

**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.

March 2, 2009

PROCEEDINGS AT
HEARING (DAY 25)

COPY

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

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Counsel for Vancouver Airport Authority:	D. Stewart, C. Friesen; B. Ergun
Counsel for B.C. Civil Liberties Association:	G. Pastine, S. Dubinsky
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Counsel for Corporal Benjamin Robinson:	R. Harris
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Counsel for Constable Bill Bentley:	D. Butcher
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Counsel for City of Richmond:	J. Goulden, M. Kleisinger, G. Trotter
Counsel for TASER International, Inc.	D. Neave, J. Spencer
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1
Cst. Kwesi Millington
In chief by Mr. Vertlieb

Vancouver, B.C.
March 2, 2009

1
2
3
4 THE REGISTRAR: The hearing is now resumed.
5 THE COMMISSIONER: Yes, good morning everyone. Yes,
6 Mr. Vertlieb.
7 MR. VERTLIEB: Thank you, Mr. Commissioner, the
8 witness, Officer Millington is in the witness box
9 and perhaps he can be sworn.

10
11 CST. KWESI MILLINGTON, a
12 witness, sworn.
13

14 THE REGISTRAR: Would you state your full name, please.
15 A It's Kwesi Millington.
16 THE COMMISSIONER: And would you spell your name.
17 A My full name?
18 THE REGISTRAR: Please.
19 A Spell first and last. First is spelled K-w-e-s-i,
20 last is M-i-l-l-i-n-g-t-o-n.
21 THE COMMISSIONER: Thank you, you may be seated.
22 Counsel.
23 MR. VERTLIEB: Thank you.
24

25 EXAMINATION IN CHIEF BY MR. VERTLIEB:
26

27 Q Officer Millington, please tell us where and when
28 you were born.
29 A I was born June 30th, 1976, Montreal, Quebec.
30 Q So sitting here today you are now old?
31 A 32.
32 Q Now, before you went to Ryerson University --
33 MR. HIRA: My client has a soft voice and I am going to
34 be coughing throughout the day. Not to ruin the
35 proceedings, you may wish to move the mike closer
36 to him.
37 MR. VERTLIEB: Thank you.
38 Q Now, we know that you graduated from Ryerson
39 University with a Bachelor of Commerce in the year
40 2000; is that correct?
41 A Yes.
42 Q Prior to that you held a number of jobs, one of
43 them being as a personal trainer, is that the
44 case?
45 A Yes.
46 Q Can we conclude that you've had a long-time
47 interest in physical fitness?

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1 A Yes.
2 Q Sir, what is your height?
3 A Six-one.
4 Q And your weight?
5 A 205 pounds.
6 Q And that's the same weight at the date of the
7 incident that brings us here today?
8 A Yes.
9 Q So of the four police officers involved, would it
10 be fair to say that you are the largest of the
11 four?
12 A Yes.
13 Q And just by way of reference, if we look at it --
14 Mr. Giles, if you could give the witness Exhibit
15 49, which is a series of photos. This has been
16 marked as an exhibit earlier, Officer. Just turn
17 to Tab 1. That's a picture of you as you're
18 entering the secure area of the airport. It would
19 appear that you are clearly larger than the other
20 two officers standing with you, is that fair?
21 A Yes.
22 Q Now, let's deal with your RCMP history. You
23 graduated from Depot when, sir?
24 A May 2005.
25 Q And where did you do your field training?
26 A In the City of Richmond.
27 Q And when was it that you were cleared to be on
28 your own and act independently then as an officer?
29 A Six months after, so November 2005.
30 Q Field training being about six months.
31 A Yes, it was six months.
32 Q You were originally posted to the Richmond City
33 detachment?
34 A Yes.
35 Q And how long did you stay there?
36 A I was there until July 2006, then I transferred to
37 YVR, Vancouver Airport.
38 Q So you graduate Depot May '05. You go to
39 Richmond. You're doing six months field training
40 and you stay on in Richmond City detachment until
41 July '06?
42 A Yes.
43 Q So from July '06 to the date of the incident you
44 were continuously stationed at the Airport
45 detachment?
46 A Yes.
47 Q On the evening in question you were part of what's

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1 known as Watch B?
2 A Yes.
3 Q We've heard from two of your brother officers, so
4 I won't go through the details of how the watch
5 works. The Commissioner has heard the way the
6 shifts work and how all the procedural matters
7 relating to the watch go. Watch B had Corporal
8 Robinson as the commanding officer?
9 A Yes.
10 Q And at the point of this incident you had been at
11 the airport perhaps a year and a half or so?
12 A Just over a year, yes.
13 Q So you were familiar with the airport, you knew it
14 well?
15 A Yes.
16 Q You knew the different areas of the airport, the
17 Domestic Terminal and the International Terminal?
18 A Yes.
19 Q And the RCMP Airport detachment works as a single-
20 man car detachment, each officer would be alone in
21 a car?
22 A Yes.
23 Q Now, let's just discuss your Taser training. This
24 took place in July of '07?
25 A Yes.
26 Q And that was training given by a Corporal Gillis?
27 A Yes.
28 Q Now, just as a coincidence, we heard that Officer
29 Bentley was training about the same time. Was
30 Bentley in your class?
31 A I don't think so. I don't remember.
32 Q Okay. I just want to cover a few things about the
33 Taser training, and this is from material given to
34 us by counsel for the Government of Canada. And I
35 am just looking at some training materials that
36 are current as at the time you were trained in the
37 summer of '07. There's a discussion in the manual
38 about a challenge, a Conducted Energy Weapon
39 Challenge. You know what that means, do you, sir?
40 A Yes.
41 Q Tell us what the challenge is. What are the
42 actual words?
43 A The challenge is:
44
45 Police, stop or you will be hit with 50,000
46 volts of electricity!
47

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1 Q Okay. That's one of the definitions that you're
2 taught in your training course?

3 A Yes.

4 Q Now, also as definition, you're given the
5 definition for "push stun mode" as a definitional
6 term?

7 A Yes.

8 Q And in the manual it says:

9

10 Push stun mode means pressing or pushing an
11 activated CEW onto designated push/stun
12 locations on an individual, allowing
13 electrical energy to be transferred to that
14 individual.

15

16 That's a definition that you were taught?

17 A Yes.

18 Q

19

20 Probe mode means deploying an activated CEW
21 by propelling and discharging two electrical
22 probes, equipped with small barbs that hook
23 onto a person's clothing or skin, allowing
24 electrical energy to be transferred to that
25 person.

26

27 A Yes.

28 Q That's what you were taught. And you were taught
29 that both of these modes are part of the
30 intermediate use of force tools available to you?

31 A It's an intermediate device, the Taser is.

32 Q The Taser is called a conducted energy weapon and
33 it's classified as an intermediate device?

34 A Yes.

35 Q Now, under "Deployment" in the manual, there's a
36 deployment section and it says:

37

38 Before using CEW, when tactically feasible,
39 give the CEW challenge.

40

41 You were taught that, as well?

42 A Yes.

43 Q You were also taught:

44

45 Multiple deployment or continuous cycling of
46 the CEW may be hazardous to a subject.

47

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1 A Yes.
2 Q And you were taught that:
3
4 Unless situational factors dictate otherwise
5 ...do not cycle the CEW repeatedly...
6
7 You were taught that?
8 A Yes.
9 Q
10
11 ...nor more than 15-20 seconds at a time
12 against a subject.
13
14 A Yes.
15 Q Now, as well, in the course that you studied under
16 Officer Gillis, you were taught -- taught about
17 completing a form called a 3996?
18 A Yes.
19 Q You're familiar with that form?
20 A Yes.
21 Q And did you complete it in this case?
22 A I believe so. I'd have to check, but I'm pretty
23 sure I did, yes.
24 Q Now, that form under the regulations in the manual
25 is to be completed at the end of a shift every
26 time the CEW is used. Did you do it -- just as an
27 aside, did you do it on the evening in question?
28 A I don't think I did it on the evening in question.
29 Q Approximately when did you do it, sir?
30 A I don't remember exactly when. I think it was the
31 next block, the next block of workdays.
32 Q And when would that be?
33 A The 14th was my last day, so it would have been
34 the block of the 18th or 19th of October.
35 Q Of '07.
36 A Of '07.
37 Q Thank you. Now, as part of training you also, to
38 be an officer in the RCMP, had to have standard
39 basic level first aid?
40 A Yes.
41 Q And you had that?
42 A Yes.
43 Q Now, I want to ask you something about the trigger
44 on the Taser weapon. If you pull the trigger and
45 release it, how long will the Taser run for?
46 A Five seconds.
47 Q You can shut it off by using the safety switch?

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1 A I believe so, yes.
2 Q Can you fire the Taser for longer than five
3 seconds at one burst?
4 A Yes, if you hold the trigger.
5 Q So if you hold the trigger down, you can run the
6 Taser as long as you are holding the trigger down?
7 A Yes.
8 Q In your training were you given any information
9 concerning possible harmful effects of holding the
10 trigger down longer than five seconds?
11 A As you said before, we were taught that continuous
12 cycling of the Taser can be -- it may be harmful.
13 Q And what were you taught about how it may be
14 harmful?
15 A I would have to go to my manual to find that. I
16 don't know exactly.
17 Q But harmful in what way?
18 A Like I said, I'd have to go to the manual for
19 that. It just said -- all I remember is it may be
20 harmful.
21 Q Be harmful to the -- to the person who is being
22 tasered.
23 A Yes.
24 Q Not to the operator.
25 A Yes.
26 Q Okay. Did your training teach you to reassess the
27 situation after each firing of the Taser?
28 A Yes, it did.
29 Q So in other words, you could be permitted to use
30 the Taser the first time, but every subsequent
31 time would be -- would be a requirement that you
32 reassess the situation to make sure each
33 subsequent use is justified?
34 A Yes.
35 Q Now, each subsequent use of a Taser would be
36 justified against the same use of force protocol
37 that allows you to use it the first time?
38 A Say that again, please.
39 Q Would each subsequent deployment of the Taser be
40 justified against the same use of force protocol
41 that allows for the first firing?
42 A Yes.
43 Q And that protocol is called the IMIM?
44 A Yes.
45 Q And that's the wheel that we've seen here in this
46 courtroom. It's a well-known document in the RCMP
47 police work, correct?

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1 A Yes.

2 Q Now, we were given a PowerPoint presentation that
3 was used. I gather when you went to your Taser
4 training, part of the way you're taught is with
5 the instructor using PowerPoints?

6 A Yes.

7 Q And you're familiar with PowerPoint, how it all
8 works?

9 A Yes.

10 Q We were given copies of the PowerPoint slides and
11 there's one that I just wanted to read to you to
12 make sure this was something that I've got
13 properly here. And this is of your training, it's
14 on the RCMP Operation Manual Policy and it's under
15 the "Medical" section. You were taught about
16 medical, as well as all the other things about
17 Taser?

18 A Yes.

19 Q So there's one that's paragraph 17-7-4. So I'll
20 just read this out to you:

21
22 If an individual is given medical attention,
23 advise that the individual was subject to
24 50,000 volts of electricity and make
25 available to the medically trained person the
26 Medical Taser Information Sheet prepared by
27 Dr. Dufour, HSO "Depot" Division. See App.
28 17-7-1. Consider keeping an up-to-date
29 Medical Taser Information Sheet with you at
30 all times.

31
32 Now, that sounds familiar to you from your
33 training, Officer, does it?

34 A The medical portion of it does, but I don't recall
35 Dr. Dufour, that name. I'd have to check my own
36 manuals to verify that exact slide is there.

37 Q So the -- you do recall being trained in something
38 to do with advising the medical people about the
39 situation?

40 A Yes.

41 Q Did you keep a Medical Taser Information Sheet
42 with you at all times when you carried the Taser?

43 A No, I don't remember being trained on that.

44 Q We covered the form 3996 earlier. Let's then
45 discuss the Taser availability at YVR detachment.
46 We were told by Bentley that there were two Tasers
47 in the detachment at the material time, October 13

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1 and 14 of 2007; is that correct?
2 A There are typically two available. That night I
3 don't know if there was one or two.
4 Q Okay. We're told that the assignment of Tasers
5 really just came on a first-come, first-served
6 basis?
7 A Yes.
8 Q So you were the first one to get the Taser that
9 evening and therefore you had it on your person?
10 A Yes.
11 Q And presumably you would have spark-tested it
12 before you left the detachment that evening to
13 make sure it was working?
14 A Yes.
15 Q Let's move then to the early morning hours of
16 October 14, 2007, and when the call came through.
17 Now, you were at the detachment?
18 A Yes.
19 Q Who else was on duty with you?
20 A Corporal Robinson, Constable Bentley and Constable
21 Rundel.
22 Q Can we play the initial radio detachment to see if
23 you can hear this, Officer. You have seen it, but
24 I don't know if you've heard it recently. And
25 this is the exhibit transcript of 40B-1.
26 MR. LUNN: I'm not sure that we're connected with the
27 PA system.
28
29 (AUDIO BEING PLAYED)
30 (END OF AUDIO)
31
32 MR. VERTLIEB:
33 Q You recognize that voice as your voice in answer
34 to the call?
35 A Yes.
36 Q And it was a call just for someone, no one in
37 particular?
38 A Yes.
39 Q And you were Echo-23 that night?
40 A I was.
41 Q Now, when that call came in were all four of the
42 officers together in the same place?
43 A Yes.
44 Q And what were you doing?
45 A We were having lunch.
46 Q So you took the call because you were the first to
47 hit the button answering the call?

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1 A Yes.
2 Q We know that all four officers attended at the
3 airport.
4 A Yes.
5 Q Was there any instruction about who was to attend?
6 A No. We just responded.
7 Q So each of you responded individually, as it were?
8 A Yes.
9 Q There was no assignment of duties to attend?
10 A No.
11 Q And there was no discussion of the call at the
12 time in the lunchroom when the call came through?
13 A No.
14 Q So all four of you got up and left and went to
15 cars?
16 A Yes.
17 Q Each of you drove in one vehicle?
18 A Oh, our own vehicles yes.
19 Q So four officers, four cars?
20 A Yes.
21 Q And the route taken was the route that we've heard
22 about, right near the gas station and back up to
23 YVR?
24 A Yes.
25 Q Take you maybe a minute to get to the
26 International section?
27 A Approximately, yes.
28 Q Did you have lights and sirens?
29 A No.
30 Q Now, because you took the call, it was therefore
31 assigned to you and you received information on
32 the CAD screen, correct?
33 A Yes.
34 MR. VERTLIEB: Exhibit 40C. Could 40C be given to the
35 officer, please.
36 Q Now, our Commissioner has seen this document and
37 others have commented on it. Just while we have
38 the document, at the very top it talks about
39 "Priority", do you see that at the top, "Status:
40 CLEARED Priority"; do you see that?
41 A Yes. Yes, I do.
42 Q Is that to be viewed as a Priority 3 call?
43 A Yes, that's what it would have been assigned.
44 Q Okay. What would Priority 1 mean?
45 A If I remember correctly, I think Priority 1 is the
46 highest emergency.
47 Q Okay. So something -- something serious and

1 something right in progress?
2 A Yeah, I believe so. I'd have to review that. I
3 didn't really look at that that often when going
4 to calls.
5 Q Okay. Well, it's unlikely at the airport you'd
6 have very many Priority 1 calls, is that right?
7 A Well, not too many high priority.
8 Q If ever in your time there?
9 A Nothing like this, no.
10 Q No. So and then Priority 2, tell us what that
11 means.
12 A It would be one step down. Like I said, I would
13 have to ask somebody in the office, I guess, what
14 Priority 2 means exactly. But I didn't pay too
15 much attention to those numbers when going to
16 calls.
17 Q But they're given to you by the RCMP dispatch
18 system, surely they're of some importance.
19 A I deal with the information that I'm given in the
20 call, that's more important to me.
21 Q So Priority 3 is -- is down the list in terms of
22 priority and urgent attention?
23 A Yes, as opposed to 1, yeah.
24 Q Right, okay. So now because you took the call you
25 get information on your police screen in the
26 police car that others might not see; is that
27 correct?
28 A Say again, sorry?
29 Q Would you, because you took the call get
30 information in your police car on the computer
31 screen that others might not get?
32 A No. As long as someone's attached to the call,
33 they can view all the information, as well.
34 Q Okay. So let's just have you confirm to the
35 Commissioner what the CAD information was on your
36 screen in the police car.
37 A It would have had the --
38 Q Do you see it on this Exhibit 40C, Officer?
39 A Oh, okay. Yeah. It has the type of call, where
40 it is, brief description of what was dispatched
41 verbally, and then the additional remarks and
42 reporting officers on the call.
43 Q So read out the information that you were given on
44 the screen.
45 A The information here says:

46
47 INTOX 55YR OLD MALE IN INTERNATIONAL ARRIVALS

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1 IN RECEPTION LOBBY THROWING LUGGAGE AROUND //
2 NON-WHITE, DRK HAIR WHITE COAT AS PER OPS //
3 NO OTHER DETAILS AVAIL
4

5 Q So you read that on your computer screen as you
6 were going to the airport in your car?

7 A Actually, the only thing I paid attention to was
8 the location, because I need to know exactly where
9 it is and I wanted to get to the airport. So a
10 lot of times we don't have time to read through
11 everything.

12 Q Okay. Now, did you receive any update information
13 as you were en route?

14 A Yes, we got an update that he was -- the male was
15 now throwing chairs through windows in the same
16 area.

17 Q And that update information is indeed on Exhibit
18 40C towards the bottom of the page?

19 A Yes, it's here.

20 Q Read that for the Commissioner.

21 A It's short for "Update":
22

23 MALE IS NOW THROWING CHAIRS THRU GLASS
24 WINDOWS IN THAT AREA
25

26 Q And that's the only information available to you
27 as at the time you arrived at the airport curb?

28 A Yes.

29 Q Was there any discussion amongst the four officers
30 en route to the airport building?

31 A No.

32 Q When you arrived did you get out of your car and
33 go to the entry doors immediately?

34 A Yes.

35 Q Did the other officers do the same?

36 A Yes.

37 MR. VERTLIEB: Just to establish the time of your
38 arrival. Mr. Lunn, can you play the YVR video
39 22233 at 1:27:50.

40 THE COMMISSIONER: Excuse me, is the screen over there
41 on?

42 MR. VERTLIEB: Are you playing now, sir? Thank you.
43

44 (VIDEO BEING PLAYED)
45

46 MR. VERTLIEB:

47 Q When you see yourself come in, will you just tell

12
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1 us to stop.

2 A It's grainy, but, yes, that's me there. Sorry.

3 Q Okay. Can we -- just use that pointer. Do we
4 have that handy? Do you see -- thanks, Mr. Giles.
5 Sorry to have you back and forth like that.

6 A There. (Indicating).

7 MR. VERTLIEB: Okay, thank you. And the time, Mr.
8 Lunn, on the video?

9 MR. LUNN: 1:28:04.

10

11 (VIDEO STOPPED)

12

13 MR. VERTLIEB:

14 Q So that fixes the time off the airport clock
15 system of your actual entry into the airport.
16 Okay? Does that help you there?

17 A Okay. Yes.

18 Q And when you got out of your cars and before you
19 actually physically entered the airport, did you
20 and your other three officers have any discussion
21 about the call?

22 A No.

23 Q So then to understand the information upon
24 entering the airport, you had the dispatch call
25 that you got when you were having lunch. You had
26 the CAD screen information, as much as you took
27 from it, and then you had the updated information.

28 A Yes.

29 Q And no discussion amongst the four officers about
30 the call in any way up to the point of your entry
31 into the airport?

32 A No.

33 MR. VERTLIEB: Thank you, Mr. Giles.

34 Q Now, let's discuss your involvement from the time
35 you enter the airport until you enter the secure
36 area of the airport. And when we say "secure
37 area", you know what we're talking about, I guess?

38 A Yes.

39 Q Okay. So what was the order of entry amongst the
40 four police officers?

41 A Entry to the secure area?

42 Q No, the entry into the airport. We saw you on the
43 YVR video. Just tell us what was the order of the
44 four of you entering into the airport building?

45 A I believe it was myself first, and then either
46 Constable Bentley or Rundel next. But they came
47 in next. I don't know which one of them was

- 1 first. And Corporal Robinson followed in behind.
2 Q From the time you entered the airport until you
3 entered the secure area, can you tell us what, if
4 anything, you were told by any of the people in
5 attendance?
6 A The people or the other officers? Which one are
7 you talking about?
8 Q Non-officers. I'll deal with the -- I'll deal
9 with officers in a moment. Let's just deal with
10 people who were civilians, to use that word.
11 A Okay. Before we got to the secure side, just
12 before, I remember hearing someone saying, "He
13 doesn't understand English. He speaks Russian."
14 Q Were you told anything else?
15 A Not that I can remember, no.
16 Q It may be a small point, but in the statement you
17 gave, you did not mention that he speaks Russian.
18 Are you quite sure that you were told he doesn't
19 speak English and he speaks Russian at that point
20 in time?
21 A I believe it's in my statement, but I can take a
22 look. I have it here, as well.
23 Q Do you? Okay.
24 A Yeah.
25 Q All right. Well, just for -- just for the point.
26 Do you have your first statement, October 14,
27 2007?
28 A Yes, I do.
29 Q And this is taken at 5:07 in the morning by the
30 Corporal Brassington?
31 A Yes.
32 Q Integrated Homicide Investigation Team?
33 A Yes.
34 Q At the Airport detachment of RCMP.
35 A Yes.
36 Q The sub-detachment, okay. Do you see your first
37 paragraph there?
38 A Yes. Yes, I do.
39 Q You said -- let me just find the one sentence.
40 We'll go into this in a bit more detail later, but
41 just on this point you said:
42
43 Someone yelled that he didn't speak English,
44 so we tried to calm him down by using hand
45 signals...
46
47 There's no mention of speaking Russian there. Are

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1 you quite sure you said that?

2 A I would have to check my second statement that I
3 gave the next day, if I can do that. I also have
4 that here.

5 Q Okay. You may have, I just -- I may be wrong.
6 Why don't we have you check that at another moment
7 and we'll just continue. Are you comfortable with
8 that, or do you want to check it now?

9 MR. HIRA: He's asked for that opportunity. The small
10 point made by counsel was that he didn't say that.
11 The witness should be allowed that opportunity.

12 MR. VERTLIEB: Totally comfortable.

13 Q Go ahead, sir.

14 A Oh.

15 Q You're looking at your statement of October 15,
16 2007 at 9:00 in the morning, 9:10?

17 A Yes.

18 Q The same Corporal Brassington?

19 A Yes

20 Q It could be in there and I just missed it,
21 Officer.

22 MR. HIRA: This isn't a speed-reading test. It's right
23 here:

24
25 ...someone yelled he doesn't understand
26 English.

27
28 MR. VERTLIEB: Understand English, that's what I
29 thought.

30 A It's page 8, actually.

31 Q Page 1?

32 MR. HIRA: Page 8.

33 MR. VERTLIEB: Your lawyer showed me page 1.

34 MR. HIRA: Page 8.

35 MR. VERTLIEB: Page 8, okay. Oh, between your lawyer
36 and I we'll get it right, I'm sure.

37 Q This was after:

38
39 They said he speaks Russian. Later, I
40 checked his identification and it was Polish,
41 so. I imagine it was Polish...

42
43 Is that what you're referring to?

44 MR. HIRA:

45
46 I heard someone say, he doesn't speak
47 English.

15
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In chief by Mr. Vertlieb

1 A Yes, page 8.
2 MR. VERTLIEB: Thank you.
3 MR. HIRA:
4
5 They said he speaks Russian.
6
7 MR. VERTLIEB: Thank you.
8 Q Do you know when you heard he speaks Russian? Do
9 you think it was the security guard right by the
10 door?
11 A I don't know who said it.
12 Q Okay. Have you listened to the tape and heard
13 that someone near the security -- the secure area
14 said something, "He speaks Russian." Did you
15 remember hearing that on the video when you
16 watched it?
17 A Yes, I do.
18 Q Okay. So we've covered everything that you were
19 told as you approached the secure area; is that
20 correct?
21 A Yes.
22 Q By -- not by civilians.
23 A By civilians, yes.
24 Q Now, was there any discussion with any of the four
25 officers that you can help us with?
26 A One of the officers asked if I had a Taser, and I
27 said "Yes."
28 Q Do you remember which officer?
29 A I believe it was Constable Bentley.
30 Q And where was that officer when he asked if you
31 had a Taser?
32 A He was beside me as we were walking to the secure
33 side.
34 Q And was he perhaps in front of you?
35 A I don't know exactly his position.
36 Q Is that the only thing spoken by any of the police
37 officers before entering the secure area?
38 A Yes.
39 Q Was there any other discussion between you and
40 your brother officers prior to entering the secure
41 area?
42 A No.
43 Q Other than what you've just now told us.
44 A No.
45 Q You've covered everything then that was said to
46 you by either civilians or police officers prior
47 to entering the secure area?

1 A Yes.

2 Q Is there anything else that you were given
3 information about from the time you entered the
4 airport to the time you entered the secure area,
5 other than what we've just now covered?

6 A No.

7 Q When you first saw Mr. Dziekanski, where were you?

8 A I was just at the glass door area separating the
9 public side from the secure side.

10 Q So you were -- you were close to him?

11 A Yes.

12 Q And he was standing?

13 A Yes.

14 Q And what was he doing when you first saw him?

15 A He was walking back and forth, pacing a bit.

16 Q Where?

17 A Just on the secure side.

18 Q Was he holding anything when you first saw him?

19 A No.

20 Q Was he in the process of breaking anything when
21 you first saw him?

22 A No.

23 Q Was he making any threatening gestures to anyone
24 when you first saw him?

25 A No.

26 Q Did you speak with any civilians at the area where
27 you were by these doors, in other words, right as
28 the secure area would open into the public area,
29 we see on video a couple of security people. Did
30 you speak with either of those two people?

31 A No.

32 Q There were some civilian females near the scene.
33 Did you speak with them?

34 A No.

35 Q So we've covered the totality of information known
36 to you as at the time you enter into the secure
37 area.

38 A Yes.

39 Q Now, once you got to the doors and about to enter
40 the secure area, you're -- were you doing the
41 scene assessment that you would be taught to do as
42 part of your training?

43 A Yes. We took account of the scene. Sorry, I
44 should add that when I did come into the airport I
45 did hear some yelling. You asked if a civilian or
46 officer had said something. I heard some yelling,
47 but I didn't know who it was coming from at the

- 1 time.
- 2 Q And do you know what was being yelled?
- 3 A No, I didn't understand it.
- 4 Q You were some distance away?
- 5 A Yeah.
- 6 Q And this was as you were entering the airport?
- 7 A Yes.
- 8 Q So you weren't close to the secure area when you
- 9 heard the yelling?
- 10 A No.
- 11 Q So in terms of scene assessment, let's just cover
- 12 a couple of items around that. You were told that
- 13 the male was non-White, correct?
- 14 A Yes. I don't remember hearing that, but reading
- 15 the dispatch ticket now I can see that.
- 16 Q Well, the dispatch ticket said that. That's the
- 17 CAD. And also the radio dispatch that we had
- 18 played out earlier said that. Do you remember?
- 19 A All I remember hearing from the dispatch was that
- 20 there was a male throwing luggage around.
- 21 Q Okay. But just -- we can play the radio dispatch
- 22 again if you want, the one you heard in the
- 23 lunchroom. I'll read what has been transcribed
- 24 about that:
- 25
- 26 We don't have much information. It came from
- 27 Ops. Report of a fifty-five year old male at
- 28 the Arrivals Reception Lobby throwing luggage
- 29 around. He's non-white. Has dark hair and a
- 30 white coat.
- 31
- 32 That was on the radio dispatch.
- 33 A Yeah. I'm aware of that, but I don't remember
- 34 hearing it at the time.
- 35 Q And then in your car on the CAD screen it said,
- 36 "non-white dark hair, white coat". That was the
- 37 second mention of non-white. Did you miss both
- 38 those?
- 39 A Yes, I did.
- 40 Q Okay. The information in the update said
- 41 "Throwing chairs through glass windows". You
- 42 recall reading that to the Commissioner a few
- 43 moments ago?
- 44 A Yes, I remember.
- 45 Q Did you see any indication of broken glass?
- 46 A No.
- 47 Q You were told about throwing luggage around, that

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- 1 was in the first information given on the radio
2 and in the police car on the CAD screen.
- 3 A Yes.
- 4 Q Do you remember --
- 5 A Yes.
- 6 Q Did you see the luggage -- any indication of
7 luggage having been thrown around?
- 8 A No.
- 9 Q In fact, the luggage was neatly stacked right by
10 the entry door?
- 11 A I did not see the luggage at this time.
- 12 Q Okay. Well, if you look at Tab 1, just while
13 we're on it, of Exhibit 49, the one we've looked
14 at earlier, you can see the luggage right inside
15 through the glass.
- 16 A Yeah, I see it.
- 17 Q Thank you. And Mr. Dziekanski was just standing
18 there?
- 19 A Yeah. He was walking back and forth, yes.
- 20 Q Did any of the fact that there was no broken glass
21 and no indication of luggage being thrown around
22 give you any reason to think that there might be a
23 different impression about this call than what you
24 had taken from the radio call in the police
25 station and on the CAD screen?
- 26 A No. I heard yelling as I came into the airport
27 and I saw that there was some chairs in his area
28 that were somewhat blocking the doorway, so I
29 assumed that there was some accuracy to what was
30 said.
- 31 Q Okay. And it was a Priority 3 call.
- 32 A I see that now. Yes.
- 33 Q Well, then, Officer, let's go to your entry into
34 the secure area and let's have you tell us,
35 please, everything that happened from the time you
36 entered the secure area until you fired the first
37 Taser.
- 38 A When I got into the secure area, like I said, he
39 was walking back and forth. He was very -- seemed
40 very sweaty and his eyes were wide, and seemed
41 very agitated. What I tried to do then is use
42 some hand signals, because I heard that he didn't
43 understand English, to try to get him to calm
44 down. I pushed my hands towards the floor and I
45 mentioned what I thought to be universal words, I
46 used two words, "passport" and "identification".
47 He didn't seem to understand. So I put my hand up

1 and motioned with a mime pen, I guess you could
2 say, to try to further, I guess, explain myself.
3 At that point he threw his hands up and I
4 interpreted that to be defiant. He turned away
5 from us and knocked some things off the desk that
6 was behind him. I don't know what he knocked off.
7 He then picked up a stapler, which was on that
8 same desk and he turned towards us and it was in
9 the open position. He held it up with one hand,
10 fist with the other, and started to approach us
11 with hands up, and I deployed the Taser at that
12 point.

13 Q I wanted to give you an opportunity to tell us
14 everything that happened prior to the first Taser
15 firing. Have you completed?

16 A Yes.

17 Q You've told us the two words you spoke, "passport,
18 identification". Did you say anything else at any
19 time prior to the first Taser shot?

20 A No.

21 Q Were any words spoken by any of your brother
22 officers prior to the first Taser shot?

23 A At the time I don't remember. Upon watching the
24 video, I could hear a greeting from Constable
25 Bentley saying "Hello, sir," or "Hello," trying to
26 greet him.

27 Q But you don't remember that from your own recall
28 of the evening?

29 A No, I don't.

30 MR. VERTLIEB: Can we play that video, please, starting
31 with the entry into the secure area. And what I'd
32 like you to do, please, Officer, is have us stop
33 when you see you're using the hand signals that
34 you've told us were to help calm him down.

35
36 (VIDEO BEING PLAYED)

37
38 MR. VERTLIEB: Just stopping there one second.

39 Q Was he moving around at this point as you're
40 approaching the secure area?

41 A I noticed his movement when I got over the railing
42 and I looked at him.

43 Q Okay. So you'll --

44 A Yeah.

45 MR. VERTLIEB: Okay, thanks. We'll keep going, please,
46 Mr. Lunn.

47 Just stop there a second.

1 Q Now, is this when you're entering the secure area?
2 A Yes.
3 Q And is Mr. Dziekanski visible?
4 A Yes.
5 Q And is he walking around, or is he standing there?
6 A At that point he's standing -- standing there.
7 Q Okay. Now, the hand signal I'm looking for, you
8 talked about using your hands, right? Show the
9 Commissioner what you say you did.
10 A I pushed my hand -- had my hands up here and I
11 pushed down in an attempt to get him calm.
12 Q So your hands were up at chest height and palms
13 down to the floor?
14 A Yes.
15 Q And you were using that as what you believed is a
16 way to tell him to calm down?
17 A Yes.
18 MR. VERTLIEB: Okay. Just stop -- have us stop when
19 you see yourself doing that on this video, please.
20 Keep going, Mr. Lunn.
21 A It would have been here, because as soon as I saw
22 him, that's when I did it, and by then I'm already
23 past that point.
24 Q Okay. So we don't see it on the video?
25 A No. No.
26 Q All right. And by now you're in really close
27 proximity with him?
28 A Yes.
29 Q And is then when you told him the words "passport"
30 and "identification"?
31 A I believe it was just before that, because I don't
32 -- like I said, I don't think he understood the
33 words, so I may have said it again. I don't
34 remember. But that's when I went to more hand
35 signals.
36 Q And what were the more hand signals?
37 A I think I said the palm up and motioning with a
38 pen.
39 MR. VERTLIEB: Maybe we'll see this on the video. Just
40 keep running for another couple of seconds,
41 please, and stop it if you see it.
42 A I think it was just before this, actually.
43 MR. VERTLIEB: Just back up, then, Mr. Lunn, please.
44 A That's it there. I can see my elbow moving and --
45 Q Okay.
46 A -- I'm doing it there.
47 MR. VERTLIEB: Just back up a frame or two if we can,

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- 1 Mr. Lunn, just so the officer can have a chance to
2 show us exactly where he is referring to. And
3 we'll use the pointer just to show us, okay?
4 Just stop there, Mr. Lunn.
5 Q You see your right hand's down by your side.
6 A Okay. Yeah, I think you can back it up a little
7 bit, because I think I was doing it just before
8 that.
9 Q You're right-handed?
10 A Yes, I am.
11 Q Your right hand's still by your side. Just if you
12 see it, you just tell us.
13 A It's easier when you play it out.
14 Q I think there's something there. Just I want you
15 to --
16 A There.
17 Q Okay, fine. And that's when you're saying
18 "passport, identification"?
19 A I may have been saying it again, but I was doing
20 hand signals there.
21 MR. LUNN: The time is 3:38.
22 MR. VERTLIEB:
23 Q So by this time you're really close to Mr.
24 Dziekanski?
25 A Yes.
26 Q Tell us what your best estimate of his height was?
27 A I'd say probably five-nine, maybe.
28 Q And what about weight?
29 A 180 maybe.
30 Q 180 pounds?
31 A Possibly, 170 to 180.
32 Q Now, you said to us that after you said "passport,
33 identification", he didn't appear to understand
34 your words, or he didn't seem to understand.
35 A Yes.
36 Q And you said he threw his hands up.
37 A After I did the second set of hand signals, yes.
38 Q Did you realize that his -- or think that perhaps
39 his passport and/or identification might be in his
40 suitcase?
41 A I didn't know where it was, but the hand signals
42 that -- sorry, when he threw his hands up, I
43 interpreted that to be that he was not wanting to
44 listen to what we were saying.
45 Q You interpreted it that way. Did you see him
46 start to go towards his suitcase at any time
47 before the first Taser shot?

- 1 A I saw him going towards the desk. I did not
2 notice him going towards his luggage, no.
- 3 Q You just didn't see that?
- 4 A I saw him going towards the desk.
- 5 Q Nothing else?
- 6 A No.
- 7 Q Okay. So who at this point in time was in control
8 of the four officers? Who did you feel had
9 control of the investigation?
- 10 A Of the investigation?
- 11 Q The dealings with Mr. Dziekanski.
- 12 A Well, when I was talking to him, he was looking at
13 me, so I would say I was at the time of speaking
14 to him.
- 15 Q You said he threw his hands up and you interpreted
16 that as being defiant.
- 17 A Yes.
- 18 Q Did you see any indication by Corporal Robinson
19 that would have caused him to move towards the
20 very area he moved towards?
- 21 A No, at the time I didn't see it.
- 22 Q Have you since looked at the video to see any
23 indication by Corporal Robinson that would have
24 suggested Dziekanski move in the exact direction
25 he moved?
- 26 A He was moving towards the table. Corporal
27 Robinson was also pointing towards the table, but
28 I interpreted that from looking at the video that
29 he was doing it regardless of where Monty,
30 Corporal Robinson was pointing.
- 31 Q So you did see Corporal Robinson pointing towards
32 the table?
- 33 A In the video, yes.
- 34 Q But not at the time?
- 35 A At the time I didn't notice it, no.
- 36 Q Is there any reason you didn't see Corporal
37 Robinson pointing at the time?
- 38 A I was focused on dealing with Mr. Dziekanski.
- 39 Q Was there some sense of urgency?
- 40 A I was communicating with him, and that's where my
41 focus was.
- 42 Q Okay. When you first saw him, was he cooperative?
- 43 A No. I would say no, because he didn't do anything
44 that we were asking.
- 45 Q Well, you asked him for passport and
46 identification.
- 47 A And I mentioned, like I said, calming down and

1 miming with the passport or miming with my hands,
2 sorry.
3 Q So you've told us about him picking up the
4 stapler.
5 A Yes.
6 Q Did you actually see him pick up the stapler?
7 A Yes.
8 Q So you knew it was a stapler that he had?
9 A Yes.
10 Q And you say he turned towards you?
11 A Turned towards us.
12 Q Yes. And show us how he held the stapler.
13 A He had it open and in his hand and up.
14 Q Up by your shoulder height?
15 A Just above his waist height.
16 Q Well, you're indicating right near your
17 chest/shoulder area.
18 A Well, it was like this (gesturing).
19 Q So that's about --
20 A So if I stand up, it's like this (gesturing).
21 Q Okay. So it's the chest area?
22 A Yes.
23 Q The stapler was open.
24 A Yes.
25 Q And you say he started towards us.
26 A Yes.
27 Q And that's when you fired the Taser?
28 A Yes.
29 Q What was your rationale for firing the Taser the
30 first time?
31 A He had the stapler open, his other fist raised.
32 He's -- was in a combative stance, as we call it,
33 and was approaching the officers, I believe, with
34 the intent to attack. So I deployed the Taser at
35 that point.
36 Q When you say he was approaching the officers, who
37 was he approaching?
38 A I believe beside me, and I'd have to see the video
39 again, I'm not sure if it was Rundel or Robinson.
40 But he was moving towards one of them, more so
41 than towards me.
42 Q He wasn't moving towards you.
43 A I was off to the side, so he was moving towards
44 another officer.
45 Q So you're saying he was moving towards Rundel or
46 Robinson?
47 A Yes.

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- 1 Q He was not moving towards Bentley, then?
2 A No, Bentley had gotten out of the way. He had
3 moved away.
4 Q Okay. So when you say moving towards us, you mean
5 either Rundel or Robinson.
6 A Yes.
7 Q Okay. Were you given any instruction before you
8 fired the Taser the first time?
9 A No.
10 Q The first Taser shot, according to an evident --
11 an evidence identification we've had here, and,
12 Mr. Commissioner, this is Exhibit N, you know that
13 in a case like this the Taser weapon would be
14 downloaded and the information taken from the
15 download --
16 A Yes.
17 Q -- the computer download. And you've probably
18 heard that a Delta Police officer named Craig
19 Baltzer did that?
20 A Yes.
21 Q You may not know Constable Baltzer directly, but
22 you've heard his name in the course of the months
23 following this event?
24 A The name sounds familiar, yes.
25 Q His -- we will be calling him as a witness, but
26 he's going to tell us the first Taser lasted six
27 seconds. Do you have any reason to say he's wrong
28 in the download information?
29 A No.
30 Q So that would mean you held your finger on the
31 trigger six seconds.
32 A Yes.
33 Q And at the end of those six seconds where was Mr.
34 Dziekanski?
35 A I believe he was still standing.
36 Q Okay. According to Officer Baltzer, the second
37 tasing was five seconds and started one second
38 after the end of the first Taser. Do you accept
39 that?
40 A Sorry, repeat yourself? I'm sorry.
41 Q The second Taser, according to Officer Baltzer,
42 lasted five seconds.
43 A Yes.
44 Q And it started one second after the end of the
45 first Taser shot.
46 A Okay, yeah.
47 Q Do you accept that?

- 1 A Yes, I would have to watch the video, but yes.
2 A Can you give us the rationale for firing the Taser
3 the second time?
4 A From my training, the effects of the Taser being
5 fired are that the person that it's applied
6 against is supposed to fall immediately, and it's
7 supposed to immobilize them. It did not have that
8 effect with Mr. Dziekanski, so I felt it was
9 necessary to fire it again, and so I did.
10 Q Prior to firing that second shot within that one-
11 second interval were you given any instruction to
12 fire a second time?
13 A No.
14 Q At the end of the second tasing, where do you
15 say Mr. Dziekanski was?
16 A He was on the ground.
17 Q Did you attempt to fire the Taser a third time?
18 A Not right away, no. The officers had moved in at
19 that point to attempt to gain control of him. He
20 was still kicking and fighting and struggling with
21 the members, and that's when I was advised to hit
22 him again, which means cycle it again. He was,
23 like I said, kicking and struggling, and he still
24 had his arms in front of him. We were trying to
25 get them behind his back. And so I did that.
26 Q And that's the first instruction you received to
27 fire the Taser, the one you just told us about?
28 A Yes.
29 Q And who was that from?
30 A Corporal Robinson.
31 Q The first two had been fired when the probes were
32 in the person, so it was in the probe mode?
33 A Yes.
34 Q And that's where the probes go into the person and
35 the wires are attached to the Taser gun and the
36 electrical current flows?
37 A Yes.
38 Q So what happened on the third firing, when he was
39 on the ground?
40 A When he was on the ground and I fired it the third
41 time, you could hear what's -- the best way I can
42 describe it is clacking. It's the sound of the
43 current. We're trained that if you hear any
44 clacking sounds that the current is not going
45 through properly and it's not in connection with
46 the -- with the subject. And I could hear it
47 clearly in the third one, so I knew that it wasn't

1 connecting with him.
2 Q You say that meant to you the current was not
3 proper, the connection not proper?
4 A Yes.
5 Q Does that mean there would be no electrical
6 current flowing at all?
7 A If you hear a clacking, there can be some
8 electrical current, but there was no -- there was
9 no movements from him and his kicking and
10 struggling was consistent from before the
11 application to after. So that indicated to me
12 that there was no connection at all.
13 Q Okay. So that attempt to Taser was when he was on
14 the ground in the probe mode.
15 A Yes.
16 Q What did you then do?
17 A He was still fighting, like I said, and so I took
18 off the cartridge at that point, which turns it
19 into the push stun mode. And I went to his rear
20 shoulder area. He was not bringing his hands
21 behind his back as we were trying to do to get him
22 under control. And so I applied it in push stun
23 mode to his rear shoulder area to attempt to get
24 pain compliance. It's a localized current which
25 is supposed to provide pain to the area it's
26 applied to.
27 Q That's the push stun mode?
28 A Yes.
29 Q Were you instructed to do that?
30 A No.
31 Q Did you tell anyone you were going to do that?
32 A No.
33 Q How long did you hold the Taser on the -- in push
34 stun mode the first time?
35 A I don't know how long I held it at the time. It
36 wasn't in contact with him for the full time
37 because he was moving and struggling. So I don't
38 know how many seconds it was actually on him.
39 Q Officer Baltzer says that the fourth was nine
40 seconds. Do you have any reason to disagree?
41 A I can agree that it was -- the trigger may have
42 been held down for nine seconds, but it was not in
43 contact with him for nine seconds.
44 Q Because he was moving and struggling.
45 A He was moving and struggling, and since the
46 incident I've looked at the video, and I've
47 listened and hear clacking again. Now, in push

- 1 stun mode when you hear the clacking it's
2 definitely not in contact with the -- with the
3 subject, because it's silent when it's in
4 connection with -- with the person.
- 5 Q Did you taser again?
- 6 A I don't recall tasing again, no.
- 7 Q So how many tasers do you recall?
- 8 A Four.
- 9 Q You know that Officer Baltzer has a fifth tasing
10 in the push stun mode that lasted six seconds?
- 11 A Yes, I'm aware of that. I have actually since
12 watched the video and listened to it, as well as
13 an audio version, I guess you could say, that was
14 produced last week, and I could hear clacking for
15 the entire time that he was -- that the last
16 deployment was -- was done, which indicates to me
17 that I may have been holding the trigger, but it
18 definitely was not in contact with him.
- 19 Q But you've told us you tasered four times. Is it
20 your recall that you only tasered four times?
- 21 A Yes.
- 22 Q In point of fact, Officer Baltzer has five
23 taserings.
- 24 A He has five deployments of the Taser.
- 25 Q Right. Is that a surprise to you to learn that he
26 sees five downloads from that weapon?
- 27 A It was at first.
- 28 Q We received a video, Officer Millington, from the
29 Homicide Investigation Team of the RCMP with the
30 taserings and the timing of the start and ending
31 of each of those taserings superimposed. Have you
32 seen that video?
- 33 A I believe so, yes.
- 34 Q What I'd like to do is have that played and have
35 you then tell us where that -- that confirms your
36 memory.
- 37 THE COMMISSIONER: Yes.
- 38 MR. VERTLIEB: I see Mr. Hira is here.
- 39 MR. HIRA: The way the -- I've got to -- just give me a
40 moment here. That video with the superimposed
41 timing is something that I objected to previously
42 because it was unclear what and how that was
43 superimposed. I suppose in theory this officer
44 can be asked if he's able to comment on it, as
45 Your Lordship - I'm sorry - as you noted, there
46 may have been something artificial about it.
47 There certainly is a difference between the

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- 1 superimposition timing and the counter that Your
2 Lordship -- that you see at the bottom of the
3 video without the superimposition. In other
4 words, the counters seem to be out of sync. But I
5 suppose this officer can be asked to comment on
6 it. It's probably something that may go to
7 weight, probably -- or may go to admissibility.
- 8 THE COMMISSIONER: Well, I don't think it goes to
9 admissibility. It may go to weight. But let's be
10 very clear so the officer knows what's going on
11 here. Could you just describe in detail what it
12 is you're going to show.
- 13 MR. VERTLIEB: Thank you, Mr. Commissioner.
- 14 Q Officer Millington, through the RCMP IHIT
15 investigation they've sent us material about this
16 case, and you understand that.
- 17 A Yes.
- 18 Q And in part of that material we received a video
19 that shows the tasing that -- while you were
20 doing it, and it takes the timing of the Baltzer
21 downloads, which is Exhibit N for identification,
22 pending the calling of Officer Baltzer, and it
23 puts those time sequences onto the screen so we
24 can use the Pritchard video, the Baltzer timing,
25 and see when the first shot was fired and when it
26 ended, and when the second shot was fired and when
27 it ended, and when the third and fourth and fifth.
28 That's what we have from IHIT that I'd like to
29 show you now.
- 30 MR. HIRA: And that's the difficulty. That's my
31 friend's summary of what he believes he has. All
32 I received after the IHIT materials were disclosed
33 to me on the Friday afternoon before the inquiry
34 began on January 16, was sometime in either late
35 January or early February I received a video --
36 sorry.
- 37 THE COMMISSIONER: I'm sorry, does the timing that you
38 reach it goes to the quality of the item?
- 39 MR. HIRA: It goes to how it was compiled. In other
40 words, there's nothing in the IHIT materials
41 telling us how it was compiled, in other words,
42 who did it and what the basis for doing so is. If
43 my friend has -- can direct me somewhere with
44 respect to that information, that would be
45 helpful.
- 46 THE COMMISSIONER: I think we'll proceed. The officer
47 was there. He can say whether it accords with his

1 recollection.

2 MR. VERTLIEB: Go ahead, please. And this will be the
3 Pritchard video with timings superimposed.

4 THE COMMISSIONER: Are we going to do this is slow
5 motion?

6 MR. VERTLIEB: Please. Thank you, Mr. Commissioner.

7 MR. LUNN: I'm not sure actually that we can run this
8 format in slow motion, but there are pauses as
9 each of the captions comes up on the screen.

10 THE COMMISSIONER: All right.

11 MR. VERTLIEB: Tell us the time when it starts on our
12 screen, Mr. Lunn.

13 MR. LUNN: We're at 3:48 currently on the Pritchard
14 video timeline.

15
16 (VIDEO BEING PLAYED)

17
18 MR. VERTLIEB:

19 Q Now, that's six seconds later. You saw that,
20 Officer Millington?

21 A Yes. I noticed that the timer at the bottom
22 continues to run. That's where I guess the
23 confusion is.

24 MR. VERTLIEB: Keep going, Mr. Lunn, please.

25 Thank you. Keep going.

26 Keep going, please.

27 Thank you, Mr. Lunn.

28
29 (END OF VIDEO)

30
31 MR. VERTLIEB:

32 Q You've seen the Pritchard video and you've seen
33 yourself in there?

34 A Yes.

35 Q You saw yourself holding the Taser in the probe
36 mode?

37 A Yes.

38 Q You saw yourself come around and do the push stun
39 mode?

40 A Yes.

41 Q And you were at his back when you were doing that?

42 A Yes.

43 Q Is there anything that you saw there that you say
44 is wrong from -- based on your recollection of the
45 events?

46 A The -- is there anything that I see that's wrong
47 with the video, or...?

- 1 Q Yes.
- 2 A Not that I can see.
- 3 Q Okay. Let's talk about push stun for a moment.
- 4 This is a very painful use of the weapon?
- 5 A It's a localized pain compliance, yes.
- 6 Q Well, Officer Bentley said it's very painful. Do
- 7 you agree with that?
- 8 A Yes.
- 9 Q You told us earlier this morning that you did not
- 10 tell anyone that you were going to use the push
- 11 stun mode. Can you tell us why you chose not to
- 12 tell your other officers about that?
- 13 A We were moving in a very fast paced situation.
- 14 They were attempting to gain control of him, get
- 15 his arms from in front of him to behind his back,
- 16 and I was doing what I could to help. We don't
- 17 normally discuss things like that when we're in
- 18 such a situation.
- 19 Q Okay. But did it at all concern you that the push
- 20 stun tasering might cause Mr. Dziekanski to react
- 21 in such a way that he might pull away from pain?
- 22 A No, at the time the goal was to get his arms from
- 23 in front of him to behind his back so that we
- 24 could get control.
- 25 Q Okay. But in doing that did it occur to you that
- 26 the pain might cause him to respond in a way that
- 27 others might think he was fighting them and being
- 28 resistant to them?
- 29 A No, I did not perceive that at the time. He was
- 30 fighting before the application and the goal was
- 31 to get him under control.
- 32 Q Well, he wasn't fighting before the so-called
- 33 application. When you say "application", you mean
- 34 the Taser firing?
- 35 A Yeah, the --
- 36 Q Yes.
- 37 A -- one on the ground you're asking about.
- 38 Q Right. Well, he wasn't fighting before you
- 39 tasered him the first time. You say he was
- 40 threatening.
- 41 A He was in a combative stance and he threatened.
- 42 Q Yes.
- 43 A Yes.
- 44 Q So when he's on the ground he's fighting, in your
- 45 words?
- 46 A Yeah, he was fighting with the other officers.
- 47 Q Did you stop for a moment to think that by

1 tasing him with this painful push stun mode it
2 might cause him to act in a way that other people
3 might think he was being resistant?

4 A No. My goal was to get him under control and to
5 get his arms from in front of him, to help the
6 other officers do that.

7 THE COMMISSIONER: Officer, how did you think that you
8 were going to gain compliance by applying pain?

9 A The pain compliance is when the Taser's applied in
10 push stun, it's a localized pain. His arms were
11 in front of him and my goal was to help the other
12 officers get them to behind his back. So by
13 applying pain to the shoulder area, the goal and
14 the expectation is that he was release his arm,
15 will release whatever side, so that you can get
16 one arm behind his back and then the other
17 subsequently.

18 MR. VERTLIEB: Now, what I'd like to do is go back to
19 the video, starting with your entry into the
20 secure area and up to the time of the firing of
21 the Taser the first time. It's about 25 seconds
22 or so, and I'd like you to watch it carefully and
23 then I'd like to ask you some questions.

24
25 (VIDEO BEING PLAYED)

26
27 MR. VERTLIEB: Okay, stop there.

28 Q That's the time of the first Taser shot. You can
29 tell that, correct?

30 A Yes.

31 MR. VERTLIEB: Thank you.

32
33 (VIDEO STOPPED)

34
35 MR. VERTLIEB: Now, for some reason we didn't play that
36 with sound. Let's try -- let me ask you a
37 question and we can play it with sound if we have
38 to.

39 THE COMMISSIONER: As I understand it, it will go in
40 slow motion without sound, but it won't go in slow
41 motion with sound.

42 MR. VERTLIEB: That's fine. Thank you, Mr.
43 Commissioner. We may not need it.

44 Q You recall the statement of October 14, the
45 morning of the incident, to Corporal Brassington?

46 A Yes.

47 Q And in the statement, if you've got it in front of

1 you,

2 A Yes, I do.

3 MR. VERTLIEB: Now, read the very first part of your
4 statement. Well, I'll give you a copy, Mr.
5 Commissioner, I realize you don't have one.

6 Q These are your own words, page 1. You were asked
7 to tell what happened that brought everybody
8 there. So just read it out for us and I'll tell
9 you when to stop.

10 A

11
12 Okay. We received a dispatch call of a male
13 in the International Travels area throwing
14 luggage around. And ... Dispatched got a
15 complaint. Our members attended while on
16 route, we got updated by dispatch that --

17
18 - I'm leaving out the uhs and ums -

19
20 -- he was now throwing chairs through windows
21 in the Arrivals Area. When we got in, we
22 proceeded public side, which is behind the
23 ... secure side of the airport and were
24 pointed to the direction of the secure side
25 of the airport. We went in and ... saw some
26 chairs lying around and a male who was
27 yelling and it wasn't making sense. Someone
28 yelled that he didn't speak English, so we
29 tried to calm him down by using hand signals,
30 ... you know, try to calm down, and he backed
31 away from us and he was still yelling. He
32 didn't listen to anything we were saying.
33 Picked up a stapler that was ... on a desk
34 nearby. He was knocking things over and he
35 approached us. I deployed the taser at this
36 point and eventually we were able to wrestle
37 him to the ground and get him into handcuffs
38 where we waited for ambulance attendants to
39 arrive.

40
41 Q Okay. Now, you say in the statement there were
42 "chairs lying around". Sir, were there chairs
43 lying around?

44 A No. In my statement I said "lying around", they
45 were actually -- the ones that I saw were -- were
46 standing.

47 Q Then you say, "we tried to calm him down by using

1 hand signals" and we didn't see that on the
2 Pritchard video, just because it didn't catch
3 that. We covered that earlier, right?
4 A Yes.
5 Q You said that you tried to calm him down and "he
6 backed away from us and he was still yelling." Do
7 you see that?
8 A Yes.
9 Q We can play the video, but are you sure he was
10 yelling when you look at the Pritchard video after
11 you tried to calm him down?
12 A I'm not sure of that. My statement says it, but
13 I'm not sure.
14 Q So that may be wrong.
15 A It may be.
16 Q Now you say, "He didn't listen to anything we were
17 saying." Do you see that?
18 A Yes.
19 Q What you said was "passport" and "identification"?
20 A Yes.
21 Q And I asked you if you knew where his passport and
22 identification would be and you said you didn't
23 know.
24 A No.
25 Q We covered anybody else talking to him and you
26 mentioned Bentley saying, "How you doing, Bud," or
27 something like that.
28 A That's what I remember him saying.
29 Q Can you tell us what it was that you meant when
30 you said to us "He didn't listen to anything we
31 were saying"?
32 A I believe I was referring to when we were talking
33 and miming to him, he turned away from us and
34 that's what I interpreted to be not listening to
35 us.
36 Q Okay. That was your interpretation?
37 A Yes.
38 Q So today you're not sure he was yelling at you
39 after you asked him or tried to calm him down?
40 A No, I'm not sure.
41 THE COMMISSIONER: I see there's a pause. We'll take
42 the morning break.
43 MR. VERTLIEB: Thank you.
44 THE REGISTRAR: The hearing will now recess for ten
45 minutes.
46
47 (WITNESS STOOD DOWN)

34
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1 (PROCEEDING ADJOURNED FOR MORNING RECESS)
2 (PROCEEDINGS RECONVENED)
3

4 THE REGISTRAR: Order. This hearing is now resumed.
5

6 CST. KWESI MILLINGTON, a
7 witness, recalled.
8

9 EXAMINATION IN CHIEF BY MR. VERTLIEB, continuing:
10

11 Q In your statement - excuse me - number one, you've
12 already read to the Commissioner the words you
13 gave to Corporal Brassington, page 1:
14

15 I deployed the taser at this point and
16 eventually we were able to wrestle him to the
17 ground and get him into handcuffs...
18

19 You read that to the Commissioner?

20 A Yes.

21 Q And the second statement, which is page -- October
22 15, you used the same language.

23 MR. VERTLIEB: We have the second statement, Mr.
24 Commissioner. Thank you.

25 Q Page 14, and you have that, Officer?

26 A Yeah, I'm looking it up now.

27 Q Okay. Just go to page 14. Do you have it now?

28 A Okay, yes.

29 Q Thank you. Top of the page:
30

31 I believe I cycled it twice, when he was
32 standing, 'cause you can press it once and
33 then it will cycle for five seconds, press it
34 again and, ah, I did it a couple of times.
35 Once it stopped he, the member's moved in
36 because he hadn't gone to the ground, and
37 were able to wrestle him to the ground.
38

39 Do you see the same use of the words "wrestle him
40 to the ground"?

41 A Yes.

42 Q And a third reference to that is at statement
43 number one, page 4, bottom of the page.

44 A Yes.

45 Q

46 ...he seemed to feel the effects of the taser
47 but he didn't fall due to that. Members had

1 to wrestle him to the ground.
2 Do you see that?
3 A Yes.
4 Q And finally, in your handwritten notes, and these
5 are notes you made on the very morning of this
6 event, handwritten notes --
7 A Yes.
8 Q -- in your police book --
9 A Yes.
10 Q -- like you're taught to do?
11 A I have it here, yes.
12 Q Second page, 0153:
13
14 On attendance male was resistant, not -
15
16 -- is that "listening to members"?
17 A Yes, listening.
18 Q
19 - picked up stapler and moved aggressively
20 towards members.
21
22 Do you see that?
23 A Yes.
24 Q Here's the part I want to focus on:
25
26 Taser deployed and cycled three times. Male
27 did not go down.
28
29 Do you see that?
30 A Yes.
31 Q That's in your notes?
32 A Yes.
33 Q
34 Stayed on feet until members --
35
36 -- and four --
37
38 - wrestled to ground.
39
40 A Yes.
41 MR. VERTLIEB: Mr. Lunn, would you play the Pritchard
42 video, starting at 3:47 or so, with the sound,
43 please.
44
45 (VIDEO PLAYED)
46
47 MR. VERTLIEB: Stop there.

(VIDEO STOPPED)

MR. VERTLIEB:

Q That's the end of the first tasing, is it, sir?

A Yes.

Q Sir, can you tell us about the wrestling to the ground?

A That's what my notes said and my statement, and he fell to the ground on his own. I made those notes and statement at the time, but he had fell on his own. I didn't realize that.

Q Well, you made the notes, the handwritten notes, in the morning of the event, before getting into typewritten statements; correct?

A Yes.

Q And then you had a typewritten statement on the 14th?

A Yes.

Q And another typewritten statement the next day?

A Yes.

Q I took you through four references to wrestling him the ground?

A Yes.

Q They were all in error?

A Yes.

Q We just went to the second statement, at page 14. You said to Brassington, you cycled it twice when he was standing. Remember reading that?

A As I believe, I cycled it twice when he was standing.

Q Sir, that was in error, was it?

A Yes. I said I believed.

Q You told the Officer Brassington, at statement -- page 1, "He approached us." Do you remember reading that to the Commissioner, after he picked up the stapler?

A Yes.

Q You again said that in the second statement, at page 2? Do you want to just look to that for a moment? Top of the page.

He picked up a stapler and ah, I perceived that to be combative behaviour, because he had it and he was moving towards, towards us.

A Yes.

Q You see that?

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1 A Yes.

2 Q I'd like to watch the video from the time you
3 enter the secure area until the firing of the
4 Taser, and I'd like you to focus on when he turns
5 away and is standing in front of the counter, and
6 you tell us when to stop when you say he's moving
7 towards you.

8 MR. VERTLIEB: So Mr. Lunn, you can go to about 3:40 or
9 so.

10 MR. LUNN: I'm actually at 3:26, now. (Indiscernible -
11 away from microphone) go forward?

12 MR. VERTLIEB: Just run it forward, please.

13
14 (VIDEO PLAYED)

15
16 MR. VERTLIEB: Let's stop there just a second.

17
18 (VIDEO STOPPED)

19
20 Q Now, I'd like you to focus on this timeframe from
21 when you're actually in close contact with him to
22 when his back is facing us, when he's against the
23 counter, up to the firing of the first Taser, and
24 tell us to stop when you see him move towards the
25 officers.

26
27 (VIDEO BEING PLAYED)

28
29 A He's moving towards us there.

30 Q Where?

31 A Just before that (indiscernible) opening.

32 Q I'm sorry. We can play it again.

33 MR. VERTLIEB: Stop there, Mr. Lunn. Just go -- Mr.
34 Lunn, go back another few seconds, just a couple
35 of seconds, please. Okay.

36 Q It's not there you're speaking of?

37 A Is this when he's going towards the desk?

38 Q Yes.

39 A Okay. No.

40 Q Okay. Run it and tell us when he moves towards
41 us, meaning the RCMP.

42 A He's moving towards us there.

43 Q Okay. And his hands are down at his side?

44
45 (VIDEO STOPPED)

46
47 MR. HARRIS: Can we have the time, please.

- 1 MR. LUNN: 3:49.
2 MR. VERTLIEB:
3 Q His hands appear to be at his side?
4 A He's holding the stapler at that point. From the
5 back you can see his elbows, but his hands were
6 up.
7 Q Okay. And you interpreted that movement, the one
8 you just identified, at the time we've just heard,
9 as a combative movement that made you bring out
10 your Taser and fire it?
11 A Yes.
12 Q Thank you. Did you form the impression that Mr.
13 Dziekanski wanted to fight?
14 A I formed the impression that he wanted -- he
15 wanted to attack one of the officers or all of the
16 officers.
17 Q So that means you formed the impression he wanted
18 to fight?
19 A Yes.
20 Q Can you show us in the video where you would
21 conclude he wants to fight?
22 A When he picked up the stapler and turned towards
23 us, that whole movement from picking up the
24 stapler and approaching us, I interpreted that all
25 to be that behaviour.
26 Q You told us the stapler was open?
27 A Yes.
28 Q Did you think that would make it more or less of a
29 weapon?
30 A More of a weapon.
31 Q Did you, in your statement to the homicide
32 investigation member, tell him that the stapler
33 was raised high?
34 A I'll have to look at the statement to see if the
35 word "high" was there.
36 Q The statement -- the second statement, page 13,
37 just focus on that page for a moment. Top of the
38 page. Maybe you can just read that.
39 A Okay.
40
41 He reached and grabbed the stapler, had it in
42 the open position --
43
44 Q I can't hear you, I'm sorry?
45 A
46 He reached and grabbed the stapler, had it in
47 the open position and had it raised high and

1 then started advancing towards us.
2

3 Q Someone reading the words, "had it raised high"
4 with the video available, might say, "Where was it
5 that he had it raised high." Can you find it on
6 the video?

7 A He had it above his waist, and that is what I used
8 the word "high" for.

9 Q You used the word "high" to refer to being above
10 his waist?

11 A Yes.

12 Q Thank you. In your handwritten statement, which
13 we just read, you wrote, "Male" -- see:

14 Taser deployed and cycled three times. Male
15 did not go down.
16

17
18 Can we conclude that that was a wrong statement as
19 well?

20 A Those are my notes, you said?

21 Q Yes.

22 A Yes, those are notes jotted at the time. The
23 statement reflected what happened.

24 Q Notes made by you in your own handwriting?

25 A Yes.

26 MR. VERTLIEB: I'd like Mr. Lunn, please, to go to the
27 end of the first taserings, which is there for six
28 seconds from the firing, and stop it. If you can
29 go six seconds. Back up, please, Mr. Lunn, and
30 just go from the -- from the firing until six
31 seconds.
32

33 (VIDEO PLAYED)

34 (VIDEO STOPPED)
35

36 MR. LUNN: That's six seconds.

37 MR. VERTLIEB:

38 Q We've covered the ground from Corporal --
39 Constable Baltzer that the first shot lasted six
40 seconds, and you had no reason to disagree with
41 that?

42 A No.

43 Q May we suggest to you that the end of the first
44 firing of the Taser Mr. Dziekanski is on the
45 ground?

46 A Yes.

47 Q And he appears to be making some noise, which

- 1 might be, to some people, crying out in pain?
- 2 A Yes.
- 3 Q At this point, you've only fired the Taser once?
- 4 A Yes.
- 5 Q We know that one second elapsed before you fired
- 6 it a second time; correct?
- 7 A Okay, yes.
- 8 Q This is in the probe mode, when the two darts are
- 9 attached to the subject?
- 10 A That's what -- you're describing what probe mode
- 11 is; is that what you're saying?
- 12 Q He was -- the second firing was in the probe mode?
- 13 A Yes.
- 14 Q Can you tell the Commissioner your rationale for
- 15 firing a second time when Mr. Dziekanski is in
- 16 that position and making the noise he was making?
- 17 A From my training, the, like I said before, the
- 18 Taser is used to immobilize and gain control of a
- 19 combative subject. He, and like I said in my
- 20 statement, he was feeling some of the effects, but
- 21 he wasn't immobilized like my training indicated.
- 22 And so the goal was to immobilize him, and that's
- 23 why I cycled it a second time.
- 24 Q Say --
- 25 A I said I believed that he was standing when I
- 26 cycled it the second time. It was a fast-moving
- 27 situation and I don't know -- I did not know that
- 28 he had already fallen once it was done a second
- 29 time.
- 30 Q Sir, you say -- did you say he was not feeling the
- 31 effect of that first Taser shot for six seconds?
- 32 A Based on my training, I said he wasn't feeling the
- 33 full effects. From my training, the effects of
- 34 the Taser cycled in probe mode is immobilization.
- 35 You're supposed to fall to the ground immediately
- 36 and not be able to move. He had moved back, still
- 37 had the stapler in his hand for some time, and so
- 38 that didn't indicate to me that he was feeling the
- 39 full effects.
- 40 Q Well, the stapler is not in his hand when he is on
- 41 the ground; right?
- 42 A When he lands on the ground, no. But like I said,
- 43 the training indicated to me that he was supposed
- 44 to fall immediately.
- 45 Q Okay. And you say he, in your opinion, he was not
- 46 feeling the full effect?
- 47 A I said that, yes.

- 1 Q Sir, would you like to have the sound of this
2 replayed and you -- so you can hear Mr. Dziekanski
3 at the time when you say he is not feeling the
4 full effect?
- 5 A I didn't say that he didn't make a sound, and I
6 didn't say he didn't feel it. I said that he
7 didn't feel the full effects of it.
- 8 Q Would you go so far as to say it sounded like he
9 was in considerable pain?
- 10 A There may have been a sound of pain, yes, but I
11 don't know whether it was considerable or not.
- 12 Q There may have been? Do you want me to have Mr.
13 Lunn replay the video with the sound?
- 14 A There was pain.
- 15 Q Thank you. Did it occur to you that his movements
16 on the ground, his moving around, was a response
17 to pain and not an attempt to be resistant?
- 18 A After the first one, when he fell to the ground,
19 I, as I said, I interpreted that to be he didn't
20 feel the full effects. The goal was
21 immobilization, and that's why it was fired the
22 second time.
- 23 Q Now, can you tell us how four healthy men from the
24 RCMP could not gain control of him when he's in
25 that position right there, lying on the ground,
26 making the noises he was making?
- 27 A Can I tell you how? He was still fighting and
28 struggling with us. I don't know why he was not
29 under control. He was fighting us, so that's why
30 we had to use it.
- 31 Q Well, sir, he's not fighting with anybody at the
32 moment that we're looking at right now, at the end
33 of the first Taser, is he?
- 34 A No.
- 35 Q You made the decision to fire the Taser again?
- 36 A Yes.
- 37 Q When he was on the ground?
- 38 A Like -- yes. Like I said, I believed he was
39 standing.
- 40 Q But you were wrong?
- 41 A Yes.
- 42 Q So the second firing lasted five seconds, and
43 you've given the Commissioner your rationale for
44 that second firing?
- 45 A Yes.
- 46 MR. VERTLIEB: Mr. Lunn, can you take us to the end of
47 five seconds, now, so we can see what the

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1 situation looked like before the third attempt.
2 And there will be a one-second gap.

3 MR. LUNN: (Indiscernible - away from microphone) one
4 second.

5 MR. VERTLIEB: One plus five, so take it six seconds,
6 now 12 into the video from the time of the firing,
7 then stop it.

8
9 (VIDEO PLAYED)

10 (VIDEO STOPPED)

11
12 MR. VERTLIEB: Thank you.

13 Q Sir, I just couldn't help but ask with listening
14 to the sound, did you conclude that that was
15 resistant behaviour?

16 A He was in combative behaviour while standing. At
17 this point, we're reassessing.

18 Q All right. So now you're reassessing. This is
19 the end of the second Taser? Four officers are
20 still in the room; correct?

21 A Yes.

22 Q He doesn't appear to be wrestling with anybody?

23 A No.

24 Q He doesn't appear to be fighting anybody?

25 A No.

26 Q Is there some reason why four officers couldn't
27 have tried to get him under what you call control
28 at this moment in time?

29 A This is what we tried to do at this time.

30 Q Well, "we" is maybe incorrect, because you were
31 planning to fire the Taser a third time and, in
32 fact, attempted to do that; is that correct?

33 MR. HIRA: With respect, that is argument. He can give
34 evidence of what happened. If you get to that
35 point you may be able to ask that question.

36 THE COMMISSIONER: Reword it, Mr. Vertlieb.

37 MR. VERTLIEB: Thank you.

38 Q At this point, this is right now before you've
39 attempted to fire a third Taser shot; is that
40 correct?

41 A This is before the third deployment, yes.

42 Q So I'd like you to tell the Commissioner, what was
43 it that made you come to the conclusion that you
44 should fire a third time?

45 A Well, just after this the other three members move
46 in and I soon follow to attempt to gain control of
47 the male. He was combative, but we're still --

- 1 didn't have him under control. So when they were
2 -- attempts to gain control of him, he was still
3 kicking and fighting with the members and was not
4 moving his hands behind his back, and that's when
5 I was advised to use it again.
- 6 Q Advised by Corporal Robinson?
- 7 A Yes.
- 8 Q So was the decision to fire the third shot yours,
9 or were you following the instruction of your
10 corporal?
- 11 A I heard his instruction, but it was my decision.
- 12 Q And at the moment you pulled the trigger for the
13 third Taser shot, were officers on Mr. Dziekanski?
- 14 A No. They were attempting to gain control of him
15 and could not do so, so --
- 16 Q Attempting to gain control in what way, sir?
- 17 A Get his hands behind his back, get him into
18 handcuffs, get him under arrest.
- 19 Q So they were actually, in some way, on him or
20 right by him, dealing with him?
- 21 A They were dealing with him, but he was not yet
22 under control.
- 23 Q Right.
- 24 MR. VERTLIEB: Just play that forward, please, for the
25 five seconds. 4:13 was apparently when that
26 starts off the Pritchard video.
- 27
- 28 (VIDEO BEING PLAYED)
- 29
- 30 MR. VERTLIEB: Stop there a second.
- 31 Q Now, you're holding the Taser?
- 32 A Yes.
- 33 Q And you're holding it in two hands?
- 34 A Yes.
- 35 Q Now, who's on him or at him?
- 36 A It's Corporal Robinson and I think it's Constable
37 Rundel, at this point.
- 38 Q Okay. All right. Do you -- you know that this is
39 before you fired the third shot?
- 40 A Yes.
- 41 Q Okay. And the rationale was because he was
42 resisting and still fighting?
- 43 A He was still fighting. He was not under control.
- 44 MR. VERTLIEB: Continue, please, Mr. Lunn. Stop,
45 please.
- 46 Q Now, how many officers are on him or right at him?
- 47 A All four of us were there.

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- 1 Q Thank you. And what were you doing by reaching
2 out with your left hand?
- 3 A I was attempting to gain control of his legs while
4 the other members were trying to get his arms
5 behind his back.
- 6 Q Is this before or after you pulled the trigger the
7 third time?
- 8 A This is before.
- 9 Q Okay. Thank you.
- 10 MR. VERTLIEB: Keep going another few seconds, Mr.
11 Lunn, please. Stop.
- 12 Q Is this when you moved back to pull the trigger?
- 13 A Yes.
- 14 Q We see three officers on him?
- 15 A There are three officers attempting to gain
16 control of him. They hadn't gotten control of him
17 yet.
- 18 Q Okay. Did you view him as being combative at this
19 point?
- 20 A Yes, he was fighting with the members, struggling,
21 and he was not get -- moving his arms behind his
22 back.
- 23 Q Was someone telling him to put his arms behind his
24 back?
- 25 A I don't know if they were saying it, but they were
26 definitely doing it physically.
- 27 Q And the third shot, in your opinion, was not
28 sending the electricity?
- 29 A Yes.
- 30 Q Tell us -- I'll have Mr. Lunn keep going with the
31 video and you tell us when the end of that five
32 seconds took place.
- 33 MR. VERTLIEB: Stop there.
- 34 A It was just before that.
- 35 Q So by now you've made the decision to take out the
36 cartridge and go to push stun mode?
- 37 A Yes.
- 38 Q And did not tell any of your brother officers?
- 39 A No.
- 40 Q So you're now in the process of going to the back
41 so you can fire the Taser in push stun mode?
- 42 A Yes.
- 43 Q Now, I think you will disappear from view.
- 44 MR. VERTLIEB: As soon as the officer disappears, Mr.
45 Lunn, stop, please. Just watch another -- a
46 little bit, please.
- 47

(VIDEO STOPPED)

- 1
2
3 Q You know that you went to Mr. Dziekanski's back
4 with your Taser --
5 A Yes.
6 Q -- intending to push stun in his back?
7 A Yes.
8 Q Would you please tell the Commissioner your
9 justification for this fourth tasing event?
10 A He was still fighting and struggling with the
11 members. He was not yet under control. He had
12 his hands in front of him. I could tell the third
13 deployment had no effect, and the members were not
14 able to get control of him and get him -- get his
15 arms, like I said, behind his back. So I went to
16 his rear shoulder area to attempt to apply pain
17 compliance to his rear shoulder area, like I said
18 before, to release his arms.
19 Q His left rear shoulder area?
20 A I'd have to check my statement. I don't know if
21 it was left or right.
22 Q You said the Taser wasn't having effect. Surely
23 you -- you must not have meant the words as they
24 literally are taken?
25 A The third time I don't believe it had any effect.
26 Q Right. So you went to his back. In your view of
27 the event, is it your view from the event, as you
28 recalled it, that you only tasered him one time
29 when you were at his back?
30 A Yes.
31 Q And so if someone were to have asked you, on the
32 morning of the incident, how many times you fired
33 your Taser at Mr. Dziekanski, you would have said,
34 "Four"?
35 A Yes.
36 Q Did it come as a surprise to you to learn that the
37 Taser had been used twice, meaning four and five
38 times, in push stun mode?
39 A Yes. When I originally heard, it was.
40 Q We've covered the fact that the last two taserings
41 were 15 seconds in total, with a one-second gap or
42 so between the pulling of the trigger. You don't
43 deny that that's the case?
44 A I don't deny that it was deployed for that amount
45 of time, but it was not in contact with Mr.
46 Dziekanski the whole time.
47 Q Did you ever, at that time, think about what

- 1 impact that multiple taserings might have been on
2 your client?
- 3 A At that time we were trying to get him under
4 control, so no, I didn't at the time.
- 5 Q I use the word "client" because apparently that's
6 a word you're taught to use in your training?
- 7 A Yes.
- 8 Q Officers Rundel and Bentley were here and they did
9 not know you were doing the push stun taserings.
10 You've told us you didn't tell anyone. Can you
11 understand how someone might not have seen you do
12 that?
- 13 A It's possible. We were all dealing with Mr.
14 Dziekanski.
- 15 Q If someone was being tasered and considering the
16 pain that that would cause, do you think the
17 person might act in a resistant way?
- 18 A No. From my training, they would comply at the
19 point of taserings, especially in the push stun
20 mode.
- 21 Q Comply to what, though, if no one's telling the
22 gentleman what to do?
- 23 A We were physically trying to gain control of him,
24 getting his arms behind his back, and that's how
25 we were trying to get his -- get him under
26 control.
- 27 Q Did it occur to you that at any time part of the
28 struggle might be from him breathing -- trying to
29 get air?
- 30 A No. He was kicking and struggling and he was
31 actively keeping his hands in front of him.
- 32 Q And on his chest?
- 33 A They were in front of him. I don't know if they
34 were on his chest or not, but they were in front
35 of him and he was --
- 36 Q He was lying on his chest?
- 37 A He was -- yeah, he was lying on his chest, yeah.
- 38 Q And perhaps one officer with weight on his back?
- 39 A I don't know that. I know that he was struggling.
- 40 Q He was ultimately handcuffed?
- 41 A Yes.
- 42 Q Did you have any part of the handcuffing, or were
43 you simply using the -- and firing the Taser?
- 44 A I'd have to check my statement. I don't know if I
45 helped. Do you want me to check?
- 46 Q Do you remember?
- 47 A I don't remember.

- 1 Q Let's discuss --
- 2 MR. HIRA: I gather my friend doesn't want him to
3 refresh his memory from his statement?
- 4 MR. VERTLIEB: I'm not worried about it, Mr. Hira. If
5 you wish to explore it, feel free. I just wanted
6 to ask him if -- I'm not concerned about it.
- 7 Q Let's discuss the handcuffing to the time of the
8 arrival of the first responders from Richmond Fire
9 Department. When this event first took place,
10 we've heard that no one else was in the secured
11 area except Mr. Dziekanski and the four RCMP; do
12 you agree with that?
- 13 A When we first dealt with him, you said?
- 14 Q When you first dealt with him up to the time of
15 the handcuffing.
- 16 A Yeah, I remember -- I don't remember anyone else.
17 I think, since watching the video, I think there
18 was a man in a black suit there.
- 19 Q And that came afterwards?
- 20 A That realization, you're saying?
- 21 Q The man in the black suit. He came in after the
22 tasering was finished?
- 23 A I don't know actually when he came in.
- 24 Q Do you know the -- do you know the man in the
25 black suit?
- 26 A Yes, I think I do him, but I don't remember his
27 name at this time.
- 28 Q Do you know him because of these events, or did
29 you know him at the time you were dealing with Mr.
30 Dziekanski?
- 31 A I'd have to see again, but I think I do -- I did
32 know him as YVR personnel.
- 33 Q And that's a gentleman named Enchelmaier, Trevor
34 Enchelmaier?
- 35 A Yeah, I know the name.
- 36 Q Do you have any recollection of him being involved
37 in any of the events up until the arrival of the
38 Richmond Fire Department?
- 39 A No.
- 40 Q I'd like to deal with Mr. Dziekanski's appearance
41 after handcuffing. Did you -- was there some
42 discussion about his colour changing after the
43 handcuffs were put on?
- 44 A Yes, a few minutes -- I think it was a couple
45 minutes after, Constable Bentley said that his
46 ears were turning blue.
- 47 Q Let's just go to your second statement, bottom of

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1 page 21. Do you have that, Officer?
2 A Yes.
3 Q Brassington asks:
4
5 ... you mentioned some specific observations
6 that BENTLEY made. [Um], do you remember
7 what he said -
8
9 -- meaning Bentley --
10
11 - about the observations he made bout
12 colouring and things like that?
13
14 What was your answer, sir? Please tell us?
15 A Sorry, where -- where are you right now?
16 Q Sorry. The second statement, the one October 15.
17 do you have that, Officer?
18 A Yes.
19 Q Bottom of page 21
20 THE COMMISSIONER: I'm afraid I don't see that there.
21 MR. VERTLIEB: You know, we may have -- this may be
22 that same issue with the pages being numbered
23 differently.
24 MR. HIRA: Look at the top of page 22, it might help.
25 MR. VERTLIEB: We've had this throughout, so we bear
26 with me.
27 THE COMMISSIONER: It begins with the words, "And you
28 mentioned some".
29 MR. VERTLIEB: Yes.
30 Q So you're at the top of page -- what it says is,
31 as the Commissioner said:
32
33 ... you mentioned some specific observations
34 that BENTLEY made.
35
36 Do you find that, Officer?
37 A Yes. It's the top of page 22.
38 Q Thank you. Yes, I have that.
39
40 ... do you remember what he said, about the
41 observations he made bout colouring and
42 things like that?
43
44 Do you see that, top of page 22?
45 A Yes.
46 Q And what was your answer, Officer Millington?
47

1 A
2 Ah, he just said his ears are turning blue.
3
4 Q And just keep reading for us.
5 A And then he says, "Okay," and then there's
6 something:
7
8 (INDECIPHERABLE) about the time when he was
9 not moving anymore.
10
11 That was about the time that he wasn't moving
12 anymore?
13
14 And I said, "Yeah." He said:
15
16 Okay, um, ah, so not immediately, upon him
17 being handcuffed?
18
19 And I said:
20
21 No, no I'd say it's a couple of minutes after
22 that.
23
24 He said:
25
26 About a couple minutes after?
27
28 And I said:
29
30 Well, yeah, maybe about a minute or, or so.
31
32 Q Thank you. Stop there. So the colour blue, his
33 ears turning blue, would have been perhaps a
34 minute to two minutes after Mr. Dziekanski was
35 handcuffed?
36 A Yes.
37 Q Did you take that to be a serious medical
38 development?
39 A Yes.
40 Q You were concerned?
41 A Yes.
42 Q Did you learn that almost immediately upon that --
43 that being noticed, Officer Bentley called Code 3
44 medical?
45 A Yes.
46 Q Did you agree with that?
47 A Yes.

- 1 Q Would you have called Code 3 if Bentley had not?
2 A Absolutely.
3 Q And you knew Code 3 meant it was a serious medical
4 situation?
5 A Yes.
6 Q Now, at the time the Code 3 was called, do you
7 know if Officer Rundel was still in the room, or
8 had he gone out on the instruction of Corporal
9 Robinson?
10 A I think we were all in the room at the time.
11 Q You knew that Robinson said to get hobbles?
12 A I did not know that, no.
13 Q Did you see hobbles arrive?
14 A No.
15 Q Officer Rundel has told us that he went to his car
16 to get hobbles. You know what hobbles are?
17 A Yes. Well, I understand them to be the leg
18 restraints that tie to the hands, unless I'm
19 mistaken. I don't know.
20 Q If someone was in Code 3 medical, you would not
21 think hobbles would be necessary, would you?
22 A No.
23 Q But you don't know when the hobbles were brought
24 back into the room, relative to the Code 3 call?
25 A No.
26 Q When you heard Code 3 was called, did you take any
27 action on your own initiative?
28 A Yes. I suggested that we get Mr. Dziekanski in
29 the recovery position. It allows for better
30 circulation and breathing.
31 Q And this is something you were taught in your
32 standard basic level first-aid?
33 A Yes.
34 Q He was handcuffed at the time?
35 A Yes.
36 Q Had you ever put someone in the recovery position
37 who was wearing handcuffs?
38 A Yes.
39 Q You felt it could safely be done?
40 A Yes.
41 Q And this was as at October 14th, 2007, you had had
42 someone handcuffed and in the recovery position?
43 A Yes.
44 Q Now, you observed the ears turning blue?
45 A I don't recall if I observed them or if I just
46 listened to what Bentley said.
47 Q You had no reason to think Bentley was wrong?

51
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1 A No.
2 Q In fact, Mr. Dziekanski was not moving at that
3 point in time?
4 A No.
5 Q He appeared unconscious to you?
6 A He wasn't moving. I don't know if he was
7 unconscious or not.
8 Q He wasn't moving at all?
9 A No.
10 Q Did you pause to think about what you might do to
11 help the situation beyond the recovery position?
12 A No. I felt that we did what we could at the time.
13 EHS was called for and he was in the recovery
14 position.
15 Q Did you ever, personally, check pulse?
16 A No.
17 Q Did you personally ever check breathing?
18 A No.
19 Q Did you personally ever check airway obstruction?
20 A No.
21 Q Did you observe Rundel or -- Rundel do any of
22 those things?
23 A No.
24 Q Did you see Bentley do any of those things?
25 A No.
26 Q Did you see Corporal Robinson do any of those
27 things?
28 A I -- yes, he said he was --
29 Q And what did Robinson do that you saw?
30 A He was checking his breathing and checking his
31 pulse.
32 Q And tell us what you saw officer -- Corporal
33 Robinson do to check breathing.
34 A I don't know if I saw him do anything. I just
35 asked if he was breathing and he said, "Yes."
36 Q Oh.
37 A I didn't look at the specific actions, sorry.
38 Q That's fine. So you didn't see Robinson checking
39 breathing?
40 A I didn't see it, no.
41 Q Did you actually see him checking pulse, then, or
42 is that something you were told by Robinson?
43 A I saw his hands by his head, but I don't know
44 exactly what he was doing. I just asked.
45 Q So you saw hands by the head. You -- "hands"
46 meaning of Corporal Robinson?
47 A Yes.

- 1 Q Did you see anyone else, prior to the arrival of
2 Richmond Fire Department, checking airway
3 obstruction, breathing or pulse?
4 A No.
5 Q You were all wearing your black gloves at the
6 time?
7 A I was. I don't know if any of the other members
8 were.
9 Q Did you see anyone take gloves off?
10 A No.
11 Q Do you remember the arrival of the first response
12 people from the Richmond Fire Department?
13 A Yes.
14 Q Did you take it that they would have more first-
15 aid training than you would with standard medical
16 basic level training?
17 A Yes.
18 Q As far as you knew, did any of the other three
19 RCMP officers have more sophisticated first-aid
20 training than you?
21 A Not as far as I know, no.
22 Q So you were glad to see Richmond Fire Department
23 arrive?
24 A Yes.
25 Q Tell us about the position of the four RCMP at the
26 time the Richmond Fire Department first walked in
27 the door?
28 A From what I can remember, Corporal Robinson was
29 still by the upper body area, and I think
30 Constable Bentley and Rundel were in front, but I
31 don't remember. I was further back, by the leg
32 area.
33 Q When Richmond Fire arrived, had Mr. Dziekanski, in
34 the timeframe between the calling of Code 3 and
35 their arrival, do anything to suggest that he
36 would start moving?
37 A No.
38 Q Would it be fair to say that he remained
39 motionless from the time of the Code 3 call and
40 the colour turning blue until Richmond Fire
41 arrived?
42 A Yes.
43 Q Was there a request by the first responders from
44 Richmond Fire that the handcuffs be removed?
45 A Yes.
46 Q Was that request complied with?
47 A Yes.

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In chief by Mr. Vertlieb

- 1 Q You disagree with the Captain Graeme from Richmond
2 Fire Department, and others who said that cuffs
3 were not removed at the request of Richmond Fire?
4 A I stepped back at the time that the conversation
5 took place. I saw the handcuffs being removed --
6 saw that the handcuffs were removed, so I just
7 assumed that it was complied with. I didn't hear
8 the conversation.
9 Q Do you not know as a fact that the handcuffs were
10 not removed until ambulance service attendants
11 arrived?
12 A No, I'm not aware of that.
13 Q So you have no knowledge of Corporal Robinson in
14 any way refusing to take handcuffs off at the
15 request of Richmond Fire Department?
16 A No.
17 Q Sir, just to help us understand, you've told us
18 you were standing at Mr. Dziekanski's feet.
19 A When the fire department came in I actually
20 stepped back further. My supervisor was in
21 control of his breathing and pulse, the fire
22 department came in, and I stepped back to let them
23 deal with it.
24 Q How far did you step back?
25 A I would say a few feet, maybe three to five feet.
26 I don't know.
27 Q So you did not hear any discussion between
28 Richmond Fire Department and Corporal Robinson?
29 A No.
30 Q You have no quarrel with the way Richmond Fire
31 Department went about their business?
32 A Quarrel with...?
33 Q Any concern?
34 A Any disagreement? Oh, okay. No.
35 Q So you don't for a moment think that they were
36 responding in a casual fashion without any sense
37 of urgency?
38 A I didn't get that impression, no.
39 Q You recognize that ambulance service people did
40 arrive?
41 A Yes.
42 Q From your memory, how many, in total, arrived from
43 the ambulance service?
44 A I don't know if it says on my statement, but I
45 don't recall how many were there.
46 Q We've heard, in the preparation for this inquiry,
47 that four ambulance people arrived. Would that

- 1 accord with your best memory?
- 2 A It's possible. Like I said, I'd have to check my
3 statement to see if I gave a number.
- 4 Q Once the Richmond Fire Department arrived, though,
5 you just relied on them to do what needed to be
6 done?
- 7 A Yes.
- 8 Q And similarly with the ambulance service?
- 9 A Yes.
- 10 Q Could you see any reason, if someone asked for the
11 handcuffs to be taken off when the -- by the fire
12 department personnel, to not meet such a request,
13 from your observation of the scene and Mr.
14 Dziekanski?
- 15 A Possibly, if he was still fighting or was going to
16 fight. I don't know.
- 17 Q Right. But sir, was he still fighting when the
18 Richmond Fire Department arrived?
- 19 A No.
- 20 Q He was motionless?
- 21 A Yes.
- 22 Q So let's ask the question again: Could you see
23 any reason not to take the handcuffs off if so
24 requested by Richmond Fire Department, based on
25 your observation of Mr. Dziekanski at the time?
- 26 A No.
- 27 Q Now, in the medical section of the Taser Operation
28 Manual, remember we talked about that earlier this
29 morning?
- 30 A Yes.
- 31 Q And we talked--
- 32 MR. VERTLIEB: And I will, at a convenient time, Mr.
33 Commissioner, mark these different manuals, but
34 I'd like to just keep going and we can mark them
35 when convenient to you, sir.
- 36 THE COMMISSIONER: All right.
- 37 MR. VERTLIEB:
- 38 Q Remember this earlier, we talked about this
39 PowerPoint that you would have seen in your Taser
40 training course?
- 41 A Yes.
- 42 Q And just so you know, we're given this material by
43 lawyers for the Government of Canada, and we're
44 confident that they gave us the accurate
45 information at the time that this event happened.
- 46 A Okay.
- 47 Q So I just want to go through this. It says --

1 this is this medical:

2
3 If an individual is given medical attention -
4
5 -- pausing there, you would presume the fire
6 department and ambulance people were giving him
7 medical attention?

8 A Yes.

9 Q
10 - advise that the individual was subjected to
11 50,000 volts of electricity -

12
13 I take it, sir, you said nothing to the fire
14 department or ambulance people --

15 A No.

16 Q -- that way?

17 A No.

18 Q Continuing:

19
20 - and make available to the medically trained
21 person -

22
23 Stopping, that would be the ambulance or fire
24 department; correct?

25 A Yes.

26 Q
27 - make available the Medical Taser
28 Information Sheet prepared by Dr. Dufour.

29
30 Now, you said, earlier, you don't -- you don't
31 know who Dr. Dufour is; did I hear that correctly?

32 A I don't recall seeing the name in --

33 Q Okay.

34 A -- my training manuals nor the medical sheet that
35 you just described.

36 Q Okay. Well, that's fine. So I -- you don't
37 remember the name Dufour, and you have no memory
38 of a medical Taser information sheet being
39 discussed in your Taser course?

40 A I don't recall, no.

41 Q Okay. Did you think in any way, though, given
42 this policy about medical precautions, to speak to
43 the fire department or ambulance people about what
44 you knew, because you'd fired the Taser multiple
45 times?

46 A I'm aware of the first part, yes, but we all knew
47 that, so I assumed that if it needed to be said,

- 1 whoever spoke to fire would let them know.
2 Q But only you, sir, would have known how many times
3 a Taser was fired.
4 A Yes. And if they needed to know details, I was
5 there.
6 Q No, but it -- just to go through the policy, sir,
7 and maybe I'm misreading it, it says -- this is
8 training to you in the Taser course; correct?
9 A Yes.
10 Q
11 Advise the individual was subjected to 50,000
12 volts of electricity and make available to
13 medically trained person the... Information
14 Sheet.
15
16 Does that suggest an onus on you to tell the
17 medical people what had happened with the Taser?
18 A No. The fact that the Taser was used is something
19 that any one of us could have relayed to the
20 medical personnel.
21 Q The reason I ask is Officer Bentley said that he
22 thought the Taser had only been fired twice. Now,
23 you knew that was not correct?
24 A Yes.
25 Q And I don't believe Officer Rundel gave us any
26 information to tell us how many times the Taser
27 had been fired in a way that was accurate. You
28 were the one doing the firing?
29 A Yes.
30 Q Is there anything else you wish to cover about
31 that point?
32 A It just says that you're supposed to advise
33 medical personnel that they were subjected to
34 50,000 volts of electricity. It doesn't say to
35 advise them of how many times. And any
36 information could have been relayed by Corporal
37 Robinson.
38 Q But sir, even if it doesn't say how many times,
39 and unfortunately I don't have the sheet. See, I
40 don't -- I'm at a disadvantage in the sense that I
41 don't know what the medical Taser information
42 sheet is. And you don't see to be --
43 A I don't recall it from my training, either.
44 MR. HIRA: Mr. Commissioner, this was disclosed to us
45 on Saturday afternoon. I haven't seen the sheet
46 and you have my client's evidence in that regard,
47 too.

1 THE COMMISSIONER: Yes, I think we all have that point.

2 MR. VERTLIEB:

3 Q So given the training you had about multiple
4 deployments, and I'll read it again:

5
6 Multiple deployment or continuous cycling of
7 the CEW -

8
9 -- conducted energy weapon --

10
11 - may be hazardous to a subject.

12
13 With that training in mind, and you've mentioned
14 your training a number of times, did it occur to
15 you to tell the first responders about the number
16 of times the Taser had been used?

17 A No. I was not part of the conversation and other
18 members were aware that multiple times were used.

19 MR. VERTLIEB: Mr. Commissioner, this might be a good
20 time to take the break, please.

21 THE COMMISSIONER: All right, we'll adjourn, now, till
22 2:00. I'm sorry, let's pause for a minute. Yes?

23 MR. KOSTECKYJ: Yes, Mr. Commissioner, I just wanted to
24 raise a point so that none of my friends are
25 caught by surprise, and that is this. It is my
26 submission that after counsel finishes, that the
27 order of cross-examination for these two remaining
28 police witnesses ought to be changed. And I say
29 that because of the leading questions that have
30 been led with respect to these officers, and it
31 seems to me that the appropriate order ought to be
32 that those who are essentially friendly in terms
33 of cross-examination ought to proceed first before
34 cross-examination is continued by myself, Mr.
35 Rosenbloom and -- and the subsequent cross-
36 examiner, Ms. Pastine.

37 And it seems that that would be the
38 appropriate and most expeditious way to proceed
39 with respect to these two witnesses.

40 THE COMMISSIONER: Mr. Hira, have you any comment?

41 MR. HIRA: Well, I can't cross-examine. I am going to
42 be hopefully examining in chief after my friend,
43 Mr. Vertlieb finishes. I wasn't planning on
44 cross-examining, but if my friend wants me to
45 cross-examine, I'm happy to do so. It just
46 destroys the weight.

47 THE COMMISSIONER: I didn't detect that in his

1 comments.

2 MR. HIRA: So it's all within your discretion, Mr.
3 Commissioner.

4 THE COMMISSIONER: Well, I appreciate that.

5 MR. HIRA: And --

6 THE COMMISSIONER: I just want to make sure that I have
7 what you have to say about it.

8 MR. HIRA: And in my submission, when we started this
9 inquiry, we sought the right to cross-examine
10 last. Your ruling was that there has been an
11 agreement in place and that we should cross-
12 examine, despite the fact we were not part of the
13 agreement, that we should cross-examine after
14 Canada.

15 In my respectful submission, nothing has
16 changed with -- to cause you to change your
17 ruling. You have gone further with Mr.
18 Rosenbloom's objection, when Constable Bentley was
19 testifying, and cautioned counsel for the police
20 officers that they should be careful in the way
21 that they word their questions.

22 So as a matter of law, or discretion, there's
23 got to be some basis for changing your
24 discretionary ruling. In my submission, that
25 hasn't occurred yet.

26 THE COMMISSIONER: Anybody else wish to comment?

27 I don't think I'll change - I'm sorry - I
28 don't think I'll change the order. Two o'clock.

29 THE REGISTRAR: The hearing is now adjourned until 2:00
30 p.m.

31
32 (WITNESS STOOD DOWN)

33
34 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
35 (PROCEEDINGS RECONVENED)

36
37 THE REGISTRAR: The hearing will now resume.

38
39 KWESI MILLINGTON, a witness,
40 recalled.

41
42 MR. VERTLIEB: Mr. Lunn, would you have the Pritchard
43 video cued up to start right before the first fire
44 of the Taser? And with the sound, please? Just
45 one second. So just hold there one second,
46 please.
47

1 EXAMINATION IN CHIEF BY MR. VERTLIEB, continuing:
2

3 Q While Mr. Lunn is handling the technical side,
4 what I want to do, Officer, is have the first
5 firing and the seconds after that played. We know
6 there's a one-second interlude between the firing
7 of -- the end of the first Taser shot and the
8 firing of the second. And what I'm going to ask
9 you to do is as you're watching the first and
10 listening to it, I'd like you to then be ready to
11 explain the behaviour that you say justified the
12 second shot from the Taser, okay? So just focus
13 on that as you're watching and listening from the
14 time you fired the first time. Mr. Lunn, please?
15

16 (VIDEO BEING PLAYED)

17 (VIDEO STOPPED)
18

19 Q You saw the behaviour?

20 A Yes.

21 Q You heard Mr. Dziekanski?

22 A Yes.

23 Q I don't want to use any language that's
24 provocative, but how would you describe what you
25 were hearing from him?

26 A Like I said before, he was feeling some of the
27 effects and I would describe it, yes, as pain.

28 Q Okay. But tell us about the sound of his voice.
29 Is there a word that you might use for the way he
30 sounded? Is there one word that comes to mind?

31 A I can't think of one, no.

32 Q Well, it -- somebody with pain might go, "Ouch,"
33 right? He might do that? That would be pain, if
34 you poked yourself with a pin or something, right?

35 A Yes.

36 Q This wasn't just mild pain that we were hearing.

37 A No. I guess it would not be.

38 Q And we didn't have the volume turned up because we
39 don't wish to be offensive to people, but you were
40 there in the room. His -- the volume of Mr.
41 Dziekanski's voice was loud?

42 A Yes.

43 Q Very loud?

44 A Yes.

45 Q In a way consistent with extreme pain?

46 A I would say there was pain, yes.

47 Q Pain or extreme pain?

- 1 A Maybe extreme pain.
- 2 Q Thank you. We now have him on the ground with his
3 feet in the air. You see that?
- 4 A Yes.
- 5 Q So can you just take us through what it was about
6 that behaviour in that position that made you
7 conclude he needed a shot a second time with the
8 Taser?
- 9 A As I said in my statement before, I believed he
10 was standing when I shot it the second time. The
11 goal was to have him immobilized so that we could
12 gain control of him and that had not been done, so
13 that's why I deployed it a second time.
- 14 Q No, but as you said before, you mean in reference
15 to your statements that you gave?
- 16 A With regards to him standing?
- 17 Q Yes.
- 18 A Yes.
- 19 Q Okay. But you've realized that the language used
20 in those statements is not accurate?
- 21 A Yes.
- 22 Q Okay. So let's deal with the accuracy of what
23 really happened and I invite you to look at the
24 position on the screen, which is at the end of six
25 seconds with him on his back and his feet in the
26 air. Are you suggesting that any of that is other
27 than the natural effect of being shot with the
28 Taser?
- 29 A Like I said before, the goal was immobilization.
30 He was supposed to drop immediately, and I did not
31 feel that that was the effects that I've had with
32 the first deployment.
- 33 Q Are you suggesting with his lying on the back and
34 his feet in the air that he's being combative?
- 35 A Not at that spot where you stopped it, no.
- 36 Q And are you suggesting he was being resistant?
- 37 A No.
- 38 Q And you've talked about the pain of the Taser.
- 39 A Yes.
- 40 Q So tell us as part of your re-assessment which you
41 say you must do before each Taser is fired, tell
42 us what part of the re-assessment was in your mind
43 when you fired the second time?
- 44 A We were trying to get him under control and that's
45 the part that I had assessed.
- 46 Q Do you have anything else to say about the
47 position he's in at the moment in time at the end

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1 of the first Taser that you say provided your
2 rationale for the second Taser shot?
3 A No.
4 Q If it's not resistant nor combative, how could the
5 firing of the second Taser be justified according
6 to your IMIM?
7 A He was combative when he first had the stapler and
8 it's a fluid fast-moving situation, that we are
9 going from a spot where we have to have a
10 combative man stopped, then put under control.
11 It's a -- it's not one moment. It's a whole
12 situation that we were looking at.
13 Q But you are required, as I understand your
14 evidence and your training to reassess before each
15 conducted energy weapon is fired.
16 A Yes.
17 Q So looking at the situation as a whole, it doesn't
18 answer the question for each individual firing, or
19 am I misunderstanding?
20 A Say again?
21 Q Don't you have to look at each individual firing
22 for justification?
23 A You reassess when possible, but we're talking
24 about a very fast-moving situation.
25 Q Is there anything else you wish to say about your
26 justification for firing the second time when you
27 see Mr. Dziekanski in that position on that video
28 at that time?
29 A No.
30 Q Now, you learned that Mr. Dziekanski had died
31 while in police custody?
32 A Sorry? Say again?
33 Q You learned that Mr. Dziekanski had died while in
34 police custody?
35 A Yes.
36 Q You knew from your work and training that there
37 would be a homicide team investigation?
38 A Yes.
39 Q You knew that the use of force used by you and
40 your brother officers that morning would be the
41 subject of discussion?
42 A Yes.
43 Q You knew that you would be interviewed by the
44 homicide investigation team?
45 A Yes.
46 Q You knew that their investigation would not be for
47 any alleged issue of mischief charges against Mr.

- 1 Dziekanski?
- 2 A Mischief charges did you say?
- 3 Q Yes.
- 4 A I don't know what they were doing it for, besides
5 to get information.
- 6 Q Right. You didn't think for a moment IHIT, the
7 homicide team, was worried about any mischief
8 charge against Mr. Dziekanski, who had now passed
9 away?
- 10 A No.
- 11 Q And you were told to return to the detachment at
12 the airport and wait for the IHIT team to show up
13 and question you?
- 14 A Yes.
- 15 Q And as you were told, the three of you, the three
16 junior constables, returned to the airport
17 detachment?
- 18 A Yes.
- 19 Q Now, we were taken through a statement by your
20 brother Rundel who used language "wrestle to the
21 ground" when it came to Mr. Dziekanski and the
22 police having to wrestle him to the ground. Have
23 you ever seen any statements made by Mr. Rundel?
- 24 A No.
- 25 Q The commission was taken to evidence from your
26 colleague, Bentley, in his statement referring to
27 Robinson and Rundel having to take him, meaning
28 Dziekanski, to ground. We've heard you this
29 morning go through the number of times you used
30 the language "wrestle to the ground". There seems
31 to be a consistency of the concept of having to
32 take Mr. Dziekanski to ground; is that an
33 impression you get?
- 34 A From what you just said, yes.
- 35 Q So I have this --
- 36 MR. HIRA: Well, just a moment.
- 37 MR. VERTLIEB: I'm sorry?
- 38 MR. HIRA: We're -- firstly, the -- what my friend
39 posed is argument and not a question. But
40 unfortunately, we now have the answer. It's an
41 argument that he can make to you. If he wants to
42 ask questions as to whether there were discussions
43 or approach it another way, I suppose he can. But
44 worded that way, I object.
- 45 THE COMMISSIONER: Maybe you could reword it, Mr.
46 Vertlieb.
- 47

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- 1 MR. VERTLIEB:
2 Q Well, then let me approach it this way. The three
3 of you, meaning, Rundel, Bentley and yourself,
4 were sent back to the detachment and await the
5 questioning by the homicide team.
6 A Yes.
7 Q And you did that?
8 A Yes.
9 Q And the three of you were the only police officers
10 in the detachment once you were sent back there in
11 the early morning hours of October 14?
12 A I'm not sure if our staff rep was there yet. He
13 may have been.
14 Q Before the staff rep, the three of you were alone
15 at the detachment?
16 A Like I said, I don't know if he was there when we
17 got there or not. I don't remember.
18 Q Okay. There were no other RCMP at the detachment
19 who had knowledge of the incident other than the
20 three of you at this point in time?
21 A No, I don't...
22 Q You presumably would have been concerned that you
23 would be the subject of questioning by the
24 homicide investigation team?
25 A I wasn't concerned about it.
26 Q Had that ever happened to you before?
27 A No.
28 Q And you weren't concerned about it?
29 A No. I was doing my job, so I was not concerned.
30 Q Okay. Did the three of you discuss at all what
31 you had seen and heard relating to Mr. Dziekanski
32 prior to the time you sat and gave your statement?
33 A No.
34 Q So can you give us any explanation --
35 THE COMMISSIONER: Mr. Vertlieb --
36 MR. VERTLIEB: I'm sorry?
37 THE COMMISSIONER: -- I don't think so.
38 MR. VERTLIEB: Okay. Fair enough.
39 Q Now, we've heard about the statements taken that
40 morning and you were advised by a member
41 representative, a Mr. Ingles?
42 A Yes.
43 Q And he would be like a union type of
44 representative for your association?
45 A That would be the best description, I think.
46 Q And each of you, to your knowledge, spoke to IHIT
47 investigation, the homicide investigation team?

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- 1 A Yes.
- 2 Q Now, we were told that some time after there was
3 what's known as a critical incident debriefing.
- 4 A Yes.
- 5 Q I'm instructed that took place on October 27,
6 2007.
- 7 A Okay. I don't remember the date.
- 8 Q I'm instructed October 27, 2007 which would be
9 approximately two weeks from the date of Mr.
10 Dziekanski's death.
- 11 A Okay.
- 12 Q Will you accept that date?
- 13 A Yes.
- 14 Q And that it took place at the RCMP police station
15 at the airport.
- 16 A Yes.
- 17 Q And it took place for approximately two hours.
- 18 A I don't know how long it was.
- 19 Q I'm instructed it was 8:00 in the morning that it
20 started; does that accord with your memory?
- 21 A I don't remember the time.
- 22 Q Well, did you think it was 8:00 in the evening?
- 23 A It was in the morning. I just don't know what
24 time.
- 25 Q Thank you. I'm instructed it started at 8:00 a.m.
26 and ended at 10:00 a.m.; do you have any reason to
27 disagree?
- 28 A No.
- 29 Q And I'm told that the three -- or the four of you
30 were there, pardon me, all four police officers
31 involved with this incident; do you agree with
32 that?
- 33 A Yes.
- 34 Q There was a psychologist?
- 35 A Yes.
- 36 Q And two RCMP member assistance personnel?
- 37 A That sounds right.
- 38 Q Now, at this point in time you believed you had
39 used the Taser or fired the trigger four times,
40 correct?
- 41 A Yes.
- 42 Q Each of you explained to each other what you had
43 done in this incident; is that what happened in
44 part at this meeting?
- 45 A No. We discussed with the psychologist with
46 regards to how we were feeling with regards to the
47 end result.

- 1 Q Well, since you had believed you'd pulled the
2 trigger four times on this conducted energy
3 weapon, did you discuss that and any concern you
4 might have for the number of times that you pulled
5 the trigger?
- 6 A No. Like I said before, we were just discussing
7 our feelings, mostly with the psychologist.
- 8 Q Given the warning in the Taser manual about the
9 hazardous atmosphere of multiple taserings, was
10 that not something on your mind two weeks later
11 when you were discussing your feelings?
- 12 A No.
- 13 Q Okay. By the point in time that the incident
14 debriefing took place, the video that came to
15 light, known as the Pritchard video, had not yet
16 been published?
- 17 A Yes.
- 18 Q You had not seen Pritchard video until it came out
19 sometime mid-November?
- 20 A Yeah. I didn't see it then either actually. I
21 chose to avoid the media at that time.
- 22 Q Now, we talked earlier about reporting, according
23 to the manual and your training manual, you were
24 taught to do recording of the Taser use? An
25 incident form to fill in each time Taser is used?
- 26 A The 3996, yes.
- 27 Q Yes.
- 28 A Yes.
- 29 Q And you filled one in for this case?
- 30 A Yes.
- 31 Q And you filled that in after the critical incident
32 debriefing?
- 33 A I don't remember exactly when I filled it in.
- 34 Q Well, did you fill it in before or after?
- 35 A I don't remember.
- 36 Q There was a requirement you fill it in within a
37 certain number of days; do you remember we read
38 that earlier?
- 39 A You said that it was recommended by the end of the
40 shift and I didn't do it then.
- 41 Q Right.
- 42 A And --
- 43 Q You did it the next shift?
- 44 A I think that -- I said that I think I did it the
45 next block.
- 46 Q Okay. Let me show you the incident information
47 which we are instructed relates to this incident.

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- 1 MR. HIRA: Do you have an extra copy?
2 MR. VERTLIEB: Sure, I do.
3 Q Now, this is the type of form that would need to
4 be completed after the Taser is fired?
5 A Yes. I guess this is the printed version of it.
6 Q Okay. So let's just go through it. We've got the
7 occurrence, the top paragraph, and that all looks
8 correct, October 14, 2007, Richmond, YVR
9 detachment, about 1:30 in the morning. Do you see
10 that?
11 A Yes.
12 Q And the type was "causing a disturbance", number,
13 four people -- number -- the number of officers,
14 four, that's all correct?
15 A Yes.
16 Q Right? Environment, it was interior, good
17 artificial light, that's correct?
18 A Yes.
19 Q Member information. The supervisor is Benjamin
20 Montgomery Robinson, he's Corporal, that's all
21 true?
22 A Yes.
23 Q And member operating weapon, that's you, Kwesi
24 Millington, Constable?
25 A Yes.
26 Q Duty type, general duty, GD, general duty?
27 A Yes.
28 Q Subject information, that would mean Mr.
29 Dziekanski, of course, correct?
30 A Yes.
31 Q He's male and we've got weight, 81 kilograms,
32 height 170 centimetres. Do you see that?
33 A Yes.
34 Q Now, 170 centimetres would be a bit less -- that
35 would be maybe an inch and a half or so less than
36 five-nine. That information that was given by
37 you?
38 A This is printed from the 3996? Is that what this
39 is from?
40 Q Well, I'm asking you. You're the one who --
41 A Yeah. Yeah, I don't remember the form actually --
42 Q -- is testifying.
43 A -- so...
44 Q All right. So there could -- okay. Let's -- we
45 think actually Mr. Dziekanski, just so you know
46 this, Officer, is 176 to 177 centimetres. Let me
47 go to the next page.

1 Mr. Hira is telling me here at the counsel
2 podium that you may not have filled this in. So
3 if you didn't, who did? Or did you fill it in,
4 sir?
5 A I don't recall this format, but --
6 Q Okay.
7 A -- I think that I may have done a 3996, but --
8 Q Which would generate the information contained
9 here; is that correct, sir?
10 A Yes, it would have.
11 Q Okay. You did the proper form recording that you
12 had to do to allow a computer-generated printed --
13 information to be printed out, correct?
14 A Yeah. I'm not familiar with this look, but I did
15 the form.
16 Q Okay. All right. Let's go to the important part
17 of this. And this is the summary. See if this
18 accords with what you said about the incident when
19 you had to report the use. And you know you had
20 to report the use, right, Officer?
21 A Yes.
22 Q Okay. Let me read this out, "Summary", and it
23 starts out:
24
25 Date October 14, 2007...
26
27 That's all right, isn't it? Right?
28 A Yes.
29 Q
30 Time 1:30 a.m. Location Level 1 Richmond...
31
32 And there's a file number; is that right?
33 A Yes.
34 Q Okay. So let's say -- let's read through:
35
36 Initial Dispatch Information: Complaint of a
37 male throwing luggage around and throwing
38 chairs through windows.
39
40 That's consistent with the information we covered
41 earlier that you were given as part of the call?
42 A Yes.
43 Q Okay.
44
45 At time of arrival members approached the
46 male who was yelling and standing on the
47 secure side of the arrivals area.

1 Sir, we covered the yelling business earlier when
2 you said he was yelling as you entered the
3 airport. This sounds like information you
4 provided, as well, doesn't it?

5 A Yes.

6 Q Thank you. Let's keep going:

7

8 The male had destroyed a computer and had
9 damaged airport property on the secure side.

10

11 That's all information you provided, sir?

12 Officer? You provided that?

13 A No, I'm just looking at it now.

14 Q You provided that information?

15 A Yes.

16 Q Thank you.

17

18 The male did not speak English --

19

20 You provided that, didn't you, Officer?

21 A Yes.

22 Q Okay.

23

24 -- and was moving around erratically and
25 would not listen to members who used hand
26 signals to attempt to get the male to calm
27 down.

28

29 Now, Officer Millington, I asked about the hand
30 signals you used and you explained that this was
31 on the portion of the video not caught by
32 Pritchard, but that's what -- that's what you were
33 writing in your summary of the event, right, sir?

34 A Yes.

35 Q Thank you. Now:

36

37 When members got closer to the male, he
38 stepped back and away.

39

40 Now, let's stop there a second. The stepping back
41 is when on the video you must mean he put his
42 hands up in the air and walked towards the
43 counter; is that right?

44 A I think so, yes. I don't remember.

45 Q Okay. Now, let's keep going:

46

47 The male then deliberately knocked items off

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1 of a desk nearby and grabbed an office
2 stapler.

3

4 That's information you provided, sir?

5

A Yes.

6

Q Now, here's the next sentence:

7

8 The male swung the stapler wildly with his
9 arm at the members.

10

11 Now, sir, I need you to really help us with this
12 statement. In your report:

13

14 The male swung the stapler wildly with his
15 arm at the members.

16

17 Now, did you see him swinging wildly on the video
18 we watched a number of times this morning?

19

A No.

20

Q Okay. You today are not going to tell us he was
21 swinging the stapler wildly with his arm at the
22 members, are you?

23

A No.

24

Q Thank you.

25

26 Cst. MILLINGTON unholstered the CEW and
27 pointed it at the male suspect (sic).

28

29 Now, that's you. You unholstered it, right?

30

A Yes.

31

Q

32 The male was not apprehensive upon seeing the
33 CEW.

34

35 You see that?

36

A Yes.

37

Q Now, that obviously must refer to you 'cause
38 you're the only one pointing this weapon.

39

A Yes.

40

Q Could you see on that Pritchard video where Mr.
41 Dziekanski seemed to look over at you and did not
42 appear to be apprehensive when facing this weapon
43 pointing at him? Could you see that?

44

A No.

45

Q Do you want to see the Pritchard video again or
46 are you confident, having seen it a number of
47 times, that it's not there?

1 A I don't remember. I don't -- it's not going to be
2 in the video 'cause he wasn't facing us in the
3 video.

4 Q Okay. Next statement in this summary of the Taser
5 use:

6
7 The male raised the stapler in one hand and
8 raised the other fist.

9
10 Do you see that?

11 A Yes.

12 Q

13 The male then aggressively moved towards
14 members on scene.

15
16 Sir, we covered that earlier when you pointed out
17 that moment where he seemed to step towards
18 somebody, one of the four of you; is that the
19 aggressively moving towards members that is being
20 referred to?

21 A Yes.

22 Q And that movement on the video that we saw is an
23 aggressive move on your evidence?

24 A That's what I put here, I guess. I don't remember
25 writing this actually.

26 Q Okay. Well, this is the report you have to file
27 as the man who shot the Taser, right?

28 A Yes. But I don't remember writing it.

29 Q That's fine.

30

31 Cst. MILLINGTON recognized the male's
32 behaviour had escalated from resistant to
33 combative, and deployed the CEW.

34

35 Sir, what -- just one more time so we have it
36 clearly in our minds, the resistant behaviour was
37 what?

38 A The resistant behaviour would be when he threw his
39 hands up and turned away from us and moved away
40 from us.

41 Q Thank you. Now, the next statement:

42

43 The CEW was cycled once for the full 5
44 seconds, which stopped the male from moving,
45 but he continued to walk towards members with
46 his arms raised once the cycle was completed.

47

1 Now, there's a few things there, sir. The cycle
2 was not the full five seconds. In fact it was six
3 seconds, you've agreed with that earlier?

4 A Yes.

5 Q And it can only be six seconds by your holding the
6 trigger down on this weapon for six seconds?

7 A Yes.

8 Q Now, so aside from that error, let's keep going
9 though -- the error, I mean, the five seconds.

10 You said it:

11

12 ...stopped the male from moving, but he
13 continued to walk towards members with his
14 arms raised once the cycle was completed.

15

16 Sir, we can play this video as many times as you
17 think it would help you to see what happened. Are
18 you here going to tell us, though, that he, after
19 the Taser was fired, he continued to walk towards
20 members as outlined in this summary?

21 A No.

22 Q Okay. So that's an error.

23 A Yes.

24 Q Thank you. And he therefore was not walking
25 towards you with arms, in the plural, raised.

26 A No.

27 Q And he was not doing that once the cycle was
28 completed because by then he was on the ground?

29 A Yes.

30 Q These are more errors in the report, I take it?

31 A Yes.

32 Q Thank you.

33

34 Cst. MILLINGTON cycled the CEW a second time,
35 after which members were able to wrestle the
36 male to the floor.

37

38 Sir, that's an error, as well, is it not?

39 A Yes.

40 Q In point of fact, he was on the floor after the
41 first and not ever wrestled to the floor, correct?

42 A Yes.

43 Q Okay. Now, you then say:

44

45 The male was still struggling at this time...

46

47 Sir, does that mean after the second tasing?

- 1 A Yes, I guess it would follow that.
- 2 Q Now, just stopping there just for a moment, we've
- 3 heard that this tasering probe or push is very
- 4 painful.
- 5 A Yes.
- 6 Q Thank you. And when he's on the ground the second
- 7 time being tasered for five seconds, sir, would it
- 8 surprise you that he'd be moving quite vigorously
- 9 on the ground, suffering this pain?
- 10 A Are you talking about after the second deployment?
- 11 Q During the second deployment.
- 12 A If he's feeling the effects, yes.
- 13 Q If he's feeling...?
- 14 A Yes.
- 15 Q There was nothing in the second deployment that
- 16 you talked about in terms of hearing a clacking to
- 17 suggest it wasn't working, right, sir?
- 18 A In the second?
- 19 Q Yes.
- 20 A Like I said, the immobilization is what we were
- 21 trained to --
- 22 Q Right. No, but forget that. You said if it was
- 23 working, there was nothing you told the
- 24 commissioner about in the second deployment that
- 25 would suggest it wasn't working properly because
- 26 you heard no clacking?
- 27 A I would have to look at it again.
- 28 Q Sir, you told us the clacking was the third time,
- 29 you heard it which told you it wasn't working
- 30 properly.
- 31 A Yes.
- 32 Q Okay. So the second time you didn't hear
- 33 clacking, right?
- 34 A I would have to look at it again.
- 35 Q Okay.
- 36 A I'm not sure if I heard it in the audio or not,
- 37 but I could -- like I said, I made notes of when I
- 38 heard clacking and I could follow up with that if
- 39 you like.
- 40 Q Do you have any reason to believe the second Taser
- 41 deployment was anything other than effective?
- 42 A Like I said, from my training, it's supposed to
- 43 immobilize him and I did say that I could look and
- 44 see if there was any clacking, based on my notes
- 45 there.
- 46 Q Sir, immobilize him? He's already on the ground
- 47 with his feet in the air and if he's being shot

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1 with electricity, might he not wriggle around and
2 move and cry out?

3 A Yes. But like I said there was muttering,
4 clacking in the audio version that I'd received.

5 Q All right.

6
7 The male was still struggling --

8
9 That's your word, "struggling". You see that
10 word?

11 A Yes.

12 Q Do you think he was struggling in pain?

13 A This is after the first or second? I don't know.

14 Q After the second.

15 A After the second, he was struggling with members.
16 I said he was fighting and still struggling. And
17 I don't believe it was in pain, no.

18 Q But then you say he was still struggling:

19
20 ...Cst. MILLINGTON cycled the CEW again.

21
22 Do you see that? You see that?

23 A Yes.

24 Q But then you say:

25
26 However, the CEW electrical impulse was
27 audible, which meant that at least one of the
28 probes were not attached.

29
30 Do you see that?

31 A Yes.

32 Q Sir, that's a clear statement, the first time that
33 you talk about the sound and the probe not being
34 attached, that's number 3 tasing, isn't it, sir?

35 A With -- the one you just described is what you're
36 saying?

37 Q In your written -- in this summary here.

38 A You're asking if this is the third one?

39 Q Yes.

40 A Yes.

41 Q Thank you. Then you say:

42
43 Cst. MILLINGTON took the cartridge off of the
44 CEW --

45
46 You did that, didn't you?

47 A Yes.

- 1 Q -- and used the push stun mode on the man's
2 rear deltoid (upper back) area.
3
4
5 Right?
6 A Yes.
7 Q And you can't tell us whether it was his left or
8 right shoulder?
9 A I don't recall, no.
10 Q Sir, just as an aside, it seems to me that if
11 you're doing all this and knowing this is painful
12 and this is something that you're taught to
13 reassess each time before you Taser, why wouldn't
14 you know which side of the back?
15 A It was a fast-moving situation and there was a lot
16 of things that happened in that few minutes.
17 Q Okay. And you were able to reassess that the
18 fourth Taser was necessary?
19 A Yes.
20 Q Now, you then tell us:
21
22 At this point, members were able to control
23 the male and get him into handcuffs.
24
25 A Yes.
26 Q
27 Cst. MILLINGTON then reloaded the CEW with a
28 new cartridge and re-holstered the CEW.
29
30 A Yes.
31 Q Did you re-arm the weapon in case Mr. Dziekanski
32 got up and came at you again and you'd have a
33 fresh Taser to work with?
34 A I didn't think about it. It's just something I
35 did.
36 Q So we've now read the summary and this is part of
37 the obligation of a Taser shooter to fill in
38 information for the benefit of the RCMP.
39 A Yes.
40 Q As you were trained to do.
41 A Yes.
42 Q Sir, when we read this summary, do you think that
43 this might give a somewhat distorted view of what
44 happened that morning with Mr. Dziekanski?
45 A There are errors in it, yes.
46 Q And would those errors cause someone to get an
47 impression that might be different than what one

- 1 might see on the Pritchard video?
- 2 A Yes.
- 3 Q So then coming to the summary of what's
- 4 transpired, when you fired your Taser weapon at
- 5 Mr. Dziekanski, you were some 11 to 15 feet from
- 6 him?
- 7 A Yes.
- 8 Q You were wearing a body armour which laymen might
- 9 call a bullet-proof vest?
- 10 A Yes.
- 11 Q You were carrying a handgun?
- 12 A Yes.
- 13 Q With live ammunition?
- 14 A Yes.
- 15 Q And an extra magazine?
- 16 A Yes.
- 17 Q You were armed with a tool called pepper spray?
- 18 A Yes.
- 19 Q Which is no minor little armament. It's one to be
- 20 used with caution and care?
- 21 A Yes.
- 22 Q You were fitted out with a collapsible baton?
- 23 A Yes.
- 24 Q And you know that baton can cause damage?
- 25 A Yes.
- 26 Q You know the baton can cause serious damage and --
- 27 to a subject, client?
- 28 A Yes.
- 29 Q You had all those tools.
- 30 A Yes.
- 31 Q Plus you had a Taser.
- 32 A Yes.
- 33 Q You were there with three other RCMP officers?
- 34 A Yes.
- 35 Q There's four of you.
- 36 A Yes.
- 37 Q To your knowledge all in good physical shape and
- 38 well-trained in the arts of defence and
- 39 controlling people?
- 40 A Yes.
- 41 Q We heard from your brother Bentley and your
- 42 brother Rundel that they were scared. In
- 43 fairness, I want to ask you the same question.
- 44 Sir, were you scared in any way at that moment in
- 45 time with those tools?
- 46 A At the moment when he picked up the stapler, I
- 47 feared for the safety of the officers, yes.

Cst. Kwesi Millington
In chief by Mr. Vertlieb

- 1 Q You were one of the officers?
2 A Yes.
3 Q So you joined Bentley and Rundel in saying you
4 were scared?
5 A Yes.
6 Q Sir, if you were scared, as you've told us, what
7 about just waiting one or two seconds to see what
8 Mr. Dziekanski would do?
9 A We fear for our safety and I thought he was going
10 to attack, so I used the Taser at that point to
11 stop the threat.
12 Q No, I understand. But you hadn't been given any
13 information from bystanders that he had threatened
14 them in any way?
15 A No.
16 Q You were told about breaking glass but didn't see
17 that?
18 A No.
19 Q You're confronting a man who's smaller than you
20 certainly. You were, by far the -- you were the
21 largest of the four?
22 A Yes.
23 Q And there's three other police officers with you,
24 right?
25 A Yes.
26 Q All with equal weaponry except the Taser?
27 A Yes.
28 Q So tell us again what would have happened if you
29 waited even one second, possibly two, to see what
30 this man would do with this open stapler?
31 A You're asking me to tell you what he would have
32 done?
33 Q Yes. Well, what -- what would have been the harm,
34 sir, of just waiting one or two seconds?
35 A Like I said before, I believed that he was a
36 threat to the other -- to the officers on scene
37 and so I acted to stop the threat.
38 Q And what you felt was an essential part of this
39 threat was this stapler?
40 A Yes, sir.
41 Q So then -- let me ask you this, what if he had had
42 no stapler?
43 THE COMMISSIONER: Well, I think that's too conjective.
44 MR. VERTLIEB: Mr. Giles, you have the stapler with
45 you. Could you unseal it, please? Mr. Giles,
46 would you be good enough to give that to the
47 officer?

Cst. Kwesi Millington
In chief by Mr. Vertlieb

- 1 Q Officer, would you mind opening the stapler and
2 show us the position it was in?
3 A He had it like this.
4 Q Would you mind standing?
5 A Absolutely. He had it like this.
6 Q Okay.
7 A Hands up (demonstrating).
8 Q Given all of the four officers and the tools and
9 the distance, that's what scared you?
10 A That's what made me fear for the officers' safety,
11 yes.
12 Q Could you -- maybe I'm missing it. Could you just
13 stand one more time and show us the motion that he
14 made that you considered to be combative?
15 MR. HIRA: There should be some decorum in terms of
16 this witness testifying. I'm concerned about
17 noises from the audience.
18 THE COMMISSIONER: Go ahead, Mr. Vertlieb.
19 MR. VERTLIEB: Thank you, Mr. Commissioner.
20 Q Just stand one more time, Officer, please, and --
21 MR. HIRA: I wasn't objecting to the question,
22 incidentally.
23 MR. VERTLIEB:
24 Q Just stand -- just show us the --
25 THE COMMISSIONER: No, I know. It's necessary, ladies
26 and gentlemen, to not really make any comments by
27 way of different noises about this evidence.
28 Go ahead.
29 MR. VERTLIEB: Thank you, Mr. Commissioner.
30 Q Would you stand, sir, with the open stapler,
31 please?
32 A Yes.
33 Q And keep in mind, of course, that Mr. Dziekanski's
34 perhaps four inches shorter than you and less
35 weight than you, correct?
36 A Yes.
37 Q Okay. Show us the combative behaviour that made
38 you feel for your officers and your own safety
39 that resulted in the Taser. Show us the combative
40 behaviour, please?
41 A Like I said, he had his fists raised, he had the
42 stapler up and he was advancing towards us.
43 Q Thank you. That's the combative behaviour?
44 A Yes.
45 Q When you think about this event and the questions
46 that we posed to you here and reflect on the fact
47 that there were four of you with handguns and

1 other assorted tools and body armour, is it your
2 evidence that because of this stapler that all of
3 that ended up in Mr. Dziekanski's unfortunate
4 demise that morning?
5 THE COMMISSIONER: Mr. Vertlieb, I don't think so.
6 Don't go there.
7 MR. VERTLIEB: Okay.
8 THE COMMISSIONER: There's certainly no suggestion in
9 the world that any of these officers knew that
10 their conduct would result in the --
11 MR. VERTLIEB: No, I agree.
12 THE COMMISSIONER: I know you didn't mean that, but
13 that stands in the air when you put those kind of
14 questions.
15 MR. VERTLIEB: That's fine. Let me just absolutely
16 eliminate that.
17 Q Sir, your training that you have talked about so
18 many times, did it ever tell you that death could
19 in any way be associated with Taser usage? Did
20 you ever --
21 MR. NEAVE: I'm going to object to that question. Mr.
22 Commissioner, I have three grounds --
23 UNIDENTIFIED VOICE: Turn on the mike, please?
24 MR. NEAVE: I have three grounds for that objection,
25 Mr. Commissioner. There's no foundation for the
26 question, there's certainly no foundation for the
27 implication that's buried within the question.
28 It's not relevant. And finally, it's improper.
29 THE COMMISSIONER: I -- without identifying which of
30 the grounds is the appropriate one, I agree with
31 you.
32 MR. NEAVE: Thank you.
33 MR. VERTLIEB:
34 Q Let's just conclude it this way, you never for a
35 moment anticipated any of the results that
36 happened that morning, did you?
37 A No.
38 MR. VERTLIEB: Thank you.
39 MR. HIRA: Mr. Commissioner, I believe I examine next.
40 THE COMMISSIONER: Yes, I think that was the
41 arrangement.
42 MR. HIRA: Thank you, Mr. Commissioner. And, for the
43 record it's, of course, Ravi Hira, who acts for
44 the officer who's giving evidence.
45
46
47

1 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE
2 MILLINGTON:
3

4 Q Now, I'm going to ask you questions about your
5 statements and the video. I'm going to ask you
6 questions about your experience at the airport,
7 some more questions about use of a Taser and Taser
8 training, the nature of the call that you had, get
9 you to elaborate on your actual observations of
10 Mr. Dziekanski, ask you to explain to the
11 commissioner what change in behaviour led to your
12 actions, and then deal with the Taser deployments
13 and why the Taser was used, without going over
14 your evidence to date in what sounds like
15 excruciating detail. So let's try it.

16 Let's talk about your statements. Your first
17 statement was given at five o'clock on October the
18 14th; is that not correct?

19 A Yes.

20 Q What advice, warnings, or strictures of any nature
21 had you received from anybody prior to giving the
22 statement?

23 A I spoke to our staff relations rep, Mike Ingles,
24 and he advised me that I have the option to wait
25 and seek legal counsel before giving a statement
26 if I so chose. I don't recall what else we went
27 through. I don't think there was anything else.

28 Q Was there any discussion about sleeping on it?

29 A Well, yes. That was part of the waiting -- the
30 waiting process. He said I could give one the
31 next day or wait until I was ready to give a
32 statement.

33 Q And what did you elect to do and why?

34 A I felt we acted within our training and I chose
35 not to seek legal counsel and I gave a statement
36 right away, right after the fact.

37 Q That statement that you gave on October the 14th,
38 when did you first see that statement after
39 providing it?

40 A I saw it about a month ago when I went to your
41 office for the first time.

42 Q That is after this phase of the inquiry had
43 commenced and in preparation for giving evidence;
44 is that correct?

45 A Yes.

46 Q Your second statement was given on the morning of
47 October 15, starting at 9:10 in the morning; is

- 1 that correct?
- 2 A Yes.
- 3 Q It spans some 36 pages and ended at about 9:57
- 4 that morning?
- 5 A Yes.
- 6 Q Did you seek any advice prior to giving that
- 7 statement?
- 8 A No.
- 9 Q And when did you first see that statement?
- 10 A The same, just after the inquiry began when I had
- 11 my first meeting at your office.
- 12 Q The third statement was taken on October the 18th;
- 13 is that correct?
- 14 A Yes.
- 15 Q And it is a short statement, just spanning two
- 16 pages?
- 17 A Yes.
- 18 Q And when did you first see -- first of all, did
- 19 you seek any advice before giving that statement?
- 20 A No. I still felt I didn't need to.
- 21 Q And when did you first see that statement?
- 22 A The same, a month ago.
- 23 Q Now, the Pritchard video we understand came out
- 24 during November 2007 and you gave Mr. Vertlieb
- 25 some answers about avoiding the media. When did
- 26 you first see that video, sir?
- 27 A The same thing, again, when I -- just after the
- 28 inquiry started, when I came to your office I
- 29 looked at the video in its entirety there.
- 30 Q However this video, of course, received a fair
- 31 amount of air play through 2007 and I understand
- 32 in 2008 and in the course of this inquiry; is
- 33 there any reason why you didn't see the video?
- 34 A I chose to avoid the media. I'm not used to being
- 35 in that type of spotlight, so I chose not to watch
- 36 the news or look at the video.
- 37 Q Now, let's deal with the types of calls that you
- 38 get at the airport. Could you tell Mr.
- 39 Commissioner the type of call that you -- the sort
- 40 of calls that you receive at the airport and
- 41 whether or not you received a call like this in
- 42 the past?
- 43 A Typically the types of calls we would get would be
- 44 screening alarms at checkpoints, if someone has
- 45 something in their luggage; vagrants; disturbances
- 46 on a plane, whether they be, you know, drug use or
- 47 smuggling drugs on a plane, that type of thing.

- 1 I'd never, ever received a call like this before.
- 2 Q Now, in terms of a call like this, never having
3 received it before, in terms of your view of the
4 situation, can you tell Mr. Commissioner whether
5 you considered this a call that required some
6 speed of dispatch or what?
- 7 A Sorry? Say it again?
- 8 Q Poorly-worded question. How did you view this
9 call when you received it? What was your thought
10 process?
- 11 A I thought it was a high-priority call with the
12 call coming in of luggage being thrown and chairs
13 being thrown. I wanted to get there as soon as
14 possible, 'cause I haven't, like I said, dealt
15 with anything like that before.
- 16 Q Okay. Now, you were taken to the computer
17 printout for this call. Did you see or analyze
18 the computer printout at any point in time during
19 the course of going to the call?
- 20 A No. I just wanted to get to the call and deal
21 with it. Like I said before, the only thing that
22 I looked at was where it was exactly, what level
23 of arrivals, 'cause there's two levels, and I
24 wanted to know where it was. Didn't have time to
25 go into it more.
- 26 Q Now, you have been led by my friend about certain
27 behaviours of Mr. Dziekanski when you first
28 encountered him; could you tell the commissioner
29 in your own words what you observed of him and his
30 behaviour when you first contacted him, when you
31 first had contact with him and prior to trying to
32 communicate with him?
- 33 A Before trying to communicate, saw, like I said, he
34 was agitated. He appeared as though he was
35 sweating and his eyes were really wide. He's
36 breathing heavily, like he had been through
37 something. And, yeah, he just seemed very
38 agitated. And that's when I tried to communicate
39 with him. The -- coming into the airport, I
40 mentioned I heard yelling and -- yeah, so those
41 are the observations I made before speaking to him
42 the first time or attempting to communicate.
- 43 Q Did you make any observations as to whether or not
44 he was under the influence of anything?
- 45 A I suspected that he was under the influence of
46 possibly a drug or alcohol, but I was not sure.
- 47 Q And in that sense, did you smell any alcohol?

- 1 A No.
- 2 Q When you say you weren't sure, how did you -- how
3 would you describe him? What made you think he
4 was under the influence of drug or alcohol?
- 5 A Just like I said, he was sweating, and he was --
6 his eyes were really wide and just seemed
7 agitated, like I said.
- 8 Q Now, you said you tried to communicate with him,
9 correct?
- 10 A Yes.
- 11 Q And in the course of describing to Mr. Vertlieb
12 your communications, you pointed out pushing your
13 hands down, correct?
- 14 A Yes.
- 15 Q And you held up your -- I believe it's your left
16 hand, being right-handed -- sorry, left-handed, I
17 do it the other way, and motioned a writing --
18 motioned like writing on your left palm; is that
19 correct?
- 20 A Yes.
- 21 Q And that part, that mime action as you described
22 it, you've pointed out on the video, correct?
- 23 A Yes.
- 24 Q The calming down with the hands down, you don't
25 see on the video because the camera is moving to a
26 second location.
- 27 A Yes.
- 28 Q Now, what experience have you had -- had you had
29 prior to October 14 in being able to communicate
30 with people that didn't speak English, that you
31 knew didn't speak English?
- 32 A Well, before coming to the airport, I worked over
33 a year in the City of Richmond and it has a very
34 high Asian population, Chinese to be specific, and
35 a lot of them, English is their second language
36 and so we -- I dealt with a lot of people
37 successfully that do not understand English in the
38 past.
- 39 Q And have you had difficulties in communicating in
40 those circumstances?
- 41 A No.
- 42 Q Now, you have been questioned about the change in
43 behaviour, and I'm going to refer you to a
44 specific matter and that is the situation where he
45 had the stapler in his hand and his other hand
46 clenched as a fist, something you just described a
47 few moments ago; is that correct?

1 A Yes.

2 Q How were the elbows displayed? How were the --
3 how were the arms at the elbow when he was in that
4 position with the stapler clenched in one fist and
5 the other hand in the form of a fist?

6 A The elbows were just slightly away from the body.

7 Q And with the arm crooked at the elbows at either
8 90 degrees or less?

9 A Yeah. The arms were bent.

10 Q And had you seen that in the video?

11 A You can tell slightly from the back that -- when
12 his arms are away from his body, but you can't
13 see, of course, the hand position.

14 MR. HIRA: Now, Mr. Lunn, I wonder whether you could
15 play from 3:03:45 to 03:49?

16 Q And Officer, you're going to have to react
17 quickly, Officer. If you could ask for the tape
18 to be stopped when you see the elbows in that
19 position.

20

21 (VIDEO BEING PLAYED)

22

23 A It's there. His arms come out and you can see it
24 on the side, once he picks up the stapler. It's
25 -- the arms come out like that.

26 Q And that's away from the --

27 A Yes.

28 Q -- the body?

29 A Slightly away from the body, yes.

30 Q All right. Now, I forgot to ask you this --

31 MR. HIRA: That's all right, Mr. Lunn, we can -- Mr.
32 Giles, if we can have the lights back on.

33

34 (VIDEO STOPPED)

35

36 Q Now, I forgot to ask you this when you first came
37 to the airport to deal with Mr. Dziekanski and
38 your initial dealings with him. Did you consider
39 him arrestable?

40 A When we first dealt with him, no, I would...

41 Q What were you trying to ascertain when you first
42 started dealing with him?

43 A We were just trying to communicate with him and
44 see if we could get some identification, see what
45 he was doing there.

46 THE COMMISSIONER: I don't understand what arrestable
47 means?

1 MR. HIRA: That's a very good point.

2 Q Did you think you could arrest him?

3 A No.

4 THE COMMISSIONER: You mean permissible or physically?

5 A I think he's asking if I saw enough evidence right
6 away to arrest him.

7 THE COMMISSIONER: All right. Thank you.

8 MR. HIRA: Yes, thank you, Mr. Commissioner. I don't
9 do very well sometimes, as you might well see.

10 THE COMMISSIONER: You're doing all right.

11 MR. HIRA:

12 Q Now, did you notice any debris or broken equipment
13 when you started to deal with him?

14 A I did not see it right away. I saw, like I said,
15 chairs that were beside him but did not see the
16 debris, no.

17 Q So when you first start to deal with him, what is
18 your objective? What are you trying to do?

19 A I was trying to communicate with him and get to
20 the bottom of basically why he was sweating, why
21 he was -- seemed a bit agitated and try to see if
22 there was anything we can do for him.

23 Q Okay. Now, his movements, how did you perceive
24 his movements before we get to this point in the
25 video and before he puts up his hands?

26 A Before he threw up his hands, you said?

27 Q Yes.

28 A Okay. At that point, he wasn't -- he didn't seem
29 to understand it and just wasn't complying, so
30 basically non-cooperative.

31 Q Okay.

32 A At that point.

33 Q When he threw up his hands, what did you perceive
34 that action to be?

35 A At that point it was resistant 'cause he threw up
36 his hands and turned away from us.

37 Q When did he start to become combative and become
38 combative?

39 A When he moved towards a table and knocked some
40 things off and picked up the stapler, once he
41 turned back towards us, I considered that to be
42 combative then and it continued as he was
43 approaching us.

44 Q Now, let's go back for a moment to your Taser
45 training. Perception, officer perception, what if
46 anything does that play in your training, either
47 Taser training or use of force training?

Cst. Kwesi Millington

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

1 A I'm not sure I understand the question. Sorry.

2 Q All right. You're familiar with the IMIM rings;
3 is that correct?

4 A Yes.

5 Q Are you able to tell the commissioner what role
6 your perceptions play in terms of the use of force
7 that you believe you're authorized to deploy?

8 A Well, we -- the course of action we take is
9 determined by our perception of the type of
10 behaviour that's exhibited by the person.

11 MR. HIRA: Great. I wonder whether I might actually
12 have Exhibit --

13 THE COMMISSIONER: I think we'll take a brief break.

14 MR. HIRA: Yes.

15 THE COMMISSIONER: Is there any suggestion we're going
16 past 4:00?

17 MR. HIRA: I think Mr. Vertlieb has made that request.
18 I'm happy to do so. I'm happy to sit until 5:00
19 if necessary.

20 MR. VERTLIEB: Mr. Commissioner, just on that, just
21 from taking a sounding, my sense would be we're
22 better off to break at the usual time and start
23 early tomorrow morning at 9:00.

24 THE COMMISSIONER: All right. We'll take a brief break
25 now then.

26 THE REGISTRAR: We will recess for ten minutes.

27

28 (WITNESS STOOD DOWN)

29

30 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

31 (PROCEEDINGS RECONVENED)

32

33 THE REGISTRAR: Order. The hearing is resumed.

34

35 CST. KWESI MILLINGTON, a
36 witness, recalled.

37

38 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CST.

39 MILLINGTON, continuing:

40

41 Q Now, I'd like to deal with your Taser training
42 here for a moment. What instruction, if any, have
43 you received regarding Tasers and injuries?

44 A We were trained that it's actually the least
45 injurious method to gain control of a subject.

46 Q Least injurious to whom?

47 A To the person.

- 1 Q Regarding the use of Tasers in stun mode, what
2 training, if any, did you receive in that regard?
- 3 A Sorry. Repeat it again.
- 4 Q Well, when you're using a Taser in stun mode, are
5 there particular locations on the body where it's
6 permissible to use a Taser?
- 7 A Yeah. You can use it on the body. It says to
8 avoid the neck and head areas.
- 9 Q What about the shoulder areas?
- 10 A You can use it on the shoulder, yes.
- 11 Q And when you're using it in stun mode, the
12 objective is what?
- 13 A It's pain compliance at that point.
- 14 Q What does that mean?
- 15 A It's basically a localized pain to just achieve
16 compliance or disorient basically.
- 17 Q So is it a fair statement to say that your
18 training is that the application of the Taser in
19 stun mode creates pain, which hopefully should
20 lead to compliance?
- 21 A Yes.
- 22 Q And the term "stuns" in relation to the IMIM, does
23 that have a special meaning in the IMIM?
- 24 A Stuns fall under empty hand control.
- 25 Q And in your Taser training, what are the primary
26 objectives? What are you taught is the primary
27 objective?
- 28 A Public safety is always our primary objective.
- 29 Q And where does police safety fall into the
30 situation?
- 31 A It's just after that. Police safety is essential
32 to ensure public safety.
- 33 Q Are you taught anything about something called the
34 AIM principle?
- 35 A Yes. AIM stands for ability, intent and means.
36 If all three are met, the person has the ability,
37 the intent and the means to do harm, then you are
38 justified in taking a course of action.
- 39 Q I'm going to come back to that. Now, we've heard
40 some evidence regarding clacking. What training,
41 if any, do you receive regarding clacking or
42 sounds and Tasers?
- 43 A We're trained that silence is what you want for a
44 complete circuit. If you can hear any clacking,
45 basically that means that there's an incomplete
46 connection and one or both probes are not
47 connected, or in stun mode it means it's not

1 connecting with the person.

2 MR. HIRA: Now, Mr. Commissioner, I don't recall
3 whether the training manual was marked as an
4 exhibit. My feeling was -- that's all it is --
5 was that it was marked as the penultimate exhibit.

6 THE COMMISSIONER: I can't recall that.

7 THE REGISTRAR: The training manual was not marked.

8 THE COMMISSIONER: No, it wasn't marked.

9 MR. HIRA: I wish to show to the police officer a slide
10 from the training manual. My version just has a
11 yellow line through it and I don't know where in
12 the training manual it fits because it was sent to
13 us at 3:30 on Saturday afternoon. Maybe I can
14 through my methodology help identify it.

15 THE COMMISSIONER: Go ahead.

16 MR. HIRA:

17 Q I'm showing you, officer --

18 THE COMMISSIONER: What's the heading?

19 MR. HIRA: Well, that's the problem, Mr. Commissioner.
20 They came in six PDF files, and I think this is
21 the fifth file and the heading, I think, is
22 "Tactical Considerations." If I can just give you
23 my book, Mr. Commissioner and it will have the
24 heading. I'll show you at the red spot where I'm
25 going.

26 THE COMMISSIONER: All right. I don't have that. No,
27 I don't have that. Go ahead, though. Don't let
28 me slow you up.

29 MR. HIRA:

30 Q I'm going to show you one of the PowerPoint
31 slides, something called "Silence Is Golden." Do
32 you see that?

33 A Yes.

34 Q And under it it has [as read]:

35
36 The CEW's electrical circuit is relatively
37 quiet in actual human use.

38
39 Do you see that?

40 A Yes.

41 Q [As read]:

42
43 Practice targets are loud since energy is
44 arcing in the air and then there is a point
45 which is vetted to ensure public and officer
46 safety.

47

1 Do you see that?

2 A Yes.

3 Q And the next slide is [as read]:

4

5 Loud arc equals bad connection. Conducted
6 energy weapon evaluation project less than
7 100 percent.

8

9 Do you see that?

10 A Yes.

11 Q What do you understand by the term "silence is
12 golden" and "loud arc equals bad connection"?

13 A That is what we were just discussing. Silence is
14 if you can't hear anything, that means the current
15 is complete and there's actually -- it's actually
16 travelling and the CEW is working properly. If
17 you hear a loud arc, which is what I refer to as
18 clacking, that means that there is a bad
19 connection. Either in push stun mode it's not
20 connected with the subject, or in probe mode one
21 or both of the probes are not connected.

22 THE COMMISSIONER: When we watched the video, we heard
23 quite a loud noise for the first deployment of the
24 Taser. Is that not a loud electrical noise?

25 A That is the initial deployment when it comes out
26 of the cartridge. It makes a --

27 THE COMMISSIONER: So you're not talking about the
28 initial noise?

29 A No, no. That is --

30 THE COMMISSIONER: All right.

31 A -- the first firing.

32 MR. HIRA: Mr. Commissioner, I will be dealing with
33 that in due course.

34 Q Now, at the end of January, having taken your
35 Taser course and received one of these Taser
36 manuals, the part that's vetted in "Silence Is
37 Golden," could you read into the record what it
38 says.

39 A It says [as read]:

40

41 If electrical current is loud during field
42 hit and the subject is not reacting, the
43 energy is likely shorting out and may not be
44 effective. Reload and deploy second shot at
45 alternate area or consider options.

46

47 Q Now, what, if anything, are you taught about

1 controlling a subject and putting handcuffs on a
2 subject?
3 A Sorry. Repeat the question.
4 Q What is your training, or do you receive any
5 training regarding handcuffing a subject?
6 A You mean in the Taser training or regular?
7 Q Well, either in Taser training or regular
8 training.
9 A Well, that is the way we control someone when
10 they're under arrest is by handcuffing them.
11 That's how we control a subject.
12 Q And how are you supposed to handcuff them?
13 A Behind their back.
14 Q Before I get to that, you also received some
15 training about something called failure analysis.
16 Do you recall that?
17 A No.
18 Q I'm showing you a slide that I received. Could
19 you tell me whether you have any recollection of
20 this? Under failure analysis, it reads [as read]:
21
22 Video training points. Listen to the CEW to
23 determine when contact is made and lost.
24
25 Do you recall any training in that regard?
26 A Yeah, we are supposed to listen to it and that's
27 how you determine whether there's a full contact
28 or not.
29 Q And do you receive any instruction about the
30 strength of a Taser in relation to, say, a
31 defibrillator?
32 A With regards to --
33 THE COMMISSIONER: Certainly you're not getting into
34 expert testimony here, are you?
35 MR. HIRA: No, but I am getting into a specific point
36 of their training.
37 THE COMMISSIONER: Well, all right. Comparing it to a
38 defibrillator --
39 MR. HIRA: You know, Mr. Commissioner, I saw this and I
40 thought, well, it's there. It's part of the
41 training.
42 A Well, we are trained that it's 800 times stronger,
43 the defibrillator is, than the CEW.
44 THE COMMISSIONER: What am I supposed to do with that?
45 MR. HIRA: Well, Mr. Commissioner, it's part of the
46 training that the Taser is safe.
47 THE COMMISSIONER: All right.

- 1 MR. HIRA: If you're told that --
- 2 THE COMMISSIONER: Well, all right, that's a different
3 point.
- 4 MR. HIRA: It's a matter to be wrapped up in due
5 course, in argument.
- 6 Q Now, either in your Taser training or in your
7 training at Depot with respect to use of force and
8 self-defence, what, if anything, are you taught
9 about reaction times?
- 10 A Well, reaction is always slower than action.
11 Someone makes an action and then your reaction
12 time is always afterwards.
- 13 Q Are you given any training as to the level of use
14 of force that you must employ in relation to the
15 behaviour or force being used by the subject?
- 16 A With regards to that, we're trained that our level
17 of intervention always has to be one step higher
18 than the force being used. That's the best way to
19 ensure that we achieve safety.
- 20 Q Are you given any training with respect to speed
21 of action?
- 22 A Well, we have to act quickly and we have to get a
23 situation under control as quickly as possible.
- 24 Q And that's specific training?
- 25 A Yes.
- 26 Q And getting a situation under control in relation
27 to handcuffing, what training do you have in that
28 regard, in other words --
- 29 A Well, that's how you get a situation under
30 control. If someone's in handcuffs, they're not
31 likely to re-escalate or become aggressive or
32 whatever.
- 33 Q Okay. Now, let's go to the Taser deployments.
34 You have told the Commissioner why you deployed
35 the Taser on the first occasion, correct?
- 36 A Yes.
- 37 Q Keeping aside the video, I want to know about what
38 you thought at the time. What did you think had
39 been achieved, if anything, by the first
40 deployment?
- 41 A Like I said, I could tell he was feeling some of
42 the effects of it but he was still not under
43 control, so that's -- that's all we had achieved,
44 him starting to feel the effects.
- 45 Q And when you say starting to feel the effects,
46 when you deployed that Taser, what did you expect
47 would happen to your subject?

- 1 A Like I've said before, I expected him to drop
2 immediately and be immobilized. You're not
3 supposed to be able to move. It overrides your
4 muscle contractions so that that was supposed to
5 be enough to take him into control.
- 6 Q Had you used a Taser before?
- 7 A No.
- 8 Q Have you used one since?
- 9 A No.
- 10 Q Now, the second Taser deployment. Did you believe
11 he was on the floor or not at the time of the
12 second deployment?
- 13 A Like I said in my statement, I believed he was
14 standing at the time of second deployment.
- 15 Q Now, you have spent a fair amount of time
16 listening to the deployments, both in an enhanced
17 audio form that was provided to you on the weekend
18 through the RCMP -- or I should say through the
19 Commission -- and in the Windows Media Player
20 video form provided through the disclosure made
21 through the IHIT files, correct?
- 22 A Yes.
- 23 Q And you have prepared a table of points in the
24 video and the audio, which are two separate files,
25 where you hear clacking; is that correct?
- 26 A Yes.
- 27 MR. HIRA: Now, Mr. Commissioner, I can do it the long
28 way or the short way. The short way is clearly
29 leading. The long way is, well, doing it the long
30 way.
- 31 THE COMMISSIONER: Well, in that it's pre-prepared,
32 unless I hear an objection, you go ahead and lead
33 it, because I understand that you're talking about
34 a prepared document.
- 35 MR. HIRA: Yes. And maybe I should lay a little bit
36 more foundation.
- 37 Q What acoustical methods did you use to prepare
38 this table?
- 39 A What I did was I listened to it with headphones
40 because it's definitely a lot easier to listen to
41 it there. And I listened to both files and kind
42 of stopped it when -- when I could hear clacking.
43 And that's how I did it.
- 44 Q And you have set out the various points in the
45 video that you hear clacking; is that correct?
- 46 A Yes.
- 47 Q And this was a document that you wanted to refer

1 Mr. Vertlieb to earlier in your evidence?
2 A Yes.
3 Q Do you have that document with you?
4 A Yes.
5 Q Could you produce it? And you prepared that on
6 Sunday; is that correct?
7 A Yes.
8 Q After receiving the enhanced audio file on the
9 weekend, correct?
10 A Yes.
11 Q And on the second deployment, looking at the
12 video, it's your evidence that you can hear
13 clacking between 3:57 and 3:59?
14 A Yes.
15 Q And on the audio at 3:58?
16 A Yes.
17 Q And on the third deployment, that you can hear
18 clacking between 4:15 and 4:17 on the video?
19 A Yes.
20 Q And on the audio between 4:15 and 4:18?
21 A Yes.
22 Q And on the fourth deployment, that you can hear
23 three seconds of clacking on the video between
24 4:28 and 4:37?
25 A 4:31.
26 Q I beg your pardon. 4:28 and 4:31?
27 A Yes.
28 Q And on the audio, two separate points, 4:24 to
29 4:26?
30 A Yes.
31 Q And then 4:29 to 4:31?
32 A Yes.
33 Q And on the fifth deployment, there's clacking on
34 the video at two separate points, one second, 4:35
35 to 4:36?
36 A Yes.
37 Q And 4:38 to 4:40 for another two seconds?
38 A That would be three seconds. Yes.
39 Q All right. And on the audio for 4:35 to 4:40?
40 A Yes.
41 MR. HIRA: I wonder if that could be marked as an
42 exhibit.
43 THE COMMISSIONER: Yes, and you'd better have copies
44 for everyone.
45 MR. HIRA: I will have copies, Mr. Commissioner.
46 THE REGISTRAR: That document will be marked as Exhibit
47 Number 53.

1 EXHIBIT 53: Copy -- Comparison of
2 Deployments and Contacts Chart dated March 1,
3 2009
4

5 MR. HIRA: I always have a messy brief. I've lost my
6 copies. I'll get them to you. I'm sorry, Mr.
7 Commissioner. Oh, they're right here, under my
8 nose.

9 THE COMMISSIONER: Officer, are you suggesting that
10 when you hear clacking there is no current
11 penetrating the individual or a reduced amount of
12 current, or are you saying?

13 A It means either one or both probes are not
14 connected, so for the probe mode it can be a
15 reduced amount of current. It doesn't mean
16 necessarily no current. But with the push stun,
17 it's definitely no current because it's -- either
18 you can hear it and it's not working or you don't
19 hear it and it's connected.

20 THE COMMISSIONER: All right.

21 MR. HIRA:

22 Q Now, the third deployment. Sorry, before we get
23 to the third deployment, I may have asked you
24 this. Was it your intention to Taser Mr.
25 Dziekanski for a second time when he was on the
26 ground? For the second deployment, was it your
27 intention to Taser him while he was on the ground?

28 A My original intention was when he was standing.

29 Q I gather you hadn't perceived him to have fallen
30 to the ground?

31 A No. No, not at the time.

32 Q The third deployment. What caused that?

33 A Like I said before, he was still kicking and
34 struggling and he was not putting his hands behind
35 his back and he was still fighting off the
36 members, and that's when I was advised by Cpl.
37 Robinson to do it again. And like I said, there
38 was still no change. He was still fighting. So I
39 did.

40 THE COMMISSIONER: Constable, I'm having trouble with
41 what you're telling me. What do you mean you
42 didn't perceive he was on the ground when I think
43 you said earlier that he was on the ground?

44 A I think that Ravi was referring to when I had
45 originally given my first statement and I thought
46 he was standing. That's how I -- that's how I
47 understood it to be.

1 MR. HIRA: Let me try to clarify that, Mr.
2 Commissioner. It's my poor questioning.

3 Q You fired the Taser first, correct?

4 A Yes.

5 Q And you've given evidence that you didn't feel
6 that he was having the full effects, correct?

7 A Yes.

8 Q The second tasing. What did you think his
9 position was when you fired the second time?

10 A What did I originally think his position was?

11 Q Yes.

12 A I thought he was still standing.

13 Q Did you intend to fire the second time -- was it
14 your intention to fire the second time if he was
15 on the ground?

16 A No.

17 THE COMMISSIONER: Are you telling me that at the
18 moment all this happened, and we see he's on his
19 back with his legs up in the air and that's when
20 the second tasing took place, that you're saying
21 that despite that you thought that he was
22 standing?

23 A Yes. It was a fast-moving situation and I thought
24 he was standing at the time, yes.

25 MR. HIRA:

26 Q And you hadn't seen the video until recently; is
27 that correct?

28 A No.

29 Q All right. The third deployment. You've given
30 some evidence regarding that. I wonder whether we
31 could go to 4:04 on the Pritchard video and go
32 from 4:04 to 4:19, fifteen seconds. And officer,
33 if you could stop when we're at the third
34 deployment, please.

35

36 (VIDEO BEING PLAYED)

37

38 A It would be there when I stood back up, yeah.

39 Q Okay. And you heard some clacking; is that
40 correct?

41 A Yes.

42 Q What did you do?

43 A When I heard the clacking, I took the cartridge
44 off and I moved towards his rear shoulder area to
45 apply it in push stun.

46 Q I'm going to ask that the video be played, and
47 could you stop when you start to take the

1 cartridge off.

2

3

(VIDEO BEING PLAYED)

4

5

A I think I may have -- yeah, I took it off there.

6

I can't see exactly when.

7

Q All right. And your radio at this stage, what has

8

happened to it?

9

A It's -- the mike has fallen off my shoulder area

10

there.

11

12

(VIDEO STOPPED)

13

14

Q Now, you've told us that you applied it in the

15

shoulder area, the fourth deployment, for pain

16

compliance.

17

A Yes.

18

Q What were you expecting to happen on that course

19

of deployment?

20

A I was expecting that -- at the time, like I said,

21

his arms were in front of him. I expected his arm

22

to release so that we could get it behind him to

23

put handcuffs on.

24

Q We've heard evidence that that deployment was for

25

nine seconds. Did you realize that it was for

26

nine seconds? What's your recollection of it?

27

A No, I didn't realize the time involved. Now, it's

28

most likely possible that it was deployed for nine

29

seconds, but from my audio and hearing the

30

clacking, I can tell that it was not applied to

31

Mr. Dziekanski for nine seconds.

32

Q And you have no recollection of a fifth

33

deployment?

34

A No.

35

Q In the course of the fourth Taser deployment, did

36

you feel Mr. Dziekanski or were you at all

37

involved in the tussle on the ground?

38

A I don't recall.

39

Q What was your view of the amount of force or the

40

efforts being expended to bring this man under

41

control?

42

A They were very great. There was three members

43

that were trying -- like all four of us, but we

44

were trying to get him under control and he was

45

actively fighting and still pushing off all of the

46

other members.

47

Q Did you have any reaction to that at the time?

1 A Well, that was what caused me to go into the push
2 stun because they were not having any effect on
3 controlling him effectively. So that's when I
4 went into the push stun mode.

5 Q Now, you were asked by my friend Mr. Vertlieb
6 about where the probes hit. Do you know where the
7 probes hit?

8 A No.

9 Q Did you at any point see where the probes were on
10 the body?

11 A No.

12 Q Do you know whether both probes made contact?

13 A I don't know.

14 THE COMMISSIONER: Are you referring to the first
15 tasing or the second or what?

16 MR. HIRA: Well, there's only one set of probes that
17 come out, Mr. --

18 THE COMMISSIONER: Yes, I understand that.

19 MR. HIRA: Well, let me clarify.

20 THE COMMISSIONER: I'm just wondering how -- are you
21 suggesting that the two probes did not contact on
22 the first deployment?

23 MR. HIRA: I'm asking this officer's evidence --

24 THE COMMISSIONER: All right.

25 MR. HIRA: I'm asking what his recollection was as to
26 whether or not there was contact and if he can
27 give us --

28 THE COMMISSIONER: You're talking about the first
29 tasing?

30 MR. HIRA: Yes, let's deal with the first --

31 THE COMMISSIONER: First deployment is a better word.

32 MR. HIRA: Yes.

33 Q What, if anything, can you tell Mr. Commissioner
34 about where, if at all, you saw the probes make
35 contact on the first deployment?

36 A I didn't see where they landed.

37 Q Did you at any point see where the probes made
38 contact, at any point in time during your dealings
39 with Mr. Dziekanski?

40 A No.

41 Q Now, what, if anything, did you do later with the
42 Taser and the deployed material, the filaments,
43 the cartridge, et cetera?

44 A I gathered it and eventually handed it over to
45 Cpl. Brassington.

46 Q What did you gather?

47 A Well, there was the Taser and the cartridge with

1 the expended filaments, the wires, and I wrapped
2 those up.

3 Q And where did you put them?

4 A I had them on me and then I transferred them over
5 to Cpl. Brassington.

6 MR. HIRA: I wonder whether we could go to the third
7 Pritchard video.

8 Q And could you stop us if you see yourself doing
9 anything with the Taser material.

10

11 (VIDEO BEING PLAYED)

12

13 A I'm wrapping it up there.

14 MR. HIRA: Stop. And the time count?

15

16 (VIDEO STOPPED)

17

18 MR. LUNN: Thirty-seven seconds.

19 MR. HIRA:

20 Q What are you wrapping up, sir?

21 A I think it's the cartridge with the filaments.

22 Q Were the probes attached to the filaments?

23 A No.

24 Q Now, I'd like you to tell the Commissioner why you
25 deployed that Taser.

26 A I deployed it because the male -- well, Mr.
27 Dziekanski was exhibiting combative behaviour and
28 I felt he was a threat to the other officers, and
29 I acted to stop the threat.

30 Q Now, you were also questioned about this
31 computerized form that you filled out or you
32 allegedly filled out, Form 3996.

33 A Yes.

34 Q Now, the version of the form that we were
35 provided, the blank version, by the Commission
36 last Saturday afternoon, looks like this. It's a
37 black and white form that spans some three pages.
38 Do you see that?

39 A Yes.

40 Q Is that the form that you filled out?

41 A That looks more of the format, for sure, yes.

42 Q Did you fill it out on a computer or with a pen on
43 paper, or do you recall?

44 A I don't recall.

45 MR. HIRA: I wonder whether that form could be marked
46 as an exhibit here.

47 THE COMMISSIONER: I think it's reached the stage as an

1 exhibit.

2 MR. HIRA: I'm sorry?

3 THE COMMISSIONER: I think it's reached the stage to be
4 an exhibit.

5 MR. HIRA: I don't have a copy but --

6 THE COMMISSIONER: I have a copy.

7 MR. HIRA: Thank you.

8 THE REGISTRAR: That will be marked as Exhibit Number
9 54.

10 MR. HIRA: That is the example of the form, Mr.
11 Commissioner, as opposed to the form itself.

12 THE COMMISSIONER: Oh, I see. You said the form. I
13 don't think the form has been marked, the one used
14 by Mr. Vertlieb.

15 MR. VERTLIEB: No, it hasn't. I was going to have all
16 those marked at a convenient time.

17 THE COMMISSIONER: Well, I think that one is 54A and
18 one is 54B.

19

20 EXHIBIT 54A: Copy - Incident Information
21 Form, Record ID: 4578

22

23 EXHIBIT 54B: Copy - Conducted Energy Weapon
24 Usage Report (blank)

25

26 MR. HIRA:

27 Q Let's deal with the form that was put to you by
28 Mr. Vertlieb.

29 THE REGISTRAR: That's the incident information form.

30 MR. HIRA: Yes, as opposed to the 3996 or 8 form. I
31 can't remember what it is.

32 Q Sir, is it your recollection that you filled out
33 this form, an incident information form?

34 A I don't recall this format, like I said before.
35 So I don't remember seeing it before, no.

36 MS. ROBERTS: If I might, Mr. Commissioner, Helen
37 Roberts for the Government of Canada. The
38 document that's just been marked as Exhibit 54 is
39 simply a sample of the form that was used in the
40 training session. It's been extracted from the
41 PowerPoint presentation. My understanding is that
42 Exhibit 54A is a printout that was provided to the
43 Commission last summer among many printouts of the
44 information that is in the Form 3996 that was
45 actually completed by Cst. Millington for this
46 incident. I can probably locate the actual Form
47 3996 completed by Cst. Millington but I hadn't

Cst. Kwesi Millington

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

1 been asked to do that up till now. I don't know
2 if that's of assistance to clarify.

3 THE COMMISSIONER: Yes. Thank you very much.

4 MR. VERTLIEB: Just since we're discussing this, Mr.
5 Hira mentioned about this material being sent to
6 him on Saturday. I just want to clarify
7 something, and Ms. Roberts can help, and I
8 appreciate her comment about 54A because that was
9 sent to us some months ago apparently as
10 representative of the form for this incident.
11 But just so Mr. Hira knows and my colleagues
12 following, in terms of the Saturday delivery, I'm
13 grateful to Ms. Roberts, who Friday night, last
14 Friday at about a quarter to 7:00 p.m., sent an
15 e-mail to our offices saying that she just
16 realized the PowerPoint presentation provided
17 earlier was incomplete and she apologized for the
18 error, which of course wasn't hers, and she
19 attached the full PowerPoint presentation that
20 would have been used during the 2007 July training
21 session and asked us to distribute it to all
22 participants as soon as possible with her
23 apologies. It's that July '07 training material
24 that Ms. Roberts found that upon her request,
25 which we of course understood, sent to all the
26 participants' lawyers and that's what Mr. Hira is
27 now talking about, nothing to do with the 54A,
28 which has been around for some months.

29 THE COMMISSIONER: All right, thank you.

30 MR. HIRA:

31 Q Just on that note in terms of your training,
32 you've been asked questions about medical
33 attention.

34 A Yes.

35 Q And what, if any, training do you receive with
36 respect to providing medical attention to people
37 who have been tasered?

38 A With regards to that, it's not mandatory to
39 provide any medical attention to someone who has
40 been tasered unless something in their condition
41 warrants medical attention.

42 Q I'm showing you another part of the training
43 manual materials that we received, as Mr. Vertlieb
44 has just described, Mr. Commissioner. It's item
45 5, "Deployment Aftercare." I'd like you to read
46 into the record what the second paragraph says,
47 item 5.2.

1 A [As read]:

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Ensure the individual receives medical attention if any unusual reactions occur or if you think he or she is in distress.

Q Thank you. And was that done in this case?

A Yes.

Q Now, you've also been asked questions about the debriefing session and questions about the members' meeting after the incident and before giving their statements. Let's start with the members' meeting after the meeting and before giving their statements.

Did you discuss your evidence with any of the members before giving your statement?

A No.

Q At the debriefing session, did you discuss your evidence with any of the members?

A No. As I said, we just discussed our feelings with the psychologist.

Q Prior to testifying here, have you discussed your evidence with any of your fellow officers?

A No.

Q You have of course met with Commission counsel when requested, correct?

A Yes.

Q And discussed your evidence with Commission counsel?

A Yes.

Q Now, you've now had the benefit of hindsight and the benefit of the video. Would you have done anything differently?

A No. We acted in accordance to our training. Of course I never intended this result.

Q When you say you never intended this result, what are you referring to?

A I never intended for Mr. Dziekanski to pass away.

MR. HIRA: Mr. Commissioner, I note the time. I wonder whether I might have the opportunity to review my notes, and if I have any more questions, I won't be very long, I can tell you that, tomorrow morning.

THE COMMISSIONER: Now, what is the pleasure in terms of tomorrow?

MR. VERTLIEB: I think we discussed starting at 9:00 a.m., Mr. Commissioner. I think that everyone is

1 comfortable with that.

2 THE COMMISSIONER: All right. As I understand it, the
3 object today and the next three days is to
4 complete the evidence of this officer and the next
5 officer.

6 MR. VERTLIEB: That's the hope but things may not
7 happen --

8 THE COMMISSIONER: That would be very desirable in that
9 we're going to adjourn for a while after that.

10 All right, nine o'clock.

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

12

(WITNESS STOOD DOWN)

14

(PROCEEDINGS ADJOURNED TO MARCH 3, 2009, AT
9:00 A.M.)

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