. And as a purser, what's your role?

30

A My role is to -- to lead my colleagues in the
cabin and to do the briefings before we start our
flight, and to see that everything goes good on
board and that if we have any problem or
something, to check that everything is okay.

31

32

33

34

Q Okay. You are the chief flight attendant on a
flight when you are working; is that correct?

35

36

A I am the chief flight attendant on the 737 and I
am the second chief flight attendant on the 747
and the Airbus 340.

37

38

39

Q Okay. So you are aware that a passenger on a
flight you were travelling on, working on in
October of 2007 had an incident in Vancouver after
the flight, correct?

40

41

42

43

A I was aware of -- he was flying to Vancouver?

44

45

Q You know that there was an incident after the
flight involving this man where he was tasered and
subsequently died. You've heard that?

46

47

1 A I know it now, but at --
2 Q Yes.
3 A -- at that time I didn't know.
4 Q Okay. You haven't spoken with us about that
5 incident before now, correct?
6 A Yes.
7 Q You have spoken with the police and given a
8 statement?
9 A Yes.
10 Q And you also provided a written statement to our
11 employer, which you signed, correct?
12 A Yes.
13 Q Have you had a chance to review copies of those
14 documents?
15 A Pardon me?
16 Q Have you had a chance to review those documents?
17 A No.
18 Q Okay. October 13th, 2007, you were working on
19 flight 3297, correct?
20 A This is the flight, it's correct, yes.
21 Q Okay. That's a flight from Katowitz, Poland, to
22 Frankfurt?
23 A That was the flight from Katowitz to Frankfurt,
24 exactly.
25 Q Okay. And am I right that departed at
26 approximately 6:20 in the morning?
27 A Exactly.
28 Q And that's Poland time?
29 A Exactly.
30 Q And how long is that flight approximately, sir?
31 A It's about one hour.
32 Q Okay. And you were the purser on that flight?
33 A Yes, sir.
34 Q Okay. That was a 737 aircraft?
35 A Yes, sir.
36 Q And the capacity is about how much on that plane,
37 sir?
38 A 122 passengers.
39 Q Okay. And how full was the flight that we're
40 speaking of?
41 A Oh, I don't know exactly, sir, but it was not --
42 it was, I think half full.
43 Q Okay. And do you recall whether it departed on
44 time?
45 A Pardon me?
46 Q Did the flight depart on schedule?
47 A Oh, sir, I don't know, but -- I don't know, sir,

1 it depart on time but I think so.

2 Q Okay. Now, I understand that there was an issue
3 which arose with respect to the seating of
4 passengers during the boarding process, do you
5 recall that?

6 A Yes.

7 Q I wonder if you could tell the Commissioner about
8 that, please?

9 A Okay. The normal boarding procedure is all
10 passengers come on board and they sit where they
11 have to sit, because everyone has a boarding pass.
12 And at this day everything was okay, the boarding
13 process was okay. After I received the final
14 figures and boarding was completed, I checked the
15 number of passengers in the business class. But I
16 do it sometimes, not always, but sometimes, and on
17 this flight I did it. And I realized that the
18 number, the figure of the passengers in the
19 business class was incorrect.

20 So I started to check the boarding passes of
21 the passengers. I don't know how many passengers
22 we had in business class on this flight, but when
23 I came to this gentleman, I ask him if he can show
24 me the boarding pass. And he was looking at me
25 like he doesn't understand. So I showed, I just
26 find him the boarding pass, and then he showed me
27 the boarding pass and I realized that he was
28 talking to me in a -- in Polish, not in English,
29 and he didn't understand English. So but in this
30 situation I smelled a little bit of alcohol, and
31 the procedure is when we have passengers who have
32 had alcohol when we board the aircraft, we need to
33 check how much alcohol they had, or if they are
34 very drunk, because sometimes on flights people
35 they have a beer or two or three on the flight,
36 and then we get trouble with those people, because
37 they behave differently.

38 And this flight, this person, he didn't
39 understand me, so I needed some help. And I
40 contacted the ground staff, the ramp agent, and
41 this person he talked -- talked to him. And I was
42 asking him that he has to tell him that I smell a
43 little bit of alcohol and for him, he will not get
44 any alcohol on this flight, if this is okay. And
45 my -- I remember that it was okay. Then I told
46 him also that he has to sit in the economy class,
47 because his boarding pass shows that his seat is

1 in the economy class, and if he is flying on. And
2 he said, yes, he is flying on. That's what the
3 translator said to me. And I advised him not to
4 consume any alcohol when he is in transit in
5 Frankfurt, because the procedure is on the
6 Lufthansa flights if passengers have drunk or have
7 had too much alcohol, they are allowed not to
8 transport them on this flight because of the
9 reason I told you. And this gentleman agreed. He
10 sat down in the economy class, I don't remember
11 the seat any more, and that's it.

12 Q Okay, sir. I'm going to ask you a few questions
13 about what you've just told us. Mix-ups with seat
14 assignments on boarding, is that unusual or does
15 that happen frequently?

16 A What do you mean, with the seat? Do you mean that
17 the passengers sit in business class, when they
18 sit in economy class?

19 Q Yes.

20 A Okay. My experience is because I fly a lot, so I
21 have a lot of flights within Europe and sometimes
22 passengers, they do themselves "upgrade", that's
23 our language, our airline language, because they
24 don't want to sit in economy class because it's so
25 crowded. And that's the reason why when I get the
26 final figures, I check if the business class, if
27 there are any passengers sitting in business class
28 who are normally supposed to sit in the economy
29 class.

30 Q Okay. You attempted to communicate with this man
31 in both English and German, or just English?

32 A Just English.

33 Q Okay. And you were -- it was apparent to you that
34 you were unable to communicate with him in that
35 language?

36 A Yeas.

37 Q Okay. The person who acted as the interpreter was
38 a ramp attendant?

39 A It was the ramp agent, yes. It was somebody from
40 the ground staff in Katowitz, sir.

41 Q And they appeared to be able to communicate with
42 Mr. Dziekanski, or with the individual?

43 A I don't know the name of this person, sir.

44 Q Fair enough. With the person you're speaking of?

45 A Yes.

46 Q Okay.

47 A He spoke to him in Polish, and he translated to

1 me, and it was just a short talk, it even took
2 about a minute, one-and-a-half minutes, two
3 minutes, I don't know.

4 Q Okay. Did you see the boarding pass of this
5 person?

6 A I saw the boarding pass because I recognized that
7 he was supposed to sit in economy class, but I
8 don't remember the seat number.

9 Q Okay. Did you read the name on the boarding pass?

10 A No, sir.

11 Q Okay. You indicated that you'd smelled what you
12 believed to be some alcohol on him?

13 A Yes, that's what I believed, but I was not sure,
14 but I wanted to make sure.

15 Q Okay. The smell you smelled, was it on his breath
16 or his body, or could you tell?

17 A No, it was just a little bit in the breath.

18 Q Okay. Was it a strong smell, or you say a little
19 bit?

20 A A little bit, sir.

21 Q Okay. Was there anything else about his
22 behaviour --

23 A No.

24 Q -- that you noticed?

25 A Nothing, sir.

26 Q Okay. You told us it's your policy to check
27 somebody with respect to their degree of alcohol.
28 Did you conduct that check, or --

29 A Yes.

30 Q Okay. And how did you do that, or how did you
31 satisfy yourself that he was okay to fly?

32 A Because I was -- there the -- I mean, my
33 experience is when somebody is very drunk, he --
34 he doesn't behave normal. And this person, he
35 behaved normal. It was only a little bit of this
36 smell, and he was very calm. He was like a little
37 -- he was shy, that's what I can say, but the
38 conversation he had with the ramp agent, I didn't
39 understand, so I was -- I was, how do you say, I
40 was -- I talked to the ramp agent and I looked at
41 him and he looked at me, and I think he was a
42 little bit astonished. And because I don't think
43 so that he knew that he was sitting wrong. And
44 that's -- that was everything.

45 Q Through the translator did he agree to consume no
46 alcohol on the flight?

47 A Yes.

1 Q And did he agree to move to economy class?
2 A Yes.
3 Q And did he in fact move to economy class?
4 A Yes.
5 Q Did you instruct the other flight personnel not to
6 serve him alcohol on the flight?
7 A Who?
8 Q The other flight attendants.
9 A Yes, that's my duty, I have to do this, because my
10 duty is also to take care of the passengers. They
11 are there. I am responsible for all our
12 passengers on board. So when something happens
13 like this, everyone, every flight attendant, it
14 doesn't matter which is the 737 or an Airbus 340
15 or 747, the person, the flight attendants who are
16 serving in this area, they know about it.
17 Q Okay. Do you know whether he was served alcohol
18 on the flight?
19 A Pardon me?
20 Q Do you know whether he was served any alcohol on
21 the flight?
22 A He didn't get any alcohol.
23 Q Do you know was there food served on this flight
24 in economy class?
25 A It's a sandwich, sir.
26 Q Okay. And was the sandwich served to this
27 gentleman, do you know?
28 A Oh, I don't know, sir.
29 Q Okay. Did you -- were you stationed in economy or
30 business class during the flight?
31 A I -- I work in the business class and also in the
32 economy class, it depends. Sometimes I go through
33 the economy class, as well, to help my colleagues
34 in the economy class serving their beverages.
35 Q Okay. Did you -- did you see this man and make
36 any observations of him during the flight?
37 A No, sir.
38 Q Okay. Do you know whether he was sleeping at all?
39 A I don't know, sir.
40 Q Okay. I take it as the purser, the procedure on
41 your flights is that you would be notified of any
42 disturbances or notable occurrences?
43 A I don't understand the question, sir.
44 Q You're the purser, so you're in charge of the
45 flight attendants, is that right?
46 A I am the chief flight attendant, yes.
47 Q Okay. And are the other flight attendants

1 supposed to tell you if there's a problem?
2 A Of course, they have to.
3 Q Okay. Were you told of any problems on this
4 flight that we're speaking of?
5 A Not at -- not at all.
6 Q Okay. And the man we've been speaking of, did you
7 observe him when he was deplaning?
8 A Pardon me?
9 Q Did you observe this man when he was getting off
10 the plane?
11 A No, sir.
12 Q Did you or your airline communicate at all with
13 this man's onward flight?
14 A I don't know, sir.
15 Q Was anything --
16 A I --
17 Q Sorry, go ahead.
18 A I didn't communicate with him when he -- you know,
19 My responsibility was to take care of the
20 passengers on this flight. What happened
21 afterwards I don't know, so I only know that when
22 we arrived in Frankfurt everything went normal,
23 then all the passengers disembarked and the thing
24 was for me done. So there was nothing special.
25 Q Do you know whether anybody contacted Condor about
26 this passenger?
27 A I don't know, sir.
28 Q Fair enough. Now, we've been speaking about this
29 person. You've told me you didn't see his
30 boarding pass.
31 A I saw his boarding pass.
32 Q I'm sorry, you didn't see his name on the boarding
33 pass, or you didn't read it.
34 A Exactly.
35 Q Are you able to describe him for me physically?
36 A No, sir.
37 Q Are you able to tell me what he was wearing?
38 A Oh, sir, no, I -- you know, in this case I don't
39 observe a person, what he's wearing, what he's --
40 you know, to me he was a passenger. I didn't -- I
41 didn't fix my eyes on -- on his clothes, so...
42 Q All right, fair enough.
43 A Pardon me?
44 Q Okay, sir. You don't remember what seat he was
45 sitting in, you've told us, is that right?
46 A I don't remember where he was sitting in the
47 economy class, no, sir.

Jesus Fernandez

In chief by Mr. McGowan

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

1 Q Okay. Have you seen a photograph of Mr.
2 Dziekanski on the television?

3 A No, sir.

4 Q Have you seen the video?

5 A No, sir.

6 Q Sir, we're speaking of the passenger and the
7 incident that happened afterwards. I'm wondering
8 can you tell me why it is you think the passenger
9 you're telling me about is the same person that
10 was involved in the incident afterwards?

11 A That's something that I could ask you, because I
12 don't know, sir. I was -- you know, I was asked
13 if something happened on my flight and the only
14 thing I said that there was one passenger in the
15 business class who was a person who was supposed
16 to sit in economy class. I don't even know if
17 this person was the person was involved in this
18 incident. So I don't know, sir.

19 Q All right. When you were speaking with the RCMP,
20 sir, they're asking you questions about a
21 Lufthansa flight and a Mr. Dziekanski. When you
22 were answering questions there, you were speaking
23 about the same man you're speaking about with me
24 today, is that right?

25 A I don't know, sir. I was -- I was speaking about
26 a person, but I did -- I don't know the name and I
27 didn't -- nobody mentioned the name.

28 Q Okay, sir. When you talked to the RCMP you were
29 speaking about the same man you're speaking about
30 today, correct?

31 A Exactly, yes.

32 Q Okay.

33 A I'm talking about -- I'm speaking about the person
34 who was on board.

35 Q And when you spoke with the RCMP you didn't know
36 anything else about who it was, is that right?

37 A Yes, that's right.

38 MR. MCGOWAN: Those are my questions, Mr. Commissioner.

39 MR. KOSTECKYJ: I have no questions, Mr. Commissioner.

40 THE COMMISSIONER: Any questions from counsel?

41 MR. BUTCHER: I just have one.

42

43 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE
44 BILL BENTLEY:

45

46 Q Sir, you've told us that this fellow was
47 transiting in Frankfurt onto Condor Airlines. Did

Jesus Fernandez

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

1 you find out at the time where he was going to
2 from Frankfurt?

3 A You're talking to me?

4 Q Yes.

5 A Sir, I can't -- I can't understand very well, but
6 I heard, I knew that he was flying to Vancouver,
7 but I didn't know what airline he choosed.

8 MR. BUTCHER: Thank you.

9 THE COMMISSIONER: Sir, thank you very much for your
10 cooperation. We appreciate it.

11 THE WITNESS: Thank you, sir.

12

(WITNESS EXCUSED)

13

(TELECONFERENCE CONCLUDED)

14

15

16
17 MR. VERTLIEB: Mr. Commissioner, we're finished with
18 this gentleman. Now the next -- next calling Mr.
19 Buettner, if we could perhaps stand down a few
20 minutes once again to organize that, please.

21 THE COMMISSIONER: Yes, all right, a few moments.

22 MR. VERTLIEB: Thank you.

23

(PROCEEDINGS ADJOURNED)

24

(PROCEEDINGS RECONVENED)

25

26

27 THE REGISTRAR: Order. The hearing is now resumed.

28 MR. VERTLIEB: Thank you, Mr. Commissioner. I wish to
29 introduce one of our colleagues, as well, Mr.

30 Sonny Parhar, who is seated beside Mr. Kosteckyj.

31 THE COMMISSIONER: Mr. Parhar.

32 MR. VERTLIEB: And that's P-a-r-h-a-r, and Mr. Parhar
33 will be assisting during some of the events here
34 before you.

35 Also to all of our colleagues of the bar,
36 when you do ask questions, I just remind you to
37 please introduce yourself and your client for
38 purposes of the record. If you would do that,
39 please.

40 Now, the next witness, Mr. Commissioner, is
41 Mr. Adolf Buettner, who is on the telephone, I
42 understand from our registrar, and I believe he is
43 able to hear this discussion.

44

(TELECONFERENCE COMMENCED)

45

46

47

MR. VERTLIEB: Mr. Buettner, are you -- are you hearing

27
Adolf Buettner
In chief by Mr. Vertlieb

1 us on the telephone?

2

3

(THROUGH THE INTERPRETER)

4

5

THE WITNESS: Yes, I can hear you.

6

MR. VERTLIEB: Thank you. Now, we have the translator sworn. Mr. Giles, I'll ask you then to deal with the witness, please.

7

8

9

THE REGISTRAR: Yes, witness, do you wish to be sworn or affirmed?

10

11

THE WITNESS: I will swear on the Bible.

12

13

ADOLF BUETTNER, a witness,
sworn.

14

15

16

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

17

A Adolf Buettner.

18

THE REGISTRAR: Would you spell your surname?

19

A Buettner, B-u-e-t-t-n-e-r.

20

THE REGISTRAR: Thank you.

21

MR. VERTLIEB: Thank you. Madam Translator, if you could keep your voice up, please, so that we can all hear you. It is your evidence of the witness that will be most important, so thank you.

22

23

24

25

THE INTERPRETER: Yes.

26

27

EXAMINATION IN CHIEF BY MR. VERTLIEB:

28

29

Q Mr. Buettner, Herr Buettner, it's Art Vertlieb. I am Commission counsel and I spoke with you by telephone a couple of weeks or so ago. And as I said to you on the phone, we would arrange to do a telephone conference because you are in Germany as we are here speaking to you; is that correct, sir?

30

31

32

33

34

35

A Yes.

36

Q Now, Herr Buettner, would you please tell us about your work with the airline. How many years have you worked in the airline industry, and tell us about your present employment, please.

37

38

39

40

A Can you speak a little bit up, and a bit slower.

41

MR. VERTLIEB: Okay. I think --

42

THE INTERPRETER: The witness meant myself, the interpreter.

43

44

MR. VERTLIEB: Yes.

45

THE INTERPRETER: Okay.

46

47

A I have been working for the airline since May

1 1990, and two years after that as purser for
2 Condor.
3 MR. VERTLIEB:
4 Q How many years altogether have you worked for
5 Condor Air?
6 A Since May 1990.
7 Q And you are still working for Condor?
8 A Yes.
9 Q And what is your present occupation with Condor,
10 what is your position?
11 A I am a purser with Condor.
12 Q And is that the same job that you had for Condor
13 in October of 2007?
14 A Yes.
15 Q Now, Herr Buettner, you understand that we are
16 here to discuss a passenger who was on the plane
17 from Frankfurt to Vancouver.
18 A Yes.
19 Q And you remembered this passenger because the next
20 day when you were at the check-in counter, you
21 were informed about the circumstances by another
22 airline employee; is that correct?
23 A What should I remember?
24 Q Well, let's just discuss your memory of this
25 flight from Frankfurt to Vancouver on October 13
26 of 2007.
27 A Yes.
28 Q Now, how heavily occupied was the flight? Roughly
29 how full or empty would you describe the flight
30 that day?
31 A I believe the flight was half empty, roughly.
32 Q Now, we want to ask you about a gentleman who did
33 not appear to understand English or German. Do
34 you understand that's who we wish to discuss for a
35 few minutes here this morning?
36 A I remember upon boarding that there was one
37 passenger who did not react when I greeted him
38 with "Hello", or "Good day".
39 Q And did you greet him with "Hello" or "Good day"
40 in English or German?
41 A I believe first in German and then in English.
42 Q Now, let's discuss that passenger for a moment.
43 The airline Condor has two sections of passengers,
44 one economy and one that is a premium type of
45 economy; is that correct?
46 A Yes, there is the economy class and the comfort
47 class.

- 1 Q And the comfort class has larger seats and less
2 passengers, is that --
- 3 A That's correct.
- 4 Q And approximately where did this gentleman sit?
- 5 A Which passenger do you mean?
- 6 Q The gentleman who did not speak English or German
7 when you greeted him.
- 8 A He sat further back on the plane, approximately
9 row 34.
- 10 Q And did he change seats at all during that flight
11 to Vancouver?
- 12 A Yes, right at the beginning.
- 13 Q And how did he appear? What can you tell us from
14 your memory of your observation of this gentleman?
- 15 A I only remember that he was sweating a little bit,
16 that he did not react to my greeting "Hello" or
17 "Good day", and that he changed seats at the
18 beginning.
- 19 Q Did you travel through the plane during that
20 flight when you were the purser?
- 21 A Yes.
- 22 Q Were there any problems in the airplane during the
23 entire length of that flight?
- 24 A There were no problems during the flight with none
25 of the passengers on the flight.
- 26 Q Were there any issues on the airplane about
27 anybody drinking too much or causing any trouble
28 at all?
- 29 A No, nobody.
- 30 Q Did the gentleman that you discussed who moved
31 from row 34, can you tell us if he gave you or any
32 passenger any trouble at all on that flight?
- 33 A If it's still the passenger we've been talking
34 about at the beginning, then no, nobody has caused
35 any trouble.
- 36 Q And do you remember that passenger leaving the
37 airplane and how he appeared when he left the
38 airplane?
- 39 A No.
- 40 Q Was there any problem with him leaving the plane?
- 41 A There were no problems with any of the passengers
42 when the left the airplane.
- 43 Q And did you -- were you the last people off the
44 plane, in other words, the passengers left and
45 then the employees of the airline left?
- 46 A After the passengers leave, the plane, the cabin
47 crew checks once again all the seats and makes

Adolf Buettner

In chief by Mr. Vertlieb

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

1 sure that everybody has left the plane, and we
2 also check for hand luggage which might have been
3 left behind, and then we leave together.

4 Q Were you at any time as purser told not to serve
5 alcohol to any passenger?

6 A No.

7 Q The passenger we've been discussing, who moved
8 from row 34 to a forward place in the airplane, do
9 you know if that gentleman drank any alcohol?

10 A I don't know.

11 Q Tell us, please, about food service for passengers
12 in economy?

13 A Okay. After takeoff there is -- there are
14 beverages served, and then a lunch. After lunch
15 there is duty-free service, and then at the end of
16 the flight there is a light dinner served.

17 Q Can you tell us approximately how many rows
18 forward this gentleman moved, and we're talking
19 about the man who was originally in row 34 and
20 moved forward. Do you have an idea of what row,
21 more or less, he might have ultimately sat in?

22 A I don't know. I don't know how many rows he
23 moved.

24 Q And finally, can you tell us anything about this
25 gentleman's description in terms of his
26 appearance, his height or weight or clothing, any
27 of that that you might remember today?

28 A No.

29 MR. VERTLIEB: Herr Buettner, those are all my
30 questions. There may be some other questions for
31 you. Just stay there, please, for a moment.
32 Thank you.

33 I would remind my colleagues to be sure to
34 introduce themselves and their client, please.

35 MR. KOSTECKYJ: It's Walter Kosteckyj, and I'm the
36 counsel for Zofia Cisowski.

37

38 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
39 CISOWSKI:

40

41 Q Sir, if a passenger wishes to have alcoholic
42 beverages, do they have to pay for them on the
43 flight?

44 A Yes.

45 MR. KOSTECKYJ: Those are all my questions.

46 THE COMMISSIONER: Anybody else?

47 MS. ROBERTS: My name is Helen Roberts, I am counsel

Adolf Buettner

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

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

1 for the Government of Canada.

2

3

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

4

5

6

Q Sir, you've described the gentleman as sweating.
Did you notice anything about his eyes?

7

8

A He was sweating slightly and his eyes were
slightly tired, I would say. That happens to a
lot of passengers.

9

10

11

Q You've told us that the gentleman didn't appear to
understand German or English. Notwithstanding
that language problem, were the flight crew able
to direct him to his proper seat?

12

13

14

A Yes. Based on the boarding card, yes.

15

16

Q Did you see that gentleman after you arrived at
the Vancouver airport?

17

18

A No.
MS. ROBERTS: Thank you.

19

20

THE COMMISSIONER: Any other questions, counsel?

21

22

CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE
BILL BENTLEY:

23

24

25

Q Herr Buettner, it's David Butcher, I am counsel
for Bill Bentley, one of the members of the Royal
Canadian Mounted Police. Can you hear me?

26

27

28

A Yes.

29

30

Q Sir, I understand the flight was scheduled to
leave Frankfurt at 12:15; is that correct?

31

32

A I don't recall that exactly.
Q Do you remember approximately what time it was
scheduled to leave?

33

34

A No.

35

36

Q Do you remember if it left on time?

37

38

A No, I don't know.

39

40

Q How long is the flight from Frankfurt to
Vancouver?

41

42

A Approximately ten, ten-and-a-half hours.

43

44

Q The aircraft was a Boeing 767?
A Yes.
Q And the seating arrangement in that aircraft is
that there are two seats on the window side of
both aisles and three seats in the middle; is that
correct?

45

46

A Yes.

47

Q Do you remember providing a statement to a man

Adolf Buettner

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

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

- 1 called Kurt Vater, your duty cabin manager?
2 A Yes.
3 Q Have you had a chance to look at that statement
4 before giving evidence?
5 A Yes.
6 Q And in that -- do you have the statement with you?
7 A Yes.
8 Q In that statement, you were able to tell Mr. Vater
9 that this passenger moved from row 34 to row 18;
10 is that correct?
11 A Yes. One passenger moved approximately from row 34
12 to approximately row 18. I say approximately,
13 because I do not recall the exact row number.
14 Q But you will agree that you told the person who
15 was making inquiries of you at the time that it
16 was row 18?
17 A It's quite a long time ago. I don't recall.
18 Q Do you remember how long after the events you gave
19 the statement?
20 A I believe it was -- I believe it was in November
21 of 2007.
22 Q Thank you. Actually, one more question. How many
23 people does the Boeing 767 seat altogether?
24 A 24 in the comfort class and 245 in the economy
25 class.
26 Q And the economy class, I take it, was half full
27 that day?
28 A Yes, approximately.
29 Q And this passenger that you're talking about, do
30 you remember whether he sat on the left side of
31 the aircraft or the right side of the aircraft
32 looking forward?
33 A I believe he sat on the right side.
34 Q And in a window seat or in the middle?
35 A On the window side.
36 MR. BUTCHER: Thank you.
37 THE COMMISSIONER: Sir -- oh, yes, go ahead.
38 MR. HIRA: Thank you, Mr. Commissioner. It's Ravi
39 Hira, I represent Officer Kwesi Millington.
40
41 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE
42 KWESI MILLINGTON:
43
44 Q Now, then, Herr Buettner, you noticed his eyes; is
45 that not correct?
46 A I only noticed that one passenger upon boarding
47 was sweating slightly and had tired eyes.

1 Q When you say "tired eyes", were the eyes watery,
2 glistening?

3 A I don't know. I am not a doctor.

4 Q No, fair enough, sir. It's just that I'm looking
5 at the statement that you gave to your duty cabin
6 manager, Mr. Kurt Vater, and in that statement you
7 say the -- you say that he had glistening eyes.
8 Do you remember that now, that he had glistening
9 eyes?

10 A That could be.

11 Q And you thought that he was withholding his
12 emotions. He seemed a little agitated; is that
13 correct?

14 A Can you please repeat the question?

15 A I'm looking at your statement and in the statement
16 did you -- do you remember telling Mr. Vater that
17 you thought that he was withholding his emotions
18 and -- and something about being agitated?

19 A That was an assumption.

20 Q Yes. You thought that he was emotional about
21 making this trip to Vancouver, correct?

22 A No. No, I only assumed that. I did not know.
23 But the passenger, the guest was very quiet.

24 Q In the statement there's some reference to
25 agitation. Do you remember telling Mr. Vater that
26 you thought he was a little agitated?

27 A No, I don't recall him being agitated. I only
28 recall that he was sweating slightly and that his
29 eyes were tired and maybe glistening a little bit.

30 Q Right. Now did you smell any odour about him,
31 sort of a sweat, or sweat and alcohol odour?

32 A No.

33 Q And, you know, you've flown into Vancouver Airport
34 a number of times, have you not, sir?

35 A Not very often, a couple of times.

36 Q All right. You didn't see him at the first
37 Immigration checkpoint; is that correct?

38 A No.

39 MR. HIRA: All right. Those are my questions. Thank
40 you very much, Herr Buettner.

41 THE COMMISSIONER: Counsel.

42 MR. NEAVE: Thank you, Mr. Commissioner. David Neave,
43 counsel for TASER International.

44

45

46

47

1 CROSS-EXAMINATION BY MR. NEAVE ON BEHALF OF TASER
2 INTERNATIONAL, INC.

3

4 Q Herr Buettner, I just want to go back to the
5 statement that you have before you that you
6 provided to Mr. Vater in November 2007. You have
7 that document with you, sir?

8 A Yes.

9 Q Is it in English or is it in German?

10 A In German.

11 Q I have a translation, sir, and I'm looking at the
12 fourth paragraph, and that paragraph deals with
13 your observations of this person we've been
14 speaking about, correct?

15 A Which paragraph do you mean?

16 Q The fourth paragraph.

17 A Is it the one "He was slightly sweating"?

18 Q Yes. And your recollection in November 2007, sir,
19 was that this individual was slightly sweating; is
20 that correct?

21 A Yes. One passenger upon boarding was slightly
22 sweating.

23 Q And that same passenger, sir, had glistening eyes,
24 was your recollection in November 2007?

25 A Yes, he had somewhat glistening and tired eyes.

26 Q And from that paragraph it appears to me, sir,
27 that there was some discussion amongst yourself
28 and your colleagues about this person and his
29 condition, correct?

30 A Yes.

31 Q Do you discuss all passengers, sir, amongst your
32 colleagues upon boarding or shortly thereafter?

33 A We did that the other day, the next day in
34 Calgary.

35 Q Every passenger?

36 A No.

37 Q And you recalled, sir, in November 2007 that you
38 had formed the view that the glistening eyes were,
39 you thought, due to a withholding of emotions,
40 correct?

41 A Yes. That was for me only an attempt to explain.

42 Q And, sir, you also assumed, and I'm making
43 reference again --

44 THE COMMISSIONER: Excuse me, not "also". He didn't
45 agree with you, so you can't say "also".

46 MR. NEAVE: Then I misinterpreted his response, Mr.
47 Commissioner.

Adolf Buettner

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

Cross-exam by Mr. Harris (for Corporal Benjamin
Robinson)

1 THE COMMISSIONER: He said he did -- he explained it
2 this way as an attempt to explain what happened.

3 MR. NEAVE: Yes.

4 Q Sir, if I can then direct you to your fourth
5 paragraph again, you made the same -- you made an
6 assumption about him being agitated, correct?

7 A It was only an attempt from me to explain why this
8 person was slightly sweating and he was simply
9 tired, that's what I believe.

10 Q And in your statement you described and used the
11 word agitation; is that correct?

12 A That was another attempt to explain.

13 MR. NEAVE: Thank you, Herr Buettner.

14 THE COMMISSIONER: Herr Buettner, thank you very much
15 for your --

16 MR. HARRIS: No, Mr. Commissioner, I have a question
17 for --

18 THE COMMISSIONER: I wish counsel would come forward a
19 little quicker.

20 MR. HARRIS: I apologize.

21

22 CROSS-EXAMINATION BY MR. HARRIS ON BEHALF OF CORPORAL
23 BENJAMIN ROBINSON:

24

25 Q Sir, my name is Reg Harris, I am counsel for
26 Corporal Robinson of the Royal Canadian Mounted
27 Police, and I have a few questions for you,
28 please.

29 Sir, if I understand what you've told us is
30 at the beginning you were positioned to greet
31 passengers boarding onto the aircraft; is that
32 correct?

33 A Yes.

34 Q And at that time, sir, I would imagine you were
35 wearing some type of clothing to distinguish
36 yourself as part of the cabin crew; would that be
37 accurate?

38 A Yes, we wear a uniform.

39 Q And part of your function on greeting passengers
40 is to greet the passengers (1), to offer
41 assistance to the passengers (2), and (3) to
42 observe the passengers for anything unusual or
43 untoward?

44 A Yes.

45 Q Turning to the first function, that is, greeting,
46 I would imagine like all airlines you attempt to
47 be friendly and receptive, both in language and

Adolf Buettner

Cross-exam by Mr. Harris (for Corporal Benjamin
Robinson)

- 1 perhaps a smile on your face, would that be
2 accurate?
- 3 A Yes.
- 4 Q And frequently the passengers boarding your
5 aircraft do not always speak the languages which
6 you speak?
- 7 A Most of them speak German.
- 8 Q All right. In any event you've encountered
9 situations where a passenger from your observation
10 speaks neither German nor English?
- 11 A Yes.
- 12 Q And despite that language barrier, your friendly
13 reception typically receives some sort of reply, a
14 nod or a comment from the passenger?
- 15 A Unfortunately not always.
- 16 Q All right. And in this case there was no reply
17 whatsoever or acknowledgment by the passenger he's
18 described?
- 19 A No.
- 20 Q And as well you've had passengers approach you
21 while you're greeting them to seek assistance on
22 locating their seating position?
- 23 A That happens as well, yes.
- 24 Q And that's been done both by passengers that speak
25 the same language as you and on rare occasion by
26 passengers just showing you their ticket or
27 boarding pass?
- 28 A That happens as well.
- 29 Q And this passenger made no efforts to seek
30 assistance from you, the uniformed flight
31 personnel?
- 32 A No.
- 33 Q Now, sir, the -- I talked about the three reasons
34 of greeting the passengers, and one is to observe
35 for anything untoward, correct?
- 36 A Yes.
- 37 Q And one of the things you have general
38 observations of the passengers is if there's any
39 medical condition that might be of concern during
40 flight.
- 41 A I did not quite understand that. Can you repeat
42 it?
- 43 Q One of your functions when you observe passengers
44 is to make a brief observation to see if there's
45 any obvious medical condition that may present a
46 problem during flight?
- 47 A Yes. Yes, you can say that.

Adolf Buettner

Cross-exam by Mr. Harris (for Corporal Benjamin
Robinson)

1 Q And if I understand, in this passenger you saw the
2 perspiration and something about the eyes that
3 stood out?

4 A Yes, but it was nothing in particular. He did not
5 look as if he was sick.

6 Q And when you arrived in Vancouver, sir, I take it
7 you cannot offer us any information as to where
8 that particular passenger went or what they did
9 with the exception they got off your aircraft?

10 A No.

11 Q And you have no recollection of making
12 observations of that passenger when he got off
13 your aircraft, do you, sir?

14 A No, I don't remember him and I did not -- we did
15 not see him again after he left the aircraft.

16 Q And I take it from that you can't tell us if by
17 the time he arrived in Vancouver his condition had
18 changed or not?

19 A No.

20 MR. HARRIS: Thank you for answering my questions, sir.

21 MR. VERTLIEB: Mr. Commissioner, perhaps because the
22 statement has been referred to, and we have the
23 benefit of a proper German translator, I think we
24 should deal with it just for a moment because
25 counsel, including myself and Mr. McGowan, only
26 have an English translation by Mr. Vater, who is
27 an employee of the airline. And that's what you
28 were hearing about earlier. And so what I would
29 like to do is have the paragraphs referred to that
30 deal with this evidence be given to the
31 translator, she can read them to Mr. Buettner and
32 confirm whether or not that is his recollection,
33 so we are relying on an appropriate translation to
34 get the best possible record. If I may do that.

35 A I did not understand the translation right now.

36 THE COMMISSIONER: So you want to read a paragraph and
37 get his comment?

38 MR. VERTLIEB: Right. I would like --

39 THE COMMISSIONER: Yes, all right, go ahead.

40 MR. VERTLIEB: Thank you. So let me give to the
41 translator this statement in German and have the
42 translator please read that to Mr. Buettner.
43 There is two paragraphs I would like to deal with
44 because of the way it's come up in my friends'
45 cross-examination, and have the translator read
46 them to Mr. Buettner, and then take his evidence
47 as to whether or not he agrees with this.

1 Just for the record I am referring to a
2 statement provided by Mr. Vater, and I'd like the
3 translator to please confirm who Mr. Vater is in
4 German for Mr. Buettner on the phone.
5 THE COMMISSIONER: Well, just a moment now. This is a
6 statement in German, as I understand it, that he
7 has given?
8 MR. VERTLIEB: Yes.
9 THE COMMISSIONER: And so I take it that we're
10 accepting the fact that what he said in the
11 statement is -- what the statement reflects he
12 said is indeed what he said.
13 MR. VERTLIEB: Yes.
14 THE COMMISSIONER: So there's not much point in
15 discussing that any further. Now, if you want it
16 translated again, I don't see how we need the
17 witness.
18 MR. VERTLIEB: Well, we need the witness only -- we
19 need the translator to deal with the translation
20 in German so we have exactly what he said.
21 THE COMMISSIONER: Yes.
22 MR. VERTLIEB: Rather than what was given in English,
23 which may or may not be correct.
24 THE COMMISSIONER: Yes. Well, that will be up to the
25 translator.
26 MR. VERTLIEB: What I'd like her to do while we have
27 her here is read the two paragraphs in question in
28 the statement that deal with this subject.
29 THE COMMISSIONER: All right. In other words, ask the
30 translator to translate the German?
31 MR. VERTLIEB: Yes.
32 THE COMMISSIONER: Okay.
33 THE INTERPRETER: (Reads witness statement in German
34 language).
35
36 RE-EXAMINATION BY MR. VERTLIEB:
37
38 Q Would you please ask Mr. Buettner if that is his
39 statement that he provided some months ago.
40 A Yes.
41 MR. VERTLIEB: May we have the translator then
42 translate that back now to English for our benefit
43 here today.
44 THE COMMISSIONER: Should we now excuse the witness?
45 MR. VERTLIEB: We can, unless my colleagues may have
46 some further questions. I'd be comfortable to,
47 though.

1 THE COMMISSIONER: That seems like everything.
2 All right, thank you very much, sir, for your
3 cooperation.

4 MR. VERTLIEB: And if the translator could please
5 translate those two paragraphs that you just put
6 to Mr. Buettner.

7 THE INTERPRETER:

8
9 He was slightly sweating and had glistening
10 eyes. After consulting with the other
11 colleagues, we assumed that he probably left
12 a lot behind and would start new in Canada.
13 The glassy eyes were rather indicated as a
14 keeping back of emotions, as well as his
15 agitation. Due to the language barrier we
16 could not ask him and it did not seem that we
17 would have success in doing so.

18
19 After the doors of the aircraft were closed,
20 the passenger moved from row 34 to row 18.
21 He did not seem agitated. Rather he seemed a
22 little bit helpless. At no time was he
23 aggressive and he was very polite and
24 thankful toward the crew.

25
26 A I made this statement one day after the flight,
27 after I consulted with my colleagues.

28 MR. VERTLIEB: That is all the area that we wish to
29 canvass, Mr. Commissioner, and thank you.

30 THE COMMISSIONER: All right. Thank you again, sir.

31
32 (WITNESS EXCUSED)

33
34 (TELECONFERENCE CONCLUDED)

35
36 MR. VERTLIEB: Now, the next witness we can start, if
37 you wish, Mr. Commissioner, or put over to two
38 o'clock, and then we can deal with the procedural
39 issue after that next witness, a Ms. Hunter.
40 We're totally at your preference. If we could
41 call her now, I don't think she could perhaps be a
42 half an hour or so, so perhaps we just go over to
43 two o'clock and finish her, and then we can do the
44 rest of the procedural.

45 THE COMMISSIONER: Well, let's start.

46 MR. VERTLIEB: Okay. Ms. Hunter.

47 THE COMMISSIONER: Thank you very much.

Patricia Hunter
In chief by Mr. McGowan

1 MR. VERTLIEB: Thank you very much.

2 MR. MCGOWAN: The next witness is...

3 THE COMMISSIONER: Yes, good morning, Ms. Hunter.
4 Thank you very much for coming.

5 THE WITNESS: Good morning.

6 THE REGISTRAR: Good afternoon. Do you wish to be
7 sworn or affirmed? Sworn is on the Bible and
8 affirmed is not.

9 THE WITNESS: I will swear on the Bible.

10 THE REGISTRAR: Could I ask you to stand, please, and
11 place your right hand on the Bible.

12

13

PATRICIA HUNTER, a witness,
sworn.

14

15

16 THE REGISTRAR: Thank you. Could you state your full
17 name, please.

18 A Frances Patricia Hunter.

19 THE REGISTRAR: Thank you. Proceed.

20 MR. MCGOWAN: For the record it's Patrick McGowan.

21

22 EXAMINATION IN CHIEF BY MR. MCGOWAN:

23

24 Q Ms. Hunter, where were you born?

25 A I was born in a city called South Shields in the
26 northeast of England.

27 Q And when did you move to Canada?

28 A I emigrated to Canada on my own in 1965.

29 Q Okay. And you were employed by Air Canada for 34
30 years?

31 A I was.

32 Q And primarily as an International Gate Agent; is
33 that correct?

34 A Correct.

35 Q Okay. And what did you do as an International
36 Gate Agent?

37 A The function of that job is at the gate beside the
38 aircraft, we check in passengers, we seat them, we
39 then board the aircraft, we deliver a manifest to
40 the aircraft with the full passenger name and any
41 documents that are required to go with an
42 international flight.

43 Q And for most of those 34 years were you working at
44 Vancouver Airport?

45 A All but two years.

46 Q And you retired from that job in 2005?

47 A No, I retired in July 2003.

41
Patricia Hunter
In chief by Mr. McGowan

1 Q 2003, okay.
2 A And a short time after that you were again
3 employed at the airport by a company named
4 Marquise; is that correct?
5 A Correct.
6 Q And what year did you start with Marquise?
7 A I started in September 2005.
8 Q Now, Marquise is a private company which contracts
9 with the airport to take care of certain customer
10 service positions; is that correct?
11 A Correct.
12 Q And you were employed by Marquise as a Customer
13 Service Agent?
14 A Correct.
15 Q And one of the stations you would be given with
16 your position as Customer Service Agent was a
17 greeter just before the Primary Inspection Line;
18 is that correct?
19 A That's correct.
20 Q Okay. Did you also work other areas in the
21 airport?
22 A Yes, I did. We have a special function in the
23 summer where we work out on the ramp with the
24 arriving aircraft and the offloading baggage.
25 Q Okay. And do you continue to be employed by
26 Marquise in the same position?
27 A I am.
28 Q Now, I'm going to ask you specifically about your
29 function when you're working just prior to the
30 Primary Inspection Line. Just so we're all clear,
31 the Primary Inspection Line is the first Customs
32 officer that a person comes to when they come off
33 the plane; is that correct?
34 A Generally speaking, once in a while I do know that
35 CBSA will send agents into a bridge and they will
36 question the passengers as they come off the
37 aircraft.
38 Q Okay. There's a large bank of booths at the
39 bottom of an escalator in the International
40 Arrivals area. That's the Primary Inspection
41 Line, correct?
42 A Yes, it is.
43 Q Okay. And when you're working just prior to that
44 line, what is your function?
45 A Primarily it is to manage queue control. We try
46 to get passengers to an inspector in the order in
47 which they came into the hall so that people don't

1 get upset. We answer any questions that
2 passengers may have, and we also have two areas
3 where you can bypass the Primary Inspection Line,
4 and we try and distinguish those passengers from
5 the rest and direct them to those areas.

6 Q Okay. And what do you wear in the way of a
7 uniform?

8 A We wear black pants and a red shirt.

9 Q Is there a crest or a logo on the shirt?

10 A There is "Customer Service" written on the back
11 and there is a similar logo on the front left-hand
12 side.

13 Q Okay. And in relation to the Primary Inspection
14 Line, where are you situated when you're working?

15 A It's a big hall, and I will work at the back,
16 which is prior to passengers entering the queue
17 area, or I would --

18 Q I'm just going to stop you. When you say "back"
19 do you mean closer to the escalator?

20 A Close, close to the escalator, yes.

21 Q Okay, carry on.

22 A And I also work right at the front, which is very
23 close to the Primary Inspection Line.

24 Q Okay. In October of 2007 did you have a station
25 or a desk, or were you a mobile?

26 A I was mobile.

27 Q Okay. And what tools did you have to assist you
28 with your job, and speaking now of October 2007.

29 A Yes. I had a clipboard with worksheets on and
30 those worksheets are flight arrivals, gates that
31 those flights will come in with passenger loads.
32 It's to assist us in knowing the volume that we'll
33 have and the time periods we'll have that volume.

34 Q Okay. Now, you told us about your function of
35 essentially corralling or guiding passengers to
36 Immigration, correct?

37 A Correct.

38 Q Okay. Now, the passengers when they come off the
39 plane, is there any task that they conduct or any
40 forms that they complete in the area where you
41 work?

42 A The Customs declaration form is given to
43 passengers on board the aircraft. There are
44 occasionally passengers who come down that have
45 not completed a form. Usually they don't have a
46 pen with them. And we have desks spread out at
47 the back and desks at the front by the Primary

Patricia Hunter
In chief by Mr. McGowan

1 Inspection Line for passengers to use.
2 Q Okay. Do you have copies of the forms yourself?
3 A We do. I carry some with me on my clipboard.
4 Q And do you know in what languages the forms are
5 available?
6 A The form is -- that we use is in English and
7 French.
8 Q Is the form available in other languages? I'm
9 speaking now of October 2007.
10 A I have not seen -- I have seen it in Japanese.
11 Q Okay.
12 A I have not seen it in any other language.
13 Q In October of 2007 was there a translation
14 available for the form in different languages,
15 aside from English, French or Japanese?
16 A Yes. We have half a dozen or maybe eight books in
17 the Customs area with translations in.
18 Q Okay. And what languages are in those books, do
19 you know?
20 A There's certainly Mandarin, Korean, Japanese.
21 Q Let me -- perhaps I can just cut right to it. Do
22 you know if there's a Polish translation in that
23 book?
24 A Yes, there is. There is.
25 Q And there was on October 2007?
26 A Yes.
27 Q I'm going to move now, Ms. Hunter, to October
28 13th, 2007. I understand you were working that
29 day?
30 A I was.
31 Q Okay. What was your shift?
32 A It was what we call an "A" shift, which is 9:00 to
33 5:30.
34 Q 9:00 in the morning till 5:30 in the evening?
35 A Correct.
36 Q And who were you working with that day?
37 A I was working primarily with my colleague Peter
38 Dore.
39 Q And did he have the same position you did as a
40 Customer Service Agent?
41 A Yes, he would be on a slightly different shift.
42 Q In the same location?
43 A Yes.
44 Q What can you say about how busy the International
45 Arrivals area was during your shift that day?
46 A I would say it was moderate. Usually by the
47 middle of October the passenger volume has

1 reduced.

2 Q During a typical shift such as this one, how many
3 individuals would you personally interact with?

4 A I would have a brief interaction with many, many
5 passengers. Close interaction with maybe six or
6 ten.

7 Q Okay. You understand you're here today to speak
8 about an individual who had an incident with the
9 RCMP sometime in the early morning hours of
10 October 14th?

11 A I do.

12 Q Okay. You know that man's name is Mr. Dziekanski?

13 A Yes.

14 Q Okay. Now, you're going to tell us something
15 about an interaction you had with an individual,
16 correct?

17 A Correct.

18 Q Do you believe this individual to be Mr.
19 Dziekanski?

20 A I do.

21 Q Okay. And tell us why you believe that?

22 A I saw his picture in the paper very shortly after
23 that.

24 Q Yes.

25 A And I recognized him.

26 Q Okay. When did you first see Mr. Dziekanski?

27 A My colleague Peter and I were standing at the
28 front of the Customs Hall, just approaching the
29 Primary Inspection Line. The passengers from
30 Condor's flight had come through, cleared
31 extremely quickly and had gone.

32 Q Now what time of day are we speaking about?

33 A This would be about 3:15, I expect.

34 Q Okay. And how did you know the passengers which
35 had cleared were from the Condor flight?

36 A Well, it was the only flight in at the time. They
37 came down the correct area from the gate that they
38 arrived at, and we certainly recognized them as
39 typical German passengers.

40 Q Okay. Carry on, I was asking about when you first
41 saw Mr. Dziekanski. You told us most of the
42 passengers from Condor appeared to have cleared
43 quickly.

44 A Correct.

45 Q Okay. Peter and I were facing each other. The
46 first I was aware of anything was Peter looking
47 beyond me, and I turned around to see what he was

1 looking at, and at that point I saw Mr.
2 Dziekanski.

3 Q Okay. And where did you see him?

4 A He had already entered the queue in the inspection
5 area.

6 Q Did you see where he came from?

7 A I did not.

8 Q Okay. Were any of the other passengers, from what
9 you believe to be the Condor airplane, remaining
10 in the queue?

11 A No.

12 Q Were there any other passengers at all --

13 A No.

14 Q -- in that area?

15 A The hall was empty.

16 Q Is this an unusual occurrence for a passenger to
17 show up when there's nobody else in the queue?

18 A It is.

19 Q Would you typically see it at some point on every
20 shift, or is it an extremely unusual event?

21 A It would -- it's an unusual event.

22 Q Okay.

23 A Passengers usually come through in groups or
24 following one behind each other. But a solitary
25 passenger is an unusual event.

26 Q Please tell the Commissioner about your initial
27 contact with Mr. Dziekanski.

28 A I looked over my right shoulder. He was coming up
29 the queue area, walking very steadily, but staring
30 straight ahead. He certainly looked unusual to
31 me. He almost had a robot-like walk and approach.
32 I took my clipboard, turned towards him as he came
33 beside me, so I was on his left-hand side at this
34 point, and said to him, "Sir, do you have your
35 Customs declaration?" And this is -- if we
36 haven't had any communication with a passenger,
37 this is usually a way to start communication.
38 Also a part of our job is to help ensure that
39 passengers have their Customs declaration ready.
40 That's to speed up the process.

41 At the point I asked him, "Sir, do you have
42 your Customs declaration?" he looked down, and I
43 believe he was looking at the Customs declaration.
44 He was certainly looking over my shoulder. He
45 looked for a few seconds and then went back to
46 looking straight ahead.

47 At that point in time Peter and I realized we

- 1 were not going to be able to have communication
2 with this passenger. So we indicated, which we
3 frequently do, with hand signals for him to
4 proceed ahead to speak with a Customs officer.
- 5 Q Okay. I'm just going to stop you there and ask
6 you a few questions. How close were you to Mr.
7 Dziekanski?
- 8 A I was standing right next to him at the point I
9 asked him about his Customs declaration.
- 10 Q You had indicated that when he looked down you
11 believed he was looking at a Customs declaration
12 form. Were you holding a Customs declaration
13 form?
- 14 A On the back of my clipboard I have a Customs
15 declaration form taped on there, and that was what
16 I was showing him.
- 17 Q Okay. Did he appear to respond to you at least,
18 or acknowledge you when you spoke to him?
- 19 A He did not.
- 20 Q Okay.
- 21 A In any way.
- 22 Q When you displayed the Customs declaration form,
23 did he appear to respond by looking at it?
- 24 A I believe he was looking at it. I believe he was
25 looking over my shoulder at it.
- 26 Q Now, can you estimate the proximity you were to
27 him, the distance between the two of you when you
28 were at your closest?
- 29 A There would have been just maybe 12 inches
30 separating us, at most.
- 31 Q Okay. Did you make any observation about any
32 odours?
- 33 A No, I didn't.
- 34 Q Okay. Did you observe anything else about him
35 physically?
- 36 A I did. He appeared to me to be quite a tall man,
37 certainly taller than me. I'm five-foot-six, and
38 my uniform shoes have a two-inch heel on them. So
39 I'm not a small person in there. He certainly
40 appeared to be taller than me. He was looking
41 over my shoulder. I did not at any point look up
42 into his eyes. Sometimes I find that
43 disrespectful to stare at somebody. But I did
44 notice he had a small sheen of perspiration on --
45 over his lip.
- 46 Q When you directed him, you told us, by hand
47 signals towards the Primary Inspection Line.

Patricia Hunter
In chief by Mr. McGowan

- 1 A Correct.
- 2 Q Did he follow the direction you'd give him with
3 your hand signals?
- 4 A He did.
- 5 Q Did you see anything in his hands when you dealt
6 with him?
- 7 A No, nothing.
- 8 Q Do you recall whether or not he had any hand
9 luggage with him?
- 10 A That I don't recall.
- 11 Q Do you recall whether or not he had any documents
12 or a passport in his hand?
- 13 A He definitely had nothing in his hands. Usually
14 passengers have documents and passports.
- 15 Q Do you recall what he was wearing?
- 16 A He was wearing a large bulky off-white coloured
17 coat.
- 18 Q Did you know where he was from when you dealt with
19 him, or what language he spoke?
- 20 A I didn't. I presumed at that point that he was
21 off a Condor flight.
- 22 Q Now, after you directed Mr. Dziekanski to the
23 Primary Inspection Line, was that your final
24 personal interaction with him?
- 25 A Yes, it was.
- 26 Q Did you continue to make observations of him after
27 that?
- 28 A Yes, I did.
- 29 Q Okay. Tell us what you observed after you
30 finished interacting with him and directed him to
31 the Primary Inspection Line?
- 32 A He approached a CBSA inspector who was sitting
33 down in his desk. They had a few moments, really,
34 it seemed, only a few moments communication. The
35 inspector then came out from his desk, indicated
36 to Mr. Dziekanski that he go back and come around
37 to a table which was there. Mr. Dziekanski did
38 that. He came to the table. So at that point he
39 has his back to myself. The inspector came to the
40 other side of the table, took out the booklet that
41 has the translations in, gave a translation to Mr.
42 Dziekanski, and at that point he looked up at
43 Peter and I and said to us, "He is Polish."
44 Because I think the inspector had seen that we had
45 tried to communicate with this passenger and
46 couldn't.
- 47 Q And when you say "he" looked up and said he's

Patricia Hunter
In chief by Mr. McGowan

- 1 Polish, you're speaking of the Customs officer?
2 A The CBSA inspector, yes.
3 Q Okay. Now, the inspector came out from behind the
4 booth and walked Mr. Dziekanski over to the desk,
5 you've told us that?
6 A He did.
7 Q Is that something you see frequently?
8 A We -- it's very, very infrequent to see that.
9 Q Okay. Just so we all have a note of it, is there
10 a form number for the Customs declarations that
11 are available there?
12 A Yes, it's Canada form E311.
13 Q Okay. Did the Customs officer stay with Mr.
14 Dziekanski at the desk or leave him there?
15 A No, he left him there to complete the form.
16 Q Okay. And what did you observe of Mr. Dziekanski
17 at the desk?
18 A At the point that the Customs officer gave him the
19 form and the translation, my colleague and I
20 stepped back several paces to allow Mr.
21 Dziekanski, or the passenger we were calling him
22 at the time, privacy to complete his form, because
23 it is a confidential document, and in our training
24 from CBSA we were told that it is a confidential
25 document. We are not to be looking over anybody's
26 shoulder while they're completing it, and we're
27 not to be coaching or instructing anybody how to
28 complete it.
29 Q How long did you observe Mr. Dziekanski at the
30 desk?
31 A I observed him probably for between 15 and 20
32 minutes.
33 Q Did he appear to be looking at the translation
34 book which had been opened?
35 A He did. Even though I was several paces behind
36 him, I could see that he was in fact looking over
37 his left shoulder at the translation book and then
38 looking back to the form.
39 Q Did you observe him write anything on the form?
40 A I didn't. His coat obscured that.
41 Q So if I understand you, you don't know whether or
42 not he wrote on the form?
43 A I don't.
44 Q How long does it typically take to fill out this
45 form, in your experience?
46 A Well, for an experienced passenger, who was
47 familiar with either English or French, I would

- 1 say three or four minutes.
- 2 Q Okay.
- 3 A It's mostly ticking the appropriate boxes.
- 4 Q Have you observed passengers take lengthy periods
- 5 of time to fill out the form before?
- 6 A I have.
- 7 Q Did you see Mr. Dziekanski move from the desk?
- 8 A No, I didn't.
- 9 Q Okay, and why is that?
- 10 A I was still several -- well, at that point I had
- 11 moved even further back and I was observing him
- 12 from time to time. He seemed to be at the desk
- 13 every time I glanced over at him.
- 14 Q What can you tell us about Mr. Dziekanski's
- 15 demeanour or behaviour while you were observing
- 16 him?
- 17 A While he was at the desk he -- I think he was
- 18 perspiring, because he was pulling out a
- 19 handkerchief from his pocket and wiping his face
- 20 frequently.
- 21 Q Did he exhibit any indication to you that he was
- 22 upset or agitated?
- 23 A No, he didn't.
- 24 Q Did you observe anything in the nature of
- 25 aggressive behaviour?
- 26 A No, nothing.
- 27 Q Did you ultimately see the book that was left open
- 28 on the desk at some point?
- 29 A No, I didn't.
- 30 Q Your last observation of him was just prior to you
- 31 redirecting yourself to a different area, correct?
- 32 A That's correct. He was still at the desk when I
- 33 left to go to the back of the hall.
- 34 Q Did you make any observations, which would
- 35 indicate that he may have been impaired, to your
- 36 observation?
- 37 A No.
- 38 Q You told us Mr. Dore was the person you were
- 39 working with that day.
- 40 A Correct.
- 41 Q Can you tell us where he is today?
- 42 A I believe Mr. Dore is on a long-planned vacation.
- 43 Q Your shift ended at what time?
- 44 A 5:30.
- 45 Q After your shift did you make any efforts to
- 46 locate or contact Mr. Dziekanski?
- 47 A I did not.

50
Patricia Hunter
In chief by Mr. McGowan

1 Q Okay. Which way did you leave --
2 A I left --
3 Q -- out of the International Arrivals area?
4 A There are two exits, and I took the exit which
5 would pass the Primary Inspection Line and go into
6 the baggage claim area, and then continue on out.
7 Q Would that have taken you past the baggage
8 carousels?
9 A Past all of them.
10 Q And would you have exited in the area referred to
11 as the "point"?
12 A Yes, I would.
13 Q And that's the place where people hand in their
14 Customs declaration cards?
15 A That's correct.
16 Q Okay. Did you look around as you walked through
17 that area?
18 A I did. I always look around.
19 Q Okay. Did you see Mr. Dziekanski while you were
20 in there?
21 A No, I did not.
22 Q If he was there, do you believe you would have
23 remembered him? If he was somewhere that you
24 looked, would you -- would you have remembered
25 that?
26 A I most -- I most definitely would have remembered
27 him.
28 Q Now, you told us that -- it sounds like he's
29 somebody that sticks out in your mind?
30 A Definitely.
31 Q Okay. Why does he stick out in your mind?
32 A He was just an unusual passenger.
33 MR. MCGOWAN: Those are my questions, Mr. Commissioner.
34 THE COMMISSIONER: I think it's time to adjourn for
35 lunch now. So we'll be back at two o'clock, and
36 thank you, see you then.
37 THE WITNESS: Thank you.
38 THE REGISTRAR: The hearing will now adjourn until 2:00
39 p.m.
40
41 (WITNESS STOOD DOWN)
42
43 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
44 (PROCEEDINGS RECONVENED)
45
46 THE REGISTRAR: The hearing is now resumed. Please be
47 seated.

51

Patricia Hunter

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

1 MR. STEWART: Mr. Commissioner, Dwight Stewart, counsel
2 for the Airport.

3 THE COMMISSIONER: Yes.

4 MR. STEWART: And I think if Ms. Hunter can retake the
5 stand.

6 THE COMMISSIONER: Indeed.

7

8 PATRICIA HUNTER, a witness,
9 recalled, warned.

10

11 THE REGISTRAR: May I remind you you're still under
12 oath.

13

14 CROSS-EXAMINATION BY MR. STEWART ON BEHALF OF THE
15 VANCOUVER AIRPORT AUTHORITY:

16

17 Q Ms. Hunter, in the questions you received from Mr.
18 Vertlieb, you commented on some of the training
19 that you received from the Canada Border Services
20 Agency, specifically in terms of how you are to
21 treat the E311 form and the E311 table.

22 A Correct.

23 Q Can you -- can you explain for the Commission if
24 you have an understanding of why it is that
25 Customs wants you to give people their privacy?

26 A In our training with CBSA it was explained to us
27 that it is a confidential document. Not only is
28 it a confidential document, but it is a document
29 that can be used in the case of the prosecution, I
30 presume, in a smuggling case. And we are at no
31 time to coach passengers how to complete it or to
32 complete it for them because if it comes to a
33 prosecution, they will not be able to proceed.

34 Q Okay, thank you. Did you have any sense of
35 whether this passenger was visiting Canada,
36 returning to Canada, or immigrating?

37 A I had no sense that he was returning to Canada. I
38 had no sense that he was a visitor or an
39 immigrant. I just accepted him as a passenger.
40 But I think I had judged that in fact he was not a
41 returning Canadian.

42 Q Are there certain clues that you look for to try
43 and identify who may be immigrating?

44 A Yes. Immigrants usually come down with their
45 papers in their hand, or they have them in a big
46 plastic folder, which they show to us right away.

47 Q Okay. To your recollection did Mr. Dziekanski

Patricia Hunter

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

1 have documents in his hand?

2 A He had no documents at all. He didn't have a
3 passport or any documents.

4 Q You've worked in the airport for some time, both
5 for the airline and now as a customer service
6 agent in the Customs Hall. Have you ever had any
7 experience dealing with medical emergencies?

8 A Yes, I have had several medical emergencies.

9 Q And you've been involved in the response?

10 A Correct.

11 Q Okay. And what is it that you do when you detect
12 a medical emergency?

13 A We would normally try and have some communication
14 with the passenger if we could, because they can
15 then tell us that it may be something specific.
16 If we cannot communicate with a passenger, we will
17 try their travelling companion; failing that,
18 somebody else who was very close to them when the
19 medical emergency showed itself. If we are not
20 able to do any of that, then we have to judge for
21 ourselves what -- what the situation is.

22 Q How is it, though, that you would seek the
23 assistance of medical responders?

24 A If the passenger appeared to be unconscious, we
25 would definitely be calling 9-1-1 right away.

26 Q Okay.

27 A Or if they displayed -- I have dealt with several
28 heart attacks and they are definitely specific
29 symptoms that you get when somebody is displaying
30 a heart attack.

31 Q Was that ever a consideration in your dealings
32 with Mr. Dziekanski?

33 A No. He didn't show any -- any symptoms at all.
34 He didn't appear to be faint or clutching the desk
35 or clutching himself.

36 Q Okay. And similarly, I imagine that you have a
37 lot of experience dealing with people who have a
38 language barrier?

39 A I do.

40 Q And can you describe for the Commission some of
41 the tools you use and some of the things that you
42 see to guide people through a language difficulty?

43 A The fact that somebody doesn't speak my language
44 and I don't speak theirs is not generally a
45 problem. We communicate sometimes through sign
46 language. People are almost always willing to
47 hand over their passport, their documents, their

Patricia Hunter

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

1 ticket, and they all seem to have a purpose and we
2 have a purpose to help them get through.
3 MR. STEWART: Okay. Now, I'm going to ask you to
4 assist me and assist the Commission in pointing
5 out some of the areas you've been talking about,
6 and I'm going to present to the witness a diagram.
7 My apologies to the Commission. We have, I think,
8 a blown-up version of this the Commission counsel
9 has arranged and only late in the day did we
10 realize that the pre-PIL area is not shown on the
11 blown-up diagram. I do have copies, though, of
12 the diagram that shows this pre-PIL area.
13 THE COMMISSIONER: Do you have copies for counsel?
14 MR. STEWART: I do.
15 THE COMMISSIONER: Thank you.
16 MR. STEWART: I'm just thinking through how I do this
17 without a person to be able to point and so many
18 people in the room. Maybe if I could do this so
19 that it is have everyone have the diagram turned
20 in the right direction. So if everyone's looking
21 at this as it would appear in a binder, so that
22 the 11 inches is vertical. And you will see that
23 on one end of the vertical there's a grey box that
24 indicates, it's very difficult to read, it gives a
25 distance.
26 THE COMMISSIONER: Mm-hmm.
27 MR. STEWART: We should put that, situate that at the
28 bottom.
29 THE COMMISSIONER: All right.
30 MR. STEWART: So I'll take this witness through just
31 some of the areas to assist people in orienting
32 themselves with respect to this map.
33 Q Ms. Hunter, at the top of this map is what appears
34 to be the escalators that people are familiar with
35 that you descend down into the Customs Hall.
36 A Yes, correct.
37 MR. STEWART: Okay. Mr. Commissioner, is that...?
38 THE COMMISSIONER: Yes.
39 MR. STEWART: Okay.
40 Q The area beyond that, is that the area that you
41 worked in?
42 A Yes.
43 THE COMMISSIONER: That's below that.
44 MR. STEWART: Below that. Thank you, Mr. Commissioner.
45 Q There then is a sort of a line going left to right
46 across what becomes the Customs Hall. The first
47 line there, can you describe what that appears to

Patricia Hunter

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

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

1 represent?

2 A That appears a short -- that represents a short
3 queuing area. It holds about ten passengers at a
4 time, and at that point they are waiting to speak
5 with a CBSA inspector. They are in that person's
6 line.

7 Q And am I correct that it's at the end of that line
8 that the 311 information tables are located?

9 A No, it's actually behind that line.

10 Q Okay, behind that.

11 A Yes.

12 Q All right. But it's up close to that?

13 A It's very close.

14 Q Okay. And then the line that's just beyond that
15 is what's referred to as the PIL or the Primary
16 Inspection Line?

17 A Correct.

18 Q Okay.

19 A The smaller squares on there are the inspectors'
20 desks.

21 MR. STEWART: Okay. If I could have that then marked,
22 I believe, as the first exhibit.

23 THE COMMISSIONER: I think that's right. Exhibit 1.

24 THE REGISTRAR: To be marked as Exhibit 1.

25

26 EXHIBIT 1: Copy - Floor Plan Airport Customs
27 area

28

29 MR. STEWART: Ms. Hunter, those are all my questions
30 for you. Some other counsel may have additional
31 questions for clarification.

32 MR. KOSTECKYJ: Walter Kosteckyj, counsel for Zofia
33 Cisowski.

34

35 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA
36 CISOWSKI:

37

38 Q I do have a few questions for you. You were
39 talking about your training. What training did
40 you actually undertake, how many hours of training
41 did you undertake before you started your job as a
42 greeter?

43 A One full day with the Marquise Corporation, and
44 half a day with Canada Border Services Agency.

45 Q Now, the day that you did with Marquise, that's
46 the company that you actually work for, correct?

47 A Correct.

- 1 Q What was involved in your training with Marquise?
2 A An explanation of the function that we have in the
3 Customs hall, plus their company policies.
4 Q And in brief, what is your function in the Customs
5 Hall?
6 A It is to -- primarily it is either queue control
7 to make sure that passengers do get through in as
8 timely a fashion as possible, or at least in the
9 order in which they came into the Customs Hall.
10 And also to separate those passengers who aren't
11 required to go through there because they're going
12 either directly on an international flight, or
13 directly on an American flight.
14 Q Do you have any security function?
15 A No. Everybody at the airport is expected to
16 maintain a degree of security. If we see anything
17 unusual, we are certainly to intercept the
18 passenger, to get involved in what is happening.
19 Q Well, you say you're to intercept the passenger?
20 A If we see anybody going into an area that they
21 should not be entering, then we are always
22 expected to step forward and question the person.
23 Q Okay. I'm assuming that if you see a security
24 risk, you call somebody that's specifically
25 trained to deal with security issues?
26 A We do, but we would be quite likely to intercept
27 the passenger prior to that, or the person prior
28 to that, because there is definitely a risk in
29 letting people just walk out onto the ramp, or
30 into the air-side area.
31 Q Well, this day of training that you took with
32 Marquise, did you do any security training?
33 A No.
34 Q And then you did a day, you said, with Canadian
35 Border Services; is that correct?
36 A A half a day.
37 Q Half a day. So from 8:00 till noon?
38 A Actually, it was the afternoon part.
39 Q Okay. So from two o'clock till four o'clock,
40 something like that?
41 A I think we were there about four hours.
42 Q All right. And in the course of that, what kind
43 of training did you receive?
44 A They explained their expectations for our part of
45 the job.
46 Q And what -- in a nutshell, what are their
47 expectations of you in your job?

- 1 A That they do maintain control of the Customs and
2 Immigration area; that we are not to interfere in
3 any way. We are not to coach passengers, or
4 encourage passengers to do anything wrong.
- 5 Q Are you told to report any unusual activities to
6 the Customs people or to the Canadian Border
7 Services agents?
- 8 A Well, they are observing us all the time. Because
9 I have had a couple of incidences that I was
10 starting to deal with, and immediately CBSA
11 inspectors arrive and take over.
- 12 Q All right. But the point, the question I was
13 asking is whether or not you are taught to report
14 to Canadian Border Services agents anything that
15 you find to be unusual?
- 16 A No, we're not.
- 17 Q Okay. So if you thought, for example, that
18 someone was a drug smuggler, and you had reason to
19 believe that, you wouldn't report that to Canadian
20 Border Services?
- 21 A Well, I've never had a circumstance like that.
22 I've never had an incident that I felt I had to
23 report anything to CBSA.
- 24 Q Well, the point -- the point I'm making is are you
25 trained to report that to Canadian Border
26 Services?
- 27 A Definitely not.
- 28 Q All right. So your job is really just to meet,
29 greet and make sure the queue runs right?
- 30 A Correct.
- 31 Q All right. Now, do you have the ability to
32 communicate with other Marquise employees, for
33 example, the Marquise employees that run the
34 information desks on the outside in the unsecure
35 area?
- 36 A Yes.
- 37 Q And do you ever work those information desks
38 yourself?
- 39 A I have done on a relief basis.
- 40 Q All right. And those are also manned by Marquise
41 personnel; is that correct?
- 42 A They are.
- 43 Q And would those people receive the same training
44 you did?
- 45 A What training they receive, I don't know.
- 46 Q Okay. Well, you've done the job, so the training
47 you received was from Marquise for the day, and

- 1 you're entitled to do that job, run the
2 information booths?
- 3 A Any time I've been on the information booth I have
4 had an employee that is there constantly with me.
5 I've only assisted.
- 6 Q Okay. Do you carry a walkie-talkie?
- 7 A Not at the time of this incident, no, I did not.
- 8 Q Okay. So at the time, back in October, if you
9 needed to communicate with someone else, let's say
10 about a medical emergency, how would you go about
11 doing that?
- 12 A We would go to our telephone at the back of the
13 hall.
- 14 Q Okay. Now, presuming that someone had a medial
15 emergency --
- 16 UNIDENTIFIED SPEAKER: (Inaudible - off microphone).
- 17 MR. KOSTECKYJ: These things are unfortunate, but they
18 sometimes occur and we will carry on.
- 19 Q The point that I was making with you earlier is if
20 you ran into a medical emergency, what you told us
21 was that, look, if you saw somebody and you
22 thought that they were in need of some form of
23 help, you would communicate with a fellow
24 traveller or with them if you could. For example,
25 if somebody you thought was having a heart
26 problem, or had some other medical problem, you
27 would communicate with that person if you could,
28 and if you couldn't, then you'd communicate with
29 somebody that was travelling with them?
- 30 A We would immediately go to the passenger, and if
31 we could have any communication at all, we would.
32 If not, usually at that point there was somebody
33 standing with them, or kneeling on the ground with
34 them, obviously with them, then we would
35 definitely speak with that person.
- 36 Q Okay. And if -- and if you can't find somebody,
37 would you page in the -- would you be able to have
38 the access to be able to page for somebody that
39 might be waiting for that person to get medical
40 background?
- 41 A If it was a medical situation, we wouldn't be
42 taking the time to page.
- 43 Q I see. Okay. Now, if someone is having
44 difficulty, language-wise, at the time were there
45 any translation services available in the airport?
- 46 A Yes, there is an interpreter's booth behind the
47 primary inspection line.

- 1 Q Okay.
- 2 A And it is staffed by CBSA.
- 3 Q Did you ever after observing Mr. Dziekanski,
4 that's who you say that you saw having this
5 difficulty, correct? You're fairly certain about
6 that?
- 7 A That is the passenger that I saw --
- 8 Q Right.
- 9 A -- coming into the Customs Hall.
- 10 Q And you saw him in the Customs Hall and you saw
11 him struggling to understand the Customs
12 declaration form?
- 13 A Well, I don't know that I saw him struggling to
14 understand. I saw him take a long time to
15 complete it.
- 16 Q All right. And during that time did you ever
17 think to call an interpreter to assist him?
- 18 A We would not be permitted to do that.
- 19 Q All right. Did you ever think of approaching
20 somebody from CBSA and saying, "Hey, this guy
21 seems to be struggling with that. You might want
22 to get an interpreter."
- 23 A We would not be permitted to do that, either.
- 24 Q Not part of your job description?
- 25 A We're not permitted to do it.
- 26 Q Okay.
- 27 A CBSA do not permit us to interfere.
- 28 Q So if you see somebody struggling, you can't
29 approach CBSA and say, "Look, we see a struggling
30 person over there that might need some help." You
31 can't do that?
- 32 A I have had that situation several times, and I
33 have seen CBSA inspectors come out and assist the
34 person immediately.
- 35 Q All right. But --
- 36 A Because they're constantly observing us.
- 37 Q Okay. But in this particular case you observed
38 this gentleman, I think from your statement and
39 from what you told us today, for somewhere between
40 30 minutes and maybe 40 minutes; is that correct?
- 41 A No, I observed him for 20 minutes.
- 42 Q All right. So you observed him for 20 minutes.
43 And during that 20 minutes of time, you didn't
44 take the occasion ever to try and contact a
45 translator?
- 46 A I would not be permitted to do that.
- 47 Q Okay. Did you ever see anybody from Canada

1 Customs call a translator?
2 A No. I saw the inspector that brought him to the
3 desk and gave him the written translation, and
4 that's the only inspector I saw approach him.
5 Q If you see something during the course of your
6 shift, are you required to fill out an occurrence
7 report and file it?
8 A Yes. We do have -- we do now. We did not then.
9 Q All right. So there was nothing at that time that
10 you filled out after seeing Mr. Dziekanski to
11 alert the authorities as to what you had seen, or
12 to say that you'd witnessed an unusual event?
13 A No.
14 Q But now such a form exists?
15 A There is.
16 Q Who is your superior? Who do you report to on a
17 shift?
18 A We have -- we're on a shift rotation and every day
19 we have a lead agent.
20 Q Who was the lead agent on that particular day?
21 A I don't remember.
22 Q Did you ever call that lead agent and say, "Look,
23 I'm watching this Polish gentleman who seems to be
24 struggling here. What do you think I should" --
25 THE COMMISSIONER: No, excuse me. The witness never
26 said he was struggling.
27 MR. KOSTECKYJ: Okay. Sorry.
28 Q This -- the witness that you -- you observed Mr.
29 Dziekanski --
30 A Mm-hmm.
31 Q -- taking time to fill out the details of his
32 form.
33 A Mm-hmm.
34 Q Did you ever call a superior to discuss that?
35 A No, because it didn't suggest to me that he was in
36 any particular need. He was filling out his
37 confidential document.
38 Q Other than to observe that Mr. Dziekanski appeared
39 to be somewhat tired and the fact that he didn't
40 speak English, you really didn't see anything that
41 unusual about Mr. Dziekanski at the time, did you?
42 A Except that he entered the Customs Hall, certainly
43 an atmosphere of isolation about him. He appeared
44 to be just looking straight ahead, staring
45 straight ahead, not communicating with us in any
46 way, and that is very unusual. Passengers usually
47 communicate.

Patricia Hunter

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

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

1 Q But when you showed him the form, he understood
2 what you were talking about?

3 A I don't know if he understood or not.

4 Q Well, he showed you his form, did he not?

5 A No, he didn't.

6 Q Oh, I see.

7 A No, no.

8 Q I thought when he first came in you made some
9 communication with him and he had a -- he had a
10 form.

11 A No. I said, "Sir, do you have your Customs
12 declaration card?" And he looked at my clipboard,
13 which has the form on the back, and then he just
14 kept on walking.

15 Q I see.

16 A He didn't give me any documentation of his, or nod
17 his head or anything.

18 Q No one seemed alerted in the area about Mr.
19 Dziekanski's presence? He wasn't violent in any
20 way?

21 A No.

22 Q He wasn't acting inappropriately in any way?

23 A No.

24 MR. KOSTECKYJ: All right. Thank you.

25 THE COMMISSIONER: Anybody else?

26 MR. HIRA: I certainly have questions.

27 THE COMMISSIONER: Yes.

28 MR. HIRA: And for the record it's Ravi Hira,
29 representing Constable Kwesi Millington of he
30 RCMP.

31

32 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE
33 KWESI MILLINGTON:

34

35 Q Now, ma'am, you gave a statement to the RCMP back
36 on December the 18th, 2007.

37 A Correct.

38 Q And you've of course read that statement to assist
39 you in giving evidence today?

40 A I have seen it since then.

41 Q You've refreshed your memory from it?

42 A Mm-hmm.

43 MR. HIRA: Forgive me, Mr. Commissioner, but being late
44 on the file I haven't had a chance to make copies
45 of a couple of documents. It's literally learning
46 over the lunch hour.

47 Q I am going to show you a copy of your statement.

1 Do you have a copy yourself, or...

2 A No.

3 MR. HIRA: May I approach the witness --

4 THE COMMISSIONER: Yes. Yes.

5 MR. HIRA: -- with a copy of the statement? Oh, thank
6 you. Thank you, Mr. McGowan. Here's a copy.

7 A Thank you.

8 Q If I could get you to turn to page 3 of the
9 statement, and just halfway down you're being
10 asked questions by Constable Senghera; is that
11 correct?

12 A Correct.

13 Q And you in response to a question from Constable
14 Senghera said:

15
16 He was sweating profusely from the moment we
17 first saw him come through the uhm pill area.
18 He stood for I am estimating thirty minutes
19 and he was obviously having difficulty
20 competing the form.

21
22 Have I read...?

23 A Okay. I'm in the wrong paragraph, sorry.

24 Q Let's do that again.

25 A Yeah.

26 Q Let's do the whole answer. The officer says:

27
28 No keep going.

29
30 Correct?

31 A Mm-hmm. Mm-hmm.

32 Q You have to say yes or no, I'm sorry.

33 A Yes.

34 Q All right. And you say:

35
36 So at that point the inspector gave him the
37 customs declaration and the polish
38 translation and Mister ZISKANSKI was standing
39 with his back to us. He was sweating
40 profusely from the moment we first saw him
41 come through the uhm pill area. He stood for
42 I am estimating thirty minutes and he was
43 obviously having difficulty completing the
44 form. Uhm he was he didn't appear to be
45 physically agitated.

46
47 Have I read your answer correctly?

- 1 A You have.
- 2 Q And of course your answer is true?
- 3 A Yes. I -- "sweating profusely" is a little more
4 sweating than I saw him. I did see perspiration
5 on his face.
- 6 Q Right.
- 7 A At the first moment while he was filling out the
8 declaration form, he was sweating more heavily.
- 9 Q And the officer continues, the very next comment
10 by the officer is:
11
12 Okay.
13
- 14 Correct?
- 15 A Correct.
- 16 Q And then you continue and say:
17
18 But he certainly was sweating uh profusely,
19 he had no hand luggage with him. He had
20 shown us no passport or documents which most
21 passengers do it's the first thing they
22 present to you. Uhm but he had kind of a rag
23 or handkerchief I don't know and he was
24 wiping his brow with this and putting it back
25 in his pocket, wiping his mouth and putting
26 it back. And at that point I left. I went
27 to the back of the haul because I could see
28 somebody back there.
29
- 30 A Correct.
- 31 Q I've read your answer correctly?
- 32 A You have, yes.
- 33 Q And it is true?
- 34 A Yes.
- 35 Q Thank you. Now, Peter Dore, you've worked with
36 him for some time?
- 37 A I have.
- 38 Q You respect him as a colleague?
- 39 A I do very much.
- 40 Q You respect his judgment?
- 41 A Yes.
- 42 Q He, as you know, has worked in airports for 38
43 years?
- 44 A That's about right. About as long as I've known
45 him.
- 46 Q And I'm told by Mr. McGowan that he's returning
47 from his vacation in March, does that -- early

Patricia Hunter

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

1 March, does that sound about right?

2 A I believe so. I don't know his schedule.

3 Q Fair enough. And before he was started working
4 with you, did you know what he did for part of
5 those 38 years that he worked at airports?

6 A I did.

7 Q Could you tell Mr. Commissioner as to what Mr.
8 Dore did?

9 THE COMMISSIONER: I'm a little worried, counsel, as to
10 where this is going. She should only give her own
11 observations.

12 MR. HIRA: I am happy to tell you where this is going.
13 I am going to put to this witness a part of Mr.
14 Dore's statement and ask her whether she adopts
15 it. We don't have access to him, and if she
16 adopts it, great. If she doesn't, we'll have to
17 consider other avenues.

18 THE COMMISSIONER: All right. Go ahead.

19 MR. HIRA: So I'm trying to lay some groundwork for
20 that purpose.

21 THE COMMISSIONER: Yes, yes, I appreciate that.

22 MR. HIRA: For that process.

23 Q Getting back to my question, can you tell me, tell
24 Mr. Commissioner as to what some of the things Mr.
25 Dore did during those 38 years, if you're aware of
26 them?

27 A Peter Dore and I were both employed -- he was
28 employed by Canadian, I was employed by Air
29 Canada, and we did very parallel jobs. So our
30 paths crossed quite a lot. And then when Air
31 Canada and Canadian merged, Peter and I worked
32 very closely together on a specific program, which
33 was a Japanese tour program. And Peter had had
34 extensive experience with this in his years at
35 Canadian and he was a great help to us in the
36 program.

37 Q All right. Now, I have a multiple page statement,
38 again provided by Commission counsel. Mr. Dore's
39 statement, which was taken on December the 18th,
40 2007, I'm going to point you to some particular
41 paragraphs and read those paragraphs to you and
42 ask you whether, (a) whether that refreshes your
43 memory at all -- or, well, first of all (a)
44 whether you agree with those paragraphs and we'll
45 take it from there. So here is Mr. Dore's
46 statement. It's a 24-page statement, which
47 appears to have been taken on December the 18th,

1 2007, the same date as your statement. Do you see
2 that?

3 A I do.

4 Q You've got Mr. Dore and a Constable Mulhall that
5 are transcribed in the statement, correct?

6 A Correct.

7 Q If you could go to page 2 of the statement,
8 please, and starting with the first answer about
9 half way through the answer, I'm going to read to
10 you from "Um":
11

12 Um, this fellow walked up to me with a, what
13 I thought at the time, was a very, I wouldn't
14 say I wo-I felt fearful, but I felt very
15 uncomfortable when I saw him and I can't
16 explain in words why, but, I've seen many,
17 many people over the years, uh, because I've
18 worked at airports for thirty-eight (38)
19 years. Um, he almost looked over, he's
20 somewhat taller than that me, and uh, and he
21 kind of looked over me, almost through me I
22 felt, um, I noticed he had nothing in his
23 hands whatsoever. He had no...baggage...
24

25 THE COMMISSIONER: No.

26 MR. HIRA: Sorry, "no hand baggage".

27 A No hand baggage.

28 THE COMMISSIONER: And, Mrs. Hunter, remember, it's
29 your observations we're interested in. And what
30 another person saw may or my not help you remember
31 what you saw. But it's what you saw. Thank you.

32 MR. HIRA: Thank you, Mr. Commissioner. Sorry.

33 A Do you wish me to --

34 MR. HIRA: I think you should -- I should sit down and
35 Mr. Stewart should give his position.

36 MR. STEWART: I just want to be certain that this
37 witness is not being asked to look into the mind
38 of Mr. Dore.

39 THE COMMISSIONER: I just said that.

40 MR. STEWART: Or confirm in any way what it is that he
41 described. And certainly there has been
42 discussions with respect to the possibility that
43 Mr. Dore may be called as a witness, but just
44 later in the proceedings. And further, Mr. Dore
45 has never seen that transcript, either, at this
46 point, so...
47

MR. HIRA: If Mr. Dore is going to be called later as a

Patricia Hunter

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

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

1 witness, I can truncate my cross-examination.

2 THE COMMISSIONER: Well, I don't think we know that.

3 So right now I think Ms. Hunter understands fully
4 that it's only her own observations we're
5 interested in.

6 A Well, I think we might be dealing with a question
7 of geography here.

8 MR. HIRA:

9 Q Yes.

10 A Because Mr. Dore was facing Mr. Dziekanski coming
11 up. I was not. I had my back to him until I was
12 aware that Mr. Dore was looking at a passenger, at
13 which point I turned around and then I saw the
14 passenger. So I don't know what his initial
15 reaction was. He certainly didn't share anything
16 with me.

17 Q Thank you. Now, did you think it was a bit
18 unusual that the passenger had no hand luggage
19 with him?

20 A I didn't observe any hand luggage, but I didn't
21 look at him from a distance. When I saw Mr.
22 Dziekanski, he was fairly close behind me, and I
23 was on his left side.

24 Q Did you, like as Mr. Dore, did you have a chance
25 to at all make eye contact with Mr. Dziekanski?

26 A I did not make eye contact with him. Peter
27 already had I could tell, so at that point I
28 looked, saw the passenger approaching me, saw that
29 he had no documentation in his hands, so I asked
30 him, "Sir, do you have your Customs declaration?"

31 MR. HIRA: All right. Those are my questions. I
32 really can't go very much further, given what the
33 witness has said, Mr. Commissioner.

34 THE COMMISSIONER: Thank you, Mr. Hira. Any other
35 counsel? Yes, Mr. Butcher.

36 MR. BUTCHER: This is David Butcher for Constable Bill
37 Bentley.

38

39 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE
40 BILL BENTLEY:

41

42 Q Ma'am, I've got questions in a couple of areas.
43 You were asked by Commission counsel whether or
44 not you smelled any odours at all?

45 A Correct.

46 Q Do you remember that? Are you familiar with the
47 smell of alcohol?

Patricia Hunter

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

- 1 A Yes.
- 2 Q Did you get close enough to him to smell alcohol
3 if there had been alcohol on his breath, in your
4 opinion?
- 5 A I would say I was.
- 6 Q And I take it that you smelled no alcohol on him
7 whatsoever?
- 8 A I did not.
- 9 Q I take it, it's probably quite common for
10 passengers coming off flights, particularly long
11 flights, to smell of alcohol?
- 12 A Actually, it's a lot less common than people
13 think.
- 14 Q But certainly you've become familiar with the
15 smell of alcohol (indiscernible - overlapping
16 speakers) --
- 17 A Oh, yes.
- 18 Q -- at the airport?
- 19 A Yes.
- 20 Q I've got a couple of questions about a document
21 that we were provided a couple of days ago. Have
22 you seen this before?
- 23 A Oh, yes.
- 24 Q Do you have a copy of that?
- 25 A No, I don't.
- 26 Q But I see that your counsel has the original.
- 27 A Mm-hmm.
- 28 Q He will perhaps hand you the original and I'll ask
29 you some questions from the copy that I have.
- 30 A Thank you.
- 31 Q So I've handed you a one-page document with
32 writing on both sides; is that correct?
- 33 A Correct.
- 34 Q The writing is in your handwriting?
- 35 A It is.
- 36 Q And when did you write these notes?
- 37 THE COMMISSIONER: Counsel, can I have a copy of this,
38 please.
- 39 MR. BUTCHER:
- 40 Q When did you write these notes?
- 41 A I don't remember the date that I wrote the notes.
42 From the best of my recollection, because I have a
43 telephone number and name on the side, it is when
44 Marquise advised me that I would be speaking with
45 Angela Rinaldis. And it was some time before I
46 was speaking with her that I made the notes.
- 47 MR. STEWART: And if I can just caution the witness,

Patricia Hunter

Cross-exam by Mr. Butcher (for Constable Bill Bentley)

1 Ms. Rinaldis is my colleague, so certainly this
2 client should know not to speak about her
3 conversations with counsel.

4 MR. BUTCHER:

5 Q And the first note reads as follows:

6
7 Condor arrived, processed passengers 15:30.

8
9 Have I read that correctly?

10 A They were all through by -- that was an estimate,
11 15:30, but they would certainly by 15:30.

12 Q Then you've got a note at:

13
14 30 minutes later?

15
16 A No, that's --

17 Q

18
19 Passenger...

20
21 Right, I'm going to come to that in just a moment.

22 A Okay.

23 Q The note seems to say:

24
25 30 minutes later? Passenger arrived -
26 solitary.

27
28 And you've crossed out "30" and replaced it with
29 "20".

30 A I have.

31 Q Is that correct? And that's the passenger that
32 you're talking about and giving your evidence
33 about, I presume?

34 A Yes.

35 Q And then you've got this comment:

36
37 Sweating - strange.

38
39 What was it that made you think that this
40 passenger was strange? What observation did you
41 make that caused you to write that down?

42 A Just his proceeding straight ahead, staring
43 straight ahead. Certainly there was an atmosphere
44 of a solitary person about him. He was an unusual
45 passenger.

46 Q And on the very bottom of the second page, you've
47 got this note:

1 A Mm-hmm.

2 Q

3

4 Not capable of caring for himself. How did
5 he board flight in DUS.

6

7 Is that correct?

8 Q Correct.

9 Q Now, DUS would be the airport code for Dusseldorf?

10 A Dusseldorf, yes.

11 Q And you thought that this flight had come from
12 Dusseldorf when in fact we know it's come from
13 Frankfurt.

14 A From Frankfurt, yes.

15 Q Again the question is what observation did you
16 make of the man that caused you to write the note:

17

18 Not capable of caring for himself. How did
19 he board flight in [Dusseldorf].

20

21 A Well, it was because he had taken 20 minutes to
22 make his way into the hall, and then he was taking
23 a further length of time to complete his
24 documentation. I don't know how long he took to
25 complete his documentation, because after 20
26 minutes I left. Now, most passengers in an
27 international airport are very purposeful, very
28 swift, they are not really in a position to take
29 so long to complete an ordinary transaction.

30 Q And so you were puzzled by his ability to have
31 undertaken the international journey on his own?

32 A To handle the formalities. He was obviously
33 struggling with handling the formalities.

34 MR. BUTCHER: Thank you. Those are my questions. Mr.
35 Commissioner, I don't know if you or any other
36 counsel wishes to have that note marked as an
37 exhibit.

38 THE COMMISSIONER: No, I don't. It's not usual.

39 MR. BUTCHER: Sorry?

40 THE COMMISSIONER: It's not usual.

41 MR. BUTCHER: No, and I --

42 THE COMMISSIONER: Notes made to refresh one's memory.

43 MR. BUTCHER: I'm not asking for it. Thank you, those
44 are my questions.

45 THE COMMISSIONER: Yes.

46 MR. STEWART: I'm assuming then that none of my friends
47 have any additional questions, and I think that

Patricia Hunter

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

1 the process to be followed is a brief redirect by
2 me.

3 THE COMMISSIONER: You can re-examine if there's
4 something, but it can't be a new topic.

5 MR. STEWART: Yes.

6

7 CROSS-EXAMINATION BY MR. STEWART ON BEHALF OF THE
8 VANCOUVER AIRPORT AUTHORITY, continuing:

9

10 Q Just with respect to your notes, Ms. Hunter, and
11 my friend just took you to that point on -- we're
12 referring to it as the second page because it's
13 been photocopied, but on the --

14 A Mm-hmm.

15 Q -- backside of your notes.

16 A I understand.

17 Q So the comment:

18

19 Not capable of caring for himself. How did
20 he board flight in DUS.

21

22 Is that a comment you're making, or a question
23 you're asking?

24 A It's a question to myself.

25 Q Okay. Are you at this point responding to some of
26 the things that have been raised in the papers at
27 this point?

28 A I saw virtually nothing that was in the papers. I
29 was away immediately after this. My husband and I
30 were in Yellowknife.

31 Q Okay.

32 A And, sad to say, it wasn't news in Yellowknife.

33 Q Okay. You weren't by this note, though,
34 suggesting that Mr. Dziekanski wasn't capable --
35 was not capable --

36 A No.

37 Q -- of caring for himself?

38 A Not at all. I was concerned about somebody taking
39 so long to handle the procedures.

40 Q Okay. You then make the comment:

41

42 Little old Chinese ladies make out fine. No
43 English.

44

45 A They do. They do.

46 Q And what is your experience with that?

47 A We have a lot of people particularly from Asian

Submissions by Mr. Neave (for TASER International Inc.)

1 countries or Eastern European countries coming
2 through Vancouver. They do not speak English. I
3 do not speak their language. But we -- we have no
4 problems. We communicate with each other. They
5 show us their documents, and usually a ticket, and
6 we are able to help them and send them on their
7 way immediately.

8 MR. STEWART: Okay. Thank you, Ms. Hunter.

9 THE COMMISSIONER: Thank you very much for taking the
10 time to come.

11 A Thank you, sir.

12 THE COMMISSIONER: We very much appreciate that.

13 A Thank you.

14

15 (WITNESS EXCUSED)

16

17 MR. VERTLIEB: Now, Mr. Commissioner, that takes care
18 of the evidence of witnesses today. There is one
19 matter that Mr. Neave wishes to canvass with you
20 concerning a motion that he has filed, and we are
21 happy, subject to your direction, to have that
22 argued now.

23 THE COMMISSIONER: Yes, let's hear it now.

24

25 SUBMISSIONS BY MR. NEAVE ON BEHALF OF TASER

26 INTERNATIONAL, INC.

27

28 MR. NEAVE: Mr. Commissioner, on Thursday we filed an
29 application to cause -- for an order to cause
30 Commission counsel to call certain expert
31 witnesses, each of whom has provided an expert
32 report, and to have those expert reports filed as
33 exhibits proper at the outset of this inquiry.

34 THE COMMISSIONER: So it's the reports you're seeking
35 to have filed?

36 MR. NEAVE: Now and -- and for a direction, to the
37 extent possible, some of the experts are from the
38 United States, some are Canadian, and I'll go
39 through it in some detail, Mr. Commissioner, so
40 it's clear on the record what the nature of the
41 application is.

42 You should have before you the application
43 itself.

44 THE COMMISSIONER: I don't seem to have any material on
45 this.

46 Yes, all right, go ahead.

47 MR. NEAVE: Thank you, Mr. Commissioner. Before you,

1 you should have an affidavit, then, of Ms.
2 Spencer, the application itself, and I will hand
3 up to you with your leave certain of the Braidwood
4 Inquiry documents that are on the website, as I
5 will be making reference to those during the
6 course of my submission.

7 To the extent my colleagues wish, I have
8 extra copies of the Braidwood Inquiry Practice and
9 Procedure Directive for Evidentiary Hearings, the
10 Ruling #1, granting participation status to
11 certain of the participants, and the Braidwood
12 Inquiry Purpose and Terms of Reference. If any
13 counsel don't have copies, I have copies with me.

14 As I mentioned, Mr. Commissioner, this is an
15 application that Commission counsel call seven
16 expert witnesses, and that each of their expert
17 reports be filed as exhibits at the outset of this
18 hearing.

19 I pause, Mr. Commissioner, to echo the
20 comments that you made in your opening this
21 morning. The circumstances of Mr. Dziekanski's
22 death are indeed most unfortunate and we echo the
23 condolences that you extended to the family.

24 Mr. Dziekanski's death has ignited a public
25 controversy concerning the safety of Taser devices
26 generally, and in particular the role, if any,
27 that the devices played in his death.

28 The expert reports and the Commission's
29 materials disclosed to participants put to rest
30 any assertion that the Taser devices caused Mr.
31 Dziekanski's death. Indeed, the expert reports,
32 and I will be taking you to them in brief, the
33 expert reports fully support the position that Mr.
34 Dziekanski died of a cardiac arrhythmia, secondary
35 to the effects of chronic alcohol abuse, alcohol
36 withdrawal, stress from both the emotional and
37 physical restraints of the withdrawal, the
38 struggle with law enforcement and alcohol
39 cardiomyopathy.

40 The expert reports that we have been provided
41 with through Commission counsel, and particularly
42 those that were obtained through the Integrated
43 Homicide Investigation Team, clearly indicate that
44 Mr. Dziekanski's death was not caused by the Taser
45 device. And, in my respectful submission, it
46 accords with the principles of fairness for
47 Commission counsel to be required to call these

1 expert witnesses, the Canadians that would be
2 subject of the subpoena power, and to make best
3 efforts to do so with respect to the two medical
4 experts in the United States.

5 The experts that we're speaking of are as
6 follows, Mr. Commissioner. There are two groups,
7 what I'm calling the medical experts, and they are
8 these:

9 Dr. Charles Lee, he is the forensic
10 pathologist in Vancouver, and Dr. Lee conducted
11 the autopsy and issued a report in January 2007.
12 Dr. Lee concluded that the principal cause of Mr.
13 Dziekanski's death was sudden death during
14 restraint due to or as a consequence of chronic
15 alcoholism.

16 Subsequent to the issuance of that report, it
17 appears that the Integrated Homicide Investigation
18 Team retained independent experts to conduct
19 additional reviews of both the autopsy, the
20 autopsy results and to review an extensive body of
21 material, and I'll be taking you to those when we
22 look at the reports, upon which to render certain
23 opinions.

24 Dr. Di Maio, whose report I will take you to,
25 is a forensic pathologist of San Antonio, Texas.
26 As I've mentioned, he appears to be retained by
27 the Integrated Homicide Investigation Team to
28 provide an expert opinion on cause of death. Dr.
29 De Maio concludes that there is no evidence that
30 the Taser device caused death. And he reports his
31 opinion as being that:

32
33 ...death was due to a cardiac arrhythmia
34 secondary to the effects of chronic alcohol
35 abuse; alcohol withdrawal; stress from both
36 the emotional and physical results of the
37 withdrawal; the struggle with law
38 enforcement...and alcoholic cardiomyopathy.
39

40 And I'll be taking you to that.

41 Dr. Sloane, who you will recall, Mr.
42 Commissioner, gave evidence at the first round of
43 the inquiry. He is an emergency physician in
44 California. He was retained by the Integrated
45 Homicide Investigation Team to provide an expert
46 opinion on the possible role of alcohol. Dr.
47 Sloane concludes that Mr. Dziekanski sustained

1 systemic effects to his organ systems as a result
2 of chronic alcohol abuse, that he appeared to be
3 in a state of agitated delirium.

4 And you will recall from the first round of
5 your inquiry, Mr. Commissioner, that Dr. Hall gave
6 some evidence with respect to excited delirium,
7 and I believe that agitated delirium and excited
8 delirium are the same symptom, just with different
9 phrasing.

10 Dr. Sloane also concludes that by adding
11 alcohol withdrawal to the milieu of agitated
12 delirium, Mr. Dziekanski was placed at risk for
13 sudden death.

14 Also retained by the Integrated Homicide
15 Investigation Team was Dr. Lu Shaohua, and I hope
16 I have that pronunciation right. I will take you
17 to his report as well. He concludes that Mr.
18 Dziekanski was in a state of agitated delirium
19 prior to and at the time of his death, and that
20 that was likely precipitated by prolonged sleep
21 deprivation, dehydration and electrolyte
22 imbalance.

23 Also retained was Dr. Pollanen, I understand
24 he is the Chief Pathologist for Ontario. He
25 concludes that Mr. Dziekanski did not die of a
26 Taser induced arrhythmia.

27 So those are the medical experts, Mr.
28 Commissioner.

29 There are two engineering experts, the first
30 of whom is Steven Palmer of the Canadian Police
31 Research Centre in Ottawa, and it appears that he
32 was retained to do certain testing on certain
33 Taser devices. And he concludes in his report
34 that all three Taser devices in the case that he
35 examined were within manufacturing specifications.

36 There is a second engineering report with
37 respect to the testing, and that was conducted by
38 Janusz Lokaj of MPB Technologies in Ottawa, and he
39 concludes in his report that the X26 devices
40 operated within TASER's performance criteria.

41 THE COMMISSIONER: Can you spell that name for me?

42 MR. NEAVE: Yes. I will take you to his report as well,
43 Mr. Commissioner. The first name is J-a-n-u-s-z,
44 and the surname is L-o-k-a-j.

45 Now, the basis for the application, Mr.
46 Commissioner, is derived from a number of sources.
47 Firstly, dealing with the Terms of Reference for

1 your Commission, and I have handed those to you.
2 And I draw specific reference to Section 3(2)
3 under the "Purposes of the Commissions". And that
4 provides:

5
6 The purposes of the hearing and study
7 commission established under section 2(2) are
8 as follows:

9
10 And that's -- you've made notation of this, this
11 morning:

12
13 (a) to provide Mr. Dziekanski's family and
14 the public with a complete record of the
15 circumstances of and relating to Mr.
16 Dziekanski's death;

17
18 And:

19
20 (b) to make recommendations referred to in
21 section 4(2)(c).

22
23 And those refer to:

24
25 ...recommendations the commissioner considers
26 necessary and appropriate.

27
28 So there is a very broad purpose for this inquiry.
29 The Terms of Reference are extremely broad.

30 And in addition under the -- as you indicated
31 this morning, Mr. Commissioner, under the Terms of
32 Reference in section 4(2)(b), you are:

33
34 ...to make a complete report of the events
35 and circumstances of and relating to Mr.
36 Dziekanski's death...

37
38 Under the Commissioner's "Practice and
39 Procedures Directive for Evidentiary Hearings", if
40 I can take you to that, Mr. Commissioner. Again
41 that sets out the "Purpose of the evidentiary
42 hearings", in section 2:

43
44 The Commissioner will inquire into those
45 matters set out in section 4(2) of the Order
46 establishing the Commission. On the basis of
47 oral and documentary evidence tendered during

1 the evidentiary hearings, the Commissioner
2 will make findings of fact and may make a
3 finding of misconduct against a person or
4 make a report that alleges misconduct by a
5 person. The Commissioner's findings of fact
6 or findings of misconduct cannot be taken as
7 findings of criminal or civil liability.
8

9 Dealing specifically with the issue of
10 witnesses, if I can have you turn over to section
11 34, Mr. Commissioner, of the "Practice and
12 Procedures Directive", that provides the following
13 under section 34:
14

15 The following rules apply to witnesses:
16

- 17 (a) Commission Counsel shall decide who
18 shall be called as a witness at the
19 evidentiary hearings,
20

21 THE COMMISSIONER: Excuse me, I have --

22 MR. NEAVE: I am at the "Practice and Procedure
23 Directive for Evidentiary Hearings", Mr.
24 Commissioner, section 34, under "Witnesses".

25 THE COMMISSIONER: Oh, all right, 34.

26 MR. NEAVE: Yes, 34.

27 THE COMMISSIONER: I was thinking 30(4).

28 MR. NEAVE: Oh, I'm sorry. My apologies. No, 3-4.
29

30 The following rules apply to witnesses:
31

- 32 (a) Commission Counsel shall decide who
33 shall be called as a witness at the
34 evidentiary hearings,
35
36 (b) Subject to Rule 35, Commission Counsel
37 shall call and examine witnesses on
38 behalf of the Commission, and may adduce
39 evidence by way of both leading and non-
40 leading questions,
41

42 So I just pause. That's the basis upon which
43 the application is brought is to cause Commission
44 counsel to decide and to call each of these
45 witnesses, and I'll go into detail as to why they
46 should be called in a moment.
47

And then, Mr. Commissioner, sub (g), 34(g),

1 it is only:
2

3 (g) after Commission Counsel has called all
4 witnesses on behalf of the Commission, a
5 participant may apply to the
6 Commissioner for permission to call a
7 witness and, if permission is granted,
8 subrules (c) to (e) apply to each
9 witness called by a participant.

10
11 So the structure of the practice before this
12 Commission is that a participant, such as my
13 client, would have no ability to even seek to have
14 these people called, or any other party to seek to
15 have a witness called until the very end of the
16 hearing. And that application would require leave
17 before you, Mr. Commissioner, and likely a
18 detailed submission as to why at that stage any
19 particular witness ought to be called.

20 Now, the present status with respect to these
21 experts is as follows. They are not on the
22 current witness list, with the exception of Dr.
23 Lee, the forensic pathologist in Vancouver, who
24 was on the first list. And I anticipate from what
25 my friend has said this morning that -- Commission
26 counsel has said this morning that Dr. Lee will be
27 called.

28 No decision, as I understand it, has been
29 made with respect to what we regard to be as
30 critical expert witnesses who have relevant
31 information with respect to the very purpose of
32 the Inquiry. And indeed on -- and I don't think
33 it's necessary to take you to it, but in Ms.
34 Spencer's affidavit, Exhibit B is a letter that we
35 wrote to Commission counsel on the 19th of
36 December, seeking to -- and that was after the
37 provincial Crown announced its charge approval
38 decision, and within -- you will recall, or you
39 may have not seen that, but within that press
40 release there was reference to unnamed experts
41 being retained and providing expert reports, which
42 supported the decision not to proceed with
43 criminal charges. So we wrote on the 19th of
44 December, seeking confirmation that those persons
45 would be indeed called. We had no response.

46 THE COMMISSIONER: Well, I don't think anybody knew who
47 they were.

1 MR. NEAVE: Well, in the material that was provided to
2 us pursuant -- well, subsequent to that decision
3 from the Homicide Investigation Team, they were
4 identified. And then last week I raised the issue
5 directly and was informed that no decision had yet
6 been made.

7 In my respectful submission, the witnesses
8 ought to be tendered or called, and the reports
9 tendered because the -- as you will see, and I
10 will take you through some of the -- well, I'll
11 take you through the reports and what I regard to
12 be as the essential portions of them, each of
13 these experts was provided with substantial
14 amounts of information. They make statements
15 about the information they were provided with.
16 They draw opinions based on the underlying facts
17 that they were provided. And in order for their
18 opinions to be proven, the underlying factual
19 assertions upon which the opinion is made must
20 also be established.

21 And, for example, and I'll take you to this
22 in a moment, but as an example Dr. Sloane, the
23 alcohol expert, makes specific reference in his
24 opinion to the evidence of a witness with respect
25 to Mr. Dziekanski on the flight from Poland to
26 Frankfurt, about which we heard this morning. And
27 all of that evidence ought to be properly tested
28 to ensure that the opinions that each of these
29 experts have rendered is supported in fact.

30 And I am going to take you through some of --
31 take you through the expert reports to show you
32 why that's important, and those are in Ms.
33 Spencer's affidavit.

34 At Tab "A", Mr. Commissioner, to that
35 affidavit, you will see a cover letter from Mr.
36 Vertlieb and then what follows is the final report
37 of the post-mortem examination. It's on the
38 second page under Tab "B". That shows that the
39 date of the autopsy and the principal causes of
40 death under Part 1, midway down the page, Mr.
41 Commissioner, the finding:

42
43 Sudden Death During Restraint

44
45 And then the next line:

46
47 due to or as a consequence of

1 Chronic Alcoholism

2
3 In Part 2. And then over the page, and this is
4 important in that this report was provided to the
5 other experts who make certain comments and reach
6 certain conclusions about its correctness. And
7 you can see, Mr. Commissioner, at page 5 of that
8 report the "Commentary", and again we have Dr. Lee
9 saying:

10
11 The circumstances surrounding the death were
12 provided to me by Coroner's Form B as well as
13 medical records provided by Citizenship and
14 Immigration Canada, and a video of the events
15 leading to death.

16
17 I presume that's the Pritchard video that we're
18 talking about. And then he makes various findings
19 with respect to his examination that I don't think
20 are necessary to read to you in full.

21 But at the bottom of the page, second line up
22 from the bottom of the page, Mr. Commissioner, Dr.
23 Lee says this:

24
25 Sudden death following restraint has been
26 described in the forensic literature, but the
27 cause and mechanism is not well understood.
28 It has been associated with virtually all
29 forms of physical restraint. It usually
30 involves men who are combative and acting
31 bizarrely. As a result, these cases often
32 involve law enforcement personnel. However,
33 cases have also involved medical personnel,
34 and occasionally ordinary citizens. In many
35 of these cases, the deceased was intoxicated
36 with drugs such as cocaine or other
37 stimulants. The current belief is that the
38 drugs cause the agitated or excited
39 delirium...

40
41 And that's the link that I indicated earlier.

42
43 ...cause the agitated or excited delirium
44 that result in the bizarre behaviour, and the
45 subsequent death following restraint.
46 Typically, the autopsy shows minimal
47 findings.

1 And then Dr. Lee says this:
2

3 This case differs from the cases typically
4 described in the literature in that the
5 toxicology examination shows no drugs
6 present. Furthermore, no medical condition
7 that may cause delirium was identified. This
8 corresponds with the video...
9

10 And again that is likely the Pritchard video, but
11 I'm not sure about that.
12

13 This corresponds with the video which shows
14 the decedent to be agitated, but he did not
15 appear delirious. However, in the absence of
16 a definitive anatomic cause of death is
17 typical --
18

19 Sorry.
20

21 ...the absence of a definite anatomic cause
22 of death is typical of the sudden deaths
23 following restraint that is described in the
24 literature. His dilated cardiomyopathy would
25 have put him at an increased risk for
26 development of an arrhythmia and sudden
27 death, but probably would not have caused
28 death by itself. The added stress of the
29 physical restraint along with the decreased
30 ability to breathe as a result of being
31 pinned in the prone position may have been
32 enough to elicit a fatal arrhythmia. The
33 presence of signs of chronic alcohol abuse
34 does raise a possibility that he was
35 suffering from alcohol withdrawal, which may
36 partly explain his agitation. It is likely a
37 combination of these and other contributory
38 factors that lead to his death. Therefore,
39 the...death is best described as sudden death
40 following restraint.
41

42 And then that report, and if I can have you,
43 Mr. Commissioner, turn to Tab "E" of Ms. Spencer's
44 affidavit, this is the report of Dr. Di Maio from
45 San Antonio Texas. And you can see the nature of
46 the materials that were provided to Dr. Maio. The
47 first one, the autopsy report; number 6,

1 observations of a constable in regard to the
2 videotapes of the incident and the TASER download;
3 the TASER printout; and then under 8, an extensive
4 list of witnesses.

5 And I just pause for a moment, Mr.
6 Commissioner. Witness 8.d, Monika Kullar, is
7 witness number 5 on the list. So all of these
8 people are coming up very shortly, if they haven't
9 given evidence already. And that example is, if I
10 can cause you to turn the page to item number 10,
11 you'll see the one-paragraph statement of Mr.
12 Gonzalez. Well, he's -- he's the person that we
13 heard of this morning. And there are other --
14 other materials upon which he was provided and
15 presumably on which this opinion relies: the
16 statements of the various Polish citizens at
17 number 14; news items with respect to the
18 deceased's conduct in Poland in number 15.

19 And then he commences a bit of a summary of
20 his interpretation of that evidence. And you can
21 see that, Mr. Commissioner, commencing at page 3,
22 the top full paragraph:

23
24 At approximately 1605 hrs, he went thru
25 Primary Customs where the Customs Officers
26 noted him to be "dripping with sweat".
27

28 And that's a reference to Mr. Chapin, who is
29 witness number 18 on the current list. And we
30 heard some of that from the previous witness with
31 respect to his sweating.

32 Then you'll see at the bottom of the page the
33 paragraph dealing with the RCMP involvement.

34 And over on to page 4, a review of the TASER
35 download information, which indicates that the
36 device was activated on five occasions. And the
37 total time of deployment is there.

38 And then Dr. Di Maio then reviews at page 5
39 the autopsy and concludes, you'll see in the first
40 full paragraph on page 5, the autopsy was
41 performed at 0900 hours on the 16th of October.
42 And then down to the bottom of that page:

43
44 The prosector concluded that based on the
45 findings of a severely fatty liver, atrophy
46 of the cerebellar vermis and dilated
47 cardiomyopathy, Robert Dziekanski was most

1 probably suffering the effects of chronic
2 alcoholism.

3
4 And then he makes in the next -- in the
5 ensuing paragraph, he supports that opinion with
6 respect to information about Mr. Dziekanski's
7 alcohol abuse, and a letter from his mother as an
8 example, a statement from one of the Polish
9 witnesses, and the report in *The Polish Times*.
10 And then concludes -- and then again makes further
11 summary at the bottom of page 5.

12 And then over on to page 6, the second
13 paragraph:

14
15 Based on the aforementioned information --

16
17 - so all of the information that he was provided
18 with -

19
20 -- it is my opinion that death was due to a
21 cardiac arrhythmia secondary to the effects
22 of chronic alcohol abuse; alcohol withdrawal;
23 stress from both the emotional and physical
24 results of the withdrawal; the struggle with
25 law enforcement personnel and alcoholic
26 cardiomyopathy. The mechanism precipitating
27 the fatal arrhythmia was, in all medical
28 probability, a hyper-andrenergic state due to
29 elevated levels of catecholamines produced by
30 autonomic hyperactivity, psychomotor
31 agitation, anxiety, and the struggle,
32 superimposed on increased catecholamine
33 levels observed in cardiomyopathies and
34 chronic alcohol abuse.

35
36 And he then provides a description with
37 respect to the effect of alcohol on the heart
38 muscle and arrhythmias, and then draws a list of
39 symptoms of alcohol withdrawal, stating that they
40 may commence four to twelve hours after stopping
41 use of alcohol and usually peak on the second day.
42 And the symptoms are these. Firstly:

43
44 Autonomic hyperactivity, e.g., sweating, a
45 pulse rate >100. These effects are due to
46 sympathetic outflow, documented by increased
47 circulating catecholamine levels in the

1 urine, serum, and the cerebrospinal fluid.

2
3 2. Psychomotor agitation...unintentional and
4 purposeless motions including pacing about a
5 room, throwing furniture or articles about.

6
7 3. Anxiety.

8
9 4. Transient visual, tactile or auditory
10 hallucinations or illusions.

11
12 5. Increased hand tremor.

13
14 6. Insomnia.

15
16 7. Nausea or vomiting.

17
18 And you will hear evidence of that. And:

19
20 8. Grand mal seizures.

21
22 And then -- and then Dr. Di Maio on page 7 says:

23
24 The diagnosis of alcohol withdrawal is based
25 on the presence of two or more of the above
26 symptoms following cessation or reduction in
27 individuals manifesting heavy and/or
28 prolonged use of alcohol.

29
30 In the second paragraph on that page he says this:

31
32 There is no evidence --

33
34 - no evidence -

35
36 -- that use of the TASER caused the death.

37
38 And he then conducts or discusses in several
39 paragraphs that.

40 He then makes reference to the June 2008
41 National Institute of Justice report on "Study of
42 Deaths Following Electro Muscular Disruption:
43 Interim Report". And on page 8 draws conclusion
44 with respect to that study, or outlines what the
45 conclusions of that study were, and notes that the
46 final study will be published in the next six
47 months. And I believe it's now available and we

1 forwarded it to you last week.

2 And then to the last page, page 9, Dr. Di
3 Maio says this:

4
5 In this case, the elevated catecholamine
6 levels due to the struggle were aggravated by
7 the effects of alcohol withdrawal and the
8 probable presence of elevated levels of
9 catecholamines present as a result of chronic
10 alcohol abuse and cardiomyopathy.

11
12 In summary --

13
14 - he says -

15
16 -- it is my opinion that death was due to a
17 cardiac arrhythmia secondary to the
18 effects...

19
20 And I've read that before. So he's simply picking
21 up what he has said elsewhere in his report and
22 summarizing them in that paragraph dealing with
23 his view following a review of all of the material
24 that he's referred to in his opinion as to what
25 the cause of death was.

26 So that deals with Dr. Di Maio.

27 Dr. Sloane's report is at Tab "D", Mr.
28 Commissioner, and you have heard from Dr. Sloane
29 previously. And you will see in his opinion
30 report, he says this:

31
32 I have been asked to comment on the possible
33 role of alcohol withdrawal as it may pertain
34 to contributing to the death of Mr.
35 Dziekanski on October 14, 2007. I have
36 reviewed the materials provided to me by
37 Corporal Derek Brassington from the
38 Integrated Homicide Investigation Team.

39
40 And then he provides a summary of those: autopsy
41 report, video, transcripts of the police and EMS
42 providers, translated transcripts of interviews of
43 some persons who knew the decedent, as well as
44 some other documents. So we don't know
45 specifically what Dr. -- what Dr. Sloane looked at
46 in reaching his opinions, but certainly that would
47 be available from Corporal Brassington.

1 And then he reaches this conclusion at the
2 bottom -- at the third paragraph on the first
3 page:

4
5 From my review of the materials provided, it
6 appears that Mr. Dziekanski had sustained
7 systemic effects to his organ systems as a
8 result of [his] chronic alcohol [abuse]. The
9 findings on autopsy as the forensic
10 pathologist notes are those that may be
11 associated with chronic use of alcohol - the
12 fatty liver, enlargement of the heart, as
13 well as cerebellar atrophy - all well known
14 to occur in the setting of alcohol abuse.
15 While there [does] appear to be conflicting
16 statements from those in Poland who knew him,
17 he does not appear to have been merely a
18 casual [drinker]. There are certainly some
19 of the interviews that may lead one to
20 believe that he did suffer...some degree of
21 alcoholism.

22
23 And he makes now some -- he makes reference to a
24 statement from a Ms. Dibon.

25 And then over the page, and this is a
26 reference to the Gonzalez evidence this morning,
27 Mr. Commissioner -- I believe it is, in any event.
28 He, Dr. Sloane says:

29
30 We know that he may have had an alcohol odor
31 on his breath from the interview with the
32 flight attendant on the flight to Frankfurt.
33 He was also seated in the wrong seat on the
34 aircraft which could have been due to any
35 number of factors, including [the] effect of
36 alcohol, effect of mild alcohol withdrawal,
37 or simply a language barrier. He reportedly
38 had an incident free flight otherwise, and
39 there is nothing reported from the flight
40 from Frankfurt to Vancouver.

41
42 And then Dr. Sloane refers to the next piece of
43 evidence at the second paragraph:

44
45 The next reports we have are from the customs
46 officials around 1605 on the afternoon prior
47 to his death. Here an individual is

1 described who is dripping with sweat, and
2 later at 22:30 he is described as
3 dishevelled, with slurred speech, [and] no
4 alcohol odor. It is unclear what happened to
5 him in the prior 6 hours.
6

7 Dr. Sloane looks at the video, the bystander
8 video, and he says this with respect to that:
9

10 What I see in this video appears to be a
11 man...
12

13 And I am midway through paragraph 3 on that page,
14 Mr. Commissioner.
15

16 What I see in this video appears to be a man
17 in a state of agitated delirium. This
18 could...be consistent with, or exacerbated
19 by, a state of alcohol withdrawal, though
20 clearly not delirium tremens.
21

22 THE COMMISSIONER: Excuse me. The reason you're
23 reading this to me is to make the point that this
24 is relevant?

25 MR. NEAVE: This is, right now, for these reports to be
26 tendered so that -- so that the examinations of
27 the witnesses that you will hear dovetail with
28 what is in these reports, and that's why I'm
29 reading them to you.

30 THE COMMISSIONER: Yes.

31 MR. NEAVE: Because, in my respectful submission, it's
32 important for the reports to be tendered because
33 each of these experts rely upon specific facts in
34 reaching their opinions, and that's the purpose.
35 And Dr. Sloane is a good example, because he is
36 talking about the evidence, some of which you've
37 heard, some of which is going to be tendered, and
38 then reaches the conclusion, as you will see at
39 the bottom of that page:
40

41 From what I have available to me, in my
42 opinion, Mr. Dziekanski's condition on that
43 evening could certainly be consistent with
44 some degree of alcohol withdrawal. I believe
45 that the time frames we are looking at would
46 allow [for] the development of alcohol
47 withdrawal if he was habitually using in at

1 least the week prior to his travel. By
2 adding the condition of alcohol withdrawal to
3 the milieu of agitated delirium that is
4 witnessed on the video and described by those
5 involved, or if it is solely due to alcohol
6 withdrawal, [it] is difficult to [definitely]
7 determine, but placed him at risk for sudden
8 death.

9
10 While the circumstances of Mr. Dziekanski's
11 death are unfortunate they are not that
12 unique or surprising when one looks at cases
13 of sudden custody death. It is often the
14 matter that in these case, no definitive
15 cause of death is ever determined.

16
17 Dr. Lu --

18 THE COMMISSIONER: Now, I see that the day is moving
19 along here. Maybe we should take a brief
20 adjournment.

21 MR. NEAVE: Thank you.

22 THE COMMISSIONER: So ten minutes.

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

24 THE REGISTRAR: The hearing is now recessed for ten
25 minutes.

26
27 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
28 (PROCEEDINGS RECONVENED)

29
30 THE REGISTRAR: The hearing is now resumed.

31 THE COMMISSIONER: Yes, Mr. Neave.

32
33 SUBMISSIONS BY MR. NEAVE ON BEHALF OF TASER
34 INTERNATIONAL, INC., continuing:

35
36 MR. NEAVE: Thank you, Mr. Commissioner.

37 The next expert is Dr. Lu, his report is
38 found at Exhibit C to Ms. Spencer's affidavit, and
39 you will see on the first page of Dr. Lu's report
40 is being -- he has been retained for the purpose,
41 and he says that:

42
43 The purpose of this report is to provide a
44 medical-psychiatric opinion with regard to
45 Mr. Robert Dziekanski's mental state prior to
46 the police incident on the dates of October
47 13-14, 2007. This report will not include

1 any opinion with [respect] to the cause of
2 death of Mr. Dziekanski.

3
4 So the reports are essentially dovetailing
5 together. The experts are looking at different
6 issues.

7 And you will see what Dr. Lu does is he, on
8 the second page of his report, starts with the
9 statement that he's reviewed the digital files,
10 and then he provides a long list, commencing at
11 the bottom of page 2, of the various materials
12 upon which he -- or that he was provided and upon
13 which his opinion is founded.

14 And then over on top of page 4 you will see
15 at the top the autopsy of Mr. Dziekanski is an
16 issue that he looks at. At item 10, the results
17 of the Taser download, on the bottom of page 4.
18 And then the list continues over to page 6.

19 And then what he does is provides and draws
20 from various pieces of that material certain
21 important excerpts, as he says, and then he refers
22 to -- identifies by name the witness and the
23 particular excerpt of that witness's statement or
24 other document that supports his opinion, and upon
25 which that is made. And that runs, Mr.
26 Commissioner, through to page 11, with 21
27 different cases of facts upon which he's
28 interpreted from the various materials he's been
29 provided with.

30 And then he then further condenses those on
31 page 11:

32
33 The followings are the facts and assumptions
34 based on a review of document files...and the
35 Pritchard video.

36
37 And then he says:

38
39 The medical opinions provided are based on
40 these facts and assumptions:

41
42 And he then lists them. And he includes over the
43 page on page 12 at item 17:

44
45 Coroner's report by Dr. Lee --
46 - as he says -

1 -- does not indicate intercerebral injuries
2 or other significant pathology. Fatty liver
3 was noted.

4
5 And then down into his "Medical Opinion", Dr.
6 Lu says:

7
8 Based on all available information --

9
10 - so all available information -

11
12 -- including the video footage of Mr.
13 Dziekanski prior to his death, numerous
14 eyewitness reports, there is a high degree of
15 certainty --

16
17 - he says, a high degree of certainty -

18
19 -- Mr. Dziekanski was in a state of agitated
20 delirium prior to the police incident and his
21 death.

22
23 And then he says:

24
25 Based on available information, there are no
26 other potential medical-psychiatric
27 conditions that could better account for Mr.
28 Dziekanski's behaviours and mental status.

29
30 And then he reviews at the bottom of the page
31 excited delirium, and provides detailed
32 information with respect to that.

33 And then over on to page 13, Mr.
34 Commissioner, at the bottom of the page, he says
35 this:

36
37 Mr. Dziekanski demonstrated classic features
38 of delirium especially based on the Pritchard
39 video footage. He demonstrated psychomotor
40 agitation, disorganized behaviours. He
41 appeared both frightened and defensively
42 threatening. His aggressive behaviours did
43 not appear to aim at any individual in
44 particular or to achieve a specific purpose.
45 Mr. Dziekanski demonstrated a decreased
46 awareness of his surroundings.

47

1 And we heard a bit about that, Mr. Commissioner,
2 from the last witness with respect to how Mr.
3 Dziekanski proceeded through the Arrivals area,
4 looking straight ahead, not engaging.
5

6 Mr. Dziekanski's behaviours are not typical
7 of individual[s] in an unfamiliar environment
8 or individual[s] coping with language
9 barriers. He did not respond to bystanders'
10 attempt to communicate with him. Although
11 based on limited information, it is clear
12 that Mr. Dziekanski had disturbances in
13 cognition. His actions were not predictable.
14 He appeared to have difficulty organizing and
15 coordinating his actions and behaviours.
16

17 And then he makes some other comments with respect
18 to delirium and some findings with respect to that
19 based on the evidence -- or on the material that
20 he reviewed.

21 And then the second-last paragraph on page
22 14:
23

24 After careful consideration it is my medical
25 opinion that Mr. Dziekanski was in a state of
26 delirium prior to his death.
27

28 It is impossible at this point to
29 retrospectively give a precise cause for Mr.
30 Dziekanski's delirium. However Mr.
31 Dziekanski had numerous risk factors that
32 might contribute to the development of
33 delirium.
34

35 And then he goes through those in terms of
36 temporal issues, and -- and issues with respect at
37 the second paragraph on page 15:
38

39 Mr. Dziekanski was noted to be thirsty.
40 Observation was made that he was sweating.
41

42 We've heard that evidence already.
43

44 He was breathing laboriously in the Pritchard
45 video.
46

46 And some other facts upon which he rests the
47 opinion, and upon which the witnesses ought to be

1 tested during the course of their respective
2 examinations.

3 He then concludes at the bottom of page 15 in
4 the second-last paragraph:

5
6 Based on available information and
7 observations Mr. Dziekanski's delirium was
8 likely precipitated by prolonged sleep
9 deprivation --

10
11 - we're going to hear evidence on that, I think,
12 from some of the witnesses -

13
14 -- dehydration and electrolyte imbalance.

15
16 And then he goes on to say:

17
18 Current medical opinion is obviously limited
19 by retrospective documentation and eyewitness
20 interviews only. The Pritchard digital video
21 footage provides excellent documentation of
22 Mr. Dziekanski's mental status in YVR
23 international arrival area prior to his
24 death. It is my medical opinion that there
25 is sufficient information to establish a
26 clear clinical picture of Mr. Dziekanski's
27 mental status prior to his death. The
28 available information is sufficient to
29 determine that Mr. Dziekanski was suffering
30 from the medical syndrome of delirium prior
31 to his death.

32
33 Is the conclusion, and you can see all of the
34 factual basis upon which Dr. Lu makes -- analyzes
35 and makes that conclusion.

36 The next expert is Dr. Pollanen. His report
37 is at Tab "F". And from his report, and you will
38 see on the second page, Dr. Pollanen was appointed
39 as the Chief Forensic Pathologist for Ontario in
40 2006, at the top of the page.

41 And then he provides in his opinion some
42 "Unifying concepts" with respect to his statement
43 that:

44
45 Some agitated people die suddenly and
46 unexpectedly when they are physically
47 restrained.

1 At the bottom of page 3, and he provides an
2 analysis of that.

3 And then over to page 6, Mr. Commissioner, at
4 the bottom of the page, Dr. Pollanen says this:

5
6 In summary, it is clear that some agitated
7 people who are restrained in the prone-
8 position die. The agitation is often due to
9 excited delirium.

10
11 So that again hearkens back to the other experts.

12
13 However, it can be difficult to determine if
14 restraint position, agitation, both, or
15 neither (something else) is the cause of
16 death in a specific case. The current data
17 suggest that taser discharge is unlikely to
18 cause a direct [arrhythmia] death in agitated
19 people that are struggling with police. It
20 is clear that high-quality autopsies are
21 vital in these cases and will often help to
22 clarify issues in a particular case.

23
24 And then he, at the succeeding pages goes
25 through the "Forensic Medical Review", and you
26 will see on the top of page 7, Mr. Commissioner,
27 he relies upon the autopsy report of Dr. Lee.

28 And then he makes some comments on page 9
29 with respect to the autopsy, and a protocol that's
30 in place in Ontario with respect to that.

31 At page 10 he makes statements with respect
32 to the agitated state and prone-position
33 restraint.

34 At page 11 he has the heading "Effects of the
35 taser" and he says this under heading 3:

36
37 The video evidence clearly excludes a direct
38 taser-related acute arrhythmic death. The
39 main evidence for this conclusion is that
40 Robert Dziekanski is seen to be alive, after
41 successful deployment of the taser. Thus, I
42 am satisfied that the 'temporal
43 disassociation' is sufficient evidence to
44 exclude a direct role of the taser discharge
45 in causing [his] death... However, does this
46 imply that the taser was not a co-factor in
47 Robert Dziekanski's death? The answer to

1 this question has two dimensions:...

2
3 And he talks about those, and he does in the
4 context of excited delirium.

5 And then over the page, Mr. Commissioner, to
6 page 12 in the "Conclusion", he says:

7
8 Robert Dziekanski did not die of the effects
9 of a physical injury, the toxic effects of a
10 drug, or an acutely fatal natural disease or
11 condition. There are at least four variables
12 that could be co-factors in death: an
13 agitated state, restraint in the prone-
14 position, the effects of a taser discharge
15 and chronic alcoholism.

16
17 And then in the second paragraph:

18
19 Robert Dziekanski did not die of a taser-
20 induced cardiac arrhythmia.

21
22 Third:

23
24 There is competing scientific evidence on the
25 putative adverse non-cardiac effects of a
26 taser discharge in animals and man.

27
28 And you've heard some of that in your first
29 Commission study.

30
31 If Robert Dziekanski's death was caused, in
32 part, by the adverse effects of an agitated
33 state, then we need to keep an open mind
34 about the putative role that the taser
35 discharge may have played in indirectly
36 contributing to [his] death, since Mr.
37 Dziekanski appears more (dis)stressed and
38 agitated after the deployment of the taser.

39
40 And that's his conclusion with respect to the
41 cause of death.

42 So with respect to the medical evidence, and
43 the medical experts, in my respectful submission,
44 the combined expert reports of Drs. Lee, Di Maia,
45 Sloane, Lu and Pollanen, go to the very heart of
46 the matters which are the subject of this hearing.
47 And the matters upon which, as I've pointed out to

1 you in the initial portions of my submission, the
2 very purpose for which -- for which this
3 Commission was struck. And in my respectful
4 submission, these reports will assist not only us
5 as counsel for TASER, but the other participants
6 in guiding their cross-examinations on medical
7 issues with --

8 THE COMMISSIONER: I take it everybody has copies of
9 these?

10 MR. NEAVE: Yes. Yes, we circulated them on Thursday
11 by e-mail, and the -- all of expert reports, Mr.
12 Commissioner, were included in Mr. Vertlieb's
13 disclosure on the IHIT information. So
14 everybody's got that.

15 THE COMMISSIONER: So there's no surprises here.

16 MR. NEAVE: There's no surprises here. But I think the
17 important thing, from my perspective and in my
18 submission, is that they be tendered now, because
19 they will form the framework for you when you're
20 considering the evidence of the various experts
21 and how those dovetail into the medical reports.
22 And, with respect, it will certainly assist
23 counsel and other -- assist counsel on behalf of
24 TASER and other counsel who may wish to conduct
25 examinations of those witnesses on the medical
26 issues, because we know what the reports are. We
27 know that they're going to be -- that they are --

28 THE COMMISSIONER: Well, you don't need the reports to
29 do that.

30 MR. NEAVE: We don't. But I think, in my respectful
31 submission, what it does is lays the framework,
32 and I'm not sure and I don't know if -- and I
33 fully expect that the U.S. experts will come, but
34 there's nothing that would preclude at this point
35 in time from the reports being tendered -- being
36 filed as exhibits prior, so that the examinations
37 can be conducted in an orderly fashion when we all
38 know that that material is in evidence proper,
39 before you, and we can then -- we can then
40 structure our examinations appropriately. I think
41 it's an efficient use for both counsel and for the
42 Commission to have them tendered now.

43 THE COMMISSIONER: And I take it your same argument
44 goes to the testing of the Taser?

45 MR. NEAVE: It does, and I don't need to take you to
46 those reports, Mr. Commissioner. They stand for
47 the propositions that I outlined in my opening,

1 that they test within specifications. So that
2 issue, quite frankly, unless there are other
3 reports out there that say they don't, is fully
4 satisfied by these reports. But that, we've all
5 heard, we all are -- we all read the newspapers
6 and we're all aware of that issue being -- being a
7 hot button at the present time. But with respect
8 to these reports, they put that issue to rest as
9 well.

10 And in my respectful submission, for the same
11 reason, the reports ought to be tendered now as
12 exhibits prior so that the matter can proceed in
13 an orderly and efficient manner before you, Mr.
14 Commissioner.

15 Unless you have further questions, those --

16 THE COMMISSIONER: No, your argument is very clear.

17 MR. NEAVE: -- are my submissions.

18 THE COMMISSIONER: Now it's about four o'clock, and
19 I'll hear of course from anybody who wants to
20 speak on the issue, but, Mr. Vertlieb, would it be
21 satisfactory to adjourn and hear the balance of
22 this tomorrow?

23 MR. VERTLIEB: Yes, (indiscernible - off microphone).

24 THE COMMISSIONER: I'm very much concerned about
25 interfering with any witnesses you may have. I am
26 not currently of the opinion that there's any
27 strong need to file these documents now, because
28 everybody has them, knows the point, knows where
29 they're going, knows the relevance of any witness
30 that is called in terms of what they say. But
31 nonetheless, we should get with it, but I don't
32 want to interfere with witnesses. So I'm in your
33 hands for a moment.

34 MR. VERTLIEB: Well, that's our concern as well, Mr.
35 Commissioner, with people that are scheduled for
36 tomorrow. But I wouldn't mind spending a few
37 minutes on Mr. Neave's comments, but we don't need
38 to do it now. It won't affect certainly the one,
39 first witness tomorrow who is coming from Eastern
40 Canada. She will have no knowledge, from what I
41 understand, about this. But we can deal with the
42 witnesses tomorrow and come back and deal with
43 this as well, tomorrow.

44 THE COMMISSIONER: All right.

45 MR. VERTLIEB: And I'm totally happy to do it that way.

46 THE COMMISSIONER: All right. That's I think what we
47 will do. Thank you very much.

1 Yes?

2 UNIDENTIFIED SPEAKER (FROM AUDIENCE): (Indiscernible -
3 off microphone).

4 THE COMMISSIONER: I'm sorry, sir, but if you'll speak
5 to Mr. Vertlieb, he will look after it.

6 Yes, we'll adjourn now.

7 THE REGISTRAR: The hearing is now adjourned until ten
8 o'clock tomorrow morning.

9

10 (PROCEEDINGS ADJOURNED TO JANUARY 20, 2009 AT
11 10:00 A.M.)

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47