

**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 3, 2009

---

PROCEEDINGS AT  
HEARING (DAY 26)

---

**COPY**

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

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

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

March 3, 2009

---

**PROCEEDINGS AT  
HEARING (DAY 26)**

---

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

(ii)

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

Vancouver, B.C.  
March 3, 2009

1  
2  
3  
4 THE REGISTRAR: The hearing is now resumed.  
5 THE COMMISSIONER: Good morning.

6  
7 KWESI MILLINGTON, a witness,  
8 recalled.  
9

10 MR. HIRA: I think Mr. Vertlieb wants to interrupt my  
11 examination and mark some exhibits, so I'll stand  
12 down.

13 THE COMMISSIONER: Thank you.

14 MR. VERTLIEB: Mr. Commissioner, I see our registrar  
15 has just stepped out. What I --

16 THE COMMISSIONER: He'll be here in two minutes.

17 MR. VERTLIEB: Okay. What I'd like to do is just mark  
18 some exhibits that we dealt with yesterday. The  
19 first to deal with, Ms. Roberts very kindly sent  
20 us the Form 3996 late yesterday. And what I'd  
21 like to do is have that 3996 form marked. This is  
22 the form that the officer is to complete. It's  
23 called the "Conducted Energy Weapon Usage Report",  
24 and it is three pages long. The portion that I  
25 read out yesterday, off a different looking form  
26 that was marked as 54A, is essentially wording as  
27 the actual original 3996 that Ms. Roberts sent us.  
28 So I'd like this form 3996, the Conducted Energy  
29 Weapon Usage Report, marked as an exhibit, and  
30 rather than get into withdrawing exhibits from  
31 yesterday, my thought would be just to mark this  
32 as the next exhibit in the proceeding. All of our  
33 friends have seen a copy of this, and I believe  
34 Mr. Giles has a copy there to mark.

35 THE COMMISSIONER: Any problem?

36 MS. ROBERTS: Helen Roberts for the Government of  
37 Canada. It was my suggestion that we substitute  
38 this for 54B, because 54B was a sample that was  
39 given in training that has details of another  
40 incident, completely unrelated to Mr. Dziekanski.

41 THE COMMISSIONER: All right. Let's make it 54B.

42 MR. VERTLIEB: Thank you. We do thank Ms. Roberts for  
43 her help.  
44

45 EXHIBIT 54B: Copy - Conducted Energy Weapon  
46 Usage Report Form 3996 substituted for  
47 previously marked Exhibit 54B

1 MR. VERTLIEB: Now, just on 54B, there's two areas that  
2 have some -- potentially some personal information  
3 for Corporal Robinson and Constable Millington on  
4 the front page and perhaps those should be  
5 eliminated, if anybody is to take copies. And,  
6 Mr. Giles, I'm looking at page 1 under  
7 "Supervisor" and under "Member Operating Weapon",  
8 there's a couple of pieces of information of a  
9 personal nature, perhaps with phone numbers and e-  
10 mails, which should just be redacted from the  
11 original form.

12 THE COMMISSIONER: All right, we'll see that that's  
13 done.

14 MR. VERTLIEB: Thank you. Now, next in terms of  
15 marking exhibits, I'd like to mark the statement  
16 referred to by the officer, taken October 14, 2007  
17 as the next exhibit, followed by the statement  
18 taken October 15, 2007, if we may. And the  
19 third --

20 THE COMMISSIONER: Just a moment, Mr. Giles.

21 MR. VERTLIEB: I'm sorry.

22 THE COMMISSIONER: Where are we at here now?

23 THE REGISTRAR: The statement taken October 15th (sic)  
24 at 0507 will be marked as Exhibit number 55. The  
25 statement of October 15th at 0910 in the morning  
26 will be marked as Exhibit number 56.

27 MR. VERTLIEB: Okay. I think you mean October 14th,  
28 0507, as Exhibit 55 -- October 14th.

29 THE COMMISSIONER: Yeah, October 14th.

30 THE REGISTRAR: That's right.

31 MR. VERTLIEB: Thank you.

32 THE REGISTRAR: October 14th, that's right.

33 MR. VERTLIEB: Thank you. So the October 14th is  
34 Exhibit 55 and 15th of October, Exhibit 56.

35 THE REGISTRAR: That's correct.

36  
37 EXHIBIT 55: Copy - Statement of Cst. Kwesi  
38 Millington taken October 14, 2007  
39

40 EXHIBIT 56: Copy - Statement of Cst. Kwesi  
41 Millington taken October 15, 2007  
42

43 MR. VERTLIEB: Thank you. And then the next is the  
44 handwritten notes of the officer, and they were --

45 THE REGISTRAR: They will be marked as Exhibit number  
46 57.

47 MR. VERTLIEB: Thank you. They're five pages.

1 EXHIBIT 57: Copy - Pages from Cst.  
2 Millington's notebook  
3

4 MR. VERTLIEB: And then finally for exhibit marking,  
5 the stapler that was sealed, and we understand Mr.  
6 Giles has the -- has had possession of it and he  
7 opened it yesterday. Perhaps that stapler could  
8 be the next exhibit.

9 THE COMMISSIONER: Yes.

10 THE REGISTRAR: It will be marked as Exhibit number 58.  
11

12 EXHIBIT 58: Stapler  
13

14 MR. VERTLIEB: Thank you, Mr. Commissioner. Thank you,  
15 Mr. Hira.

16 MR. BRONGERS: Mr. Commissioner, if I may, with respect  
17 to the handwritten notes, I promised my colleague,  
18 Mr. Buchanan, who is not here today, he was  
19 concerned that there may again be some personal  
20 information if there were any interviews taken.  
21 So I was just hoping to have an opportunity to  
22 quickly look at that to see if we need to redact  
23 personal information from that, as well.

24 THE COMMISSIONER: Yes. Well, go ahead when you have a  
25 chance.

26 MR. BRONGERS: Thank you, Mr. Commissioner.

27 MR. HIRA: Mr. Commissioner, there is a third statement  
28 of Officer Millington taken on October 18, 2007.  
29 Was my friend proposing to have that marked as  
30 well?

31 MR. VERTLIEB: No problem, whatever you wish, Mr. Hira.  
32 We're happy to have it marked.

33 MR. HIRA: It would seem to me that if you want --

34 MR. VERTLIEB: That's fine.

35 MR. HIRA: -- to have a complete record, Mr. Vertlieb,  
36 you may want that marked. It's just a two-page  
37 statement, just deals with one issue.

38 THE COMMISSIONER: Has anybody ever mentioned it?

39 MR. HIRA: He has actually mentioned it in his  
40 evidence, not once but a couple of times.

41 THE COMMISSIONER: Well, all right, we'll have it  
42 marked, again, as I indicated before, not for the  
43 truth of the contents but as an adjunct to  
44 understand the evidence given verbally.

45 THE REGISTRAR: The date of that document, Mr. Hira?

46 MR. HIRA: It's October 18. It is a short statement.  
47 It's two pages, Mr. Commissioner.

1 THE REGISTRAR: It will be marked as Exhibit number 59.  
2 THE COMMISSIONER: Thank you.

3

4 EXHIBIT 59: Copy - Two-page statement of  
5 Cst. Kwesi Millington taken October 18, 2007  
6

7

8 MR. HIRA: Mr. Giles, could I have Exhibits 54A and  
9 54B, please.

10

11 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE  
12 KWESI MILLINGTON, continuing:

13

14 Q Now, Officer, Exhibit 54B has been produced this  
15 morning and marked this morning. Are you familiar  
16 with this document?

17

18 A Yes.  
19 Q And you completed this document as part of the  
20 Taser reporting requirements?

21

22 A Yes.  
23 Q And you're more familiar with that document than  
24 the version which was provided yesterday, Exhibit  
25 54A; is that correct?

26

27 A Yes.  
28 Q You haven't seen that Exhibit 54B exhibited in the  
29 form that it is in Exhibit 54A?

30

31 A No.  
32 Q Thank you. Now, I want to deal with two  
33 applications of the Taser first. You have given  
34 evidence and said in your statements that Mr.  
35 Dziekanski was standing at the time of the  
36 application of the second Taser; is that correct?

37

38 A Yes.  
39 Q You've had the benefit of the video, and from that  
40 it appears that Mr. Dziekanski is on the ground at  
41 the time of the application of the second Taser.

42

43 A Yes.  
44 Q And did you perceive that he was on the ground at  
45 the time of the application of the second Taser,  
46 that is, on the occasion in question?

47

48 A No. At the -- I believed he was standing, as my  
49 statement said.  
50 Q What, if anything, would you have done different  
51 if he were on the ground?

52

53 A Well, if he was on -- if I had known he was on the  
54 ground before the application of the second Taser  
55 deployment, I would have not done it at the time.  
56 I would have reassessed the situation and we would

57

1 have tried to move in and take control, similar to  
2 what we did before the third application, and if  
3 it was necessary, I would have applied the Taser  
4 at that time.

5 Q Great. Let's talk about the fifth application of  
6 the Taser. Do you have any -- I should say the  
7 fifth deployment of the Taser. Do you have any  
8 recollection of deploying it the fifth time?

9 A No.

10 Q You've had an opportunity to look at Pritchard  
11 video number 2; is that correct?

12 A Yes.

13 Q And what, if anything can you tell us about the  
14 fifth deployment in relation to that video?

15 A Well, I can see from the video that at the time of  
16 the fourth application I was at his rear shoulder  
17 area, and the time of the fifth application I was  
18 actually around on the other side. The audio  
19 version that was produced to me on the weekend of  
20 just the audio, I could hear the clacking sound  
21 before the fifth application, which indicated that  
22 there was no contact. It was just being deployed.  
23 And like I said, I could see myself on the other  
24 side of him, during the time period that the fifth  
25 application would have been done. My explanation  
26 for that would have been that I may have, due to  
27 the stress of the situation, been holding the  
28 trigger, but it definitely was not in contact with  
29 Mr. Dziekanski at the time.

30 THE COMMISSIONER: I want to be clear about this.  
31 Yesterday you told me that the clicking sound  
32 didn't necessarily mean there was no contact with  
33 the person in the sense that electricity was  
34 entering the person. Rather you said it meant  
35 either there was none or it was reduced.

36 A I said in the probe mode it can be reduced if you  
37 hear clacking.

38 THE COMMISSIONER: Yes.

39 A But in the push stun mode, which is what I'm  
40 referring to now.

41 THE COMMISSIONER: Yes.

42 A There is no chance of any contact --

43 THE COMMISSIONER: All right.

44 A -- if you can hear the -- the clacking.

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

46 Q Now, what, if anything, did you notice about Mr.  
47 Dziekanski after the handcuffs were put on him?

- 1 A When the handcuffs were finally put on, there was  
2 some grunting, some sounds he was making, and he  
3 was still squirming for a couple of minutes. And  
4 it was after that that Constable Bentley had said  
5 that his ears were turning blue, a couple of  
6 minutes later, and that's when we put him in the  
7 recovery position and EHS was called Code 3.
- 8 Q Are you able to help the Commissioner with  
9 reference to the Pritchard videos as to when your  
10 recollection is of EHS being summoned or your  
11 recollection of when he was turning blue?
- 12 A Based on what I saw from the video, at the end of  
13 the second video we were still gaining control and  
14 he was in cuffs. I would say it was between the  
15 second and the third video that the turning blue  
16 part and the EHS was called, because at the  
17 beginning of the third video he was already in the  
18 recovery position, which indicates that all of  
19 that would have happened just in between -- just  
20 before the start of the third video.
- 21 Q Now, yesterday Commission counsel suggested that  
22 there were four Mounties in vests with a number of  
23 tools, and asked you whether you were scared or  
24 whether you were fearful and why you were fearful,  
25 and you used the term that you were fearful.  
26 Could you explain what you meant by that term?
- 27 A Well, basically, by "fearful", I believed that Mr.  
28 Dziekanski was going to harm one of the officers.  
29 I believed he had the ability and the intent and  
30 the means to -- to do that. With regards to the  
31 ability, he had -- he was standing in front of us,  
32 and that there was nothing blocking him from  
33 reaching us, per se, for example, the glass in  
34 between the secure side and the public side, that  
35 would have prevented his ability to attack us.  
36 The intent, his arm was raised, he had the stapler  
37 in his hand, and that was the means. So I  
38 believed he was going to cause harm to one of the  
39 officers and that's what I meant by fearful.
- 40 Q Now, when you say the "intent", what do you mean  
41 by that?
- 42 A Well, the intent was demonstrated by his holding  
43 the stapler up and his other fist clenched, as  
44 well, and him approaching us.
- 45 Q And the means?
- 46 A Well, the means would have been the stapler.
- 47 Q Now, why did you deploy the Taser as opposed to

1 using another option?

2 A Well, from my training, we're trained that the  
3 Taser is the least injurious means to bring a  
4 subject under control as fast as possible, so  
5 that's why I used it.

6 MR. HIRA: Now, Mr. Commissioner, there is one other  
7 housekeeping matter. I wonder whether Commission  
8 counsel has the enhanced video -- sorry, the  
9 enhanced audio that was produced to us on Friday  
10 afternoon. It should be marked as an exhibit, for  
11 it dovetails with the table and this officer's  
12 evidence regarding clacking.

13 THE COMMISSIONER: All right. I know nothing about  
14 that particularly. Any comment?

15 MR. VERTLIEB: No, no comment, no objection.

16 THE COMMISSIONER: All right. That will be the next  
17 exhibit, then.

18 MR. HIRA: Well, let me then just address that with the  
19 witness, and try to enhance, so to speak, your  
20 knowledge in that area.

21 THE COMMISSIONER: All right.

22 MR. HIRA: Mr. Giles, if I could have the table  
23 prepared by the witness, that I think it's Exhibit  
24 55. Perhaps it's the prior exhibit. Yes.

25 THE REGISTRAR: Exhibit 53?

26 MR. HIRA: Sorry.

27 Q Officer, I'm showing you Exhibit 53. This is a  
28 chart, a chart that you prepared regarding  
29 deployments, video clacking and audio clacking; is  
30 that correct?

31 A Yes.

32 Q The video clacking, what video did you use for  
33 that column of the chart?

34 A The Pritchard video, and --

35 Q Sorry, keep going, Officer.

36 A Sorry. The Pritchard video in Windows Media  
37 Player, specifically.

38 Q And with regard to audio clacking, what did you  
39 use for that portion of the chart?

40 A The audio version that was produced to me.

41 Q And that was the version produced to you on the  
42 weekend?

43 A Yes.

44 Q I'm showing you a copy of a disk that I'm told is  
45 -- contains two audio files and is entitled  
46 "Enhancement Audio on the Pritchard Video". Was  
47 it a disk similar to this?

8

Cst. Kwesi Millington

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

1 A Yes.

2 MR. HIRA: Mr. Commissioner, I wonder whether that disk  
3 could be marked as Exhibit 53A, just so that it's  
4 tied into the table.

5 THE COMMISSIONER: Yes, all right.

6 THE REGISTRAR: It will be marked as 53A.

7

8 EXHIBIT 53A: Disk entitled "Enhancement  
9 Audio on the Pritchard Video"

10

11 MR. HIRA: Officer, those are my questions of you. I  
12 wonder whether you could answer questions of other  
13 counsel.

14

15 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
16 CISOWSKI:

17

18 Q Sir, how many hours did you spend listening to  
19 those audiotapes and reviewing the video over the  
20 course of the weekend to produce table 53?

21 A I would say it was a few hours. I don't know  
22 exactly how many.

23 Q How many hours, sir?

24 A I don't know the exact amount.

25 Q Ten?

26 A I don't know how many.

27 Q Possibly ten?

28 A It's possible.

29 Q Yeah. Now, you didn't spend -- or hear that  
30 clacking on the night in question, did you, sir,  
31 on the 14th of October?

32 A Which deployment are you referring to?

33 Q Any of the clacking. You didn't -- you didn't  
34 hear clacking on October the 14th?

35 A Actually I did hear clacking on the third  
36 application on the night of the 14th.

37 Q So you heard clacking on one occasion and one  
38 occasion only on the night of the 14th. That's  
39 your evidence here today; is that correct?

40 A I remember hearing it on the third application,  
41 yes.

42 Q Yeah. And you had to listen for over ten hours to  
43 try and find that clacking on these two videos in  
44 order to prepare this table, 53A; is that correct?

45 A Like I said, I don't know exactly how many hours  
46 it was.

47 Q Yeah, but probably ten or more, right?

- 1 A I don't know for sure.
- 2 Q Well, your earlier answer to me, sir, was that  
3 when I suggested to you ten, that you said yeah,  
4 it could have been ten.
- 5 A I said it was possible, but I don't know the exact  
6 amount.
- 7 Q All right. Now, is that easily discernible, this  
8 clacking sound, to me listening to this audio, or  
9 does it require your special ear to be able to  
10 hear that?
- 11 A I don't know if you could hear it. I used  
12 headphones to hear it.
- 13 Q All right. Has anybody else listened to it,  
14 anybody independent and that you've listened to it  
15 with and confirmed to you that they could hear the  
16 clacking?
- 17 A Besides my lawyer, no.
- 18 Q All right. Now, do you have any martial arts  
19 training, sir?
- 20 A No.
- 21 Q Well, hold on now. You went to Depot. You took  
22 martial arts training at Depot, did you not?
- 23 A When you say "martial arts training" I refer to  
24 something specific, a specific martial art taught,  
25 such as Jujitsu or some other form. I don't have  
26 anything like that. We are taught basic hand-to-  
27 hand at Depot.
- 28 Q It's a little bit more detailed than that, isn't  
29 it, sir? Aren't you misrepresenting what you're  
30 taught at Depot? Let's talk about that for a  
31 second. You take about 75 hours of training at  
32 Depot in self-defence, correct?
- 33 A I don't know how many hours, but it's a lot of  
34 hours, yes.
- 35 Q Yeah. You're there at least a few times a week,  
36 three or four times a week doing self-defence?
- 37 A Yes.
- 38 Q And you have self-defence instructors that are  
39 usually people that carry black belts and such  
40 things?
- 41 A I don't know their qualifications. They're  
42 trainers. I don't know what their martial art  
43 background is.
- 44 Q You're telling me that you go in training and you  
45 deal with instructors that you have for a six-  
46 month period of time and no one ever tells you  
47 that they carry a black belt in Karate or Judo or

- 1 else, you don't know that information?
- 2 A I don't know.
- 3 Q All right. Well, you do self-defence training,  
4 you start off with things like Judo and wrestling,  
5 don't you, sir?
- 6 A Yeah, we do.
- 7 Q Body movement. You learn to get on a mat and you  
8 learn to do body movement, leverage, correct?
- 9 A Body movement, okay, yes.
- 10 Q So you start off with things like wrestling, you  
11 move into Judo and throws and holds, correct?
- 12 A We do all that, yes.
- 13 Q Yeah. And then after you do that you move into  
14 Karate, kicks and punches, correct?
- 15 A I don't recall being taught Karate, but soft hand  
16 control-type moves.
- 17 Q Well, do you remember being taught punching in  
18 Karate? Do you ever remember saying "Kiyai"?
- 19 A No.
- 20 Q Okay. Did you ever learn to do any Karate  
21 punching?
- 22 A Not to my recollection, no.
- 23 Q Did you practice any kicks?
- 24 A No, not that I recall. No.
- 25 Q Okay. Did you get involved in ground fighting?  
26 Did you ever hear that term?
- 27 A Yes.
- 28 Q Ground fighting. What is ground fighting?
- 29 A It's -- for the purposes of our training it's how  
30 to control someone if you're on the ground with  
31 them.
- 32 Q It's about -- it's basically street fighting,  
33 isn't it, sir? You're taught how to street fight.
- 34 A I wouldn't consider it that, no, it's controlling.
- 35 Q You're taught how to incapacitate someone who  
36 might be attacking you, correct?
- 37 A We're taught to gain control of someone if they  
38 are fighting us, yes.
- 39 Q Yeah. And you're also taught that if your life is  
40 in peril, you're taught how to choke somebody out,  
41 right?
- 42 A We are taught the carotid choke, if that's you're  
43 -- if that's what you're referring to, carotid  
44 control, which would be somewhat of a choking  
45 manoeuvre.
- 46 Q Not somewhat, it's a choking manoeuvre, correct?
- 47 A Yes.

- 1 Q Yes. You practice things like in the event that  
2 you should have to disarm somebody who's got a  
3 knife and you don't happen to have a weapon. You  
4 practice that?
- 5 A Yes.
- 6 Q You even practice in the unlikely eventuality that  
7 you're unarmed and someone has a gun, how to  
8 disarm someone with a gun, even though it's a  
9 high-risk manoeuvre, aren't you?
- 10 A Yes.
- 11 Q You spend a lot of time fighting with very, very  
12 fit guys on a mat, don't you, sir?
- 13 A Yes.
- 14 Q You sit back-to-back, somebody blows a whistle and  
15 it's who can take the other guy down, right?
- 16 A I don't remember sitting back-to-back, but  
17 something like that, yes.
- 18 Q Well, same idea. You sit back-to-back, or you're  
19 put into a position and it's your job to take the  
20 other guy out, or vice-versa, right?
- 21 A Yes.
- 22 Q All right. Now, you and Constable Bentley had  
23 similar training, correct?
- 24 A Yes.
- 25 Q Because you and Bentley are very close in time at  
26 Depot, correct?
- 27 A I believe we're about a year or so apart.
- 28 Q Okay. I actually thought it might be six months  
29 apart. Did you recollect seeing Bentley at Depot?
- 30 A No.
- 31 Q Now, after you finished Depot you did recruit  
32 field training?
- 33 A Yes.
- 34 Q Did you complete that in the required six-month  
35 period of time?
- 36 A Yes.
- 37 Q And while you were doing recruit field training  
38 you had a trainer, correct?
- 39 A Yes.
- 40 Q Is that trainer involved in any way in this  
41 investigation?
- 42 A No.
- 43 Q It wasn't somebody that took statements or in any  
44 other way got himself involved in the course of  
45 this investigation?
- 46 A My trainer you're talking about?
- 47 Q Yes.

- 1 A No.
- 2 Q All right. Now, you remember the training  
3 objectives of the RCMP?
- 4 A Specifically what are you referring to?
- 5 Q Well, do you recollect that one of the things they  
6 were telling you that they wanted you to develop a  
7 pride in yourself and in the RCMP, and to that end  
8 they taught you about the history of the RCMP and  
9 tried to make you prideful in being a member of  
10 the RCMP?
- 11 A Yes.
- 12 Q They wanted you to conduct yourself in a way that  
13 you would reflect well on the RCMP?
- 14 A Yes.
- 15 Q They wanted you to develop and exercise discretion  
16 in how you dealt with people?
- 17 A Yes.
- 18 Q They talked to you about approaching individuals  
19 and suspects and treating everyone as if they were  
20 a client, and they referred to people as clients?
- 21 A Yes.
- 22 Q And they said to you, you have to look  
23 subjectively at people and we want you to be  
24 empathetic with people that you're dealing with.  
25 Do you remember that word, "empathetic"?
- 26 A Yes.
- 27 Q That was stressed to you, correct?
- 28 A Yes.
- 29 Q And they talked to you about community based  
30 policing, you remember that?
- 31 A Yes.
- 32 Q And the whole notion was that what you're trying  
33 to do as a police officer is show professionalism.  
34 You were trying to show that you as a professional  
35 police officer have certain skills. You could  
36 resolve conflict, and that you turn to physical  
37 force as a last resort, correct?
- 38 A Yes.
- 39 Q And you were taught that an officer that can  
40 resolve a situation without using force, but can  
41 do it with persuasion, advice and warning is more  
42 highly valued than the person who turns to  
43 physical force, correct?
- 44 A It's preferable, yes.
- 45 Q Yes. And that that's the kind of attitude and the  
46 type of work that makes you look more professional  
47 in the public's eyes, correct?

1 A Yes.  
2 Q All right. Now, you were also taught in this  
3 operational framework called CAPRA, do you  
4 remember that?  
5 A Yes.  
6 Q And CAPRA is something that you're familiar with  
7 even today and it's used in the field, it's what  
8 you all operate by, correct?  
9 A Yes.  
10 Q CAPRA, "C" stands for client?  
11 A Yes.  
12 Q "A" stands for acquire and analyze the situation,  
13 correct?  
14 A Assess the information.  
15 Q Assess. "P" stands for partnership?  
16 A Yes.  
17 Q That's the partnership of the people that you work  
18 with and also people in the community, correct?  
19 A Yes.  
20 Q And then you talk about response, and you're  
21 supposed to use a measured response, a response  
22 that fits the circumstances, correct?  
23 A Yes.  
24 Q And then you're supposed to assess, to continually  
25 improve, right?  
26 A Yes.  
27 Q Yesterday you were asked as to whether you would  
28 change anything about how you acted. My  
29 understanding was your answer was: "In the  
30 circumstances I wouldn't change a thing. I  
31 couldn't." Is that accurate?  
32 A I responded that I acted according to our  
33 training, so...  
34 Q And you said you would do it the same way again.  
35 A Yes.  
36 Q Right?  
37 A Yes.  
38 Q This is after assessment for continuing  
39 improvement. You didn't see how you could improve  
40 what you did, right?  
41 A You're saying I said that yesterday?  
42 Q Yeah.  
43 A Okay, yes.  
44 Q Do you still stand by that, apart from this change  
45 that you made, that if you had realized now that  
46 Mr. Dziekanski was down on the ground screaming,  
47 that you wouldn't have tasered him the second time

- 1 at that point?
- 2 A Since looking at the video and after the questions  
3 from Ravi, I have since said that I would change  
4 the assessment process after the first Taser  
5 deployment.
- 6 Q That was a change between yesterday and today,  
7 right?
- 8 A Since seeing the video and being shown that, yes.
- 9 Q Yeah. Well, you've had a year and something to  
10 re-evaluate and reassess what you've done, and  
11 it's only this change that you have come up with;  
12 is that correct?
- 13 A As I mentioned yesterday, I only saw the video for  
14 the first time a month ago when I was starting the  
15 proceedings after the inquiry had started.
- 16 Q Yeah, but you've had lots of chance to review and  
17 to think about what happened and what you could  
18 do, and what you're telling us today is the only  
19 thing that you would change is the fact that now  
20 that you know that Mr. Dziekanski was down, you  
21 would have reassessed before tasing the second  
22 time.
- 23 A Yes.
- 24 Q That's the only change.
- 25 A Yes.
- 26 Q All right. And you understand in this client-  
27 based model that you're taught at Depot, and that  
28 you -- is reinforced to you when you're out in the  
29 field as well, correct, the client-based model?
- 30 A Yes.
- 31 Q That victims, witnesses, everyone deserves  
32 treatment, professionalism and respect.
- 33 A Yes.
- 34 Q And you're taught to be mindful of who you're  
35 dealing with, the subject you're dealing with and  
36 to make your responses appropriate to that  
37 subject, instead of just relying on things that  
38 you may be taught about self-defence or other  
39 types of things, correct?
- 40 A We're taught to make our responses appropriate to  
41 the behaviour, but also assess the environment and  
42 the individual.
- 43 Q Within the context of what that individual is  
44 like. For example, you would approach a person, a  
45 First Nations person, you might take into account  
46 different background and different values,  
47 correct?

- 1 A Yes.
- 2 Q And that's something you're specifically taught?
- 3 A Yes.
- 4 Q You have cross-cultural training to do that kind  
5 of thing, correct?
- 6 A It's not extensive, but it -- an example may have  
7 been raised during training such as that.
- 8 Q Yeah. And while you're in training you do this  
9 framework and they put together scenarios,  
10 correct?
- 11 A Yes.
- 12 Q And in some of those scenarios you're dealing with  
13 people that come from different backgrounds and  
14 you're required to start to think subjectively,  
15 what's that person thinking, how are they  
16 operating, what do I need to be and mindful of  
17 with that individual, correct?
- 18 A Yes.
- 19 Q And you're also put in situations, for example,  
20 where you might be dealing with people in a  
21 situation where there'd be a family dispute,  
22 right?
- 23 A Yes.
- 24 Q And you're taught how to come upon somebody who's  
25 in a distress situation like that, somebody in a  
26 family dispute, for example, right?
- 27 A Yes.
- 28 Q And what you are taught to do when you're  
29 approaching somebody like that is to turn on the  
30 empathy, right?
- 31 A Empathy is always something that you're supposed  
32 to use.
- 33 Q Yeah. And one of the things that you are taught,  
34 for example, is that when you're talking to  
35 somebody, if they're sitting down, you try to sit  
36 down so that you're not standing over top of them  
37 making them feel uncomfortable, right?
- 38 A It is taught that that might help.
- 39 Q Yes. And it's taught that, for example, take your  
40 hat off when you're talking to someone, right?
- 41 A I think that may have been taught. I don't know.
- 42 Q Yeah. And somebody -- and they tell you, "Don't  
43 wear your sunglasses. Try to make eye contact.  
44 Take your glasses off when you're talking to  
45 somebody," that kind of thing, right?
- 46 A I guess they may have mentioned that, as well,  
47 it's something that --

1 Q You mean, "may have", they did, didn't they?

2 MR. HIRA: Perhaps the witness could be allowed to  
3 finish his answer.

4 A All I'm saying is I don't know if I was taught  
5 specifically that, but some of these things are  
6 things that I would do anyways, take off my  
7 glasses, as you say, sunglasses, so I can see them  
8 in their eye, look at them eye-to-eye, that type  
9 of thing.

10 MR. KOSTECKYJ:

11 Q And you know that in some cultures people look  
12 away from you rather than look in your eye.  
13 You're familiar with that, as well, for example,  
14 First Nations people, right?

15 A Yes.

16 Q It's a matter that sometimes people will look down  
17 at the ground, and that's a sign of respect,  
18 instead of looking you in the eye, so you have to  
19 be mindful of those kind of cues, right?

20 A There are different cultures that do different  
21 things with regards to greetings.

22 Q Right?

23 A Yes.

24 Q But the one I gave you, you know about that?

25 A Say that again?

26 Q You know about that, where some people instead of  
27 looking you in the eye, for example, when you're  
28 dealing with a lot of First Nations people, as a  
29 sign of respect instead of looking you in the eye,  
30 they might look down and away from you, but that's  
31 a sign of respect, right?

32 A I am not aware of that being a sign of respect,  
33 but I know that some people don't look at you in  
34 your eye when you talk to them. Yes.

35 Q Yeah. And it's not necessarily because they're  
36 disrespectful, right?

37 A Right.

38 Q Okay. Now, you were at the detachment having  
39 lunch when this call came in, right?

40 A Yes.

41 Q Let me just go back for a second. Because in your  
42 training you also spent time after you did these  
43 models, and after you went through and did these  
44 interactions with people, you went to the court --  
45 the courtroom you've got there. You spent some  
46 time in the courtroom that's there at Depot,  
47 right?

- 1 A Yes.
- 2 Q And you were taught how to give evidence there,  
3 right?
- 4 A Yes.
- 5 Q You were taught how to sit in the box, you were  
6 taught how to answer questions, and they went  
7 through, and it was like a primer in how to be a  
8 witness, right?
- 9 A They gave some training in that, yes.
- 10 Q Yeah. Because they've got a courtroom set up  
11 there, all for that purpose, right?
- 12 A Yes.
- 13 Q All right. Now, you also were taught it's very  
14 important to keep a notebook. That's one of the  
15 police officer's best friends is the old notebook,  
16 right?
- 17 A Yes.
- 18 Q And when you're walking around at Depot, the  
19 training facility, you all carry your notebook in  
20 your pocket, right?
- 21 A Yes.
- 22 Q And you're taught that you are supposed to keep  
23 that notebook, and that notebook is something that  
24 you may be allowed to use in court to refresh your  
25 memory, correct?
- 26 A Yes.
- 27 Q It's important to be accurate and it's important  
28 because of the usual record keeping that a police  
29 officer makes, he can use that notebook in court,  
30 right?
- 31 A Yes.
- 32 Q And that's true for statements. When you prepare  
33 a statement it's because you're able to say,  
34 "Well, you know what, I wrote a statement, Judge,"  
35 if you're in court on something, "I wrote a  
36 statement back at the time when the events were  
37 clear in my mind. May I refresh my mind from that  
38 statement?" Correct?
- 39 A Yes.
- 40 Q And in fact you did that the other day, you said  
41 to -- when you were in examination by counsel for  
42 the Commission you said, "Well, look, I want to  
43 take a look -- can I check my statement?" Do you  
44 remember that?
- 45 A Yes.
- 46 Q Yeah. Now, let's talk again about this -- the  
47 call coming in and you were sitting around having

1 lunch, that was the four of you. Is that  
2 accurate?  
3 A Yes.  
4 Q The same four members that attended at the scene?  
5 A Yes.  
6 Q This is back at the sub-detachment?  
7 A Yes.  
8 Q When you were having lunch, were you sitting  
9 around a table together? Is it a table setting,  
10 is it on couches, what's the circumstance, where  
11 were you sitting?  
12 A Table setting.  
13 Q And it's -- is it common for you when you come in  
14 when you're in the sub-detachment, I take it that  
15 that's a secure location, correct?  
16 A Yes.  
17 Q People can't come walking in and out of there  
18 without pressing a button or a buzzer. It's a  
19 totally secure location, right?  
20 A Yes.  
21 Q So when you guys are in there kicking back having  
22 lunch, would you take off what some people used to  
23 call the Sam Browne, but you call a tool belt. Do  
24 you take that off and hang that thing up?  
25 A No.  
26 Q You just leave that on?  
27 A Yes.  
28 Q All right.  
29 A You have to be ready to respond to a call.  
30 Q Yeah, but it only takes us -- it only takes a  
31 minute to put that on, doesn't it?  
32 A Not with the radio wiring and everything involved  
33 there. It takes me a little bit longer, so I keep  
34 it on.  
35 Q All right. Did the other members, did they take  
36 their tool belts off while they were sitting  
37 around having lunch?  
38 A I don't recall. I don't think they -- I don't  
39 know if they did.  
40 Q You're not sure.  
41 A No.  
42 Q Now, you had signed the Taser out earlier in the  
43 evening, right?  
44 A Yes.  
45 Q And when you signed it out, who had the other one  
46 signed out?  
47 A I don't know.

- 1 Q But when you go in, is that your -- you come on  
2 shift, do you go and check for the Taser? Is that  
3 something you do routinely?  
4 A Yes, check for everything.  
5 Q Just -- you're six-foot-one, right?  
6 A Yes.  
7 Q You're 200-and-something pounds.  
8 A 205, yes.  
9 Q You're in the prime of physical condition, right?  
10 You work out all the time?  
11 A As much as I can, yes.  
12 Q Yeah. You were a physical trainer before you  
13 joined the RCMP, right?  
14 A Yes.  
15 Q And then you went to -- to training and you spent  
16 all kinds of time marching around, right? That's  
17 in drill, right?  
18 A Yes.  
19 Q That's physical?  
20 A Yes.  
21 Q And then you spent time doing self-defence, right?  
22 A At Depot you're saying?  
23 Q Yeah.  
24 A Yes.  
25 Q And you do a lot of double-timing while you're  
26 around Depot, right?  
27 A Yes.  
28 Q And that's basically running with your boots on in  
29 time, right, double-timing?  
30 A Yes.  
31 Q The rest of the time you spend marching, right, in  
32 a proper -- with a proper march with your arms  
33 properly extended, right?  
34 A Yes.  
35 Q And then you do PT, physical training?  
36 A Yes.  
37 Q And you came out and you kept all that physical  
38 training up, right?  
39 A As much as I can. You're doing it every day  
40 there.  
41 Q I'm just kind of curious. Why did you feel you  
42 needed the Taser?  
43 A Need to carry it?  
44 Q Yeah. I mean, there's one Taser. You're the  
45 biggest guy on -- you're the biggest guy there,  
46 from what we heard yesterday, why not leave the  
47 Taser for somebody smaller? Why didn't you -- why

1 did you need it?  
2 A It was just a tool I was trained on, so I carried  
3 it just like anything else.  
4 Q But there was only one, right? The only one left.  
5 A I don't know if there was one or two the night  
6 that I took it, but there was one available and I  
7 took it.  
8 Q Yeah. Was there any conversation while you were  
9 having lunch over the Taser and the fact that you  
10 had it?  
11 A No.  
12 Q There wasn't any conversation about "Oh, you got  
13 it and I wanted to get it"?  
14 A No.  
15 Q You don't recollect that?  
16 A No.  
17 Q Are you sure about that, or just it didn't happen  
18 or you don't remember?  
19 A It didn't happen.  
20 Q Okay. That was your last night shift. Did you  
21 guys have -- do you have a special lunch on that  
22 last night shift?  
23 A A special lunch?  
24 Q Yeah, do you guys do something special for that,  
25 get together and have a special lunch on that last  
26 day that you work together before you go on your  
27 days off?  
28 A No.  
29 Q All right. Now, let's talk about the Taser  
30 training a little bit. When they talk to you and  
31 they give you the Taser, they talk to you about  
32 the different modes that the Taser can be used in.  
33 They talk about the stun and the probe, right?  
34 A Yes.  
35 Q But before they tell you any of that, they tell  
36 you this, don't they? That when you deploy one of  
37 these weapons, the onus is on you, the operator,  
38 to make sure that you had the grounds to use it,  
39 right?  
40 A Yes.  
41 Q The onus is always on you to explain your actions,  
42 correct?  
43 A Yes, explain why you deployed it.  
44 Q And that's why they come up with that AIM thing,  
45 the thing you kept referring to when you were  
46 being asked in examination in chief by your  
47 counsel, where -- what does AIM stand for again?

- 1 A It stands for ability, intent and means.
- 2 Q Right. And you were also schooled that there is
- 3 an operational manual. You know about the
- 4 operational manual?
- 5 A Yes.
- 6 Q That's like the Bible for a police officer, isn't
- 7 it?
- 8 A It's an important document, yes.
- 9 Q Well, it's pretty important. It tells you how you
- 10 handle every kind of situation, right?
- 11 A Yes.
- 12 Q You write tests about the operational manual when
- 13 you're in Depot, right?
- 14 A There are contents of the test that cover the
- 15 operational manual.
- 16 Q There are two manuals you use. One's the
- 17 administrative manual. That's how you order your
- 18 kit and supplies and how you apply for leave. And
- 19 then there's the operational manual that tells you
- 20 what you have to do and how you have to react in
- 21 certain circumstances. It tells you what you're
- 22 supposed to do and how you're supposed to react,
- 23 right, on an operational level.
- 24 A It covers that, yes.
- 25 Q Yes. And one of the things it tells you is
- 26 specifically that the onus is on you to prove that
- 27 you had the appropriate authority under s. 25 of
- 28 the **Criminal Code** to use force right?
- 29 A Yes.
- 30 Q That's fundamental to your training, right?
- 31 A Yes.
- 32 Q Now, they also tell you, even in the Taser course,
- 33 that it's preferable to try to use other means,
- 34 rather than resort to the Taser, correct?
- 35 A It says to assess other options available.
- 36 Q Well, they tell you, look, if you can persuade
- 37 that's preferable, right?
- 38 A If you can avoid using it, yes.
- 39 Q Yeah. It's the same old thing, just like you're
- 40 taught back at Depot: persuasion if you can do
- 41 it, warning if you can do it. You look for other
- 42 means, correct?
- 43 A You assess if there's other means available, yes.
- 44 Q And so you're mindful of this when you're
- 45 assessing other means. How many police officers
- 46 are available, right?
- 47 A Yes.

- 1 Q Where is the event taking place? Is it in a  
2 secure area or is it open to the public, and is  
3 the public likely to be engaged by whoever I'm  
4 dealing with, right?
- 5 A The environment, yes.
- 6 Q Yeah, the environment's very important, whether  
7 it's contained or not, right?
- 8 A The environment, yes.
- 9 Q Yeah. Now, you're told that this assessment is  
10 continuous, right? You have to continuously keep  
11 assessing?
- 12 A Yes.
- 13 Q And besides the fact you've got to justify your  
14 actions, you're also taught that you must legally  
15 be able to articulate your rationale, right?
- 16 A Yes.
- 17 Q That's taught to you in the course. It's part of  
18 the course material. It's on page 6, I believe.  
19 I think that's an exhibit, right?
- 20 A I don't know what page it's on, but it's taught,  
21 yes.
- 22 Q The legal articulation, the being able to sit  
23 there and explain and give chapter and verse as to  
24 why I did it, right?
- 25 A Yes.
- 26 Q Okay. Now, there's some safety issues with the  
27 Taser. They tell you that, look, you can take an  
28 eye out with this thing, right?
- 29 A If the probe goes in someone's eye, it can cause  
30 damage, yes.
- 31 Q If it hits them in the head, hits them in the  
32 throat, hits them in the groin area, any of those  
33 things can cause all kinds of issues, right?
- 34 A Yeah, the probe in certain areas can cause damage.
- 35 Q Yes, serious issues. They teach you to shoot at  
36 centre mass, right?
- 37 A Yes.
- 38 Q That's the chest area from the neck down, right?
- 39 A From the neck to the torso area.
- 40 Q Yeah. Just like you do on a shooting target,  
41 you're trying to find that sweet spot, the CX,  
42 right?
- 43 A The centre of mass is what we aim for, yes.
- 44 Q Yeah. And the centre of mass is that area right  
45 there in the old chest, right?
- 46 A It's the torso area.
- 47 Q Yeah. Now, and you know and there's no mistake

- 1 about the fact that if you hold the trigger down  
2 it's going to keep discharging, right?
- 3 A Yes.
- 4 Q And there's no question that you're told that  
5 multiple discharges are dangerous, right?
- 6 A We are told that they can be dangerous.
- 7 Q Yeah. You're told to avoid multiple discharges?
- 8 A We are told to avoid them when possible unless  
9 situational factors dictate otherwise.
- 10 Q Well, aren't you told that one is okay, two if you  
11 need them, but more than that, that that's not --  
12 that's not appropriate? Aren't you told that?
- 13 A No, we're told that we should avoid multiple uses  
14 if possible, but unless, like I said, situational  
15 factors dictate otherwise.
- 16 Q Well, you guys don't leave your brains at home.  
17 Why did you think that multiple -- that they  
18 didn't want you using multiple charges?
- 19 MR. HIRA: With respect, the first part of the question  
20 is improper; the second part of the question is  
21 proper.
- 22 MR. KOSTECKYJ: Well, let me rephrase it.
- 23 Q Why, when you brought your common sense, sir, to  
24 the equation, did you think that multiple charges  
25 might be something you should avoid, or that they  
26 brought to your attention?
- 27 A Due to the fact that if there's no reason to use  
28 it, if the person is under control.
- 29 Q Well, it was a bit more than that. They're  
30 telling you that every time you increase the risk  
31 when you keep deploying the Taser, right?
- 32 A We're taught that if you use it multiple times it  
33 can be dangerous.
- 34 Q Yeah, it can increase the risk, right?
- 35 A We're taught, like I said, I don't know about  
36 increasing the risk, but it's definitely not to be  
37 used if you can avoid it.
- 38 Q Now, you're also taught that you're supposed to  
39 give a challenge when you use that Taser, right?
- 40 A Where possible, yes.
- 41 Q What's the challenge?
- 42 A It's "Police, stop or you'll be hit with 50,000  
43 volts of electricity!"
- 44 Q Okay. And you're also taught that, look, the  
45 Taser looks remarkably like a gun and a lot of  
46 people think in circumstances that it is a gun,  
47 and that's an advantage to you for using it as a

- 1 warning device, right?
- 2 A We're not taught that, no.
- 3 Q Well, it does look like a gun, doesn't it?
- 4 A It has a trigger and a barrel like a gun.
- 5 Q Yeah. So it looks like a gun, right?
- 6 A Not to me because I'm trained in both and I've
- 7 seen them.
- 8 Q Yeah, but you appreciate that you're told during
- 9 the course of training that -- that it has and
- 10 looks like a gun to a lot of untrained people,
- 11 right?
- 12 A I don't recall being taught that, no.
- 13 MR. KOSTECKYJ: Okay. I'm looking, sir, at page 3 of
- 14 the section from -- and this is, sir, from the
- 15 exhibit -- have you seen the PowerPoint -- I'm not
- 16 sure. That hasn't been marked, I don't think, as
- 17 an exhibit, Mr. Giles?
- 18 THE REGISTRAR: It has not been marked, no.
- 19 MR. KOSTECKYJ: Okay.
- 20 Q I'm showing, you, sir, a PowerPoint presentation
- 21 that we've been told is the PowerPoint that was
- 22 being used at the time that you were being
- 23 trained. Do you recognize that, sir?
- 24 A I recognize some of the slides. I would have to
- 25 look at my own manuals, as well, to make sure that
- 26 the slides match up. So I could go from there.
- 27 Q Were there other manuals that you had, sir, that
- 28 besides the PowerPoint presentation? There were
- 29 manuals that were provided to you?
- 30 A Well, in a similar format. There was a PowerPoint
- 31 presentation that I received when I was trained,
- 32 and they may have added slides since, I don't
- 33 know.
- 34 MR. HIRA: He's brought whatever was given to him, that
- 35 he still has in his possession, if you want to
- 36 look at that.
- 37 MR. KOSTECKYJ: Yeah, while we're taking the break I'll
- 38 ask you to produce that and I'll have a look at
- 39 it, sir.
- 40 A Okay.
- 41 Q Now, I'm going to take you to the part on RCMP
- 42 policy and deployment. It's on page 3, but it's
- 43 actually towards the back, the very back portion
- 44 in my handout. If you go to the back three pages,
- 45 it's about four pages back from the very back,
- 46 page 3. Do you have that?
- 47 A I think so. It says page 3 on the bottom, you

1           said?

2       Q     Yeah, it says -- at the top it says "RCMP O.M.  
3           Policy Deployment", do you see that?

4       A     Yes.

5       Q     And it's got a section there, and this is from the  
6           Operational Manual, right?

7       A     Yes.

8       Q

9                   Multiple deployment or continuous cycling of  
10                  the CEW may be hazardous to a subject.

11

12                Right?

13       A     Yes.

14       Q     So you are told that there is a higher risk to  
15           someone's health and well-being if you do  
16           continuous or multiple taserings, correct?

17       MR. HIRA: Are you planning to put the next sentence to  
18           him?

19       MR. KOSTECKYJ: In due course.

20       A     Do you -- okay, sorry, repeat the question?

21       Q     Yeah. So you are told and you do know that the  
22           risk of multiple taserings increases risk of well-  
23           being to somebody.

24       A     Yes, we're taught that multiple deployments can be  
25           hazardous.

26       Q     Yes. And it tells you, and it goes on to tell  
27           you:

28

29                   Unless situational factors dictate otherwise,  
30                  do not cycle the CEW repeatedly, nor more  
31                  than 15-20 seconds at a time against a  
32                  subject.

33

34                Right?

35       A     Yes.

36       Q     And those factors would be things like: Are you  
37           alone facing somebody who's armed? Are you in the  
38           company of other able-bodied police officers,  
39           right?

40       A     That covers a lot of factors, possibly those ones  
41           will --

42       Q     But those ones in particular, right?

43       A     Those ones will be included, yes.

44       Q     And the location and area where you're dealing  
45           with somebody, correct?

46       A     Yes.

47       Q     All right. Now, are you taught as well, sir, that

1 if you have first aid training, and incidentally  
2 you're required to have first aid training in  
3 order to join the Mounted Police, right?  
4 A Yes.  
5 Q And it's a requirement of your job that you keep  
6 up your first aid certificate, correct?  
7 A Yes.  
8 Q So you have to make sure that you keep your first  
9 aid training up, right?  
10 A Yes.  
11 Q And you were first aid trained at the time?  
12 A Yes.  
13 Q And you're taught that as long as you're first aid  
14 trained, which everybody is, correct?  
15 A All members are, yes.  
16 Q The guy operating the Taser is supposed to remove  
17 the probes from the people that you shoot those  
18 probes into when the person's down, right?  
19 A It's said if you're first aid trained you can  
20 remove the probes.  
21 Q Yeah. And you do that unless they're located in a  
22 sensitive area like the eye or the groin, right?  
23 A You can do it, yes.  
24 Q You didn't do it, did you, sir?  
25 A No.  
26 Q You never tracked down the probes in this case.  
27 A No.  
28 Q Now, let's talk about all the various statements  
29 that you made, because there were lots. You made  
30 both -- and your notebook and everything else that  
31 you wrote about this case. When you were doing  
32 that, let's make no mistake about this, you had  
33 AIM in mind, right? You knew that you had to  
34 explain why a person had died in custody, and you  
35 also knew you had to explain why you used the  
36 certain kind of force, a Taser in the  
37 circumstances, correct?  
38 A You're asking if I knew I had to explain that?  
39 Q Yeah.  
40 A Yes.  
41 Q Well, you knew that because your obligation under  
42 s. 25 is you were taught and it was in your  
43 operational manual is onus is on you, right?  
44 A Yes.  
45 Q So, now, when you set -- first of all, you were --  
46 you wrote in your notebook, and I presume you did  
47 that still while you were at the scene, correct?

1 A Yes.

2 Q And you did that because you wanted to be able to  
3 use that notebook and refresh your memory if and  
4 when you were ever called to a court to testify  
5 about these matters?

6 A That's typically why you write in your notebook.

7 Q Yeah. And so you're trying to be as accurate and  
8 as straightforward as you can be, right?

9 A Do the best you can, yes.

10 Q Yeah. And you are taught in Depot to work under  
11 pressure situations, right?

12 A Yes.

13 Q You were trained, you were put under the gun, you  
14 get up at five o'clock in the morning and you go  
15 through evening. Sometimes you are dragged out of  
16 your dorm and you are made to do certain exercises  
17 or you were put through difficult circumstances in  
18 order to deal with stress, right?

19 A Yes.

20 Q And when you're at the firing range, for example,  
21 somebody might come around and try to distract you  
22 and take your mind off of what you're doing in  
23 order for you to be focused, right?

24 A Yes.

25 Q You were taught to work under stress, right?

26 A Yes.

27 Q So being in a stressful situation isn't unusual,  
28 is it?

29 A No.

30 Q In fact, you're put under stress from the first  
31 minute you arrive at Depot, the first time you  
32 meet a drill corporal, it's all stress, right?

33 A There's a lot of stress at Depot.

34 Q So making notes at the scene of a situation isn't  
35 something that you're not trained to do and aren't  
36 trained to deal with effectively, right?

37 A We're trained to make notes at the scene, yes.

38 Q And you're trained to deal with stressful  
39 situations, as well, right?

40 A Yes.

41 Q Okay. Now, you also went back to the detachment  
42 that day. You were sent back, right?

43 A After the incident you mean?

44 Q Right.

45 A Yes.

46 Q But before you went back there was a period of  
47 time when you were standing around while the

- 1 ambulance people were working and you were in the  
2 company of your other fellow police officers,  
3 correct?
- 4 A Yes.
- 5 Q And you were in the company of people from the  
6 airport, correct?
- 7 A Yes.
- 8 Q And you were in the company of people from the  
9 security for the airport?
- 10 A Yes.
- 11 Q And do you remember sitting before you left and  
12 having discussions with them about what had  
13 happened?
- 14 A No.
- 15 Q Okay. Because we heard evidence earlier, as I  
16 understand it, from one Mr. Enchelmaier, that  
17 there were discussions that took place between  
18 himself, police officers and others. Were you  
19 subject to those conversations?
- 20 A No.
- 21 Q Are you certain?
- 22 A Yes.
- 23 Q Well, where were you -- you didn't go out to  
24 interview anybody, correct?
- 25 A No.
- 26 Q You didn't monitor the body?
- 27 A No, I was just standing beside.
- 28 Q You were standing around in the area, correct?
- 29 A Yes.
- 30 Q Are you telling us that through that period of  
31 time you didn't have discussions with either  
32 airport personnel, security personnel, or anybody  
33 else about the circumstances of what had happened?
- 34 A No.
- 35 Q Well, do you remember the security guard finding  
36 the stapler?
- 37 A No.
- 38 Q Well, who found the stapler?
- 39 A I don't know.
- 40 Q Was it you?
- 41 A No.
- 42 Q I want to get this clear. While you were there,  
43 'cause from the time that you reeled up the Taser  
44 wires, you took no part in monitoring Mr.  
45 Dziekanski, right?
- 46 A No.
- 47 Q You didn't go and take statements?

1 A No.  
2 Q You didn't take photographs?  
3 A No.  
4 Q And so you were just in the area hanging out while  
5 the guys from Richmond Fire showed up and  
6 subsequently the ambulance?  
7 A I stood by, yes.  
8 Q Yeah. And you did that until you were sent back  
9 to the detachment in order to give a statement?  
10 A Yes.  
11 Q Okay. You did nothing active during the course of  
12 that period of time after Mr. Dziekanski was  
13 handcuffed and down until you went back to the  
14 detachment, nothing active in the investigation?  
15 A No. I had asked Corporal Robinson about vitals,  
16 but other than that, no.  
17 Q Yeah. And you did tell us that you don't -- you  
18 never actually observed Mr. -- Corporal Robinson  
19 taking vitals, right?  
20 A No.  
21 Q Now, when you got back to the detachment you knew  
22 that there was some seriousness to all this  
23 because you had a division rep there, right?  
24 A Yes.  
25 Q You knew you were going to have to give  
26 statements, the statements were going to be looked  
27 at and reviewed by others, and they were going to  
28 be your explanation of what went on in terms of  
29 your obligations to defend your actions, correct?  
30 A Yes.  
31 Q Because you indeed were supposed to defend your  
32 actions because the onus was on you, right?  
33 A Yes.  
34 Q All right. Now, you were also told that you  
35 weren't going to -- that the statements weren't  
36 going to be warned statements, right?  
37 A I wasn't warned, no.  
38 Q But you were told they weren't going to be warned.  
39 You knew that?  
40 A My division rep didn't tell me that, but when I  
41 went in I wasn't warned, so...  
42 Q And you knew there's significance to statements  
43 that aren't warned, right?  
44 A I wasn't thinking about that at the time.  
45 Q Well, you're a police officer. You know there's a  
46 difference between a warned and an un-warned  
47 statement.

1 A Yes.  
2 Q You know that a warned statement -- an un-warned  
3 statement can't be used in evidence in a criminal  
4 proceeding.  
5 A Well, if you're not warned and you're not under  
6 investigation, if you make a voluntary statement  
7 it may be used, so that's not entirely the case.  
8 Q Okay. But you understood that you were giving a  
9 statement that others were going to take a look  
10 and rely upon, right?  
11 A Yes.  
12 Q And at some point you became aware that there were  
13 Crown prosecutors that were looking at all of the  
14 evidence, and presumably your statement as well?  
15 A You're saying I knew that that was -- that  
16 happened later on?  
17 Q Yeah.  
18 A Yes.  
19 Q You never sought to change any of your evidence or  
20 to give an update or to clarify anything when you  
21 found out that this matter was going to be  
22 investigated by prosecutors, correct?  
23 A No, I never saw the statement until about a month  
24 ago.  
25 Q But you never took any opportunity to clarify  
26 anything?  
27 A No.  
28 Q You had your notebook with you. You didn't turn  
29 over your notebook. They took copies of it, but  
30 you kept your notebook?  
31 A Yes.  
32 Q So you knew what was in your notebook?  
33 A Yes.  
34 MR. KOSTECKYJ: Now, Mr. Giles, I'm not sure which is  
35 the exhibit with the -- with the note, the actual  
36 notebook.  
37 THE COMMISSIONER: 57.  
38 MR. KOSTECKYJ: Thank you, Mr. Commissioner. If 57  
39 could be put before the witness.  
40 Q I'm looking at an entry, sir, it says "1967-04-15"  
41 at the top. Do you see that?  
42 A Yes.  
43 Q Is this your handwriting?  
44 A Yes.  
45 Q What does 1967 refer to?  
46 A That would have been the date of birth of Mr.  
47 Dziekanski.

- 1 Q I see. Now, read for us what your note says, sir.  
2 A  
3 Upon attendance male was resistant - not  
4 listening to members - picked up stapler and  
5 motioned aggressively towards members. Taser  
6 deployed and cycled 3 times. Male did not go  
7 down - stayed on feet until members --  
8  
9 - and I put in brackets "(4)" -  
10  
11 -- wrestled to ground. Push stun deployed to  
12 upper back shoulder area. Cuffs put on.  
13 Male in custody put into recovery position.  
14  
15 Q Where did you get the information about Mr.  
16 Dziekanski's date of birth?  
17 A I'm not sure if it was papers or if I was told. I  
18 don't remember.  
19 Q Well, do you remember meeting a -- a Border  
20 Services agent, a Mr. Chapin?  
21 A No.  
22 Q Do you remember meeting any Border Services agent?  
23 A No.  
24 Q Do you remember a Border Services agent coming out  
25 and tracking down the documents for -- for you and  
26 other members?  
27 A No.  
28 Q Showing you where the passport and all the other  
29 documents were?  
30 A No.  
31 Q You were in the area but you never saw that  
32 happen?  
33 A I'm saying I don't recall it. I don't remember.  
34 Q Okay. You said that in your note that you were  
35 going to be able to rely upon later that you'd  
36 cycled three times the Taser, correct?  
37 A It says that, yes.  
38 Q It's wrong, isn't it?  
39 A Yes.  
40 Q You said that Mr. Dziekanski stayed on his feet  
41 until four members wrestled him to the ground.  
42 Right?  
43 A Yes.  
44 Q You never took part in wrestling Mr. Dziekanski to  
45 the ground.  
46 A No. This is what I jotted down at the time.  
47 Q No, but hold it. You, yourself --

- 1 MR. HIRA: Let him finish his answer, please.
- 2 MR. KOSTECKYJ: I thought he had.
- 3 A No, I hadn't. I said I jotted down at the time.
- 4 My statement is what I gave later. But I jotted
- 5 to the best of my recollection at the time.
- 6 Q Well, let's just review. After you finished with
- 7 the tasing, you were no longer involved in
- 8 monitoring Mr. Dziekanski, correct?
- 9 A No.
- 10 Q You weren't distracted by speaking to any Canadian
- 11 Border Services people apparently, correct?
- 12 A I don't remember that, no.
- 13 Q Yeah. You say you didn't have discussions, you
- 14 don't remember having discussions with airport
- 15 personnel or with security people, right?
- 16 A Yes.
- 17 Q And you weren't involved in making any of the
- 18 calls to the medical people, right?
- 19 A No.
- 20 Q So you had lots of time to focus on writing your
- 21 statement because you also weren't involved in
- 22 gathering evidence like the stapler, right? You
- 23 didn't do that.
- 24 A No.
- 25 Q You didn't do any photographs.
- 26 A No.
- 27 Q And you took no statements from anybody.
- 28 A No.
- 29 Q So you knew, sir, that you had no involvement in
- 30 taking Mr. Dziekanski to the ground, right?
- 31 A As I said, it was my best recollection at the
- 32 time. It was a fast moving, stressful situation,
- 33 and that is what I jotted down at the time.
- 34 Q It was wrong, right?
- 35 A Yes.
- 36 Q In fact, Mr. Dziekanski was felled by the Taser,
- 37 correct?
- 38 A Yes.
- 39 Q You never took the opportunity to correct that
- 40 answer at any time up until you came to this
- 41 proceeding, correct?
- 42 A Corrected in my notebook, you're saying?
- 43 Q Yeah.
- 44 A No.
- 45 Q And you had those notes with you the whole time?
- 46 A Yes.
- 47 Q Let's take a look at the statement you gave on

Cst. Kwesi Millington

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

1           October the 14th. That's the statement to  
2           Corporal Brassington.

3           A     I have it here.

4           Q     Incidentally, did you know Corporal Brassington  
5           before this?

6           A     No.

7           Q     Did you become aware that Corporal Brassington  
8           knew Corporal Millington (sic)?

9           A     I'm -- knew who?

10          Q     Sorry, Corporal Robinson.

11          A     I didn't know they knew each other.

12          Q     Well, I just notice that there seems to be some  
13          familiarity, and I thought maybe you -- you had  
14          never met Corporal Brassington before?

15          A     No.

16          Q     All right. Now, let's take a look at this  
17          statement on page 1, and let's go down after the  
18          dispatch call to "When we got in". Do you see  
19          that?

20          THE COMMISSIONER: Where are you now?

21          MR. KOSTECKYJ: I'm in the first full paragraphs where  
22          it says Constable Millington, it starts off,  
23          "Okay. We received a dispatch call". Do you see  
24          that?

25          A     I don't see it, no.

26          Q     This is on the October 14th statement.

27          THE COMMISSIONER: October 15th.

28          MR. KOSTECKYJ: Oh, sorry, I meant October 14th. My  
29          apologies.

30          THE COMMISSIONER: Now, you want to be in Exhibit 55.

31          MR. KOSTECKYJ:

32          Q     Do you have that, sir?

33          A     The one from the 15th you're saying?

34          Q     No, the 14th.

35          A     Okay. I'm going back to the 14th at 5:07.

36          Q     Yeah, 5:07 in the morning. And then you're giving  
37          your narrative of what happened, and it starts  
38          off, "Okay. We received a dispatch call".

39          A     Yes.

40          Q     And I'm taking you now to "When we got in". Do  
41          you see that part?

42          A     Yes.

43          Q     It says:

44

45                         When we got in, we proceeded public side,  
46                         which is behind the uh secure side of the  
47                         airport and were pointed to the direction of

1                   the secure side of the airport.

2

3

Right?

4

A

Yes.

5

Q

6

We went in and uh, saw some chairs lying  
7                   around and a male who was yelling and it  
8                   wasn't making sense.

9

10

The impression that you're giving in that  
11                   statement, sir, is that it was when you went  
12                   inside to the secure area that Mr. Dziekanski was  
13                   yelling at you. Do you see that?

14

A

I take it that it was when we went in and saw  
15                   chairs lying around and the male, I just said in,  
16                   so for me that meant public side.

17

Q

Okay. Because he wasn't yelling at you when you  
18                   were inside the secure area, when you entered in  
19                   to speak to him to begin with?

20

A

When we spoke to him, no.

21

Q

In fact, as you were approaching he was calm?

22

A

He appeared agitated and he was sweating, but he  
23                   wasn't yelling, no.

24

Q

Well, you say he was agitated. What was he doing  
25                   to make you feel that he was agitated?

26

A

Just by the way he looked, he was sweating, his  
27                   eyes were wide, and he was breathing heavily, so I  
28                   don't know what had made him agitated, but that is  
29                   the impression that I got.

30

Q

Are you saying that you actually saw him breathing  
31                   hard when you first walked in?

32

A

I could tell he was breathing deeply, but not  
33                   excessively so, but that was the impression that I  
34                   got that he was agitated.

35

Q

Well, he wasn't walking around, was he?

36

A

Not when we went right up to him. We were face-  
37                   to-face.

38

Q

Yeah. He wasn't yelling; he wasn't screaming; he  
39                   wasn't pacing, right?

40

A

Not when we were with him, no.

41

Q

No. And you say we tried to calm him down by  
42                   using hand signals. What you meant is you tried  
43                   to calm him down using hand signals, right?

44

A

Yes.

45

Q

That's that four to five seconds that we can't see  
46                   on the tape, that's the period of time you say you  
47                   did that?

- 1 A I think it was longer than four to five seconds,  
2 but it's the period we can't see.
- 3 Q Okay. Well, we have the tape, so that's easily  
4 identifiable for anybody. But if -- I put it to  
5 you that it was a four- to five-second period,  
6 window of opportunity for you to make those hand  
7 signals. Do you disagree with that?
- 8 A I would have to see the tape to know for sure,  
9 but...
- 10 Q Okay. Well, you viewed the tape with a lot of  
11 care. You spent last Saturday, you spent hours  
12 watching that tape, right?
- 13 A Yes.
- 14 Q All right.
- 15  
16 ...and he backed away from us and he was  
17 still yelling.
- 18  
19 Do you see that?
- 20 A Yes.
- 21 Q He wasn't yelling when he stepped away from you,  
22 did he?
- 23 A No.
- 24 Q So that was wrong.
- 25 A Yes.
- 26 Q And then you go on, he:  
27  
28 Picked up a stapler that was uh on a desk  
29 nearby. He was knocking things over and he  
30 approached us.
- 31  
32 He wasn't knocking anything over, was he, sir?
- 33 A He knocked things over before he picked up the  
34 stapler, so...
- 35 Q Are you telling us that we can see in the tape  
36 that he was knocking things over?
- 37 MR. HIRA: That's not a -- that's not a proper  
38 question. It can be reworded.
- 39 THE COMMISSIONER: Try again.
- 40 MR. KOSTECKYJ:
- 41 Q While you were in that secure area and before you  
42 tasered him, are you telling us that you saw him  
43 knocking things over?
- 44 A When he went to the desk before he picked up the  
45 stapler, I recall that he was knocking some things  
46 off the desk.
- 47 Q What did he knock off the desk?

- 1 A I don't know.
- 2 Q What hand did he use to pick up the stapler?
- 3 A I don't recall what hand.
- 4 Q Where did the stapler come from?
- 5 A It was on the table, same table there.
- 6 Q There's a shelf in front of that table, as well,  
7 right?
- 8 A I'm referring to the one table or shelf area that  
9 he moved to.
- 10 Q Yeah, but in front of that desk, when he was  
11 standing facing you, there's a shelf area.
- 12 A I'm not aware. I don't know.
- 13 Q All right. You don't remember whether there's a  
14 shelf in front of that desk or not, is that  
15 accurate?
- 16 A In front of the table where he picked up the  
17 stapler?
- 18 Q Yeah.
- 19 A I don't recall.
- 20 Q
- 21 I deployed the taser at this point and  
22 eventually we were able to wrestle him to the  
23 ground...
- 24
- 25 That wasn't right, was it?
- 26 A No.
- 27 Q And then I'm going to take you to page 4. You  
28 were asked a second time, so -- this is at the  
29 bottom of the page, sir:
- 30
- 31 Okay, so after he was tasered then you  
32 mentioned that he was, and I - I don't  
33 remember if you said he was put to the ground  
34 or wrestled to the ground or struggled on the  
35 ground or whatever. Um but after he was  
36 tasered, um, what happened after he was  
37 tasered?
- 38
- 39 Your answer was what, sir? Read it out for us.
- 40 A
- 41 Uh, well, he seemed to feel the effects of  
42 the taser but he didn't fall due to that.  
43 Members had to wrestle him to the ground.
- 44
- 45 Q Not correct, right?
- 46 A No.
- 47 Q Now, incidentally, after Mr. Dziekanski was

- 1 handcuffed and he was down, you never saw him  
2 conscious again after that, did you, sir, once the  
3 handcuffs were on him?
- 4 A Yes, he was grunting and still squirming after the  
5 handcuffs were on for a couple of minutes and then  
6 I think he went unconscious after that.
- 7 Q Well, it's been suggested to us that he was  
8 unconscious within seconds after being handcuffed.  
9 You don't recollect that?
- 10 A My recollection is a minute or two.
- 11 Q Let me take you to your statement, page 5, at the  
12 bottom. Do you see that?
- 13 A Yes.
- 14 Q Corporal Brassington asks you:  
15  
16 Okay. And um, when he was - eventually when  
17 he got handcuffed was he, was he still um  
18 conscious and everything when he was  
19 handcuffed?  
20
- 21 And your initial answer is what? Go on, read it  
22 to us, sir.
- 23 A  
24 Ah yeah. He appeared to be conscious and he  
25 appeared to be breathing -  
26
- 27 Q And Corporal Brassington says: "Okay". And you  
28 go on to say:  
29  
30 - as well.  
31
- 32 And he says:  
33  
34 Okay. Um, um at what point did um he fall  
35 into unconsciousness?  
36
- 37 And then you go to correct yourself. What do you  
38 tell him?
- 39 A  
40 ... I think that when he was on the ground he  
41 was unconscious, at at one point but brief -  
42 I think he was unconscious but breathing.  
43
- 44 Q So do you want to correct your answer, sir? After  
45 he was handcuffed and he was on the ground, isn't  
46 this what you're telling Corporal Brassington,  
47 that you're correcting yourself:

1                   Actually sorry. I think that when he was on  
2                   the ground he was unconscious, at at one  
3                   point but brief - I think he was unconscious  
4                   but breathing.

5  
6                   Right?

7                   A    I'm saying that when he was on the ground he was  
8                   unconscious at some point, as I said, but when he  
9                   was first handcuffed I still believe he was moving  
10                  and squirming for a minute or two before he went  
11                  unconscious.

12                 Q    Well, it looks to me from looking at page 5 that  
13                  what you're trying to do is correct your answer  
14                  from the bottom of page 5 at the top of page 6,  
15                  because you say:

16  
17                         Actually sorry. I think that when he was on  
18                         the ground he was unconscious...

19  
20                         Do you see that?

21                  A    I wasn't correcting. I was just telling him when  
22                  he went unconscious.

23                  Q    Yeah, okay. Now, you also saw that the probes  
24                  were still on him -- in him when he was on the  
25                  ground, right?

26                  A    I didn't see the probes, no.

27                  Q    Well, taking you to page 7. You're talking there  
28                  about:

29  
30                         The connectors were still attached, but he  
31                         was already on the ground.

32  
33                         Isn't that the probes?

34                  A    Yes. When I rolled up the filament on the  
35                  cartridge, I noticed that they weren't attached,  
36                  so from that my assumption would be that they were  
37                  in him, but I was telling you before I didn't see  
38                  them.

39                  Q    Yes. But you were telling him on that morning  
40                  that the connectors were still attached when he  
41                  was on the ground, correct?

42                  A    Yes, I said that to him.

43                  Q    And then he asks you is there anything else you  
44                  want to say about the incident. You're given that  
45                  opportunity, right?

46                  A    He asks if I wanted to get into more detailed and  
47                  lengthier statement and I said --

- 1 Q But he asks you if there's anything you want to  
2 add.
- 3 MR. HIRA: Again, if the officer could be allowed to  
4 finish his answer.
- 5 A Can you say what line you're referring to exactly?
- 6 MR. KOSTECKYJ:
- 7 Q Yeah, at the very last question, Corporal  
8 Brassington, "Okay" -- actually, just before that:  
9
- 10 Okay, got you. Now I know. Um, it is um  
11 5:13. Is there anything else about the  
12 incident itself and your response to it that  
13 you think is important that uh that I should  
14 know about? Anything to ask or that I forgot  
15 to ask?  
16
- 17 Right?
- 18 A Yes.
- 19 Q You didn't mention that you had deployed the Taser  
20 five times.
- 21 A I was aware of four times, but I didn't mention  
22 that, no.
- 23 Q He didn't mention that, either.
- 24 A No.
- 25 Q Well, you knew that multiple taserings were  
26 discouraged, from your training.
- 27 A Yes.
- 28 Q And you didn't think that was a significant fact  
29 to mention?
- 30 A In the body of the statement I mention multiple  
31 deployments to him.
- 32 Q Yes. Now, speaking about that multiple  
33 deployments, you were the only one that knew how  
34 many times you had deployed the Taser, correct?
- 35 A Yes.
- 36 Q The other members didn't.
- 37 A No.
- 38 Q And yet you never thought it significant enough  
39 that you should while standing around walk up to  
40 the ambulance attendants or the Richmond Fire and  
41 tell them how many times you had deployed, right?
- 42 A No, the other members, especially Corporal  
43 Robinson, who was dealing with them, knew that  
44 there was multiple deployments. He may not have  
45 known the exact amount but he definitely knew  
46 there was multiple.
- 47 Q Well, he knew there were two.

1 A He would have known two at least, yes.

2 Q Yeah. But you were the only one that had all the  
3 details?

4 A Yes.

5 Q Isn't there a certain responsibility when you take  
6 out and check out that weapon to be responsible  
7 for the weapon, to be responsible for its use and  
8 to be responsible and advise medical personnel  
9 about its use when necessary? Isn't that part of  
10 the responsibility of taking it?

11 A Yes, but I believe that Corporal Robinson had  
12 enough information to give to the EHS or the  
13 ambulance attendants regarding the Taser use.

14 Q You took no responsibility upon yourself, even  
15 though you had been the one to deploy the Taser,  
16 correct?

17 A Correct.

18 Q Now, let's talk about your second statement, or  
19 the next, October the 15th. This is the one  
20 that's taken the following day at 9:10 in the  
21 morning. I'm going to take you once again to page  
22 1, sir. I'm taking you down to the part where:

23

24 And as we went through, someone yelled he  
25 doesn't understand English.

26

27 Do you see that part?

28 A Yes.

29 Q It's about eight, nine lines down.

30 A Yes.

31 Q

32 That's what I remember hearing.

33

34 Correct?

35 A Yes.

36 Q So you knew the man couldn't speak the language,  
37 right?

38 A Yes.

39 Q And it goes on:

40

41 Um, so we got --

42

43 Are you all right, sir?

44 A Yes.

45 Q

46 Um, so we got to the male and he was  
47 definitely in an agitated state.

- 1           You're talking about you got to him, right?
- 2       A       Yes.
- 3       Q       So now you're in his company, right?
- 4       A       Yes.
- 5       Q
- 6                    He was yelling. I didn't understand what he
- 7                    was yelling.
- 8
- 9           You said that, right?
- 10      A       Yes.
- 11      Q       That was wrong, right?
- 12      A       It was wrong for that time. He was yelling when
- 13                   we got into the airport, but I guess this would
- 14                   imply that he was yelling when I was right in
- 15                   front of him, so that was incorrect.
- 16      Q       That was -- yeah, that was incorrect, wrong?
- 17      A       Right.
- 18      Q       And when you said he was definitely in an agitated
- 19                   state, he was standing there waiting for you to
- 20                   walk in the doors. He wasn't walking around, was
- 21                   he?
- 22      A       When I hopped over the railing and I approached
- 23                   him, he was not walking around, no.
- 24      Q       He wasn't in a fighting stance?
- 25      A       No.
- 26      Q       He was standing there with his hands by his side?
- 27      A       Yeah, they were low. Yes.
- 28      Q       And you didn't notice, for example, that he had
- 29                   his luggage beside him?
- 30      A       No.
- 31      Q       And at that time you didn't notice that there was
- 32                   any broken furniture, is what you told us
- 33                   yesterday, correct?
- 34      A       No.
- 35      Q       And then once again you talk about this proceeding
- 36                   to use hand signals, and that's the period of
- 37                   time, once again, that you showed us yesterday,
- 38                   that four to five seconds, whatever it is, when
- 39                   the camera shifts, correct?
- 40      A       Yes. You can see a little bit of it when the
- 41                   camera comes back into view.
- 42      Q       And that's this, doing this writing?
- 43      A       Yes.
- 44      Q       That's where you had your hand up and you were
- 45                   showing, pretending you were writing. What was
- 46                   the message you were trying to get across there?
- 47      A       I had mentioned passport, identification, two

- 1 universal words, or I thought to be universal  
2 words, to him, and that was along those lines what  
3 I was trying to tell him, communicate to him.
- 4 Q Did you see Mr. Dziekanski go towards his bag or  
5 point towards his bag?
- 6 A No.
- 7 Q You don't recollect that?
- 8 A No.
- 9 Q Are you saying it didn't happen, or you don't  
10 remember?
- 11 A It didn't happen as far as my recollection was.
- 12 Q Well, do you remember that he was told by -- by  
13 the corporal, Corporal Robinson, to stop when he  
14 was going towards his bag?
- 15 A I don't remember that, no.
- 16 Q So if that happened, you just don't remember that  
17 happening?
- 18 A No.
- 19 Q If he was told, and he -- and he stayed away from  
20 his bag, would that mean that he was obeying an  
21 instruction?
- 22 A If he was told -- sorry, can you say it again?
- 23 Q If he was told no, when he was reaching for his  
24 bag, and he stepped away, would that be obeying an  
25 instruction?
- 26 A If that is what happened, yes, he would be  
27 obeying.
- 28 Q Okay. I put this to you, sir, because previous  
29 witnesses, including your fellow officers, have  
30 said that he was reaching towards his bag and was  
31 told to stop.
- 32 A I don't recall that.
- 33 Q You don't recall that. Then at the bottom of the  
34 page:  
35  
36 He moved away from us. Ah, there were four  
37 of us there and he knocked some things. I  
38 didn't see what he knocked over but there was  
39 a desk nearby, a counter, and he knocked some  
40 things over and backed away from us and ah,  
41 at that point ah, we were all around him.  
42
- 43 Should we be able to see that on the tape, this  
44 knocking of things down?
- 45 A It's possible that you wouldn't have seen what he  
46 knocked over because the shelf is such that it's  
47 slightly below the upper part of the counter, and

1 the camera angle is from the other side of the  
2 glass.

3 Q Does that mean the camera wouldn't have been able  
4 to see the stapler?

5 A The stapler might have been higher, so I think you  
6 can see the stapler on the table.

7 Q All right. Now, you indicated that at some point  
8 you had turned Mr. Dziekanski into the recovery  
9 position. Do you recollect that?

10 A I had stated that we should turn him to the  
11 recovery position and I think I assisted with it.

12 Q Do you know what position Mr. Dziekanski was in  
13 when the Richmond Fire arrived?

14 A I would say he was in the recovery position, so,  
15 yeah.

16 Q So if other witnesses said that he was laying face  
17 down with his hands handcuffed behind his back and  
18 his head turned to the side, but his legs  
19 basically extended, is that what you mean by the  
20 recovery position?

21 A No. Recovery position is body turned on the side  
22 to allow for better breathing and circulation.  
23 The hands can be behind the back still, but as  
24 long as you're on your side, the breathing and  
25 circulation is okay.

26 Q Would you agree with me, sir, that a person who's  
27 unconscious has no control over their body? It's  
28 hard to keep them in the recovery position with  
29 their hands handcuffed?

30 A No. As long as you spread the legs, then it's  
31 enough of a balance that even if they're  
32 unconscious they will remain in the recovery  
33 position.

34 Q Okay. You -- did you pay attention when Richmond  
35 Fire arrived?

36 A I stepped back and I was not...

37 MR. KOSTECKYJ: Now --

38 THE COMMISSIONER: Maybe this is a good time to take  
39 the morning break.

40 MR. KOSTECKYJ: Yes, thank you.

41

42 (WITNESS STOOD DOWN)

43

44 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

45 (PROCEEDINGS RECONVENED)

46

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

1 MR. KOSTECKYJ: For the record, Walter Kosteckyj,  
2 counsel for Zofia Cisowski.

3  
4 CST. KWESI MILLINGTON, a  
5 witness, recalled.

6  
7 CROSS-EXAMINATION BY MR. KOSTECKYJ ON BEHALF OF ZOFIA  
8 CISOWSKI:

9  
10 Q We're just continuing on with your discovery -- or  
11 your examination, sir, correct? Now, you, just  
12 before the break or after we broke, you passed up  
13 your -- the documents that you had received from  
14 your conducted energy weapon training, correct?

15 A Yes.

16 Q With your notes on them?

17 A Yes.

18 Q And these are documents that you've kept with you  
19 since the time that you took that training on July  
20 12th, 2007?

21 A Yes.

22 Q And I note, sir, that you made a special note, in  
23 writing, of the fact that there should be no more  
24 than a 15 to 20 seconds of deployment of the  
25 Taser, correct?

26 A No more than -- it's no more than 15 to 20 seconds  
27 at a time.

28 Q It doesn't say that in your note. It says  
29 "deployment"; correct, sir?

30 A Yes, that's what it says.

31 Q Yeah. And it also -- what -- what are the other  
32 notes that follow along from that?

33 A There's a challenge -- the challenge is written  
34 there.

35 Q Yeah, what does it -- what does it say for the  
36 challenge?

37 A  
38 Police. Stop or you'll be hit with 50,000  
39 volts of electricity.

40  
41 Q And you've written that out as well, correct?

42 A Yes.

43 Q And it also talks about the fact that you've got  
44 to make notes in your notebook immediately after  
45 the event about when the discharge has occurred?

46 A Yeah, it says [as read]:

47

1                   Record the time, day, location of use in  
2                   notebook and whether challenge was given.  
3

4           Q       And that's your handwritten notes, correct?

5           A       Yes.

6           Q       You didn't record that in your notebook, did you?

7           A       No, I didn't.

8           Q       And it also says that you're to fill out that  
9                   3996, I think it is; is that correct?

10          A       Yes.

11       MR. KOSTECKYJ: I would suggest that these be marked as  
12                   an exhibit. These are the actual notes that were  
13                   made by this particular witness and as to his  
14                   training.

15       THE COMMISSIONER: Well, I'm hesitating here. You've  
16                   only read one little bit, and that's obviously in  
17                   the record. I mean, when one makes notes, they  
18                   really do have to be explained. I'm sure you've  
19                   encountered that with your own notes.

20       MR. KOSTECKYJ: Well, that's true. The main purpose  
21                   for providing these is that, as I understood it,  
22                   the witness didn't agree, necessarily, that the  
23                   material that we produced was in the -- was  
24                   correct, or the necessary -- the material he  
25                   received, that he had his own material. So other  
26                   than the notes that I've specifically referred to  
27                   or that other counsel have referred to, I'm not  
28                   interested in that being marked -- that being  
29                   considered as part of the exhibit, but I am  
30                   concerned about the details of the course and the  
31                   printed material that was provided to him.

32       THE COMMISSIONER: Oh, all right. We will mark it on  
33                   that understanding.

34       MR. HIRA: There are notes that my client has made  
35                   throughout these materials. In my submission,  
36                   what should be marked is the course and not the  
37                   notes. So what I would suggest is that we -- that  
38                   Mr. Morley, who's sitting with me, over the lunch  
39                   hour do some redacting and get this to you so that  
40                   you have the slides only.

41       THE COMMISSIONER: What have you to say about that?

42       MR. KOSTECKYJ: I'm satisfied with that.

43       THE COMMISSIONER: All right.

44       MR. KOSTECKYJ: Any notes I should -- he should be  
45                   questioned on.

46       THE COMMISSIONER: All right, thank you.

47       MR. HIRA: I don't think Mr. Morley will thank me.

1 MR. KOSTECKYJ:

2 Q In any event, you made specific mention of those  
3 things, and the specific mention was that you must  
4 keep track in your notebook of deployments,  
5 correct?

6 A Yes. It says, "Time, date, location of use," and  
7 "whether the challenge was given."

8 Q And you never did that, either one of those two  
9 things?

10 A No.

11 Q Let's go back, sir, to your statement for a  
12 second, that I was dealing with you before the  
13 break, and that was the statement of the 15th. Do  
14 you have that, sir?

15 A Yes.

16 Q I'm going to take you to page 13 of that  
17 statement. I'm actually going to take you to the  
18 very bottom of page 12, because that's where the  
19 question is raised that I want the answer to. And  
20 it's Corporal Brassington asking you [as read]:

21  
22 Okay. Okay. You guys get on to the secure  
23 side, you mentioned that he'd turned some  
24 steps backwards and then started knocking  
25 some things off of a desk or on a desk. Tell  
26 me as much as you can remember about, you  
27 know, him stepping backwards and what he did  
28 with these things on the desk.

29  
30 And then this is your answer - why don't you read  
31 it for us, sir.

32 A  
33 Um, yeah, like I said, before he knocked...  
34 some things that were on the desk --

35  
36 Oh:

37  
38 ...like I said, before he knocked...some  
39 things that were on the desk and ah, then he  
40 reached and grabbed the stapler, had it in  
41 the open position and had it raised high and  
42 then started advancing towards us.

43  
44 Q You said that?

45 A Yes.

46 Q You said he had it raised high, correct?

47 A Yes.

- 1 Q Well, isn't the impression from "raised high"  
2 meaning much higher than his chest level; isn't  
3 that the impression you were conveying there?  
4 A I don't believe so. I just said, "raised high".  
5 I wasn't exact about where exact he -- exactly  
6 that he had the stapler.  
7 Q Well, hold it. You were -- knew that you had this  
8 aim in mind. You knew that you had to cover  
9 yourself with s. 25, the onus is on you, and  
10 you're telling a corporal investigating this thing  
11 he had it raised high. I put it to you, sir, the  
12 impression you were trying to convey was that he  
13 had this thing up in the air, correct?  
14 A That's not the impression that I got from it.  
15 "High" can mean over the waist or high above the  
16 shoulder.  
17 Q Sorry, sir, what was that answer about high?  
18 A It can mean above the shoulder, but it can mean  
19 above the waist as well. I didn't get exact with  
20 it and he never went further with that.  
21 Q Well, there's a significant difference between  
22 raised high and raised to waist level; right?  
23 A Raised above waist level?  
24 Q Yeah.  
25 A High can be above waist level, yes.  
26 Q Are you seriously asking us to believe, sir, that  
27 you weren't intending to convey to the corporal  
28 that this thing was raised up in the air?  
29 A I didn't intend that, no.  
30 Q You also filled out an occurrence report; right?  
31 A Yes, I believe so.  
32 Q Do you have a copy of that with you, sir?  
33 A No.  
34 Q Do you see this, sir?  
35 A Yes.  
36 Q Do you have it?  
37 A Yes.  
38 Q This is a regular form that you're supposed to  
39 fill out with respect to every occurrence that you  
40 attend; right?  
41 A Yes.  
42 Q It's a form that's required, and in an  
43 investigation anything that's significant you  
44 write into an occurrence report, correct?  
45 A It's a synopsis, so it's normally a briefer  
46 version.  
47 Q Yes.

- 1 A And if you -- later on you do an occurrence  
2 report, which is the full details of the event.
- 3 Q Well, the purpose of this occurrence report is to  
4 put and maintain into a file what you did and what  
5 you saw with respect to any investigation that  
6 you're involved in, correct?
- 7 A Yes.
- 8 Q And the purpose of it is, is that if somebody else  
9 takes over the file they know exactly what you did  
10 and what you saw and they can then take reasonable  
11 steps thereafter, correct?
- 12 A That would be more what the occurrence report is  
13 for. Synopsis is just a brief overview.
- 14 Q But that was the purpose of it, it was for an  
15 occurrence report? It says, "General occurrence  
16 hard copy", correct? Synopsis, and it's part of  
17 the occurrence report?
- 18 A Synopsis precedes the occurrence report. It's  
19 just to give a quick snapshot of what happened,  
20 and then you can explain later in an occurrence  
21 report.
- 22 Q Yeah, and you're supposed to keep this accurate?  
23 Other people are relying upon this document?
- 24 A Yeah.
- 25 Q Right?
- 26 A Yes.
- 27 Q And you're required to keep it in the normal  
28 course of your duties, correct?
- 29 A To keep it? Sorry, I don't --
- 30 Q Well, to keep it, to make it in the normal course  
31 of your duty?
- 32 A Yes.
- 33 Q And in here, when you wrote your synopsis, you  
34 said the male appeared agitated; right?
- 35 A Yes.
- 36 Q Well, when you got to him he wasn't agitated, was  
37 he?
- 38 A Like I said, my version -- my impression of  
39 agitated was because he was sweating and his eyes  
40 were wide and he was breathing somewhat heavily,  
41 so --
- 42 Q I've read -- sorry, did I cut you off?
- 43 A Yeah. So that is what I determined agitated to  
44 be.
- 45 Q Okay. I've looked at your notebook, I've looked  
46 at your first two statements. I challenge you,  
47 sir, to show me where, in any of those statements,

1           you wrote that the man was sweaty. I challenge  
2           you, sir, to tell me where in those reports you  
3           wrote that his eyes were wide apart.

4           A     Wide.

5           Q     Wide. Where, in those -- any of those statements,  
6           where in your notebook, is that found?

7           A     I can check my statement, if you'd like me to,  
8           and --

9           Q     Yeah.

10          A     -- see where I find it.

11          Q     We'll take -- when we take a break, you take your  
12          opportunity to check your statement, all right?  
13          But in the meantime, let's proceed on. And then  
14          you said -- you go on to say [as read]:

15  
16                   At this point, a male backed away from  
17                   members and started to deliberately throw  
18                   things of the nearby desk.

19  
20           Correct?

21          A     Yes.

22          Q     You didn't point out that he'd been directed away  
23          from his bags, correct?

24          A     I didn't observe that, so no.

25          Q     Yeah. All right. And you say that he advanced  
26          towards members, correct?

27          A     Yes.

28          Q     He never advanced towards members, did he?

29          A     Yes, when he picked up the stapler and had it  
30          open, he started advancing towards us.

31          Q     He never took a step forward. He didn't get a  
32          chance before you tasered him, did he?

33          A     Actually, he did take a couple steps forward, one  
34          or two, I don't know how many.

35          Q     It's your evidence that he took one or two steps  
36          forward?

37          A     He took some steps, yes, forward.

38          Q     Some steps?

39          A     I don't recall if it was one or two, but he  
40          definitely started moving towards us.

41          Q     Okay. You never challenged him?

42          A     Challenge as in...?

43          Q     "Stop or I'll shoot" --

44          A     No.

45          Q     -- "50,000 volts into you"?

46          A     No, I never gave the --

47          Q     You were --

- 1 A -- challenge.
- 2 Q You were about 15 feet away from him?
- 3 A Perhaps 11 to 15 feet.
- 4 Q Yeah. Your other fellow members were well back
- 5 from him, correct?
- 6 A They were -- had maintained some distance.
- 7 Q So there was ample opportunity for you to give him
- 8 the challenge, was there not, sir?
- 9 A I didn't perceive it at the time.
- 10 Q Well, do you think that was a mistake now, in
- 11 retrospect, that you had time to give him the
- 12 challenge?
- 13 A No, I don't think I had time.
- 14 Q All right. Why not?
- 15 A As I've said before, it was a fast-moving
- 16 situation, he had it in his hand, I believed that
- 17 he was going to attack with the stapler, and I
- 18 acted quickly to stop the threat.
- 19 Q Well, what would have been wrong with taking the
- 20 one or two seconds to make the challenge or to
- 21 show him the gun, get his attention?
- 22 A Show him the Taser, you mean?
- 23 Q Yeah, the Taser gun.
- 24 A I believed that he was going to attack and I
- 25 acted, like I said, to stop the threat
- 26 immediately.
- 27 Q He wasn't attacking you?
- 28 A He was moving towards one of the other officers,
- 29 and I've said I feared for the safety of the other
- 30 officers.
- 31 Q Who?
- 32 A In the video I can see that Corporal Robinson was
- 33 likely the one that was right in front of him.
- 34 Q And he had pepper spray?
- 35 A Yes.
- 36 Q Baton?
- 37 A Yes.
- 38 Q Distance?
- 39 A He had created some distance.
- 40 Q Yeah. He had all those things working in his
- 41 favour, correct?
- 42 A Yes.
- 43 Q You had numbers on your side, four healthy, in
- 44 shape, police constables and a corporal, correct?
- 45 A Three constables and a corporal, yes.
- 46 Q The three of you had been out of training for less
- 47 than three years, so you were in very fit

1 condition, not long out of Depot, correct?  
2 A We were in shape, yes.  
3 Q Yeah. And you couldn't see why you should take  
4 the time to give a warning in those circumstances?  
5 A I didn't believe there was time.  
6 Q You also believe that you only discharged the  
7 Taser four times, correct?  
8 A Yes, that was my original thought.  
9 Q Did you panic, sir?  
10 A No.  
11 Q Well, I put it to you, sir, that you did. You  
12 panicked over the entire situation.  
13 A I did not. I feared for the safety of the other  
14 officers and so I acted to stop the threat.  
15 Q Your notes were wrong on many occasions, correct?  
16 A They were wrong a few times, yes.  
17 Q On many occasions, about things that are central  
18 and important to the issue of whether you had the  
19 right to use force?  
20 MR. HIRA: With respect, that's an argument my friend  
21 can make. If he wants to break it down, he may be  
22 able to ask questions.  
23 THE COMMISSIONER: No, it's a legitimate question.  
24 A It was wrong on some occasions, yes.  
25 MR. KOSTECKYJ:  
26 Q On many occasions that were related to your right  
27 to use force?  
28 A It was wrong on the amount of times I did deploy  
29 the Taser and our dealings with him. There was  
30 some incorrect parts of my notes.  
31 Q And you knew that those things were important in  
32 order for you to be able to justify using the  
33 Taser in the first place?  
34 A Yes.  
35 Q You were covering yourself in your notes and in  
36 your statement; correct, sir?  
37 A No, I don't believe so. That was what I  
38 recollected at the time and my statement and my  
39 notes were my best recollection of the events.  
40 Q Let's go on and take a look at 54-B, which is the  
41 new exhibit that was produced today. Do you have  
42 that, sir?  
43 A I don't think so.  
44 MR. KOSTECKYJ: Mr. Giles, the witness needs 54-B,  
45 please.  
46 THE REGISTRAR: I do not have it, the actual  
47 replacement, the substitute.

1 MR. KOSTECKYJ: I think we -- I only got the copy that  
2 was passed out this morning. I'm not sure if  
3 there's another one or not. If my -- Mr. McGowan,  
4 it looks like, is coming to my rescue.

5 Q Do you have that, sir?

6 A Yes.

7 Q Do you see the incident summary?

8 A Yes.

9 Q This is a document that you're required to fill  
10 out and to explain your use of the Taser?

11 A Yes.

12 Q [As read]:

13

14 At the time of arrival -

15

16 -- do you see this --

17

18 - members approached the male -

19

20 A Yes.

21 Q

22 - who was yelling and standing on secure side  
23 of the arrivals area.

24

25 A Yes.

26 Q

27 The male had destroyed a computer and damaged  
28 airport property on the secure side.

29

30 Do you see that?

31 A Yes.

32 Q

33 You didn't know that when you came in. You told  
34 us you never saw the damaged material until after;  
35 right?

36 A

37 No. I filled this out a long time after the  
38 actual event, and it was likely information that I  
39 got from seeing the scene afterwards.

40 Q

41 But somebody reading this may have thought that  
42 you actually knew about that before you deployed  
43 the Taser; right?

44 A

45 Yes, they may have.

46 Q

47 It was a false impression, correct?

48 A

49 Yes.

50 Q

51 Now [as read]:

52

53 When members got closer, he stepped back and  
54 away. The male then deliberately knocked

55

1 items off a desk and grabbed an office  
2 stapler. The male swung the stapler wildly  
3 with his arm at members.  
4

5 Do you see that?

6 A Yes.

7 Q Wildly?

8 A I've said before, that was incorrect.

9 Q Okay. So once again, this is a document you're  
10 required to fill out to meet your onus, and it's  
11 an incorrect characterization of what Mr.  
12 Dziekanski was doing?

13 A Yes.

14 Q Are you prepared to admit now, sir, that you were  
15 just covering yourself here?

16 A No. This was what I understood to be an internal  
17 document. My statement reflects my more accurate  
18 depiction of what happened.

19 Q Well, you knew that it was a document that was  
20 required to be filled out to justify your use of  
21 the Taser.

22 A I didn't actually understand that entire  
23 statement --

24 Q Well, we --

25 A When I filled this out, I just understood it to be  
26 an internal document. Didn't know the reason for  
27 it, really.

28 Q Well, you knew, from taking the course, your  
29 handwritten notes that were on there, you must  
30 give a warning, you must keep track in your  
31 notebook, correct?

32 A Yes.

33 Q Must keep track when you deploy; right?

34 A Yes.

35 Q Must keep track of time of deployment?

36 A Yes.

37 Q Must talk about the warning?

38 A Yes.

39 Q And must fill out this 3996 as proof -- to meet  
40 your proof, your onus, of why you did it, correct?

41 A I knew I had to fill out this form, yes.

42 Q Yeah. And then it goes on [as read]:  
43

44 Constable Millington un-holstered the CEW and  
45 pointed it at the male subject. The male was  
46 not apprehensive.  
47

1           That's not true, is it?  
2       A     The -- sorry, where are you? That he was not  
3           apprehensive?  
4       Q     Yeah. That's not true?  
5       A     Well, I don't believe he was apprehensive. He was  
6           -- he was combative at that time, so --  
7       Q     Well, he didn't stop because he never saw it  
8           coming, did he?  
9       A     I don't know if he saw it.  
10      Q     Well, you never made eye contact with him?  
11      A     I don't recall if I did, no.  
12      Q     Well, you never called his name or said, "Hey,  
13           you," or, "Stop, I'm gonna shoot," any of that  
14           kind of stuff, right?  
15      A     No.  
16      Q     You never drew his attention to you?  
17      A     No.  
18      Q     So this is a misleading statement as well, is it  
19           not, sir?  
20      A     That he wasn't apprehensive?  
21      Q     Yes.  
22      A     I don't know.  
23      Q     You don't know whether he was apprehensive or not,  
24           because you never made any eye contact with him.  
25      A     Like I said, he was combative, so --  
26      Q     Not my question.  
27      A     Okay.  
28      Q     My question was: You never made any eye contact  
29           with him?  
30      A     That was your previous question, yes.  
31      Q     Yeah. And the answer was?  
32      A     I never made eye contact with --  
33      Q     No.  
34      A     -- him.  
35      Q     You knew there was official significance to this  
36           document?  
37      A     I did not know the significance of --  
38      Q     Well, look, you went to a course on the Taser,  
39           correct?  
40      A     Yes.  
41      Q     Prohibited weapon. You were taught that at the  
42           Taser course?  
43      A     Yes.  
44      Q     What's a prohibited weapon?  
45      A     It's a designation of a weapon in the **Criminal**  
46           **Code** that is to be possessed, to my understanding,  
47           to be possessed only by certain people, police

- 1 being one of them.
- 2 Q Yeah. Prison guard's the other. Can you think of  
3 anybody else?
- 4 A No.
- 5 Q No. Just like automatic machine guns, those kinds  
6 of things, they're all prohibited weapons, right?
- 7 A I don't know if a machine gun is prohibited or  
8 restricted.
- 9 Q Well, you studied this at Depot, you know what's  
10 prohibited.
- 11 A The Taser, yes. I don't know about other weapons.
- 12 Q Okay. I would have thought you would have studied  
13 that as well, to know when you can seize a  
14 prohibited weapon or not when you're doing a  
15 search of a car.
- 16 A That's why we carry the **Criminal Code** with us, so  
17 that we can look these things up.
- 18 Q Now, let's just go back and review the scene and  
19 our entry into it. Neither you nor anybody else  
20 you saw spoke to a complainant, correct?
- 21 A No.
- 22 Q Now, is it not common and, in fact, usual that  
23 when you get a complaint you track down the  
24 complainant and get their story?
- 25 A If that's possible we -- we do that sometimes.
- 26 Q Well, why wasn't it possible here?
- 27 A We entered the airport area and, like I said, I  
28 heard yelling, and due to the call that came in,  
29 we wanted to get to Mr. Dziekanski as soon as  
30 possible to figure out the situation.
- 31 Q What do you mean "we"? You never made a "we",  
32 because you never spoke to anybody else, correct?
- 33 A No.
- 34 Q There was no "we". There was no plan. There was  
35 no organization. There was no communication,  
36 correct?
- 37 A No.
- 38 Q Right. So why couldn't one of the four of you  
39 stop to talk to the complainant?
- 40 A I can only explain my actions. I wanted to get to  
41 the male as soon as possible.
- 42 Q The answer is, sir, is it not, that somebody could  
43 have, correct?
- 44 MR. HIRA: Well, with respect, now he is arguing. The  
45 witness has said what he did. He can't speak for  
46 the others.
- 47 THE COMMISSIONER: There's some justification for that.

1 MR. KOSTECKYJ: All right.  
2 Q There were four of you, right?  
3 A Yes.  
4 Q All four of you didn't have to jump over the fence  
5 all at once, did you?  
6 A I -- maybe not. They could have waited if they  
7 wanted to. But I --  
8 Q Well, look --  
9 A -- wanted to get to him, so that's why I went  
10 over.  
11 Q But Bentley had already jumped over the fence  
12 before you.  
13 A The -- okay.  
14 Q Right?  
15 A Yes.  
16 Q He was in front of you, going over the fence?  
17 A Yes, I believe so.  
18 Q Why couldn't you hang back and speak to a  
19 complainant?  
20 A I wanted to assist and deal with the male, so --  
21 Q Okay. Well, here's the call you got. You got a  
22 call that there was broken glass, right?  
23 A Got a call that he was throwing chairs through  
24 windows, yes.  
25 Q Yeah. But there was no chair going through a  
26 window, right?  
27 A No.  
28 Q There was nobody bleeding?  
29 A No.  
30 Q There was nobody injured?  
31 A Not that I could see, no.  
32 Q Mr. Dziekanski was behind a glass partition,  
33 correct?  
34 A Yes.  
35 Q He was the only one in the area?  
36 A In the secure area?  
37 Q Yeah.  
38 A That I could see at the time, yes.  
39 Q Yeah. And you can see the whole area because it's  
40 all glassed?  
41 A Yes. But I was --  
42 Q You didn't -- you didn't see a broken computer at  
43 that point?  
44 A No.  
45 Q You didn't see any debris broken?  
46 A No.  
47 Q You didn't see any reason for urgency, did you,

- 1 sir?
- 2 A Actually, I did see a reason for urgency because I  
3 wanted to get to him, but I did not see the debris  
4 that you were talking about.
- 5 Q Yeah, I know you wanted to get to him, but you  
6 didn't have to. You didn't have to run to it, did  
7 you?
- 8 A I didn't run to him. I just wanted to get to him,  
9 like I said.
- 10 Q Well, don't you think that jumping over a barrier  
11 is running to him?
- 12 A No. It's just getting past the barrier to me  
13 communicating with him.
- 14 Q Look, you were taught at Depot about how to deal  
15 with people, and one of them was, take your time,  
16 especially if you think you're dealing with a  
17 distressed person, and be calm, right?
- 18 A Be calm, you said?
- 19 Q Yeah.
- 20 A Yes.
- 21 Q Act in a calm fashion?
- 22 A Yes.
- 23 Q Make it seem that you are in control and casual,  
24 right?
- 25 A Yes.
- 26 Q Well, jumping over a barrier isn't in control and  
27 casual, is it?
- 28 A It's what I needed to do to get to him. And when  
29 I dealt with him, initially when I tried to  
30 communicate with him, I was calm and casual.
- 31 Q Okay. No one went to customs, right?
- 32 A No.
- 33 Q You never thought of going to customs, yourself?
- 34 A No.
- 35 Q Well, Bentley engaged him to begin with, Constable  
36 Bentley, correct?
- 37 A He may have greeted him first, yes.
- 38 Q Yes. So why did you butt in?
- 39 A I was trying to assist, trying to communicate with  
40 him the same way.
- 41 Q Yeah, but look, when you're dealing with a  
42 distressed person, you've been taught at Depot you  
43 -- this is just common sense. When somebody's  
44 engaged him, you don't get a bunch of people  
45 engaging the same person, correct?
- 46 A I don't recall that, no.
- 47 Q You don't recall being told in Depot that when

1           you've got a distressed person, let somebody talk  
2           to him, stand in the background, let that person  
3           see where they can go?  
4        A     No. We approach a call at the same time and so we  
5           all try our best to communicate with him.  
6        Q     Well, let's use some common sense. You've got a  
7           distressed person. Do you think it's a good idea  
8           for three or four people to engage him in  
9           conversation, or is it better for one?  
10       A     One or two is fine.  
11       Q     Yeah.  
12       A     I didn't feel that there was anything that I was  
13           saying that was getting in the way of Constable  
14           Bentley communicating with him.  
15       Q     Well, there was also nothing preventing you from  
16           going in the customs hall to see if Mr. Dziekanski  
17           had come out of the customs hall, right?  
18       A     There was not time for that. We wanted to get to  
19           him and communicate with him.  
20       Q     There was nothing to stop you from walking past  
21           Bentley, who was communicating with him, and going  
22           to the customs hall, was there?  
23       A     No.  
24       Q     Looking at him and knowing that he was on the  
25           secure side, did it ever cross your mind that he'd  
26           just come out of the customs hall?  
27       A     No.  
28       Q     Well, how do you get to the secure side?  
29       A     Typically, you come from that area, but I did not  
30           know where he came from, at that point.  
31       Q     Yeah, but the surmise, what you would have  
32           thought, coming upon that scene, was that he just  
33           exited out of the customs hall, correct?  
34       A     I didn't think of that at the time. I just wanted  
35           to communicate with him.  
36       Q     Right. You didn't want to follow CAPRA, you  
37           didn't want to assess, did you, sir?  
38       A     Actually, I was assessing?  
39       Q     Really? Well, you didn't assess the complainants,  
40           correct?  
41       A     No.  
42       Q     You didn't get any information about whether he'd  
43           been violent or not?  
44       A     No. Other than the dispatch call.  
45       Q     Yeah. But dispatch calls, you don't rely solely  
46           on a dispatch call, you investigate. That's what  
47           CAPRA's about. That's what assessment is, right?

1 A Yes.  
2 Q Let's talk about this urgency that you talk about.  
3 You never used sirens, right?  
4 A Sirens?  
5 Q Yeah, to get there.  
6 A No.  
7 Q You never used lights?  
8 A No.  
9 Q And you knew that it was, what was it, in the  
10 dispatch it was a three?  
11 A Like I said, I didn't pay attention to the number.  
12 I just listened to the information.  
13 Q Well, doesn't that number make some sense to you,  
14 some urgency, if it's a one, a two, or a three,  
15 doesn't that make a difference?  
16 A It does, but I rely more on what's being told to  
17 me as opposed to looking at a number on a screen.  
18 Q Yeah, but if it's a one, they tell you it's a one,  
19 right?  
20 A They don't actually say, "One" --  
21 Q Yeah.  
22 A -- on the dispatch.  
23 Q Well, there must be some significance to it. They  
24 must be trying to tell you something, whether it's  
25 a one, a two or a three, three being a lower level  
26 of urgency than a one, right?  
27 A Three is a lower level urgency, yes, but all they  
28 have is what's on the screen. They don't say,  
29 "One, two or three" --  
30 Q Yeah.  
31 A -- in the dispatch.  
32 Q But they let you know it was a three, right?  
33 A On the dispatch ticket --  
34 Q Yes.  
35 A -- that's listed.  
36 Q Yes. Right?  
37 A Yes.  
38 Q Okay. Now, let's talk about the first-aid or the  
39 lack thereof. You knew, and it was brought to  
40 your attention that Mr. Dziekanski was turning  
41 blue --  
42 A Yes.  
43 Q -- correct?  
44 A Yes.  
45 Q That was within seconds or certainly brief moments  
46 or a minute or two after he was handcuffed --  
47 A Yes.

- 1 Q -- correct?
- 2 A Yes.
- 3 Q You had first-aid?
- 4 A Yes.
- 5 Q You had a certificate?
- 6 A Yes.
- 7 Q Someone turning blue held special significance for  
8 you, did it not?
- 9 A It might mean that there's not circulation going  
10 to the head area, but...
- 11 Q And if you don't have circulation to the head area  
12 for four to six minutes, you knew this from your  
13 first-aid, did you not, you stand the danger of  
14 dying?
- 15 A I don't know the exact amount of minutes. I know  
16 that it's definitely something you need to attend  
17 to.
- 18 Q Well, if I suggested to you that it was four to  
19 five minutes or 10 minutes, would you agree with  
20 me?
- 21 MR. HIRA: Well, there are two (indiscernible - away  
22 from microphone). Maybe you could be a bit more  
23 precise.
- 24 MR. KOSTECKYJ: Okay, well, let's be precise.
- 25 Q You took the first-aid course?
- 26 A Yes.
- 27 Q You know that there's a precious allotment of time  
28 once someone is unconscious and if they aren't  
29 able to breath or circulate, correct?
- 30 A Yes.
- 31 Q And that steps have to be taken, correct?
- 32 A Yes.
- 33 Q You knew that the man was turning blue?
- 34 A Yes.
- 35 Q You knew that that meant that he had circulation  
36 issues?
- 37 A Yes.
- 38 Q The normal step that would be taken in respect of  
39 that is CPR, correct?
- 40 A No, not if they still have breathing and a pulse  
41 and Corporal Robinson indicated to me that he did.  
42 You don't do CPR if they're still breathing and  
43 they have a pulse.
- 44 Q There was no discussion about doing CPR between  
45 you and Corporal Robinson, was there?
- 46 A No.
- 47 Q Never even came up?

- 1 A No.
- 2 Q Wasn't even something that the two of you  
3 reflected on for a moment?
- 4 A We never discussed it, no.
- 5 Q No. And you never thought of turning on your  
6 radio and calling the ambulance authorities or  
7 your dispatcher to advise them, "The man's turning  
8 blue, now," correct?
- 9 A Constable Bentley called for EHS services.
- 10 Q Yeah, and you heard that call, correct?
- 11 A Yes.
- 12 Q Did anybody mention blue, that the man was turning  
13 blue, that you heard?
- 14 A No, I don't think so.
- 15 Q No. Well, didn't you think that was significant?
- 16 A No. The significant part is making sure EHS gets  
17 there immediately, and that's why we called for  
18 Code 3.
- 19 Q Yeah, well, don't you think it's important that  
20 they have as many details as they can about the  
21 patient?
- 22 A The details that we gave, for them to come Code 3,  
23 that was sufficient.
- 24 Q Yeah, but didn't you think that they would be able  
25 to instruct you or assist you in how to deal with  
26 the man if they knew more about his condition?
- 27 A No. I felt what was done was sufficient.
- 28 Q You ever had a man turning blue on you before  
29 that?
- 30 A No.
- 31 Q So this was a highly unusual circumstance, you've  
32 got a prisoner, he's cuffed with his hands behind  
33 his back, he's turning blue, one of your fellow  
34 constables is bringing that to your attention, and  
35 you don't think you should bring that specific  
36 fact to anybody's attention who's a caregiver?
- 37 A Like I said, I felt what was done was sufficient.
- 38 Q So the answer was, "No, you didn't think it was  
39 reasonably prudent to do that"?
- 40 A No.
- 41 Q Sir, you took ownership of the Taser that day,  
42 right?
- 43 A I signed it out, yes.
- 44 Q You were prepared to take on the responsibilities  
45 that came with using the Taser?
- 46 A Yes.
- 47 Q Weren't you the one primarily responsible for

- 1 making sure that the medical attention was dealt  
2 with as well?
- 3 A We are all trained in first-aid, so anyone can do  
4 it.
- 5 Q Yeah, but you're the one that shot the Taser.  
6 You're the one that took ownership. You're the  
7 one that made the decision. You are taught in  
8 that course that you have medical responsibilities  
9 that come after the Taser is deployed, correct?
- 10 A You're taught that you can remove the probes, but  
11 it's a -- it's optional. And all of the members  
12 knew that Mr. Dziekanski was tasered, so we were  
13 all prepared to give the same help to ambulance  
14 attendants, et cetera.
- 15 Q Yeah, except you were the only one that knew he'd  
16 been tasered five times, or four, correct?
- 17 A Yes.
- 18 Q Now, in your first-aid course, did you know the  
19 significance of a defibrillator?
- 20 A Yes.
- 21 Q Did you, at any time, consult with anybody in the  
22 area to see where one might be located?
- 23 A No.
- 24 Q Did you ever consult with the airport authorities  
25 who were standing by while you were waiting in the  
26 area, to see where the emergency response from the  
27 airport might be?
- 28 A No.
- 29 Q Sir, you just abdicated all responsibility for the  
30 use of the Taser that night to others, didn't you?
- 31 A What does abdicated mean, sorry?
- 32 Q Well, it means that you turned over your  
33 responsibility or the responsibility for dealing  
34 with this man to others. You just assumed others  
35 were doing it?
- 36 A I knew they were capable of giving the same  
37 information that I could with --
- 38 Q And you -- sorry?
- 39 A With the exception of the four deployments.
- 40 Q You knew they were capable, but you never saw  
41 anybody actually monitoring him?
- 42 A I asked Corporal Robinson if he had breathing and  
43 pulse and he told me, "Yes," so I believed him,  
44 that he was monitoring him.
- 45 Q Yeah, but you never actually saw him doing it?
- 46 A No.
- 47 Q You never saw anybody from the airport doing it,

1 or any security official doing it, correct?  
2 A No.  
3 Q Look, in your statements, you left the impression  
4 he was yelling, when you were dealing with him,  
5 correct?  
6 A I said he was yelling, yes.  
7 Q While you were dealing with him. That's the  
8 impression you left?  
9 A Was that in my statements or in the report? I  
10 don't know.  
11 Q Well, in the statements and the report. We've  
12 gone through it all, sir. Right?  
13 A I remember it in the report. I don't remember in  
14 the statements if I left the impression he was  
15 yelling right when we were dealing with him, but I  
16 may have.  
17 Q You used the word "raising his hands" in your  
18 statement, remember that?  
19 A Yes.  
20 Q You told people that you had to take him down,  
21 four of you had to jump on him?  
22 A I said he had to be wrestled to the ground.  
23 Q Well, that was four of you jumping on him, right?  
24 A No. We were trying to wrestle him to the ground.  
25 Q Yeah. Well, isn't that the impression you were  
26 leaving, four of you had to take him to the  
27 ground?  
28 A Yes.  
29 Q Because the Taser was ineffective on him?  
30 A I just said that four had to wrestle him to the  
31 ground.  
32 Q That was the impression you were leaving, the  
33 Taser was ineffective on him, you had to take him  
34 to the ground?  
35 A Okay.  
36 Q Is that true?  
37 A I guess someone could have that impression, yes.  
38 Q Well, what other impression would you form if you  
39 had to wrestle him to the ground?  
40 A That possibly Taser had some effects on him, like  
41 I said, but it wasn't fully enough to take him to  
42 the ground, so that is likely the impression that  
43 I may have left.  
44 Q But the Taser did take him to the ground?  
45 A Yes, I realize that now.  
46 Q Sir, I put it to you again: You panicked, you got  
47 this all wrong because you don't have a good

1 recollection of what happened that night, do you?  
2 A Actually, I do, and like you said, I made some  
3 mistakes in the statement, but my overall  
4 recollection I think was good.  
5 Q Your overall recollection was good?  
6 A Yes.  
7 Q You didn't know you tasered him five times, or you  
8 didn't know you deployed the Taser five times,  
9 right?  
10 A No.  
11 Q You worked with these individuals before?  
12 A Yes.  
13 Q For some period of time or some months, correct?  
14 A Yes.  
15 Q Did you guys work out together?  
16 A I may have worked out with them once or twice, I  
17 don't know.  
18 Q Okay. I'm guessing you were the strongest of the  
19 four of them; is that accurate?  
20 A I could be.  
21 Q Yeah. Well, you'd worked out with them before.  
22 That was -- you had a sense of who the strongest  
23 person was there, correct?  
24 A I would assume that I was the strongest, yes.  
25 Q Yeah. Why didn't you just put the Taser down and  
26 just help them restrain him when he was on the  
27 ground?  
28 A At what point are you talking about?  
29 Q Well, after the first tasing.  
30 A Like I said, he wasn't under control, he was still  
31 fighting the members off.  
32 Q He was on the ground.  
33 A But he was still fighting, actively struggling,  
34 and still had his arms in front of him.  
35 Q Well, we'll let the -- the tape, itself, will be  
36 evidence of how he was struggling, but did you see  
37 him going into the fetal position, protecting  
38 himself, did you see that?  
39 A That's not what I interpreted at the time.  
40 Q You've seen the tape since?  
41 A Yes.  
42 Q You see that on the tape now?  
43 A I don't interpret it at that, no.  
44 Q You don't interpret it that way?  
45 A You mention the fetal position, and I don't  
46 remember --  
47 Q Do you remember --

- 1 A -- I don't interpret him --
- 2 Q Do you remember him --
- 3 A -- acting that way.
- 4 Q -- on the tape, reaching for his chest after he's
- 5 shot?
- 6 A After the application where he hits the ground,
- 7 yes, he did curl up, yes.
- 8 Q Yeah. In a fetal position?
- 9 A You could call it that, I guess.
- 10 Q He's screaming in pain when he's on the ground?
- 11 A He was yelling in pain, yes.
- 12 Q Yes. So why didn't you just forget about all the
- 13 second, third and fourth and fifth tasing and
- 14 just help the guys?
- 15 A When he was on the ground and they moved in to try
- 16 to control him, I did move in at that point, but
- 17 he was still fighting us off, and that's when I
- 18 had to use it again, because he was still fighting
- 19 and kicking and struggling with us.
- 20 Q Are you aware of dangers of using a Taser when the
- 21 probes are in stun mode, when the probes are still
- 22 in the individual?
- 23 A Sorry, say that again?
- 24 Q Well, if you've still got probes in the
- 25 individual, in your prisoner, and then you go and
- 26 use it in stun mode, do you -- are you aware of
- 27 any dangers that flow from that?
- 28 MR. NEAVE: My objection to that question is there's
- 29 simply is no foundation for the proposition that
- 30 my friend is endeavouring to ask --
- 31 THE COMMISSIONER: Well, he's asking whether he knows
- 32 anything about this.
- 33 MR. NEAVE: But implicit within there is an assertion
- 34 that there is a danger with respect to the
- 35 application of the Taser device when the probes
- 36 are affixed to the subject and the -- and the
- 37 device is being deployed in push stun mode, and
- 38 there's simply no evidence -- there's no
- 39 foundation for that assertion whatsoever.
- 40 THE COMMISSIONER: Well, it's not an assertion, it's a
- 41 question. I appreciate your concern, and I agree
- 42 with your premises --
- 43 MR. NEAVE: Thank you.
- 44 THE COMMISSIONER: -- but I still think that it's a
- 45 proper question.
- 46 MR. NEAVE: Thank you, Mr. Commissioner.
- 47

1 MR. KOSTECKYJ:  
2 Q Sir?  
3 A Can you ask the question again?  
4 Q Yeah. When the probes are still in a -- your  
5 client and -- are you aware of any dangers that  
6 flow from the fact that you would use the Taser,  
7 have you ever been made aware of that, in the stun  
8 mode --  
9 A No.  
10 Q -- when the probes are still in him?  
11 A No, I'm not aware of any danger.  
12 Q All right. There are websites that deal with law  
13 enforcement and the use of Tasers. Were you  
14 familiar with those at the time?  
15 A No, I just rely on what I was trained.  
16 Q Okay. You didn't go beyond that and look at the  
17 websites and the different types of tasing and  
18 how you might use a Taser more effectively?  
19 A No. My job is to act within my training.  
20 Q I know that's what your job is, but did --  
21 A No, I never went to any other website.  
22 Q Okay. Are you now prepared to admit that you  
23 would do things differently that night, sir?  
24 A No. I acted within my training, but I never  
25 intended that end result.  
26 MR. KOSTECKYJ: Thank you. Those are my questions.  
27 THE COMMISSIONER: Thank you.  
28 MR. HIRA: There's one matter outstanding. He wanted  
29 the officer to go through his statement to deal  
30 with where "sweaty and wide eyes" are found. I  
31 encourage my friend to direct the officer to page  
32 12 of the October 15th statement.  
33 THE COMMISSIONER: All right, that's --  
34 MR. KOSTECKYJ: Well, before I'm done, let's do that.  
35 Q Do you see page 12, sir?  
36 A This is --  
37 THE COMMISSIONER: Do you know --  
38 MR. KOSTECKYJ: This is the second -- this is --  
39 MR. HIRA: Exhibit 56, Mr. Commissioner.  
40 THE COMMISSIONER: All right. It certainly helps the  
41 record if we use the exhibit numbers.  
42 MR. KOSTECKYJ: Sorry.  
43 THE COMMISSIONER: So this is Exhibit 56, page which?  
44 MR. HIRA: Page 12, and it's the first answer.  
45 THE COMMISSIONER: Page 12.  
46 A It's at the top that it says.  
47

1 MR. KOSTECKYJ:

2 Q Yeah. And then at -- if you look at the bottom of  
3 page 11 [as read]:

4  
5 That's all I'm asking for. What was your  
6 impression when you guys got out to him.  
7 Tell me how he appeared, physically, when you  
8 got up close [to him]?

9

10 And your answer was [as read]:

11

12 he appeared, you know I keep you using the  
13 word agitated, but his eyes were really wide  
14 and he seemed like he was either sweaty or  
15 clammy or something.

16

17 So you seem to be uncertain --

18 THE COMMISSIONER: I think you should read it all.

19 MR. KOSTECKYJ: Sorry.

20 Q [As read]:

21

22 I don't know what it was, but possibly on the  
23 affect of something. It wasn't just the look  
24 of something who looked angry.

25

26 Correct?

27 A Yes.

28 Q Now, when you first saw Mr. Dziekanski, you never  
29 called for medical assistance, correct?

30 A No.

31 Q If you thought you were dealing with somebody who  
32 had medical issues, that's what you're trained to  
33 do, correct?

34 A Who had medical issues?

35 Q Yeah. If you thought he had medical issues when  
36 you first came upon him, you would have been  
37 calling for medical backup, correct?

38 A Not necessarily right away. Depending on -- we  
39 always try to communicate with them first, and see  
40 if we can go from there, and eventually we can  
41 call for EHS.

42 Q Don't you call EHS right when -- if you think that  
43 there's mental health issue?

44 A No. We normally would try to deal with the person  
45 first, then go from there.

46 Q Now, there's nothing in there about breathing  
47 heavily, is there, sir?

Cst. Kwesi Millington

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

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

1 A Not in there, no.

2 Q And, in fact, you didn't see Mr. Dziekanski  
3 breathing heavily when you first came upon him?

4 A I don't know if it's anywhere in the statement,  
5 but my recollection is that he may have been  
6 breathing heavily, but I don't recall.

7 Q You don't have a recollection of that?

8 A Not at this time, no.

9 MR. KOSTECKYJ: Those are my questions. Thank you

10 THE COMMISSIONER: Thank you.

11 MS. ROBERTS: For the record, my name is Helen Roberts.

12 I'm a lawyer for the Government of Canada.

13

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

16

17 Q Constable Millington, you were asked by Mr.  
18 Kosteckyj about actions that you took at the scene  
19 after Mr. Dziekanski was handcuffed; do you  
20 remember that?

21 A Yes.

22 Q Do you have your notes in front of you, Exhibit  
23 57?

24 A My notes from my notebook?

25 Q Yes.

26 A I have my notebook here. I don't have the  
27 exhibit. Is that good enough?

28 Q Yes, that's fine.

29 THE COMMISSIONER: Ms. Roberts, can I just interrupt  
30 you for a moment. I think we should mark this  
31 last document.

32 MR. KOSTECKYJ: Yes, thank you.

33 THE COMMISSIONER: Yes, it's called Conductive Energy  
34 Weapon Usage Report, will be the next exhibit.

35 THE REGISTRAR: That will be marked as Exhibit  
36 number 60.

37

38 EXHIBIT 60: Conductive Energy Weapon Usage  
39 Report

40

41 THE COMMISSIONER: Yes, Ms. Roberts.

42 MS. ROBERTS:

43 Q In your notebook, sir, there are printed numbers  
44 on the bottom right corner of the pages; am I  
45 correct?

46 A Yes.

47 Q All right. And Mr. Kosteckyj took you through and

- 1 asked you to read out the information you wrote on  
2 page 5?
- 3 A Yes.
- 4 Q And you were asked about how many times you  
5 referred to the Taser deployment on that page?
- 6 A Yes.
- 7 Q And I don't want to lead. What do your notes say  
8 about Taser deployment on that page?
- 9 A It said it was deployed and cycled three times.
- 10 Q All right. And if you read further down to after  
11 the point in time when Mr. Dziekanski's on the  
12 ground, does it say anything further about Taser  
13 deployment?
- 14 A On the same page or --
- 15 Q Yes.
- 16 A Well, it says:  
17  
18 Push stun deployed to upper back and shoulder  
19 area.  
20
- 21 Q All right.
- 22 A "Upper back shoulder area."
- 23 Q Is the reference to push stun in addition to the  
24 cycling three times or was it meant to be included  
25 in the cycling three times?
- 26 A I think it's in addition.
- 27 Q All right. So your notes refer to four  
28 deployments?
- 29 A Yes.
- 30 Q Thank you. On page 6 of your notes, the next  
31 page, you've got a reference at the top to "OTH".  
32 What does that mean?
- 33 A That is our definition for "other". Normally,  
34 every person we deal with has a labelling system,  
35 I guess, for our reporting, and "OTH" means  
36 "other".
- 37 Q And you've got Mr. Pritchard's name right  
38 underneath that?
- 39 A Yes.
- 40 Q And then you have some -- what appears to be an  
41 address and a phone number?
- 42 A Yes.
- 43 Q Where did you get that information?
- 44 A I would have gotten it directly from Pritchard, if  
45 I remember correctly.
- 46 Q All right. So was that something you did at the  
47 scene after Mr. Dziekanski was handcuffed?

- 1 A Yes, it would have been.
- 2 Q And below that, you've got the name of someone  
3 else there?
- 4 A Yes, that's information that I got from Ron Van  
5 Hooten, and his information's there.
- 6 Q All right. And did you get that information from  
7 Mr. Van Hooten at the scene?
- 8 A Yes.
- 9 Q So in terms of things that you did after the scene  
10 -- after Mr. Dziekanski was handcuffed, you  
11 evidently went and spoke to two witnesses and got  
12 some information?
- 13 A Yes, I obtained some information from -- from  
14 them.
- 15 MS. ROBERTS: Mr. Commissioner, this might be the  
16 appropriate moment in which to relay, that is,  
17 personal information, and we would ask that the  
18 same order be made, that if this is copied, that  
19 that --
- 20 THE COMMISSIONER: Yes.
- 21 MS. ROBERTS: -- personal information be --
- 22 THE COMMISSIONER: Yes, I agree with that.
- 23 MS. ROBERTS: -- covered. Thank you.
- 24 Q Constable, since leaving Depot, have you taken a  
25 number of courses with the RCMP?
- 26 A Yes.
- 27 Q Have you taken any courses in motor vehicle  
28 accident work?
- 29 A Not that I can think of, no.
- 30 Q At Depot you received training with regard to the  
31 Instant Management Intervention Model, I think  
32 you've testified?
- 33 A Yes.
- 34 Q In that training, have you received information  
35 with regard to dealing with, for instance, a  
36 person with an edged weapon?
- 37 A In -- in training?
- 38 Q Yes.
- 39 A Yes.
- 40 Q All right. And have you received training about  
41 the distance that a police officer would like to  
42 be from a person with an edged weapon?
- 43 A Yes. I don't remember the exact number. I think  
44 it's actually about 20 feet or 21 feet.
- 45 Q All right. And were you given information about  
46 why that would be preferable for a police officer  
47 to be that distance?

- 1 A Well, with regards to reaction time, the action  
2 that someone takes is always faster than the  
3 police officer's reaction, so they can cover  
4 distance, or someone with an edged weapon, as you  
5 say, can cover distance extremely quickly before  
6 we even have time to react. So that extended  
7 distance, whereas it may look really far to some  
8 people, someone with an edged weapon can act  
9 really quickly and reach you really fast if they  
10 are to attack.
- 11 Q All right. In answering that question, you  
12 referred to the police officer's reaction time.  
13 Do you recall what you were trained about,  
14 specifics of what you were told about the police  
15 officer's reaction time?
- 16 A With regard to reaction, it's always slower than  
17 the person's action. I don't recall everything  
18 specifically, but...
- 19 Q And that would be the time to react to do what,  
20 for instance?
- 21 A Oh, if reaction time is to actually -- for  
22 example, if we're against an edged weapon, it  
23 would be to defend ourselves, reaction time to  
24 make sure that we keep safe, protect the safety of  
25 ourselves and other officers.
- 26 Q All right. Would you -- one of the possible  
27 reactions to a person with an edged weapon be to  
28 draw your firearm?
- 29 A Oh absolutely, yes.
- 30 Q When you were trained about reaction time, were  
31 you trained anything about the time it would take  
32 to extract your weapon?
- 33 A I don't recall the exact time, but the distance  
34 that you create is to give you time to react to  
35 get your weapon out, if that's what you need to  
36 do.
- 37 Q All right. Were you given any similar training  
38 about persons with other potential weapons that  
39 weren't edged weapons?
- 40 A We were trained that anything can -- a lot of  
41 different things can be used as weapons that may  
42 not be considered weapons otherwise. Yeah.
- 43 Q Were you trained about the distance you would want  
44 to be from a subject with something -- something  
45 that could be a weapon but wasn't an edged weapon?
- 46 A The time/distance ratio, we are always -- we are  
47 trained that you want to give yourself enough

- 1 distance from someone who has any weapon, to give  
2 yourself time to react, and...
- 3 Q When Mr. Dziekanski turned and had the stapler in  
4 his hand, I think your evidence is that you were,  
5 was it, 11 to 15 feet, am I correct, from him?
- 6 A Yes, that's what my statement says.
- 7 Q All right. According to your training, was that a  
8 safe distance away from a police officer?
- 9 A Actually, I would prefer more distance. Like I  
10 said before, if someone has a weapon, if you have,  
11 ideally, 21 feet, that is what I remember the  
12 number to be, anyways. It would have been nice to  
13 create more distance, if possible.
- 14 Q Do you recall the optimum distance at which you  
15 can use the conducted energy weapon in probe mode  
16 and still hit the subject?
- 17 A I would have to verify from my training, but I  
18 think it's 20 or 21 feet.
- 19 Q All right. Does the distance from the subject  
20 make any difference to where the probes land on  
21 the body, according to your training?
- 22 A Yes. The top probe shoots straight. The bottom  
23 at an eight-degree angle. So the further away you  
24 are, the greater the spread of the probes. And  
25 the further the spread of the probes on the body,  
26 the -- the more effective the CEW would be.
- 27 Q All right. You may not remember, but if you do,  
28 do you recall what the spread would be from a  
29 distance of 11 to 15 feet, by any chance?
- 30 A No. I did write down the spreads in my notes, if  
31 you want me to check, but I don't remember it  
32 offhand.
- 33 Q If you have those notes there, that would be  
34 helpful.
- 35 A I -- I have about half of the documents. If I  
36 could get the rest of them, I could find it, I  
37 think. What's the distance? I -- I have it here.
- 38 Q Yes, if you could give us an approximation.
- 39 A What is the distance that you were asking about?  
40 You were asking for a specific distance?
- 41 Q I think your evidence is you were 11 to 15 feet  
42 away from Mr. Dziekanski when you deployed the  
43 Taser --
- 44 A Oh, okay.
- 45 Q -- the first time.
- 46 A Well, 10 feet would be an 18-inch spread and --  
47 THE COMMISSIONER: Eighteen-inch?

- 1 A Eighteen-inch spread. And 15 would be 26-inch  
2 spread, according to my notes here.
- 3 MS. ROBERTS:
- 4 Q According to your training, would the Taser have  
5 more impact or less impact the further apart the  
6 probes were on the person?
- 7 MR. KOSTECKYJ: That was actually asked and answered,  
8 with respect. The officer indicated earlier in  
9 his evidence the further the probes are apart the  
10 more effective it was.
- 11 MS. ROBERTS: Well, Mr. Commissioner, many counsel have  
12 asked repetitive questions. I apologize if that  
13 was --
- 14 THE COMMISSIONER: Well --
- 15 MS. ROBERTS: -- covered.
- 16 THE COMMISSIONER: -- I -- yeah. No, go ahead.
- 17 A So yes, the further apart the probes are, it's  
18 more effective.
- 19 MS. ROBERTS:
- 20 Q And were you trained as to why it would be more  
21 effective if the probes were further apart?
- 22 A Yes. Basically, the current travelling through  
23 the filaments to the probes, if it has a wider  
24 spread there is a greater distance for the current  
25 to go through and effectively immobilize the  
26 subject.
- 27 Q Were you given any training about a police  
28 officer's reaction time in un-holstering and  
29 getting their Taser ready to fire?
- 30 A Say that again, sorry?
- 31 Q Were you given any training about the reaction  
32 time of a police officer to perceive a threat, un-  
33 holster their conducted energy weapon and get it  
34 ready and -- to fire?
- 35 A I believe we're trained just to create as much  
36 distance as you can to give yourself the  
37 reactionary time necessary to pull out and deploy  
38 the Taser if necessary.
- 39 Q All right. Can you tell the Commissioner the  
40 steps you would take when deciding to use your  
41 conducted energy weapon?
- 42 A Basically, you look at the behaviour of the  
43 subject and if -- according to our training, it's  
44 used for highly resistant or combative behaviour,  
45 and the steps taken are you assess the situation  
46 and if they fit the behaviour and AIM is  
47 satisfied, as in they have the ability, intent,

1 intent to harm, "M" means you're justified to use  
2 it.

3 Q I'm sorry, I should have been more specific.  
4 A Okay, sorry.  
5 Q I met the physical steps that you would take.  
6 A Okay.  
7 Q What would you physically --  
8 A Okay, sorry.  
9 Q -- have to do?  
10 A You have to un-holster it, it has a thumb release  
11 to un-holster it, take off the safety and then  
12 deploy.

13 Q All right. Do you know how long that took you  
14 during training or how long that took you on the  
15 night in question?  
16 A It would be a second or two either way.  
17 Q Now, during your training, were you told anything  
18 about a condition referred to as agitated or  
19 excited delirium?  
20 A Yes. We were told that sometimes a person can  
21 exhibit excited delirium -- symptoms of excited  
22 delirium, and we're trained that the Taser is a  
23 very effective tool because if someone is  
24 exhibiting excited delirium or has that condition,  
25 they are normally focused and aggressive and other  
26 methods of intervention do not have an effect, and  
27 the Taser is most effective for that, because it  
28 causes immobilization and we can gain control of a  
29 subject that's exhibiting those -- that condition,  
30 if you will.

31 Q Did you observe in Mr. Dziekanski any of the signs  
32 that you had been trained might indicate a person  
33 was experiencing agitated delirium?

34 THE COMMISSIONER: Now, let's be clear. This is at the  
35 time and before the Taser was used, is that what  
36 you mean? Or in reflection?

37 MS. ROBERTS: I was going to get to whether he  
38 considered it at the time.

39 THE COMMISSIONER: Oh, all right.

40 MS. ROBERTS: Perhaps I'll start with that.  
41 Q On the night in question, did you -- did it occur  
42 to you that Mr. Dziekanski might be exhibiting  
43 some of the signs of agitated delirium as you'd  
44 been trained?  
45 A Yes. Basically, what I saw with regards to him  
46 being sweaty and his eyes really wide, and I think  
47 I said clammy in my notes as well, to that

- 1           agitated state is very typical of someone who is  
2           -- who has excited delirium or is under that --  
3           has that condition, sorry.
- 4        Q     All right. Did making those observations have any  
5            impact on what you decided to do at the scene?
- 6        A     When I got there, no. I wanted to communicate  
7            with him, and that was my primary goal.
- 8        Q     All right. In your training, do you remember if  
9            you were told anything about how to deal with  
10           people exhibiting agitated delirium, in terms of  
11           your interaction with them?
- 12       A     Yes. We were -- when we got training on that with  
13            regards to people with excited delirium, we're  
14            trained that they must be restrained before they  
15            can be treated, so I think the -- the actual slide  
16            was there can be no medical treatment without  
17            restraint, and so we needed to -- I mean, in a  
18            situation where someone has excited delirium,  
19            restraint is the first goal.
- 20       Q     Now, you've given evidence that once Mr.  
21            Dziekanski was on the ground, was it three or was  
22            it four of you initially trying to handcuff him?
- 23       A     At what point are you talking about?
- 24       Q     When Mr. Dziekanski was on the ground --
- 25       A     Okay.
- 26       Q     -- were there three members trying to handcuff  
27            him, or were you involved, initially, in the  
28            physical restraint of him?
- 29       A     I had approached and had gone to his leg area to  
30            try to restrain him. I wasn't trying to actively  
31            handcuff him. I wasn't at that part of his body.  
32            But I was involved in the trying to control him.
- 33       Q     All right. Had you been involved in a situation  
34            before that, where four members were involved in  
35            restraining someone?
- 36       A     Not that I can recall, no.
- 37       Q     Had you been involved in a situation where three  
38            members were required for restraining someone?
- 39       A     Yeah, I've been involved in situations before  
40            where there have been multiple members that need  
41            to restrain one person, absolutely, yeah.
- 42       Q     Was this similar to those incidents, or was this  
43            different in some way?
- 44       A     It was different, because it took longer to -- to  
45            restrain him. But at the same time, it was  
46            similar in the sense that we have had situations  
47            where our first attempts were not successful to

Cst. Kwesi Millington

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

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

1           restrain someone.

2           Q     Just to cover this off, did I talk to you about  
3           the questions I was going to ask you before I  
4           asked these questions?

5           A     No.

6           MS. ROBERTS: Thank you.

7           THE COMMISSIONER: Now, what -- I've lost track of our  
8           order. Who else is wanting to --

9           MR. HIRA: These gentlemen are next.

10          THE COMMISSIONER: Yes, all right.

11          MR. HARRIS: I'm Reg Harris. I'm counsel for Corporal  
12          Robinson.

13

14          CROSS-EXAMINATION BY MR. HARRIS ON BEHALF OF CORPORAL  
15          ROBINSON:

16

17          Q     When you were being questioned by Commission  
18          Counsel, you were asked whether or not you heard  
19          any commands prior to your first deployment of the  
20          Taser; do you recall that question, sir?

21          A     Yes.

22          Q     All right. Where was your focus immediately  
23          before deploying the Taser?

24          A     It was on Mr. Dziekanski.

25          Q     Okay. Were you watching what the other officers  
26          were doing?

27          A     No.

28          Q     Were you expecting them to say anything to you?

29          A     No.

30          Q     All right. Would you have any reason, at that  
31          stage, to be focusing on Corporal Robinson?

32          A     No.

33          Q     Immediately after the first deployment and prior  
34          to Mr. Dziekanski going to the ground, so I'm  
35          focusing on the deployment, the time period  
36          between the first deployment and Mr. Dziekanski  
37          going down on the ground, where was your focus?

38          A     Still on him.

39          Q     All right. Were you paying any attention to the  
40          other officers?

41          A     No.

42          Q     Can you describe for us the noise level in the  
43          environment at that time?

44          A     I can't tell how loud it was. I was just focused,  
45          so I don't know about how loud it was.

46          Q     Okay. When you say "just focused", can you  
47          explain what you mean by that?

- 1 A We were dealing with Mr. Dziekanski, and I would  
2 assume I had some level of auditory exclusion at  
3 that point, and...
- 4 Q Can you explain to us what you mean by "auditory  
5 exclusion"?
- 6 A During a stressful event, when you are dealing  
7 with someone, you are focused on one point or one  
8 person or whatnot, in this case it was Mr.  
9 Dziekanski, and you block out a lot of other  
10 audible sounds. Your brain just does that  
11 automatically because you're focused and it is,  
12 like I said, a high-stress situation.
- 13 Q Okay. Is it impossible that the -- this auditory  
14 exclusion was operating for you prior to the first  
15 deployment?
- 16 THE COMMISSIONER: I think --
- 17 MR. HARRIS: All right, let me rephrase it, then.
- 18 Q Prior to the very first deployment, were you  
19 feeling a level of stress at that time?
- 20 A Yes, I would say so, yeah.
- 21 Q I'm just going to ask you briefly about the  
22 critical incident debriefing. When you went to  
23 that debriefing, did you make any notes there?
- 24 A No.
- 25 Q Did you see any of the other officers present  
26 making notes?
- 27 A No.
- 28 Q Did that debriefing in any way change or shape  
29 your recollection of the events?
- 30 A No.
- 31 MR. HARRIS: I wonder if we could go to Pritchard video  
32 two, please. And we do not need the sound. Do  
33 not need the sound. And if we could go to 0344,  
34 please.
- 35 Q All right, sir, do you see yourself in the video  
36 there?
- 37 A Yes.
- 38 MR. HARRIS: What I'm going to ask is that it be played  
39 to approximately 0346, if you could just play it,  
40 please.
- 41
- 42 (VIDEO BEING PLAYED)
- 43
- 44 MR. HARRIS: Stop there.
- 45 Q Can you describe for us what your right hand is  
46 doing in that frame where it's been stopped?
- 47 A I think I may be pointing to the table there.

1 Q All right. Do you recall any conversation or why  
2 you did that, or anything about that, sir?

3 A I don't recall, no.

4 Q Okay. All right, in a moment I'm going to ask  
5 that it be played, and I'm going to ask you to  
6 watch what your actions are, I'm going to ask you  
7 to describe it, and I'm going to ask you why you  
8 make those actions, all right? Is that clear?

9 A Yes.

10 MR. HARRIS: Okay. Would you please play it, sir.  
11 Stop.

12 A At that point, he had picked up the stapler and  
13 had raised it up. I move out of the picture. I'm  
14 trying to create some distance at that point,  
15 because I didn't want to get attacked, and I may  
16 have pulled out the Taser at this time, I don't  
17 know, I'm out of the picture.

18 MR. HARRIS: All right. Now, if we could back up a  
19 little bit to 0346 again, please.

20 Q At the point where you've described that you're  
21 backing up out of the picture, are you watching  
22 any of the other officers?

23 A No.

24 Q All right. Now, after Mr. Dziekanski is  
25 handcuffed and after -- after he has been  
26 handcuffed, are you making any efforts to note  
27 precisely what the other officers are doing?

28 A Say that again, sorry? After he's handcuffed?

29 Q Let me put it this way. After Mr. Dziekanski is  
30 handcuffed, were you making specific efforts to  
31 note what the other officers' activities were?

32 A No.

33

34 (VIDEO STOPPED)

35

36 Q All right. I'd like you to go to page 21 of your  
37 statement, which is Exhibit 55, I believe.

38 UNIDENTIFIED MALE VOICE: It's Exhibit 56.

39 MR. HARRIS: Pardon me.

40 Q And I'm referring to statement -- the second  
41 statement in time.

42 A Okay.

43 Q Do you have that in front of you, sir?

44 A Yes.

45 THE COMMISSIONER: I'm sorry, I missed the page.

46 MR. HARRIS: Page 21.

47 Q And in the middle of the page, Corporal

1 Brassington asks you about:

2

3

The member that's primarily dealing with  
4 checking his pulse is who?

5

6

Do you see that question?

7

A Yes.

8

Q And what was your answer at that time?

9

A "Corporal Robinson".

10

Q All right. And then the next question is about  
11 the monitoring of the breathing and who's doing  
12 that, correct?

13

A Yes. And I said Monty was doing that as well.

14

Q All right. I've heard you testify that you did  
15 not -- let me rephrase this. I'm uncertain as to  
16 your testimony as to whether or not your saw  
17 Corporal Robinson checking pulse or not.

18

A I think that I said that I don't remember seeing  
19 him check breathing and pulse, but I just asked  
20 him if he had a pulse and was breathing --

21

Q All right.

22

A -- and by that, in my statement, I assumed he was  
23 the one monitoring the breathing and that's why I  
24 said it there.

25

Q Let's deal with that for a moment. You said, if  
26 I'm not mistaken, you said you don't remember  
27 seeing him do that; have I repeated that  
28 correctly?

29

A Yes.

30

Q All right. That's today you're talking about not  
31 remembering, or is it back then you didn't  
32 remember, when you gave your statement?

33

A I would say both. I don't remember seeing what  
34 actions he took, specifically.

35

Q All right. Did you ever watch, specifically, to  
36 see if Corporal Robinson did that?

37

A No.

38

Q Okay. Did you ever watch, specifically, to see if  
39 Corporal Robinson took out -- took his glove off  
40 or anything like that?

41

A No, I didn't notice.

42

Q Were you looking for that?

43

A No.

44

Q All right. When the comment was made about the  
45 change of colour of Mr. Dziekanski, if I  
46 understand your evidence, Mr. Dziekanski was  
47 repositioned at that time?

- 1 A Yes.
- 2 Q All right. And who participated in that?
- 3 A I think we all did. Corporal Robinson was by that
- 4 head area, so I assumed that he would have been a
- 5 big part of that, and I helped with the legs.
- 6 Q Now, at the time of this particular incident, had
- 7 you had much experience dealing with handcuffed,
- 8 unconscious prisoners?
- 9 A I think we've dealt with that when I worked in
- 10 Richmond City, but at the airport I don't recall
- 11 any incident like this.
- 12 Q Okay. You said, "I think". Do you recall a
- 13 specific incident, sir?
- 14 A No.
- 15 Q You've described Corporal Robinson kneeling near
- 16 the head area of Mr. Dziekanski. Do you recall
- 17 any other position that Corporal Robinson may have
- 18 had in relation to Mr. Dziekanski?
- 19 A No.
- 20 Q All right. Just a few more questions, sir. You
- 21 were asked about the distance and the spread of
- 22 the Taser probes. Do you recall being asked about
- 23 distance and what impact it will have on the
- 24 spread of the Taser probes?
- 25 A Yes.
- 26 Q What about distance and the impact that it would
- 27 have on the penetrability or the ability of a
- 28 probe to penetrate; did you receive training about
- 29 that?
- 30 A With regards to that, yes. If they're wearing
- 31 clothes, loose clothing, regular clothing, there's
- 32 a good chance that it's not going to get to the
- 33 skin, it's -- will just stick in the clothing of
- 34 the person. Yeah, clothing is a big part of it --
- 35 Q Okay.
- 36 A -- as well.
- 37 Q Does distance impact the ability of a probe to
- 38 penetrate, from your training?
- 39 A It would, because it's projected and so if you're
- 40 further away it's probably not going to penetrate
- 41 as deep into the clothing or whatnot as it would
- 42 if you were close-up.
- 43 Q All right. When you observed Mr. Dziekanski pick
- 44 up the stapler, from your perspective, did you see
- 45 any reason why he might have picked up that
- 46 stapler?
- 47 A There was no reason that I could think of, no.

- 1 Q Did you see -- or from your perspective, was there  
2 any possible reason why he would be advancing  
3 towards you or the other officers with the stapler  
4 out?
- 5 A Based on the position that I saw him in, the only  
6 thing I thought he was going to do was attack us.
- 7 Q You were asked questions earlier about your  
8 training in response to domestic disturbances and  
9 use of empathy and things like that. Do you  
10 recall those earlier questions?
- 11 A Yes.
- 12 Q Can you explain to us how time and circumstances  
13 of the environment may or may not impact one's  
14 ability to show empathy and take time, those sorts  
15 of things?
- 16 A Yes. Certain situations you have time to go into  
17 more details and ask more questions, that type of  
18 thing, but depending on the person's behaviour, if  
19 they escalated to a point that that's no longer  
20 possible, we have to react, like I said, to a  
21 person's actions. So you may not have time all  
22 the time to go into as many details as you'd like.
- 23 Q From your perspective in this matter, was there  
24 time to do sort of the empathy and things like  
25 that?
- 26 A Well, we tried with communication in the  
27 beginning, but then we ran out of time, yeah.  
28 There was not time to go further.
- 29 Q Looking back on the events, when you first  
30 encountered Mr. Dziekanski, was there anything  
31 from his behaviour to suggest to you that he was  
32 going to pick up this item and use it or hold it  
33 as he did?
- 34 A Do you mean when we first approached him?
- 35 Q When you first approached him.
- 36 A No, I didn't expect that to happen, no.
- 37 Q What about when he turned, when he was turning  
38 with his -- you know how he sort of threw his  
39 hands up and turned, what about at that stage?  
40 Did you expect anything at that stage?
- 41 A At that point, no. I just assumed he wasn't  
42 listening to us and, like I said before, he was  
43 sweaty and seemed agitated, but I had no reason to  
44 believe it was going to go any higher than that,  
45 at that point. It was unusual, but I didn't know  
46 what was going to happen next.
- 47 Q All right. You asked some -- answered some

1 questions about your assessment of the scene when  
2 you -- or assessment of Mr. Dziekanski. Is your  
3 assessment only based on your observations of Mr.  
4 Dziekanski, or are there other things that you  
5 took into your assessment that night?

6 A At that point, I hadn't seen the debris that was  
7 in the area. When I got in I saw chairs that were  
8 in an unorganized fashion. That would be the only  
9 other thing, of course, except for the dispatch  
10 call that we received. But my observations were  
11 just based, at that point, on -- on him and what  
12 he did.

13 Q Did the conduct or comment by any of the security  
14 people or any of the people in the meet-and-greet  
15 area have any impact on your assessment?

16 A Yes. The fact that they said he didn't speak  
17 English, he spoke Russian, that led me to believe  
18 I might need to use more hand signals to try to  
19 communicate with him, so that's what I did.

20 Q Did the security personnel's positioning have any  
21 significance for you when you arrived?

22 A No.

23 MR. HARRIS: All right. Thank you for answering my  
24 questions, sir.

25 THE COMMISSIONER: I see now we're getting fairly close  
26 to the lunch break. It would be -- I think we all  
27 want to see whether we will finish today. Could I  
28 give some idea of where we're at here? Shall we  
29 have an hour for lunch, an hour and a half, or  
30 what is the feeling?

31 MR. BUTCHER: I have five minutes. I'll be a little  
32 more than that.

33 THE COMMISSIONER: Is there anyone else who's going to  
34 ask questions after Mr. Butcher? Well, is an hour  
35 sufficient? Anybody object to that? Well, we'll  
36 break, then, for one hour, and it will be 1:30.

37 THE REGISTRAR: The hearing is now adjourned until 1:30  
38 p.m.

39  
40 (WITNESS STOOD DOWN)

41  
42 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

43 (PROCEEDINGS RECONVENED)

44  
45 THE REGISTRAR: The hearing is now resumed.  
46  
47

Cst. Kwesi Millington

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

1 KWESI MILLINGTON, a witness,  
2 recalled.  
3

4 MR. HIRA: Mr. Commissioner, Officer Millington's  
5 training materials are about five minutes away.  
6 There was a lot of material to copy and make  
7 copies for everybody. I understand Mr. Butcher's  
8 questions may or may not touch on those materials.  
9 I'm in the embarrassing position of saying we may  
10 have to stand down for a couple of moments if that  
11 does occur.

12 THE COMMISSIONER: You said, "may or may not," Mr.  
13 Butcher. Is that a "may" or a "may not"?

14 MR. BUTCHER: I propose that I ask the questions that I  
15 have otherwise, and that I then be given a chance  
16 to review them. Mr. Rosenbloom can carry on, and  
17 if I have no questions, then I'll not need to ask  
18 any.

19 THE COMMISSIONER: Well, let's -- no, I don't want to  
20 move out of the order. We'll break for a few  
21 minutes. Let me know when they're here.  
22

23 (PROCEEDINGS ADJOURNED)

24 (PROCEEDINGS RECONVENED)  
25

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

27 MR. HARRIS: Mr. Commissioner, over the break I  
28 realized that there was a small quick area that I  
29 neglected to canvass with this witness. I'm  
30 wondering if I might be granted the indulgence to  
31 complete that small area.

32 THE COMMISSIONER: Yes, of course. Go ahead.

33 MR. HARRIS: Thank you. Might the witness be provided  
34 with Exhibit 57, please?  
35

36 CROSS-EXAMINATION BY MR. HARRIS ON BEHALF OF CORPORAL  
37 ROBINSON, continuing:  
38

39 Q Constable Millington, Exhibit 57 are -- is a copy  
40 of the notebook entries that you made on that  
41 night?

42 A Yes.

43 Q All right. And I note at the bottom of page 6 to  
44 the left there's a time entry of 02:19?

45 A Yes.

46 Q What does that time entry indicate?

47 A It says:

1                   Member/writer observed Cpl. ROBINSON check  
2                   pulse every couple of mins while male was in  
3                   recovery position. Male had a pulse.  
4

5           Q     All right. Now, the 2:19, is that the time that  
6                   you made that notation?

7           A     I believe it was the time I made the notation,  
8                   yes.

9           Q     Okay. So do you recall where you were when you  
10                  made that particular notation?

11          A     No, I don't remember.

12          Q     All right. On this particular night, where did  
13                  you spend the majority of your time at the  
14                  airport? That is, after the incident involving  
15                  Mr. Dziekanski and before you leaving the airport,  
16                  where did you spend the majority of your time,  
17                  sir?

18          A     In -- I think in the secure side area.

19          MR. HARRIS: All right. Thank you. Thank you, Mr.  
20                  Commissioner.

21          MR. BUTCHER: Thank you.

22

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

25

26          Q     Constable Millington, I am David Butcher and I'm  
27                  counsel for Constable Bentley. You and I have  
28                  never discussed these events together, have we?

29          A     No.

30          MR. BUTCHER: If the witness could please have Exhibit  
31                  40C. This is the CAD document.

32          Q     You will see on that document that there is a  
33                  description of the type of call, and it's given as  
34                  being "assist other agency".

35          A     Yes.

36          Q     Do you know who inputs that data onto this  
37                  document or onto this field on the computer?

38          A     I think it would be someone at our E-Comm dispatch  
39                  office.

40          Q     Is it done by the police officers?

41          A     No. No.

42          Q     And who assigns the priority or how is the  
43                  priority of the call assigned on this document?

44          A     I think it's the same location, done by either the  
45                  call-taker or someone at E-Comm.

46          Q     If this call had been classified by E-Comm as  
47                  mischief in progress or crime in progress, would

1 the priority have been different?  
2 A It may have been, I'm not sure.  
3 Q You don't know. Is that --  
4 A No, I -- I don't know.  
5 Q Now, you are seen in the last Pritchard video  
6 collecting the Taser filaments. Do you remember  
7 seeing that?  
8 A Wrapping it up, yes.  
9 Q Wrapping them up. When you went to collect the  
10 filaments, were they still connected to the  
11 probes?  
12 A No.  
13 Q Did you break the filaments from the probes?  
14 A No.  
15 Q Do you know how or when they were broken or  
16 severed?  
17 A No.  
18 Q How much force is required to break those  
19 filaments?  
20 A It would be considerable to get the probe off, but  
21 I don't know exactly how much. But it would be  
22 some force for sure.  
23 Q You -- I'll ask it this way. Do you recall  
24 Corporal Robinson providing any direction to any  
25 officer between the time that Mr. Dziekanski was  
26 handcuffed and the time that the Richmond Fire  
27 people arrived?  
28 A No.  
29 Q And do you know what Constable Rundel and  
30 Constable Bentley were doing during that period?  
31 A No. No.  
32 Q Do you know where they were?  
33 A They were in the area, but I don't know exactly  
34 where they were.  
35 Q You told us earlier that your notes reflect a  
36 conversation with Mr. Pritchard; do you remember  
37 that?  
38 A Yes.  
39 Q Did you know before you left the airport that  
40 night that he had taken a video of the incident?  
41 A Yes, I believe I was aware of that, yeah.  
42 Q Do you know how you were aware of that?  
43 A No.  
44 Q You told us that Mr. Dziekanski was still  
45 resisting the officers whilst he was on the  
46 ground. Have you got any information to provide  
47 the Commission about the degree of resistance

- 1           being shown by Mr. Dziekanski?
- 2       A     Like I said before, he was still kicking, fighting
- 3           and struggling with the members, not putting his
- 4           hands behind his back. As far as degree, it was
- 5           excessive. He was fighting off four members,
- 6           so...
- 7       Q     You were asked why you didn't broadcast that Mr.
- 8           Dziekanski had turned blue. I'm wondering if you
- 9           can tell the Commissioner what you are told in
- 10          your training about the content of radio
- 11          broadcasts?
- 12       A     Well, we're told to keep them simple and to the
- 13          point, and in Richmond specifically we are sharing
- 14          the radio broadcast frequency with the whole city,
- 15          and I believe at the time with UBC, as well. So
- 16          want to keep our broadcasts short and to the
- 17          point.
- 18       Q     Now, I am going to ask you some questions about
- 19          your training materials and take you to some of
- 20          the other slides. And these pages appear to be
- 21          numbered as chapters or -- of the training
- 22          program. I'm going to ask you go to the third
- 23          page 1 under the heading "Medical". Do you have
- 24          that? It has a handwritten number 4 on the top
- 25          right-hand corner of the page.
- 26       A     Yes, okay.
- 27       Q     You were -- well, first of all, can you tell us
- 28          how it was that you came into possession of these
- 29          particular materials?
- 30       A     They were given to me during my training.
- 31       Q     In July of 2007?
- 32       A     Yes.
- 33       Q     At the course.
- 34       A     Yes.
- 35       Q     And were these slides shown to you during that
- 36          course?
- 37       A     Yes, I believe they gave us the materials and
- 38          showed the slides as they were going through them.
- 39       Q     And so dealing with the slides on that page, you
- 40          were told that Taser devices are among the most
- 41          extensively-studied non-lethal weapons?
- 42       A     Yes.
- 43       Q     And you made a reference in your direct evidence
- 44          to defibrillators being 800 times stronger than
- 45          the Taser. Is the -- is the slide below that one
- 46          the slide that taught you that?
- 47       A     Yes, it's the slide here.

1 Q And that says [as read]:

2

3

4

5

6

7

8

9

A Yes.

10

Q Turning to the next page, you were told, amongst other things in the bottom slide, that animal testing has shown insignificant effects on heart rhythms and blood pressure?

11

12

13

14

A Yes.

15

Q That there's been over 100,000 human volunteers, 99 percent of whom were incapacitated?

16

17

A Yes.

18

Q Turning over two pages to the last slide under the heading "Medical Testing Drugs", you were told that the advanced Taser was applied directly to the chest of experimental animals without causing heart failure during tests at the University of Missouri?

19

20

21

22

23

A Yes.

24

Q You were told that using worst-case scenarios, cardiac safety experts found no induction by the M26 of abnormal heart rhythms.

25

26

27

A Yes.

28

Q Do you remember what those worst-case scenarios were?

29

30

A No.

31

Q And you were told, as well, that there was no arrhythmia provocation even when animals were given stimulant drugs such as epinephrine and isoproterenol.

32

33

34

35

A Yes.

36

Q Turning to the next chapter under -- you have the handwritten number 5 in the top right-hand corner. Do you have that?

37

38

39

A Oh, okay. Oh, the next group of pages.

40

Q Next group of pages, yes.

41

A Yes.

42

Q This is under the heading "Why Conducted Energy Weapons" --

43

44

A Yes.

45

Q -- or on that subject matter. And on the next page, you were taught that it is extremely

46

47

Cst. Kwesi Millington

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

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

1 effective, even compared to lethal weapons?

2 A Yes.

3 Q And can you tell us anything else about that,  
4 about what you were told about that subject?

5 A It's -- I think that they're referring to the fact  
6 that even -- actually, no, I don't understand the  
7 question. Sorry.

8 Q I was just wondering if you were told anything  
9 about why they were considered to be extremely  
10 effective, even compared to lethal weapons?

11 A All I remember regarding that is that they are the  
12 least -- one of the least injurious means of  
13 gaining control of a subject.

14 Q And then the next two items are "Safe in numerous  
15 situations" and "Safer for suspects and fellow  
16 officers".

17 A Yes.

18 Q Were you taught anything else about those two  
19 subjects, other than what's listed in those two  
20 bullets?

21 A Not that I can remember, no.

22 MR. BUTCHER: Thank you. Those are my questions. At  
23 this point, I've asked more questions about this  
24 document, and it would be my submission that it  
25 would be appropriate to mark it at this point.

26 MR. HIRA: I think you'd said that it was to be marked  
27 and --

28 THE COMMISSIONER: All right. It will be the next  
29 exhibit.

30 MR. VERTLIEB: I'm just wondering, I don't mind doing  
31 that, but at some point it would be helpful to see  
32 the original. We haven't seen that yet.

33 MR. HIRA: The officer has the original and I have told  
34 my friend he's welcome to take a look at the  
35 officer's original at any time he wants.

36 THE COMMISSIONER: All right.

37 MR. VERTLIEB: Thank you.

38 THE REGISTRAR: That'll be marked as Exhibit number 61.

39

40 EXHIBIT 61: Training materials

41

42 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE  
43 GOVERNMENT OF POLAND:

44

45 Q Officer, my name is Don Rosenbloom, and I  
46 represent the Government of the Republic of  
47 Poland. I'd like you to answer some questions for

1 me.

2 Officer, it's your testimony, as I have  
3 listened to you yesterday and today, that you  
4 never saw the video until approximately a month  
5 ago when in the company of legal counsel; is that  
6 correct?

7 A Yes.

8 Q And it's also your testimony, as I heard you  
9 yesterday and today, that you never had an  
10 opportunity to look at the written statements that  
11 were given by you to the IHIT investigators on the  
12 day or days just shortly after the incident again  
13 until you were present with your counsel a month  
14 ago.

15 A Yes.

16 Q Now, during the period from the 14th of October,  
17 2007 until a month ago, you were aware that the  
18 incident in question had become a matter of  
19 international controversy?

20 A Yes.

21 Q And you were aware that there was extensive media  
22 coverage about this incident, both shortly after,  
23 then after the release of the video, and for an  
24 extended period of time?

25 A Yes.

26 Q Can I ask you, Officer, were you curious at any  
27 point leading up to your attendance at counsel's  
28 office a month ago to want to look at the video?

29 A No, I was aware of the actions that we took. As  
30 I've said before, I'm not used to that type of  
31 being in the media, if you will, and I was not  
32 curious about it, no.

33 Q Well, Officer, let's forget the media coverage and  
34 let's just talk about the fact that you were aware  
35 as of the evening in question that a video had  
36 been taken of the incident, correct?

37 A Yes.

38 Q Okay. You're asking us to believe that from that  
39 moment until a month ago, you weren't curious to  
40 know whether the video depicted the events as you  
41 described them to the IHIT investigators?

42 A No, I was not. I knew the -- that there was a  
43 video that had been taken and -- but I was aware  
44 of our actions, so I was not interested in it.

45 Q So you're telling us, are you, that throughout the  
46 period leading up to a month ago, you were totally  
47 confident that the history that you gave to the

- 1 IHIT investigators shortly after the incident  
2 would be totally proven out in the video that was  
3 taken by Mr. Pritchard.
- 4 A Yes.
- 5 Q Are you, to this day, satisfied that that feeling  
6 that you had was indeed confirmed by the video?
- 7 A Like I said, with the exception of the second  
8 deployment of the Taser when I said I believed he  
9 was standing, and the wrestling to the ground, I  
10 noticed that there were a couple of discrepancies.  
11 But for the most part, yes.
- 12 Q Otherwise, you feel, as you stand in the box  
13 today, or sit in the box today, that the video  
14 completely confirms the version of events that you  
15 provided to the IHIT investigators?
- 16 A With the exception of the angle that it was taken  
17 at. It was taken from behind, and I saw what Mr.  
18 Dziekanski was doing from the front.
- 19 Q Well, Officer, at a point in time, you became  
20 aware that this matter became one of a criminal  
21 investigation and that the Crown counsel was  
22 reviewing the circumstances of the event?
- 23 A Yes.
- 24 Q At the point where you became aware of that  
25 situation, did you not want to protect yourself by  
26 at least reviewing the video, reviewing the  
27 statement that you provided to IHIT so that you  
28 could be assured that the Crown counsel had the  
29 full set of facts as you understood them?
- 30 A No, I was confident in the actions that we took,  
31 and everything was there. I had given statements  
32 and they had the video, so I didn't feel there was  
33 anything else I needed to do.
- 34 Q I see. So after the release of the video  
35 approximately a month after the incident, didn't  
36 some of your acquaintances or your colleagues in  
37 the force discuss with you the fact that this  
38 video was being published and there were  
39 depictions in that video of interest maybe?
- 40 A They had let me know that the video was published,  
41 and at that point we were not working at YVR  
42 anymore, but that was the end of my concern about  
43 it.
- 44 Q Well, not working at YVR. When were you moved  
45 from that detail out at YVR?
- 46 A Away from YVR, you mean?
- 47 Q Yes.

- 1 A The block after November -- it was, I think, mid  
2 November.
- 3 Q Right. About November what? In other words,  
4 approximately how many weeks after the incident of  
5 the 14th of October?
- 6 A Five weeks, I think.
- 7 Q Yes? And during those five weeks, is it fair to  
8 say that your fellow officers who had been  
9 involved in this incident were also at YVR until  
10 that time?
- 11 A Yes.
- 12 Q Yes. And so over the days that transpired after  
13 the 14th of October, you were working in the same  
14 block from time to time as Constable Bentley, as  
15 Corporal Robinson, as Constable Rundel?
- 16 A Working in the same block as in group of days?
- 17 Q Meaning you were on shift sometimes together.
- 18 A Yes.
- 19 Q You were seeing each other, you were having meals  
20 together?
- 21 A During our time at YVR you're talking about?
- 22 Q Yes, after the incident.
- 23 A Yes.
- 24 Q Yes. And you were still at YVR at the time of the  
25 release of the video, weren't you?
- 26 A Yes.
- 27 Q Yes. And having not seen the video, did not your  
28 fellow officers who were involved in this incident  
29 discuss the video with you?
- 30 A No.
- 31 Q Did you ask them about what they were seeing on  
32 the video?
- 33 A No.
- 34 Q Why?
- 35 A As I have said before, I felt that our -- our  
36 actions were within our training and I did not  
37 need to watch the video.
- 38 Q So you were totally confident that the version of  
39 events as you gave them to the IHIT investigators  
40 would be sustained after scrutinizing the video.
- 41 A Yes.
- 42 Q And you were wrong.
- 43 A On a couple of points --
- 44 Q Yes.
- 45 A -- there were some discrepancies between what I  
46 said in my statement and the video - for example,  
47 the wrestling to the ground - was -- was wrong

1 about some of them.

2 Q No, it's clear from the record the areas that you  
3 believe you were wrong, and in respect to those  
4 areas, you are conceding you were wrong --

5 A Yes.

6 Q -- obviously. Now, we spoke today about the  
7 notepad, and excuse me, I don't know the exhibit  
8 number, but your notepad that you carried with  
9 you. Did you at any time prior to making your  
10 entries into that notepad have discussions with  
11 your fellow officers about the event in question?

12 A No.

13 Q I'll come back to that later, then. Thank you.  
14 Now, I want to focus for a few minutes on the  
15 conversations you had, or might have had, with  
16 your fellow officers after this incident.  
17 Firstly, you report that after the incident, you  
18 and your colleagues went back to the sub-  
19 detachment office because you were waiting for the  
20 IHIT investigators.

21 A Yes.

22 Q Now, Officer, did you have any conversations with  
23 your fellow officers back at the detachment office  
24 on those early-morning hours leading up to the  
25 IHIT investigators arrival in respect to the  
26 incidents -- incident that had happened out at the  
27 airport?

28 A No.

29 Q Officer, are you inviting us to believe that you  
30 went back to that detachment office, you were  
31 assembled there, you were together?

32 A Yes.

33 Q And you're telling me that there was no discussion  
34 about the fact there had just been an in-custody  
35 death?

36 A No.

37 Q "No," you're saying you did not say anything.  
38 A We did not have a discussion about it.

39 Q Well, Officer, I just act a lot on common sense.  
40 Can you explain to me -- would you not agree with  
41 me that it is totally abnormal that after going  
42 through this traumatic event at the airport, that  
43 you go back to the sub-detachment office and you  
44 don't say anything about what had just happened?

45 A Sometimes when people are involved in a stressful  
46 situation, they just want to take some time to  
47 just decompress. I was waiting for our staff

1 relations rep to come and I felt no need to  
2 discuss the incident.

3 Q And is it your testimony that not only did you not  
4 discuss anything to do with the incident in  
5 question, but you did not overhear your fellow  
6 officers talking about the incident?

7 A No, I did not.

8 Q Is it your testimony further that at no time  
9 following that assembly of the officers on the  
10 14th of October until this day that you've ever  
11 talked to your fellow officers about the incident?

12 A No, I haven't.

13 Q Okay. You're sure of that answer.

14 A Yes.

15 Q Officer, there has been testimony given in these  
16 proceedings that there was a critical incident  
17 debriefing, and you testified to that yesterday,  
18 correct?

19 A Yes.

20 Q And in your testimony yesterday, did you not say  
21 that indeed there was no discussion about the  
22 events of the day, it was more a psychological  
23 consultation, for want of a better term?

24 A Something like that, yes.

25 Q You said yesterday in response to Commission  
26 counsel, Mr. Vertlieb, that there was no  
27 discussion about the events in question, about  
28 each officer's version of events, correct?

29 A Yes.

30 Q Officer, just a few days ago your fellow officer,  
31 Constable Bentley, testified under oath in these  
32 proceedings. He testified on Thursday of last  
33 week. I'd like to read you portions of the  
34 transcript of what he said under oath concerning  
35 this very meeting we're speaking about, and I'm  
36 reading from page 80 of Thursday's transcript and  
37 I'm reading from line 21. And just so I don't  
38 mislead you, I'm very happy to give you a copy so  
39 that you can follow it. And I'm referring to line  
40 21 of page 80 of last Thursday's transcript.

41 A Yeah, I see it.

42 Q And your fellow officer, Constable Bentley, was  
43 asked by myself, "Question", what I do -- speaking  
44 about the debriefing incident.

45 THE COMMISSIONER: That's the answer.

46 MR. ROSENBLUM: Pardon me?

47 THE COMMISSIONER: That's the answer.

Cst. Kwesi Millington

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

1 MR. HIRA: I think you're going to start at 15. Try  
2 line 15, question.

3 MR. ROSENBLOOM: Fine, I'll go up to line 15:

4 Q

5 Q So let me make myself very clear. Is it your  
6 testimony that since leaving YVR's terminal  
7 and heading back to the sub-detachment, you  
8 have no memory of ever discussing with  
9 Corporal Robinson the events in question and  
10 comparing your version against his version?

11 A What I do remember is we did have what's  
12 referred to as a critical incident debrief,  
13 where we all told our version of the events  
14 that transpired that evening.

15

16 Then it goes on, and I would refer you to the next  
17 page, page 81, down at line 40:

18

19 Q During that meeting, was there a discussion  
20 among your fellow officers as to their  
21 respective version of events?

22 A Everyone gave their version of the events.  
23 There was no discussion amongst members, they  
24 just told their side of the story. That was  
25 it.

26

27 Now, Officer, was Constable Bentley telling the  
28 truth in these proceedings?

29 THE COMMISSIONER: Oh, I don't think so, Mr. --

30 MR. ROSENBLOOM: Sorry. All right.

31 Q Having read the transcript of Constable Bentley's  
32 responses to me on Thursday of last week, was he  
33 in error according to your memory?

34 A According to my memory, yes. I don't remember any  
35 of those discussions.

36 Q You would agree with me, Officer, would you not,  
37 that according to your evidence, this was the  
38 first assembly of the four of you, four officers.  
39 It was an important meeting. It was with certain  
40 other officers present, correct?

41 A The first...?

42 Q I'm sorry. The meeting in question is a meeting  
43 you obviously would remember in some detail. It  
44 was a meeting where the four of you were all  
45 together?

46 A Yes.

47 Q And you'd agree with me, would you not, that it --

1           that surely if discussions about the events of  
2           that day came up, that you'd remember that today?  
3        A     I believe so, but I did not discuss any events  
4           with them.  
5        Q     And you'd agree that your testimony today  
6           definitely contradicts that of Constable Bentley?  
7        A     According to what I see here, yes.  
8        Q     When I ask you whether you have had any  
9           discussions with your fellow officers about this  
10          event since the 14th of October, you appreciate I  
11          am speaking not only of in-person discussions, but  
12          also telephone conversations. You appreciate  
13          that?  
14       A     Yes.  
15       Q     And so your answer was comprehensive when you said  
16          "No," you were speaking of any form of  
17          communication.  
18       A     Yes.  
19       Q     And in fact, Officer, am I right that Constable  
20          Rundel was repositioned or transferred over to  
21          Vancouver Island?  
22       A     Yes. Yes.  
23       Q     And Constable Bentley was transferred to what  
24          location?  
25       A     2010 Vancouver Olympic Committee.  
26       Q     Yes. And Corporal Robinson?  
27       A     The same. Different unit inside, but the same  
28          overall unit, I guess you could say.  
29       Q     Within Vancouver.  
30       A     Within Vancouver 2010, yes.  
31       Q     And you never had any long-distance phone calls  
32          with Constable Rundel after he went over to  
33          Vancouver Island?  
34       A     I don't recall having any, no.  
35       Q     No. So if one required the production of your  
36          telephone records, you're confident that there'd  
37          be no entries of a phone call over to Vancouver  
38          Island to Constable Rundel?  
39       A     I don't think so, no.  
40       Q     You don't think so. You're not sure?  
41       A     I wouldn't -- I wouldn't have called, definitely  
42          not from my personal phone, and if I called, it  
43          might've been a work phone, I don't know. But no.  
44       Q     So your personal telephone records would never  
45          disclose any calls to Constable Rundel over on the  
46          Island.  
47       A     No, I don't think so.

- 1 Q You keep saying, "I don't think so," which invites  
2 me to carry on with this. What do you mean, "I  
3 don't think so"? Surely you recollect whether you  
4 ever had a call with Constable Rundel from your  
5 phone since this incident.
- 6 A Then I would say no, 'cause I don't -- I don't  
7 recall any phone call.
- 8 Q All right. Now, during this debriefing meeting,  
9 that critical events debriefing meeting we're  
10 speaking about, did anyone record that meeting in  
11 terms of tape-recording to the best of your  
12 knowledge?
- 13 A I don't think so, no.
- 14 Q You don't remember any equipment present with  
15 microphones?
- 16 A No.
- 17 Q Did anybody take any notes?
- 18 A No.
- 19 Q We've had some testimony about who was present at  
20 that meeting other than the four officers. Would  
21 you give me a little bit more background to who  
22 those individuals are?
- 23 A I know the psychologist was there.
- 24 Q Yes.
- 25 A The force psychologist. And the media  
26 spokesperson.
- 27 Q Media spokesperson. I am interested in knowing a  
28 little bit more about that. That person, by name,  
29 is...?
- 30 A Nikki Basra.
- 31 Q I'm sorry?
- 32 A Nikki Basra, I think her name is.
- 33 Q And is she an officer of the force?
- 34 A I think so, yes.
- 35 Q Constable Basra?
- 36 A I don't know if she's constable or corporal.
- 37 Q All right.
- 38 A I don't know what her title is.
- 39 Q And she was there as a media advisor. Did she, in  
40 fact, give media advice to this group?
- 41 MS. ROBERTS: I have to make an objection here. I have  
42 spoken to Nikki Basra. She was there as a MEAP  
43 member, and that's the information I conveyed to  
44 Mr. Vertlieb. She was not there as a media  
45 person. That's another role that she fills at  
46 some times. She was there as a Member Employee  
47 Assistance Program worker.

Cst. Kwesi Millington

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

- 1 MR. ROSENBLoom: Sorry, she was there as a...?  
2 MS. ROBERTS: MEAP, M-E-A-P, worker. She was not there  
3 as a media spokesperson. That's a different  
4 capacity that she fills at some times.  
5 MR. ROSENBLoom: And rather than going to the witness,  
6 is this MEAP advisor a staff relations individual?  
7 I don't know the term. That's what I'm --  
8 MS. ROBERTS: No. They're just trained RCMP members  
9 who help out in stressful situations. They're  
10 trained to do work on -- as members of the  
11 Employee Assistance Program.  
12 MR. ROSENBLoom: Employee --  
13 MS. ROBERTS: Assistance --  
14 MR. ROSENBLoom: -- Assistance Program.  
15 MS. ROBERTS: -- Program.  
16 MR. ROSENBLoom: And she was there in that capacity.  
17 MS. ROBERTS: Yes.  
18 MR. ROSENBLoom: And did not provide any media advice.  
19 MS. ROBERTS: No.  
20 MR. ROSENBLoom: Thank you.  
21 Q And anybody else present that you remember?  
22 A I don't remember who else was there.  
23 Q All right. Now, in terms of your background with  
24 the force, you were an officer for about two years  
25 approximately?  
26 A Yes.  
27 Q You were out at the airport for just over a year  
28 before this incident?  
29 A Yes.  
30 Q We obviously note you're in very fine state of  
31 fitness. Just of interest, do you do track and  
32 field? Ever done track and field?  
33 A Not competitively, no.  
34 Q No. Ever done any distance running, marathon  
35 running, anything of that sort?  
36 A No.  
37 Q No. Don't be modest. On the day in question you  
38 were in a state of superb conditioning, weren't  
39 you?  
40 A Yes.  
41 Q Now, you took the first aid course prior to  
42 joining the RCMP?  
43 A Yes.  
44 Q You didn't have a refresher course before this  
45 incident?  
46 A I'm not sure if I went for -- we have what's  
47 called block training every three years and that

1 -- it's like a refresher -- it gives a refresher  
2 first aid course during that. I may have had that  
3 in 2007.

4 Q Fair enough. And during the course, you were  
5 given some training in terms of CPR?

6 A Yes.

7 Q Were you ever during the training required to do  
8 CPR on a person or was it on a mannequin or  
9 whatever they call it?

10 A They give us rubber or plastic mannequins --  
11 Q Yes.  
12 A -- to do it on.

13 Q You never did it on an individual during training?  
14 A No.  
15 Q No. And do I gather from your testimony, and  
16 please correct me if I misrepresent this at all,  
17 you had never carried out an active CPR after  
18 getting out of the force and being a constable?

19 A On a live person, you mean?  
20 Q Yes. Yes, in other words, in real life on the  
21 scene were you ever called upon to do CPR?  
22 A No.  
23 Q I'm informed through one of the previous witnesses  
24 that the police cruisers have first aid kits in  
25 the trunk, correct?  
26 A Yes.  
27 Q What's in that kit?  
28 A It's been awhile since I've seen one. I know  
29 there was gauze and --  
30 Q Sorry? There's what?  
31 A Gauze.  
32 Q Yes.  
33 A Different types of bandages, liquids like rubbing  
34 alcohol, that type of thing. There may be  
35 different masks on the inside. I don't know  
36 exactly what's in there any more.  
37 Q Maybe never looked in one?  
38 A I have looked in one but it's been a long time.  
39 Q So maybe masks, maybe not?  
40 A Not sure.  
41 Q And a mask, if you describe as -- or state as a  
42 mask would be the mask and bag; is that correct,  
43 where you need oxygen assistance?  
44 A Yeah. I think it would be something that you put  
45 over your face and breathe into.  
46 Q Yes. Now, in terms of the Taser course that we  
47 have heard much about, was there ever discussion

1 during the Taser course of the physiology of the  
2 heart that -- when applying a Taser there might be  
3 health issues arise?  
4 A With regards to the heart?  
5 Q Yes. Coronary issues. Is that focused on at all?  
6 A Not to my recollection. I think actually it's --  
7 it may say in the manuals that it was shown not to  
8 affect the heart, but I'd have to check to verify.  
9 Q Yes. And again, please correct me if I  
10 misrepresent your testimony, you do not believe  
11 that there was instruction given to you that you  
12 could medically compromise an individual by  
13 extended tasing, repeated tasing?  
14 A I believe in the manuals it says it may be  
15 hazardous to someone's health.  
16 Q Yes.  
17 A That is in the manuals.  
18 Q And the manual speaks of, what, repeated tasing?  
19 A Yes. It says to avoid repeated deployments unless  
20 situational factors dictate.  
21 Q Sure.  
22 A Otherwise --  
23 Q Fair enough. And repeated means, obviously, more  
24 than once?  
25 A Yes.  
26 Q And even more the case if it's a third tasing or  
27 a fourth or a fifth, obviously?  
28 A For multiple, yes.  
29 Q Yes. Was that on your mind at all at the moments  
30 where you applied or deployed the Taser?  
31 A After every Taser deployment a reassessment is  
32 done, yes, and I assessed whether it was necessary  
33 again before applying.  
34 Q Yes.  
35 A Yes.  
36 Q I appreciate that. And you're reassessing the  
37 situation to decide whether it's necessary again.  
38 But my question is as part of that assessment,  
39 were you weighing the issue of medical impairment  
40 that might arise by repeated tasing?  
41 A Not at the time. It was a fast-moving situation  
42 and we were dealing with it with a short period of  
43 time -- in a short period of time.  
44 Q So let's get this straight. It is your testimony  
45 that from the conclusion of the first tasing  
46 until the end of the last tasing, you were not  
47 mindful or thinking about the medical consequence

1 side of repeated taserings?

2 A I was not thinking of it at the time, no.

3 Q Do you wish you had now?

4 A If I wish I had thought about that?

5 Q Do you now wish that you had thought about that?

6 A My feelings on that have not changed. I believe  
7 that we were acting according to our training,  
8 like I said.

9 Q Oh, but --

10 A But I never intended what happened.

11 Q No. I appreciate that. That's been made very  
12 clear in these proceedings. But you said your  
13 training, part of your training. But part of your  
14 training was to be mindful of medical consequences  
15 of repeated taserings, correct? Have you not just  
16 told me that?

17 A Yes.

18 Q And so part of your training was in the context of  
19 reassessing this -- yes, reassessing the  
20 situation, you had to be mindful of the medical  
21 issues, didn't you?

22 A And we were as we went along through it.

23 Q Well, except I heard you say a moment ago - maybe  
24 I'm the only one missing all this. I thought  
25 you've testified a moment ago that you were not  
26 putting your mind to that issue throughout the  
27 period from the conclusion of the first Taser  
28 until the last taserings; didn't you tell me that?

29 A Yes.

30 Q So I ask you if you weren't thinking about that,  
31 wasn't that contradicting your manual and the  
32 direction that the force gave you about multiple  
33 taserings?

34 A No. We were thinking about it -- our training in  
35 regards to dealing with anyone is to get them  
36 under control, but to have -- to be -- to ensure  
37 that they're safe and that once they're under  
38 control, they get any attention they need. So I  
39 don't go into any situation thinking that I want  
40 anything bad to happen to someone or medical --  
41 something will happen bad to them, per se, so  
42 that's what I was thinking about during that.

43 Q Well, Officer, let me try to articulate this.

44 A Yes.

45 Q In making your assessments, whether to carry out a  
46 second deployment, a third, a fourth, a fifth,  
47 you're having to balance things. Firstly, you're

1           having to balance or assess the risk factor to  
2           your fellow officers in the situation, right?  
3        A     Yes.  
4        Q     And are you not obligated by the manual to also  
5            assess as part of the equation, the medical  
6            consequences of repeated taserings?  
7        A     Can you repeat the question?  
8        Q     Are you not also obligated as part of assessing  
9            the situation and making a decision whether to  
10           repeatedly taser, to think about the medical  
11           consequences of doing so?  
12       A     It's in our training manuals but we were acting in  
13           a fast situation, like I've said to you before.  
14       Q     Well, I appreciate that. We understand that. I'm  
15            simply asking whether the manual dictated that a  
16            component of your assessment before a multiple  
17            taserings was to determine whether or not there  
18            might be medical consequences.  
19       A     I don't recall. I don't recall.  
20       Q     You don't recall what?  
21       A     If that's in there. I don't know.  
22       Q     Well, you did say, have you not acknowledged that  
23            the manual says multiple taserings can be --  
24            repeated taserings can be injurious to health?  
25            Have you not said that?  
26       A     Yes.  
27       Q     All right. Now, during the training for taserings,  
28            have you ever seen an officer of the force being  
29            tasered more than once?  
30       A     No.  
31       Q     Have you ever seen an officer of the force being  
32            tasered more than five seconds in duration?  
33       A     No.  
34       Q     Have you ever seen an officer of the force being  
35            tasered by application of the Taser anywhere other  
36            than the back area?  
37       A     Other than the stomach -- the front area?  
38       Q     No. I'm asking whether you've ever seen in your  
39            taserings course, an officer of the force being  
40            tasered for training purposes anywhere other than  
41            application or deployment to the back.  
42       A     Yes. The only place I have seen is in the front.  
43       Q     It is in the front.  
44       A     Yes.  
45       Q     I see.  
46       A     Yes.  
47       Q     All of the taserings you've witnessed in training

1 processes have been tasered to the front area?  
2 A Yes.  
3 Q Have you ever witnessed tasering of an officer in  
4 a push-stun mode?  
5 A No.  
6 Q Any explanation you know why that would be the  
7 case? Why would that not be part of your course  
8 program?  
9 A For another officer to get tased in push-stun  
10 mode?  
11 Q Yes.  
12 A The point of the training is so that you can --  
13 all the officers can know what it's like to be  
14 tased. I don't know why they wouldn't do push-  
15 stun as well as probe.  
16 Q Have you ever been tasered?  
17 A Yes.  
18 Q How many times?  
19 A Once.  
20 Q Five-second cycle?  
21 A I don't remember if it was one second or five  
22 seconds. I don't know.  
23 Q Oh, it could be just one second? Have you -- do  
24 they -- sometimes have you seen officers subjected  
25 to only one-second tasering?  
26 A Yes.  
27 Q Is that the common exercise, one second?  
28 A You can do one second, you can do five seconds.  
29 Between one and five seconds.  
30 Q But in terms of what you have witnessed with your  
31 fellow officers, have most of them been one-second  
32 tasers, applications?  
33 A I think in my course, some did five, some did one.  
34 Q Do you know something known as alligator clips?  
35 Are you familiar with that term?  
36 A I don't think so, no. I don't know what that is.  
37 Q Are you familiar with whether when officers are  
38 being tasered in training that clips are given to  
39 them before the application or deployment?  
40 A Clips?  
41 Q Yes.  
42 A No, I'm not aware of that, no.  
43 Q Now, I believe you've already testified that this  
44 incident out at the airport was your first  
45 experience with field tasering, in other words,  
46 tasering other than in the classroom; is that  
47 correct?

- 1 A Yes.
- 2 Q And obviously then this was the first time you had  
3 ever deployed the Taser?
- 4 A Yes.
- 5 Q In respect to the IHIT investigation as you were  
6 waiting for the investigators to arrive, this was  
7 your first experience with an in-custody death,  
8 wasn't it?
- 9 A Yes.
- 10 Q And it obviously was of some significance to you  
11 that officers superior to you were coming out to  
12 the detachment to carry out such an investigation?
- 13 A It was -- can you repeat that, please?
- 14 Q That it was a -- a significant matter in your mind  
15 that officers were coming out to question you  
16 about this death.
- 17 A Yes.
- 18 Q Yes. And, in fact, you would agree with me in  
19 terms of policing that an investigation of a death  
20 is just about as high a priority as one can  
21 experience in policing, right?
- 22 A Yes.
- 23 Q And your staff representative had given you some  
24 counsel before you went into that meeting?
- 25 A He had spoken to me, yes.
- 26 Q Yes. And presumably he told you, did he not, that  
27 it was important to provide as accurate a  
28 statement as you could possibly do; did he not say  
29 something like that?
- 30 A I don't remember if he told me that specifically,  
31 but his -- more of his role was just to tell me  
32 that I could wait to give a statement and I could  
33 get legal counsel if I wanted to.
- 34 Q He didn't impress upon you the significance of  
35 that statement that it would be relied upon by  
36 your superiors in evaluating the issue of whether  
37 there was excessive force applied?
- 38 A I don't know if he told me that specifically.
- 39 Q But in any event, you recognized that it was  
40 important to be detailed and accurate?
- 41 A Yes.
- 42 Q Now, there's been testimony given here regarding  
43 some misinformation that was provided to the  
44 public by the RCMP subsequent to this event and  
45 Constable Rundel, I believe, testified that he was  
46 monitoring the media coverage to the extent that  
47 he was hearing representations made by the media

- 1 -- excuse me, by the RCMP to the media that were,  
2 in his opinion, misrepresentations. Did you hear  
3 any?
- 4 A I don't recall any, no.
- 5 Q Officer, did you not hear after this incident that  
6 the RCMP was telling the public that there had  
7 been only two taserings?
- 8 A I did not know that, no.
- 9 Q When did you -- let me ask you this. Is this the  
10 first time you have heard that the RCMP's  
11 pronouncement to the public is that there were  
12 only two taserings?
- 13 A Yes. I didn't know that, no.
- 14 Q And so one assumes then that you assumed that the  
15 RCMP was speaking of more than two taserings?
- 16 MR. HIRA: Well...
- 17 MR. ROSENBLROOM: All right.
- 18 MR. HIRA: First you should establish whether or not  
19 he's heard any media reports.
- 20 MR. ROSENBLROOM: Yes.
- 21 Q Well, have you heard any media reports in respect  
22 to the number of taserings?
- 23 A No.
- 24 Q And, Officer, you're aware that there came a time,  
25 I believe around December the 12th or 14th of last  
26 year, 2008, where the Crown counsel made a public  
27 statement at which time they indicated that they  
28 were not intending to lay charges; you remember  
29 that?
- 30 A Yeah. I actually got that from my staff relations  
31 rep. I didn't hear it in the media.
- 32 Q And you -- when you say you got that, did you get  
33 the statement from Mr. Lowe, the Crown counsel?
- 34 A No. The staff relationship -- staff relations  
35 rep, Mike Ingles, being in Ontario, I kept in  
36 contact with him, just to find out where -- when  
37 the inquiry was starting, et cetera.
- 38 Q So you've never read the statement?
- 39 A No.
- 40 Q And so your only knowledge about what was said in  
41 that statement is through your staff relations  
42 officer?
- 43 A Yes.
- 44 Q And did that staff relations officer inform you  
45 that the Crown at that time announced to the  
46 public that there had been five taserings?
- 47 A No.

1 Q This is all news to you? I'm telling you for the  
2 first time?

3 A Yes.

4 Q Now, when you did see the video with your counsel,  
5 and I'm certainly not asking you what you and your  
6 counsel discussed during the seeing of that video,  
7 but when you saw that video for the first time,  
8 were you surprised at how the event was depicted  
9 in that video?

10 A I don't know if I was surprised. I know that it  
11 didn't show everything that we saw, 'cause it came  
12 from the back.

13 Q Well, I'll come back to that a little later in my  
14 examination. I now, Officer, would like to focus  
15 on the incident in question and you've already  
16 testified you were well aware as you approached  
17 the subject, Mr. Dziekanski, that he didn't speak  
18 English. That we know, right?

19 A Yes.

20 Q Okay. In my cross-examination of you, Officer,  
21 I'm going to compartmentalize the events of that  
22 afternoon into four separate compartments or  
23 periods and I want to tell you what those four  
24 periods are, so you follow me as I cross-examine.  
25 The first period I want to examine you on is  
26 between your first contact with Mr. Dziekanski  
27 until he reaches the counter. The second period  
28 is from the arrival at the counter by Mr.  
29 Dziekanski until he is tasered. The third period  
30 I'm going to be asking you about is from when he  
31 was tasered until he's handcuffed. And the fourth  
32 and last period is between his handcuffing and  
33 until the EHS arrives, the ambulance service.

34 Now, in respect to those four compartments or  
35 time periods, I want to -- going to be asking you  
36 (1) the evidence that you gave to the  
37 investigators about the incident within each of  
38 those four periods and secondly, within each  
39 period, I'm going to ask you what really happened,  
40 based upon what we now know and what you see in  
41 the video.

42 Now, appreciating that that is the direction  
43 I'm taking, I'd like to go to the first period,  
44 the first compartment of time, and that is from  
45 first contact until Mr. Dziekanski arrives at the  
46 counter. Now, I'm going to summarize what you  
47 said to the IHIT investigators and, Officer, at

1 any time if you believe I'm misrepresenting what  
2 you said, I'll refer you to the statements that  
3 are a part of the evidence, but we've gone over it  
4 so many times I want to obviously expedite the  
5 process unless you feel that I misrepresent.

6 In terms of the first contact, until Mr.  
7 Dziekanski reaches the counter, you speak of him  
8 yelling, correct?

9 A Yes.

10 Q You speak of him not making sense?

11 A Yes.

12 Q You speak of him being agitated?

13 A Yes.

14 Q You speak of having to try to calm him down?

15 A Yes.

16 Q You speak of him backing away from you -- from you  
17 as officers and still yelling?

18 A Yes.

19 Q And you said that he didn't listen to anything  
20 that you were saying?

21 A Yes.

22 Q And you testified on Monday, yesterday, that with  
23 his hands up in the air that you interpreted that  
24 as defiance?

25 A Yes.

26 Q Having said that, given that testimony and having  
27 provided that representation generally to the  
28 investigators, I want to go into what really  
29 happened that night, Officer. I'm going to invite  
30 you to retract most of the material facts that you  
31 provided to the IHIT investigators in the  
32 interviews after that event. Firstly, Officer,  
33 would you agree with me that in observing Mr.  
34 Dziekanski from the video, you now recognize that  
35 on your entry into the secure area, he was calm.

36 A I would still say he was agitated, yes.

37 Q Well, one moment. Was he calm?

38 A I would describe him as agitated, not calm.

39 Q Constable Bentley, under oath here, has testified  
40 that in his opinion he did have a calm demeanour.  
41 Now, does that influence you in any way in terms  
42 of the testimony you give today?

43 A Like I said before, he appeared agitated to me.

44 Q Okay. Now, I listened as carefully as I could to  
45 your testimony. In trying to glean from it what  
46 was the basis upon which you felt he was agitated,  
47 and please correct me again if I misrepresent your

- 1 evidence. He was sweating. Is that evidence of  
2 agitation?
- 3 A The combination of him with his wide eyes, the  
4 sweating and the possible -- the clammy-ish look  
5 and the breathing, that's what I determined to be  
6 agitated as a whole.
- 7 Q And I may be the only one in this room that  
8 doesn't understand. What does wide-eyed mean?
- 9 A Your eyes -- his eyes were really wide and they  
10 weren't at a -- I can do it for you, if you  
11 like --
- 12 Q Yes, I'd appreciate that.
- 13 A -- as to what wide -- eyes are wide.  
14 (Demonstrates).
- 15 Q I see.
- 16 A So...
- 17 Q But you've acknowledged that he wasn't erratic in  
18 his movements during that first contact?
- 19 A No.
- 20 Q You would expect somebody who was agitated to be  
21 hyperactive, wouldn't you?
- 22 A Not necessarily. I perceived him to be agitated,  
23 based on what I described to you.
- 24 Q He was, in fact, calm. He wasn't moving around  
25 erratically, was he?
- 26 A Like I said, I believed he was agitated, not calm.
- 27 Q But there was no hyperactivity to his conduct.
- 28 A No.
- 29 Q And when you look at the video, it looks like  
30 quite a normal exchange between Mr. Dziekanski and  
31 the four of you at that point in time?
- 32 A From his end, there was no exchange, but we were  
33 trying to --
- 34 Q Yes.
- 35 A -- communicate with him.
- 36 Q Yeah. But there's nothing that could be  
37 translated by an observer to this video to suggest  
38 that he was manifesting an agitated behaviour when  
39 you were standing with him there?
- 40 MR. HIRA: Well, I think that question is argument  
41 because it refers to an observer of this video.  
42 If my friend has the skill to get that information  
43 or get what he wants through a more refined  
44 question, in my submission...
- 45 THE COMMISSIONER: He wants you to be more refined.
- 46 MR. ROSENBLOOM: I'd love counsel to inform me what he  
47 believes is refinement when it comes to this area.

- 1 Q By your observation of the video, will you agree  
2 with me that Mr. Dziekanski is not manifesting  
3 agitation in his movements when you see him?
- 4 A Based on the video, no.
- 5 Q You agree?
- 6 A Yes.
- 7 Q All right. Then we come to the area of your  
8 evidence that he was defiant, maybe non-  
9 cooperative. Do you not use that term? Did you  
10 not use that term?
- 11 A I don't know if I used that in my statement --
- 12 Q All right. Fair enough. Now, at what point in  
13 time do you believe that he became defiant?
- 14 A When he threw up his hands and turned away from us  
15 and moved towards the table.
- 16 Q All right. And, what -- in your opinion that was  
17 an act of resistance?
- 18 A Yes.
- 19 Q Okay. I don't want to take up any more time than  
20 is necessary, Officer, but I cross-examined  
21 Constable Bentley about this very thing because he  
22 too testified about this act of resistance and  
23 defiance and so on. Let me come at it this way  
24 and at any point if you want to see the video  
25 again, I welcome you requesting it.
- 26 I suggested to Constable Bentley that, in  
27 fact, the video clearly depicts Constable --  
28 excuse me, Corporal Robinson pointing to the  
29 counter at a point where Mr. Dziekanski had not  
30 yet turned around and headed in that direction; do  
31 you know -- are you aware of that being depicted  
32 in the video?
- 33 A No. My -- my recollection of it, even after  
34 looking at the video, was that he turned and was  
35 going to the table as Corporal Robinson was  
36 pointing, as you say, but he was doing it  
37 irregardless of Corporal Robinson pointing.
- 38 Q Well, I'd like to look at the video with you, and  
39 I wonder if I could have that pointer again,  
40 please, the laser. Sorry, just before we start.
- 41 Okay. Now, I would like, yes, the event --  
42 the frame to commence about the point where you  
43 and Mr. Dziekanski and your fellow officers are at  
44 the luggage, and I will first play this at normal  
45 speed and then I will ask for it to be freeze-  
46 framed.
- 47

1 (VIDEO BEING PLAYED)

2  
3 MR. ROSENBLOOM: Thank you. Now, I would like to go  
4 back with a freeze-frame mode.

5  
6 (VIDEO BEING PLAYED)

7  
8 MR. ROSENBLOOM: Right. A little bit further back,  
9 please. Back. Back. Back, back, back, back.  
10 Thank you.

11 Q Now, if we could start right there and start going  
12 slow-motion and I'm going to direct your attention  
13 right at this spot and maybe -- you're not going  
14 to see that on your --

15 A I can see it here, yes.

16 Q You can see my laser?

17 A Oh, sorry. I thought you were saying the --

18 Q No. I'm sorry. So if you could watch the big  
19 screen and you are watching, I believe, the arm of  
20 an officer coming up into a horizontal direction.

21 MR. ROSENBLOOM: Yes, carry on, please. Stop there for  
22 a moment.

23 Q You see that arm, what appears to be an arm?

24 A Yes.

25 Q Correct?

26 A Yes, I do.

27 Q And next frame? Okay. Arm gets to almost a  
28 horizontal position, correct?

29 A Yes.

30 Q And I will show you in a moment, I hope to your  
31 satisfaction, this is Corporal Robinson that we're  
32 going to see. Now, at that moment, Officer, with  
33 that frame number...?

34 MR. LUNN: 3:39.

35 MR. ROSENBLOOM:

36 Q 3:39. Do you agree Mr. Dziekanski is still at his  
37 luggage? He has not turned around. He has not  
38 commenced what you spoke of as his active  
39 defiance?

40 A No.

41 Q You agree? "No" meaning you agree?

42 A Yes. Yes.

43 Q Yes. Okay. Let's just carry on frame by frame.  
44 Arm goes up even more horizontally, correct?

45 A Yes.

46 MR. ROSENBLOOM: Yes. And just carry on in slow  
47 motion.

1 (VIDEO BEING PLAYED)

2

3 Q And I will suggest to you as it's being done that  
4 we will see the index finger and glove of Corporal  
5 Robinson pointing.

6 MR. ROSENBLOOM: All right. Stop there for a moment.

7 Q And you then, indeed, see a glove and a pointing?

8 A Yeah, I see it now.

9 Q Yes.

10 MR. ROSENBLOOM: Carry on.

11

12 (VIDEO BEING PLAYED)

13

14 Q Finger index pointing towards the counter, sir?

15 MR. ROSENBLOOM: Stop.

16 Q And right finger pointing, index finger towards  
17 the counter?

18 A Yes.

19 Q Yes. And now we see Corporal Robinson, don't we?

20 A Now I see him, yes.

21 Q And we see that the arm that had been extended is  
22 that of Corporal Robinson?

23 A Yes.

24 Q Okay. Now, do you agree, having reviewed the  
25 video with me just now that it appears conclusive  
26 in your mind that before Mr. Dziekanski turned  
27 around and left his luggage and headed to the  
28 counter, that he was being instructed to do so?

29 A The video appears to show that he may be pointing,  
30 yes.

31 Q And for an officer to point someone in a certain  
32 direction, isn't that a command?

33 A Yes.

34 Q And the command was for Mr. Dziekanski to go to  
35 the counter?

36 A I don't know what the command was --

37 Q Well --

38 A -- but...

39 Q -- let's assume it was sign language and nothing  
40 was said.

41 A Then yes.

42 Q Yes. Is this surprising you to see these frames  
43 of the video today?

44 A Yes. I did not see the hand before him walking  
45 into the view, I did not see that hand before.

46 Q So does it come as a surprise to you today that  
47 there becomes -- it becomes apparent from the

- 1 video that Constable -- excuse me, Corporal  
2 Robinson, was directing Mr. Dziekanski to the  
3 counter before Mr. Dziekanski turned around and  
4 headed to the counter?
- 5 A Yes.
- 6 Q That's pretty significant, isn't it, Officer?
- 7 A In regards to the whole situation or this  
8 defiance --
- 9 Q Well, in regards to the issue of your testimony  
10 that you testified that he was defiant.
- 11 A At the time I still interpreted it to be defiant.
- 12 Q Okay. At the time. Now, at the time, would you  
13 agree with me that Corporal Robinson is making his  
14 hand motion or command with you right in -- beside  
15 him?
- 16 A Yes.
- 17 Q You didn't see it?
- 18 A I did not notice it.
- 19 Q You did not see at any time Corporal Robinson with  
20 his arms out right pointing towards the counter?
- 21 A As I said, I was focusing on Mr. Dziekanski, so...
- 22 Q Now, you also testified that Mr. Dziekanski when  
23 he raised his hands was interpreted by you as  
24 defiance, correct?
- 25 A Yes.
- 26 Q Would you agree with me, Officer, having now  
27 viewed this video again, that the shrugging of the  
28 shoulders and the hands going up is obviously an  
29 act of resignation and compliance?
- 30 A It still looks like a defiant look to me.
- 31 Q How can you possibly interpret the movement of his  
32 hands, the shrug of his shoulder and the arms  
33 going up with the hand -- the palms open and  
34 turning around and complying with the command to  
35 go over to a counter as being defiance?
- 36 MR. HIRA: The officer has -- has been asked that  
37 question twice and my friend can ask the question  
38 another way a third time perhaps, but the way he's  
39 currently worded it is pure argument.
- 40 THE COMMISSIONER: No, I don't agree with that. Go  
41 ahead.
- 42 MR. ROSENBLUM:
- 43 Q So Officer, my question here is in the context of  
44 you now appreciating that it becomes apparent that  
45 Corporal Robinson is ordering or commanding Mr.  
46 Dziekanski to go to the counter. Would you now  
47 agree that the body posture of Mr. Dziekanski

1 raising his hands, shrugging his shoulders and  
2 turning around and heading away towards the  
3 counter is, in fact, and can only be interpreted  
4 as an act of total compliance?

5 A As I've said before, I still see it as a movement  
6 of defiance based on the way he moved his hands.

7 Q I'm sorry, Officer. I'm a bit hard of hearing. I  
8 did not hear your response.

9 A I said I still see it as a -- as a movement of  
10 defiance. That's how it looks to me, the  
11 movement.

12 Q Well, I hate to take more time on this, but just  
13 explain to me how such a body movement can be  
14 possibly interpreted as defiance - arms up in the  
15 air, palms open, back to the officers, walking  
16 towards a counter that you've been directed to  
17 head to?

18 A I looked at the way he threw up his hands and,  
19 like, put his hands up and that's just how I see  
20 it.

21 Q Do you consider or are you testifying that his arm  
22 movement was one that was combative?

23 A No. I said defiant.

24 Q Yes. Defiant meaning he didn't give a damn what  
25 you were asking him to do, or what? What do you  
26 mean by defiant?

27 A He did not want to listen to us. That's how I --  
28 so I --

29 Q How can you say, Officer, that he didn't want to  
30 listen to you when he is complying with Corporal  
31 Robinson's direction to head over to the counter?

32 A You asked me how it looked on the video and I'm  
33 still saying that it looked defiant, so...

34 MR. ROSENBLoom: Mr. Commissioner, are we taking an  
35 afternoon coffee break?

36 THE COMMISSIONER: If you'd like one, yes. We'll do it  
37 now.

38 MR. ROSENBLoom: Thank you.

39 THE REGISTRAR: The hearing will now recess for ten  
40 minutes.

41

42 (WITNESS STOOD DOWN)

43

44 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

45 (PROCEEDINGS RECONVENED)

46

47 THE REGISTRAR: Order. The hearing is resumed.

Cst. Kwesi Millington

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

1 CST. KWESI MILLINGTON, a  
2 witness, recalled.  
3

4 MR. ROSENBLOOM: I'm about to introduce my friend on  
5 this matter.

6 THE COMMISSIONER: All right.

7 MR. ROSENBLOOM: I'm about to cross-examine on the CEW  
8 user course document that was just brought in  
9 shortly after the noon break, and in referring to  
10 this document, the pages are very confusing  
11 because they're numbered all over the place. And  
12 my colleague, Mr. Morley, who is part of Mr.  
13 Hira's team, is to speak to this so that the  
14 document can be properly marked and easily  
15 referred to in cross-examination of the witness.

16 THE COMMISSIONER: Yes, Mr. Morley.

17 MR. MORLEY: Yes, thank you, Mr. Commissioner. For the  
18 record, Brendan Morley for Cst. Kwesi Millington.

19 What has been marked as Exhibit 61 is in fact  
20 eight separate booklets, each of them dealing with  
21 various components of the Caw user course which  
22 Cst. Millington attended. We wonder if they might  
23 not be marked as Exhibits 61A through H for the  
24 reason that the pagination begins anew on each  
25 specific one.

26 THE COMMISSIONER: Yes, all right.

27 MR. MORLEY: Thank you, Mr. Commissioner.  
28

29 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF  
30 GOVERNMENT OF POLAND, continuing:  
31

32 Q Officer, you have Exhibit 61 in front of you,  
33 which is this training manual that was brought in  
34 after the lunch hour? And I'm referring you to  
35 section 4 and to page 4 of section 4. Take your  
36 time.

37 A The sections don't seem to be --

38 Q Have you found that?

39 A No, they don't seem to be a number on this one.  
40 Is this an exact copy? I don't know.

41 Q If I may just assist you.

42 A Is it supposed to say 4 up top like I wrote in?

43 Q Yes, it should, and your copy doesn't appear to.

44 A I don't know if this is the wrong one.

45 THE REGISTRAR: Are you saying it should be marked A  
46 to H?

47 MR. ROSENBLOOM: Well, no. I'm just saying that the

1 copy that was provided to me by counsel are  
2 sections and there's a number 1 circled at the top  
3 right-hand corner, then a second section with  
4 number 2 circled at the top.

5 Q Well, officer, I am referring to section 4, page  
6 4, and I'll find that here for you if I may.

7 THE REGISTRAR: Do you have a copy for the  
8 Commissioner?

9 MR. ROSENBLUM: I thought the Commissioner would have  
10 a copy of the exhibit, 61.

11 THE COMMISSIONER: Go ahead.

12 MR. VERTLIEB: Does the officer wish his original back  
13 with his notes? Is that what you're looking for?

14 A Or even a copy that is -- that's sufficient. I  
15 can get the original back and then I can find that  
16 slide. Brendan is bringing back the original.

17 THE COMMISSIONER: You're in Exhibit 61, which letter?

18 MR. ROSENBLUM: Letter D.

19 THE COMMISSIONER: D, thank you.

20 MR. ROSENBLUM:

21 Q So I'm at page 4 at the bottom right-hand corner,  
22 and there are three PowerPoint slides that we're  
23 looking at here. And officer, you'd agree with me  
24 at the top slide it speaks to [as read]:

25

26 Avoid extended or repeated CEW applications  
27 where practicable.

28

29 Right?

30 A Yes.

31 Q And we've spoken about that one, haven't we?

32 A Yes.

33 Q I was interested to look at the following slide  
34 headed [as read]:

35

36 Avoid extended or repeated CEW applications  
37 where practical.

38

39 You see that?

40 A Yes.

41 Q And do you see where it reads [as read]:

42

43 The application of the CEW is a physically  
44 stressful event?

45

46 A Yes.

47 Q Do you then see where it reads [as read]:

1                   Especially when dealing with persons in a  
2                   health crisis such as excited delirium, it is  
3                   advisable to minimize the physical and  
4                   psychological stress to the subject to the  
5                   greatest degree possible.

6

7                   Do you see that?

8                   A       Yes.

9                   Q       It then reads [as read]:

10

11                   Officers should only apply the number of  
12                   cycles reasonably necessary to allow them to  
13                   safely restrain the subject.

14

15                   A       Yes.

16                   Q       And you'll see the last bullet. I'm skipping one  
17                   bullet. Last bullet [as read]:

18

19                   If circumstances require extended duration or  
20                   repeated discharges, the operator should take  
21                   care to observe the breathing patterns of the  
22                   subject and provide breaks in the CEW  
23                   stimulation where practicable.

24

25                   A       Yes.

26                   Q       Now, you see that. Do you remember that being  
27                   part of your training presentation?

28

29                   A       Yes.

30                   Q       Were you mindful of those cautionary notes from  
31                   your instruction on the night of the 14th of  
32                   October?

32

33                   A       Yes.

34                   Q       You were? And did you suspect as you approached  
35                   the situation and were about to deploy the Taser  
36                   that Mr. Dziekanski was a man with excited  
37                   delirium?

37

38                   A       As I've said before, he was exhibiting some of the  
39                   signs that he may have it, but I did not know for  
40                   sure if he had it.

40

41                   Q       Right. But you were alive to the fact that that  
42                   might have been the case?

42

43                   A       Yes.

44                   Q       And that being the case, do you believe, reading  
45                   the manual as I've just put in front of you, that  
46                   you were in compliance with the manual when you  
47                   carried out the five incidents of taserung that we  
48                   have heard about?

1 A I believed that it was four, but yes, I was  
2 mindful of it.

3 Q And when you say you were mindful, do you believe  
4 you were in compliance with the manual?

5 A Oh, sorry.

6 Q Pardon me?

7 A Yes. I didn't realize what the question was.

8 Yes.

9 Q So you are telling us that knowing that Mr.  
10 Dziekanski -- being of the opinion that Mr.  
11 Dziekanski may have been exhibiting some  
12 indications of excited delirium, you were  
13 minimizing the physical and psychological stress  
14 to the subject to the greatest degree possible?  
15 Is that your testimony?

16 A If I was able to do so, I would have. But the  
17 speed of the situation dictated otherwise.

18 Q And you believe that you complied with the last of  
19 those bullets on that slide, that where [as read]:  
20

21 ...circumstances require extended duration or  
22 repeated discharges, the operator should take  
23 care to observe the breathing patterns of the  
24 subject and provide breaks in the CEW  
25 stimulation where practicable?  
26

27 Do you believe you complied with that?

28 A It says where practicable. Yes.

29 Q Officer, where were your breaks between your  
30 deployments? Did you consider that the timeframes  
31 between each of the cycles were breaks?

32 A I didn't look at it as that, but we were  
33 reassessing as we went along, trying to get him  
34 under control, only applying if necessary the next  
35 time.

36 Q Now, I want to come to the second of the four  
37 periods in question. You'll recall the first  
38 period related to your first attendance, first  
39 contact, to the point where Mr. Dziekanski gets to  
40 the counter. I now want to focus on the second  
41 period. That period is from the arrival at the  
42 counter until the tasing.

43 Now, again I want to break it down into what  
44 you told the investigators and what really  
45 happened. So let's deal first with what you told  
46 the investigators. And again, to speed things up  
47 I'm going to give you a summary of what I

1 understand to be your testimony. And again,  
2 please interrupt me if I misrepresent.

3 I believe, sir, that your testimony generally  
4 to the investigators, and indeed some of your  
5 testimony under oath here yesterday and today, is  
6 that he raised the stapler and you told the IHIT  
7 investigators that he raised it high, correct?

8 A Yes.

9 Q But you've told us what you consider high.

10 A Yes.

11 Q And that he started advancing towards us. You did  
12 say that, didn't you?

13 A Yes.

14 Q You said that the way he had the stapler and was  
15 coming towards us as if he wanted to fight. You  
16 did say that, didn't you?

17 A I'd have to look at the statement to determine if  
18 that was exactly what I said. What statement are  
19 you looking at?

20 Q I'm looking at the first of your statements, page  
21 -- I have numbered them differently. Page 33 of  
22 your statement --

23 A The second statement?

24 Q -- of the 15th of October, your second statement.  
25 Do you now have that page?

26 A I'm getting to it.

27 Q Page 33. Then if you would go down two-thirds of  
28 the way where Cst. Brassington says:

29

30 Okay. Um, you mentioned that he, he was his  
31 behaviour was com- was combative or appeared  
32 combative. Um, tell me more about that.

33

34 And you answered -- why don't you read that out.

35 A

36 Ah, well based on our training, ah, there are  
37 levels of behaviour that initiate different  
38 responses or require different responses. And  
39 ah, that behaviour is what I recognized him  
40 to be exuding, just the way he had the  
41 stapler and was coming towards us as if he  
42 wanted to fight.

43

44 Q Okay. So I did represent your comments correctly?

45 A Yes.

46 Q All right. Just continuing with that summary of  
47 what you told the officers, you said at another

1 point in your statements that you had the  
2 impression he wanted to hurt us?  
3 A Yes.  
4 Q Yes. And you also said to the investigating  
5 officer that Mr. Dziekanski seemed more paranoid  
6 than angry.  
7 A Yes.  
8 Q Yes. Having made those representations to the  
9 investigators, I now want to focus on what really  
10 happened that night, sir. To that end, I'm going  
11 to invite you to retract most of the material  
12 information you provided to the IHIT investigators  
13 in respect to this passage of time, this  
14 compartment of time.  
15 You say you didn't see Mr. Dziekanski pick up  
16 the stapler, did you?  
17 A I said I don't remember seeing him pick it up.  
18 Q You said that he threw items off the counter. Do  
19 I have that testimony correctly?  
20 A Yes.  
21 Q And my learned friend -- I think it was Mr.  
22 Kosteckyj -- was asking you where were these items  
23 located. And your answer was?  
24 A It was on the desk. There was a desk and a shelf.  
25 Q Yes?  
26 A And I think it was on the bottom part.  
27 Q I see. So there was what we'll call the counter  
28 top?  
29 A Yes.  
30 Q And then there was on the exterior side, the  
31 public side of the counter, if I can put it that  
32 way, a shelf below it; is that correct?  
33 A It would have been on the other side. The higher  
34 shelf was on the window side and then it dipped  
35 down --  
36 Q Yes.  
37 A -- on the inside, interior side.  
38 Q Sorry. I maybe didn't understand. The second  
39 shelf we're speaking about, which is lower than  
40 the counter top, is on the side closest to the  
41 public area or on the other side?  
42 A The other side.  
43 Q Yes. And did you see Mr. Dziekanski move items  
44 from that lower counter, lower shelf?  
45 A Yes. I saw him -- I saw some items that he was  
46 knocking over but I don't know what exactly it  
47 was.

- 1 Q You never took a look later --
- 2 A No.
- 3 Q -- to determine? I'm going to suggest to you,  
4 officer, that when you say or informed the IHIT  
5 investigators that he raised the stapler high,  
6 that any normal person's interpretation of that  
7 statement is that he raised the stapler above his  
8 shoulders. Do you agree with me?
- 9 A No. I said before that above the waist could be  
10 high as well.
- 11 Q All right. Officer, in the course of carrying out  
12 your duties as a police officer, if you turned to  
13 a subject and you said, "Put your hands up high,"  
14 what would you expect them to do? And please show  
15 us. Please show us.
- 16 A Either raise them here (gesturing) or raise them  
17 high above their head.
- 18 Q If you instructed a person to raise their hands  
19 high, wouldn't you expect them to raise them in  
20 the manner I'm raising them?
- 21 A It could be that or it could be just above the  
22 waist.
- 23 Q Just above the waist?
- 24 A Yeah.
- 25 Q But the way you're motioning here for these  
26 proceedings is that your arms are at least to a  
27 point where your hands are higher than your  
28 shoulders, correct?
- 29 A That's what I demonstrated to you, but lower could  
30 be high as well.
- 31 Q Oh, officer. It's not what you demonstrated.  
32 When you responded to my learned friend Mr.  
33 Vertlieb's questioning, as I recollect your  
34 demonstration of your recollection of the night,  
35 you had the stapler in one hand, the fist in the  
36 other hand, and you had the posture in such a  
37 position that the wrist and the hands were below  
38 the shoulder. Do you not agree with me?
- 39 A I may have, yes.
- 40 Q May have been? Just may have been?
- 41 A (No audible response)
- 42 Q Well, officer, it's important for the Commission  
43 to fully appreciate your evidence. When you  
44 testified a few days ago, is it not correct that  
45 you demonstrated how Mr. Dziekanski was clutching  
46 the stapler and how he had his left hand in a fist  
47 and that in doing that demonstration you had both

1 hands well below the shoulder?  
2 A It could have been below the shoulder, yes.  
3 Q Yes, it could have been. And in fact, is that  
4 your recollection of exactly how Mr. Dziekanski  
5 presented himself at that moment?  
6 A That is my best recollection.  
7 Q Below the shoulder?  
8 A Yes.  
9 Q All right. That being the case, in the course of  
10 your duty as a police officer, if you turned to  
11 somebody and you said, "Hands up high," would you  
12 feel there's compliance if a person simply brought  
13 their hands to this location as I'm demonstrating  
14 to you where the hands are below the shoulder?  
15 Would that be compliance?  
16 A Yes. Not in a fist, but if they had their hands  
17 like that, yeah.  
18 Q You'd be satisfied in ordering a subject to put  
19 their arms high, hands high, if they simply did  
20 this (gesturing)?  
21 A If their hands were open, yes.  
22 Q You wouldn't, officer, consider that an act of  
23 non-cooperation? Would you not have expected a  
24 person when so ordered to put their hands above  
25 their shoulder?  
26 A Not necessarily, no.  
27 Q Mr. Dziekanski when he takes the stapler -- and  
28 you never saw him actually grab it, did you?  
29 A I don't recall seeing him grab it, no.  
30 Q He's never wild with it, is he?  
31 A No.  
32 Q No. He's not swinging the stapler in a wild  
33 fashion, is he?  
34 A No.  
35 Q No. You then testify -- and this probably  
36 perplexes me more than anything in this  
37 case -- that he then makes his advance against  
38 your fellow officers, and you've used the word  
39 "advance" and you've used the word "a step or  
40 two." And then you were invited, I believe by  
41 Commission counsel, to view the video and to  
42 freeze-frame the moment where there is, in your  
43 opinion, that moment of advancement. You recall  
44 that --  
45 A Yes.  
46 Q -- from yesterday? Officer, I didn't see any  
47 advancement. And maybe I'm the only one in this

1 room that isn't getting this. But I would like to  
2 do the video again with you and I'd like you to  
3 explain at the moment where you believe there is  
4 advancement, how anyone possibly can interpret  
5 this video in a manner that suggests there is an  
6 advancement against the officers.

7 MR. LUNN: Would you like it played at normal speed?

8 MR. ROSENBLOOM: Normal speed and then --

9 Q Officer, why don't we do it slow motion so you can  
10 pinpoint the point of what you consider  
11 advancement.

12 MR. ROSENBLOOM: No, I want it a little bit further  
13 along. Starting here, but going to the point of  
14 tasering. Let's put it that way.

15  
16 (VIDEO BEING PLAYED)

17  
18 A He's advancing there.

19  
20 (VIDEO PAUSED)

21  
22 Q I don't see it. Help me. Where is there an  
23 indication that his body is moving in a forward  
24 direction?

25 A When he opens his arms and I can see him moving  
26 forward. You can't see it from this end obviously  
27 because the table is blocking him from behind.

28 Q Yes.

29 A But he's moving forward.

30 Q I appreciate that. But if he is moving forward,  
31 does not one see from the back observation that  
32 there's some torquing of the torso, that there's  
33 some torquing of his back as he moves?

34 A Not necessarily. I see him moving forward.

35 Q Would you agree with me, in your observations of  
36 this video, that his back remains in a constant  
37 plane or angle throughout the moment you're  
38 speaking about? There's no torquing of the body,  
39 is there?

40 A I didn't say that torquing was indicating that he  
41 was moving forward, but I see him moving forward.

42 Q Sorry. But maybe I didn't provide the background  
43 for this. You do agree, do you not, that for a  
44 person to move forward with one step or two steps,  
45 that there is obvious torquing of the shoulder  
46 blades of the body?

47 A They can move without torquing the shoulder

1 blades, as you were saying.

2 Q Meaning that you're suggesting that you can move  
3 and take a right step and a left step without any  
4 movement of the -- any torquing of the shoulder  
5 blades; is that correct?

6 A Yes.

7 Q Is there anything in this video that you're  
8 suggesting invites evidence that there has been a  
9 movement of Mr. Dziekanski and an advancement  
10 towards your officer?

11 A Can I watch it again?

12 Q Yes, of course.

13

14 (VIDEO BEING PLAYED)

15

16 A He's moving there. Sorry, this is -- can you  
17 rewind and play it again, please.

18 Q Of course.

19 A I don't know if you're rewinding or forwarding  
20 sometimes with this thing.

21 And he's moving there. And there's a slight  
22 leaning forward in the body and he's moving at  
23 that point.

24 Q All right. Now, accepting for a moment that such  
25 movement did take place, it certainly, you would  
26 agree with me, isn't a movement that suggested  
27 that he was on the attack, did it?

28 A I believed he was going to attack, yes.

29 Q Well, I know you believed that he was going to  
30 attack. But in terms of what you see there, you  
31 would agree that it was by your evidence one step  
32 forward?

33 A I don't know how many steps exactly.

34 Q Well, he didn't continue to step forward, did he?

35 A No, because I deployed the Taser at that point.

36 Q Yes. But did you get the impression that he was  
37 at that point about to proceed beyond one step?

38 A Yes.

39 Q But officer, do you see Mr. Dziekanski with any  
40 form of animation moving out from that counter?

41 A He was approaching us, moving forward.

42 MR. ROSENBLOOM: Just carry on with the video, please.

43 Let's go back again from the point where you  
44 believe he steps forward -- and frankly, I still  
45 don't see it, but maybe others do. And I have to  
46 leave it to others. Thank you, stop, and going  
47 back to where the officer believes that there is a

1 movement forward. Thank you very much.

2 Q Now, you spoke about how he held the stapler and  
3 how he had his fist in his left hand. And  
4 Cst. Rundel, I believe, testified that the stapler  
5 and the fist were clutched pretty close to the  
6 chest as I remember his testimony. And that's  
7 sort of your testimony, isn't it?

8 A But I have his arms up. I don't know if I said  
9 close to the chest or just out.

10 Q Would you not agree with me, officer, that that  
11 should have been interpreted by you as an act of  
12 defence, not offence?

13 A No. Like I said, he had it raised up and was  
14 coming towards us.

15

16 (VIDEO STOPPED)

17

18 MR. ROSENBLOOM:

19 Q Well, if one is coming towards you with a stapler  
20 and you were worried it was going to be thrown,  
21 didn't you?

22 A I didn't know what he was going to do.

23 Q Officer, would it not be likely that if a person  
24 was going to throw the stapler at you, that they  
25 would be in a throwing stance and not having the  
26 stapler and fist up against the chest or near the  
27 chest?

28 A I don't know what position he would be in if he  
29 was going to throw it. But like I said, I don't  
30 know what he was going to do with it.

31 Q Well, you've got to assess at every second the  
32 situation as it's unfolding. If a person is in a  
33 pitching stance, you're to anticipate it's going  
34 to be thrown, right?

35 A If someone is in a pitching stance --

36 Q Yes.

37 A -- you're asking me if they're going to throw  
38 something?

39 Q Yes.

40 A Yes.

41 Q Yes. And you know that if someone is going to  
42 throw something and they're in the stance as you  
43 described it, with their stapler and fist near the  
44 chest, that to throw it, you can't throw it in  
45 this posture, can you?

46 A If you're talking about throwing, I don't know if  
47 they could. Maybe they couldn't. Maybe they

- 1           could.
- 2           Q     But it's common sense, isn't it? I've got my pen  
3           right now. I want to throw this pen at you, I  
4           can't throw it in this posture. I can do that  
5           (throwing). That's about what I can do, right?
- 6           A     I don't know what you can do with it.
- 7           Q     Well, officer, obviously it's common sense that if  
8           you are about to throw something, you are going to  
9           have to change your posture and lob it or throw it  
10          at the individual, right?
- 11          A     I don't know what position. People can throw from  
12          different positions.
- 13          Q     So you think it was as threatening in terms of the  
14          likelihood that it was going to be thrown -- it  
15          was as threatening that Mr. Dziekanski was in the  
16          posture you described as if he had been in a what  
17          I call throwing posture?
- 18          A     It may be more likely that he's going to throw it  
19          if he's in that posture, but he may have thrown it  
20          either way, if that's what you're sticking with  
21          throwing.
- 22          Q     Do you really believe if I gave you my pen and you  
23          were in the posture you described to Mr.  
24          Commissioner that you could throw the pen from  
25          where you're located to where I'm located now, in  
26          that posture, without moving?
- 27          A     I don't know.
- 28          Q     Ms. Roberts was examining you in cross-examination  
29          I guess late morning, if my memory is right, and  
30          she was discussing with you the manual, as I  
31          understand it, the manual as it dictates distances  
32          and what are safe distances and how officers  
33          should be mindful of distances and threats and  
34          risk to their lives and so on, right? Do you  
35          remember that examination?
- 36          A     Yes.
- 37          Q     Officer, you have testified that as you observed  
38          these events leading to your tasing that you  
39          feared for the safety of your fellow officers; is  
40          that correct?
- 41          A     Yes.
- 42          Q     Now, you observed the distance that they were  
43          located from Mr. Dziekanski during these precious  
44          moments before the tasing, right?
- 45          A     Approximately, yeah.
- 46          Q     Now, there was nothing that barred the officers  
47          from gaining or taking more distance from Mr.

1 Dziekanski if they had chosen to do so in these  
2 moments, right?

3 A Not that I could see, no.

4 Q No. Huge room. It wasn't as if one of your  
5 officers was backed up against the wall, was he?

6 A No.

7 Q No. In fact, there was almost a tennis court size  
8 room behind him if he wanted to retreat to a  
9 greater distance, correct?

10 A Behind who?

11 Q I'm saying that if the officers that were closest  
12 to Mr. Dziekanski -- I believe Officer Bentley and  
13 Cpl. Robinson -- that those officers at that  
14 moment, had they wanted or feared for their  
15 safety, could have retreated to a further distance  
16 from Mr. Dziekanski.

17 A There was more space behind them.

18 Q There was tons of space behind them, wasn't there?

19 A There was more space, yeah.

20 Q Well, more space. Isn't it a huge room?

21 A It's a big room.

22 Q Yes. And there were no obstructions. It wasn't  
23 as if any of them were obstructed by a counter  
24 behind them or a wall behind them.

25 A No.

26 Q And so, officer, as you assessed the risk to your  
27 fellow officers, did it come into your mind, did  
28 you consider that the officers, if they had felt a  
29 risk, could have done a further retreat from where  
30 they were located?

31 A I didn't consider that at the time. He was  
32 advancing and I acted to stop the threat.

33 Q Well, there was about seven or eight feet maybe  
34 between Mr. Dziekanski and the closest officer.  
35 Is that fair to say?

36 A I don't know how much distance between --

37 Q Well, approximately what? Was it somewhat the  
38 distance of you to me?

39 A That would be probably about right.

40 Q All right. And so at that moment, if one accepts  
41 your evidence -- and I certainly don't -- but if  
42 someone accepts the evidence that there was this  
43 advancement against the officer, he had a seven-  
44 or eight-foot or nine-foot distance, correct?

45 A He had some distance, yes.

46 Q And having that distance and that advantage, if he  
47 had wanted to pull back and give himself even more

1 distance, that option was available to him?  
2 A Yes.  
3 Q You didn't see the officers do that, did they,  
4 just before you tasered?  
5 A I didn't notice it, no.  
6 Q No. You didn't notice it, and I suggest to you  
7 that at the moment where you had to assess things,  
8 you knew that the officers in question were not  
9 feeling risk or they would have retreated further  
10 away, and they didn't, did they?  
11 A I don't know what risk they were feeling. My job  
12 was to do what I had to do.  
13 Q Now, you pulled out the Taser at some point and  
14 you must have released the safety latch, correct?  
15 A Yes.  
16 Q And when did you remove that safety latch or  
17 whatever you call it? Discharged the safety  
18 latch?  
19 A I don't recall exactly when I did it, but from my  
20 training, it would be just before firing if I did  
21 it according to my training.  
22 Q And you said just before training. I'm asking you  
23 your memory of the night in question. You removed  
24 the Taser from the holster?  
25 A Yes.  
26 Q You obviously threw the safety switch to an on  
27 position?  
28 A Yes.  
29 Q Was that done almost instantaneously?  
30 A I don't recall.  
31 Q All right. But you would have done that because  
32 you had to do that to discharge, correct?  
33 A Yes.  
34 Q And then, as I understand it, the aiming of the  
35 weapon is by way of a laser beam; is that correct?  
36 A You can do it by laser beam or just by pointing.  
37 I don't remember seeing the laser beam on the  
38 night in question, on that night.  
39 Q But that is an option for you?  
40 A The laser? Yes.  
41 Q Yes.  
42 A Yes.  
43 Q Nice feature, isn't it?  
44 A I don't know if it's nice or not, but it's --  
45 Q Well, in terms of it's a useful way of ensuring  
46 that you hit your target, right?  
47 A Yes, it would be.

- 1 Q Officer, telling us what you told the Commission  
2 today of the distance of Mr. Dziekanski from your  
3 fellow officers, why didn't you have the Taser  
4 aimed with the laser on Mr. Dziekanski and why  
5 didn't you hold off on discharging the trigger  
6 until you saw there was a true advancement against  
7 your officer that endangered your officer?
- 8 A Like I said before, he had the stapler, he had it  
9 raised. He was already advancing so I acted to  
10 stop the threat.
- 11 Q Well, if he already was advancing -- and you know  
12 I'm never going to join you on that theory, but  
13 let's say that he was advancing -- he was still  
14 eight feet away from the officer at the point  
15 where he commenced his advancement.
- 16 A I was trained to stop the threat as soon as  
17 possible, so -- he had it up. He was in his  
18 combative stance. He as advancing. I believed  
19 that he was going to attack on the other officers  
20 and so I acted.
- 21 Q But wouldn't it have been more prudent to keep  
22 your aim on the subject with the laser beam and  
23 that at a point where you are assured that there  
24 is truly an attack going on, to apply the trigger?
- 25 A No. I acted in accordance to stopping the threat  
26 like I was trying to.
- 27 Q All right. You said in your statement that he  
28 seemed more paranoid than angry. I was interested  
29 in that observation. You made that statement to  
30 the IHIT investigators, correct?
- 31 A Yes.
- 32 Q Now, what did that mean to you, that you were  
33 interpreting paranoia instead of anger?
- 34 A Where did I say that? I know I said it. I just  
35 want to make sure I know when it was.
- 36 Q You said it in your second statement --
- 37 A Page 12. I have it here.
- 38 Q Pardon me?
- 39 A It's on page 12. I just found it.
- 40 Q Oh, you found it. Okay, feel free to review it  
41 before I speak to you about it.
- 42 A Okay. It was when we first saw him.
- 43 Q Yes. The fact that you interpreted this as  
44 paranoia rather than anger -- what did you believe  
45 was the situation in light of that observation?
- 46 A Like I said, I said more than angry. He didn't  
47 appear to be angry in that he was moving around

- 1 and doing a lot of things, but the wide eyes and  
2 the sweating indicated -- that's what I described  
3 as paranoid and agitated.
- 4 Q Yes. And if I suggest to you that paranoia means  
5 that an individual is worried about the supposed  
6 hostility of others, would you agree with me  
7 that's sort of a definition of paranoia?
- 8 A You know what? I just used the word and I didn't  
9 attach the meaning to it at all.
- 10 Q Well, would you agree with me, without using the  
11 word even, that your interpretation of the  
12 demeanour and behaviour of Mr. Dziekanski was a  
13 person who was worried about the supposed  
14 hostility of others, namely the police officers?
- 15 A No. I didn't interpret it that. So I used the  
16 wrong word.
- 17 Q You'd agree with me that the encirclement of four  
18 officers with their hands in the area of their  
19 holsters would lead one to being paranoid or  
20 nervous about the hostility of people around them?
- 21 A No, not if they hadn't done anything or were going  
22 to do anything wrong.
- 23 Q Officer, whether they had done anything wrong or  
24 not, do you not agree with me that to be in a  
25 foreign country, encircled by four officers with  
26 their hands down by their holsters, would cause a  
27 person to be in fear?
- 28 A Once again, I don't think that would be the case.
- 29 Q Really? You'd expect a person to be completely  
30 lackadaisical and calm about a situation like  
31 that?
- 32 MR. HIRA: Well, Mr. Commissioner, I haven't stood up  
33 despite the last two or three questions. The last  
34 one truly does cross the line in my view. The  
35 first two did too.
- 36 THE COMMISSIONER: Go ahead, Mr. Rosenbloom.
- 37 MR. ROSENBLOOM: Thank you.
- 38 A Repeat the question, please.
- 39 Q I'm not sure I can. I'll do my best. Would you  
40 agree with me that for a foreigner to be  
41 confronted by four armed officers, uniformed, with  
42 the officers encircling them, with the officers'  
43 hands down at holsters, would cause a person to be  
44 in fright?
- 45 A Once again, not if they hadn't done anything wrong  
46 or were not going to do anything wrong, no.
- 47 Q I suggest to you it's nothing to do with their

1 culpability, whether they did anything wrong or  
2 not. It's to do with the fact that they are  
3 witnessing a very traumatic event. It is a  
4 traumatic event, isn't it?

5 A I don't think so, no.

6 Q You don't think so, officer. You don't think to  
7 be in a foreign country and to be backed up  
8 against a wall, in this case a counter, with four  
9 armed officers encircling you and with their arms  
10 down at their holsters, isn't traumatic?

11 A No.

12 Q You don't think it would scare anyone?

13 A No.

14 Q I suggest to you that if it did scare anybody,  
15 that it would be natural that they would be  
16 putting themselves in a defensive posture. You  
17 agree with that?

18 A Say again.

19 Q That if a person did interpret the events in front  
20 of them as causing fear, that they would naturally  
21 go into a defensive posture.

22 A If someone interpreted somebody doing something  
23 and was afraid of it, would they go into a  
24 defensive posture?

25 Q Yes.

26 A Yes.

27 Q You agree?

28 A Yes.

29 Q Officer, this Taser was a whole new thing for you,  
30 wasn't it?

31 A What do you mean by that?

32 Q Well, you just finished the course a couple of  
33 months earlier?

34 A Yes.

35 Q Yes. And you never deployed it?

36 A No.

37 Q You were looking forward to deploying it, weren't  
38 you?

39 A No, I was not.

40 Q It's an interesting tool, isn't it, the power that  
41 it confers to an officer to point that weapon at  
42 an individual and to just watch them wilt in front  
43 of you. They just collapse sometimes, right?

44 A If you say they collapse sometimes, this was the  
45 first time I had used it so I don't know about  
46 sometimes or what would happen.

47 Q But I'm suggesting to you, officer, that this was

- 1 almost a toy for you.
- 2 A No. Just like anything else on my belt, it's a  
3 tool.
- 4 Q It's a tool, but it was a new tool for you, wasn't  
5 it?
- 6 A It was one that I was trained on recently, yes.
- 7 Q Yes. And it was a new toy -- or excuse me, new  
8 tool that you were looking forward to applying to  
9 see how people reacted to it. This would be your  
10 first deployment, wouldn't it?
- 11 A I was not looking forward to using it, but it was  
12 my first deployment, yes.
- 13 Q I'd like to come to the third compartment or  
14 timeframe that I spoke about earlier, officer,  
15 which is the period from your tasing until the  
16 handcuffing. I want again to go into what you  
17 told the IHIT investigators and then I want to go  
18 into what really happened, officer.
- 19 Focusing on what you told the IHIT  
20 investigators -- and again, I'm going to approach  
21 it in the same way and speed things up. And  
22 please stop me if I misrepresent. You said no one  
23 ordered you to use the Taser the first time?
- 24 A No.
- 25 Q You said you tasered him because he was carrying  
26 out very combative behaviour?
- 27 A Yes.
- 28 Q You say that with the first tasing, "He shaked a  
29 bit but he didn't fall down," correct?
- 30 A Yes.
- 31 Q Yes. You said you were 11 to 15 feet away and  
32 that the second tasing was also from a distance?
- 33 A Yes.
- 34 Q You said that members moved in because he hadn't  
35 gone down to the ground and you were able to  
36 wrestle him to the ground? You've spoken about  
37 that today, yes?
- 38 A Yes.
- 39 Q You said that you believed you cycled it twice  
40 when he was standing?
- 41 A Yes.
- 42 Q You said the members were eventually able to  
43 wrestle him to the ground. You say in your  
44 statements to IHIT that Cpl. Robinson ordered you  
45 to deploy it the second time. I'm not sure if  
46 that's your testimony at the Commission. Is it  
47 the same evidence?

1 A I think it was the third time that he asked me to.  
2 Q The third time?  
3 A And of course you reported on the push stun mode  
4 application. You did say to the IHIT  
5 investigators that you believed the events in  
6 question, from first contact until he was  
7 handcuffed, was less than ten minutes. Do you  
8 want reference to that or you remember that?  
9 A I don't remember. If you want to show me where I  
10 said that?  
11 Q Happy to.  
12 A It sounds right.  
13 Q It does sound right? Okay. I'm happy to do it if  
14 your counsel requires it, but I believe I can  
15 refer you to it. You would agree with me now that  
16 that is a terrible miscalculation of time, isn't  
17 it?  
18 A What is?  
19 Q The estimate of ten minutes between first contact  
20 to handcuffing.  
21 A I believe I said less than ten minutes.  
22 Q Yes, you did say less than ten minutes. But  
23 obviously you were approximating it around ten  
24 minutes, I assume, with that response, were you  
25 not?  
26 A No, less than ten minutes. I just knew it wasn't  
27 quite ten minutes so it could be five to ten,  
28 right, or --  
29 Q I see. So if it's a minute and a half, that is  
30 also appropriate to respond less than ten minutes?  
31 A Yes.  
32 Q I see. I'd like to now focus on what really did  
33 happen that night in respect to this timeframe.  
34 I'm going to again invite you to retract much of  
35 your material evidence now that you've had an  
36 opportunity to view the video. First of all, we  
37 know there was no warning, correct?  
38 A Correct?.  
39 Q You didn't feel there was time for that?  
40 A No.  
41 Q You acknowledge that that is contrary to policy  
42 not to give a warning unless it isn't practicable?  
43 A Unless it -- yeah.  
44 Q Now, in the incident report you say -- and you can  
45 get that out maybe. I think that is Exhibit 54B.  
46 And actually, I'm speaking of the conducted energy  
47 weapon usage report, not the incident report. Do

1           you have that in front of you? If you go to  
2           page 2 under "Incident Summary."

3           A       Yes.

4           Q       I'm interested in this, officer. You say about  
5           three lines down -- no, right at the end of the  
6           second line on the right-hand side:

7  
8                       The male was not apprehensive upon seeing the  
9                       CEW.

10  
11           Do you see that?

12          A       Yes.

13          Q       Why do you say that?

14          A       I believe I said it at the -- in the report, that  
15               he did not change his course of action.

16          Q       Did not change his course of action. Officer,  
17               there has been testimony given in these  
18               proceedings where the audio portion of the events  
19               were recorded and then provided to a Polish  
20               interpreter who translated the words, as audible,  
21               into English. Are you aware of that?

22          A       Yes.

23          Q       I am further informed -- and I'll be corrected by  
24               Commission counsel if I misrepresent this because  
25               I was not there for this portion of evidence --  
26               that on the soundtrack, the Polish interpreter has  
27               provided the transcript of what he heard and that  
28               he hears at a certain time location -- it happens  
29               to be referred to here as 3:43 -- before I read  
30               out what he provides as translation at that point,  
31               I believe the evidence before this Commission is  
32               that at this moment in time, it is just before you  
33               taser Mr. Dziekanski. Now, that being the case,  
34               the document before the court as evidence is that  
35               the translator says that Mr. Dziekanski says just  
36               moments before you tasered him:

37  
38                       Leave me alone. Leave me alone! Did you  
39                       become stupid? Why?

40  
41           And then I'm informed that the translator, who was  
42           examined in the witness box in these proceedings,  
43           said the term "Did you become stupid" could also  
44           be translated as "Are you crazy?" Now, is this  
45           the first you've heard about this evidence?

46          A       Yes.

47          Q       Well, assuming I have accurately stated the record

- 1 of these proceedings, and assuming it is accurate  
2 that this statement is made by Mr. Dziekanski  
3 before tasing -- and it obviously is, isn't it?  
4 He didn't say it after, did he?
- 5 A No.
- 6 Q You don't recall him saying anything in Polish  
7 after, do you?
- 8 A No.
- 9 Q No. So assuming it's before the tasing, is that  
10 not evidence of an apprehension or fear?
- 11 MR. HIRA: Again, that's an argument that he can make.  
12 This witness --
- 13 THE COMMISSIONER: The difficulty is that this was  
14 obviously in Polish and --
- 15 MR. ROSENBLOOM: This was -- ?
- 16 THE COMMISSIONER: Obviously in Polish and you're  
17 really just asking for an opinion. It has to be  
18 in the air because the officer obviously didn't  
19 know about this.
- 20 MR. ROSENBLOOM: Point well taken. I thank you very  
21 much.
- 22 Q But do you recollect Mr. Dziekanski saying  
23 something in Polish moments before the tasing?
- 24 A No.
- 25 Q And in your assessment of the situation before you  
26 pull that trigger, you would be wanting to  
27 prudently observe and listen to everything that  
28 was happening to ensure that the right decision  
29 was being made. Right, officer?
- 30 A If there's time for that. But he was moving  
31 forward.
- 32 Q Time for -- isn't there always time for assessment  
33 before you pull the trigger?
- 34 A The assessment was done when he had the stapler in  
35 his hand, he was moving towards us. And that is  
36 when I acted.
- 37 Q But officer, was it not important to be observant  
38 of what was going on around you and that the  
39 individual might be saying something, albeit in a  
40 foreign language?
- 41 A I observed the situation and his actions led me to  
42 do what I did.
- 43 Q And even though the microphone of Mr. Pritchard in  
44 the other room, separated by a glass wall, picks  
45 up these comments in Polish, you don't recollect  
46 Mr. Dziekanski saying anything; is that correct?
- 47 A No.

1 Q Now, there's been much focus on the timing of the  
2 tasering incidents, and you recall that you have  
3 been cross-examined now for two days about your  
4 decision to deploy the Taser the second time,  
5 correct?

6 A Yes.

7 Q And you come before us and you have informed us  
8 that indeed you were in error in your  
9 representations to IHIT by having indicated to the  
10 investigators that Mr. Dziekanski was still  
11 standing when you chose to apply the second  
12 deployment.

13 A Yes.

14 Q Now, what interests me here is that you apply the  
15 first deployment and you observe what we all have  
16 now observed in the video, and there is a decision  
17 being made by you during the lapse of time after  
18 the first deployment that you better give him that  
19 second shot. Now, my question to you is this:  
20 you've testified that you thought up until  
21 recently that your second deployment was when Mr.  
22 Dziekanski was still standing. If one looks at  
23 the video, freeze-framing the moments from the  
24 first deployment until he falls to the ground at  
25 the conclusion of the six-second cycle, officer,  
26 at what point in time during those six seconds did  
27 you ever imagine that Mr. Dziekanski was going  
28 anywhere but to the ground?

29 A When -- from my training -- I'm trained that the  
30 Taser is supposed to cause you to fall immediately  
31 and cause immobilization. When he was moving  
32 away, I could tell that he wasn't feeling the full  
33 effects and so that led me to believe that he  
34 wasn't going to fall.

35 Q All right, officer. You thought that he wasn't  
36 feeling the full effects. I ask you this. Was  
37 your goal in the deployment of the Taser to get  
38 Mr. Dziekanski to the ground? Yes or no?

39 A Yes.

40 Q Whether he received the full dose of your 50,000  
41 volts or not, would you agree with me that Mr.  
42 Dziekanski was clearly heading towards the ground  
43 from the moment of that tasering?

44 A I did not know that, no.

45 Q Well, I asked you to look at the video, and we can  
46 do it again. Is there a moment in time where you  
47 can point to us where you imagine that in fact he

- 1           wasn't heading to the ground? He'd lost all  
2           voluntary control of his body, hadn't he?
- 3       A     I did not know that.
- 4       Q     No, you didn't know it. But you have to observe.  
5           you're the one holding the trigger. You have to  
6           make an assessment. Is it your testimony that at  
7           any point after the application of the first  
8           deployment you imagined that Mr. Dziekanski was  
9           going anywhere but to the mat?
- 10      A     Like I said, I didn't know if he was going to  
11         fall.
- 12      Q     I'm sorry, didn't know --
- 13      A     I didn't know if he was going to fall to the  
14         ground. The training -- my training indicates  
15         that immobilized, overrides your nervous system,  
16         and you fall immediately.
- 17      Q     Was it your training that in the event of  
18         something less than the ideal deployment, to at  
19         least observe whether you were achieving your goal  
20         of bringing a person down before applying a second  
21         Taser?
- 22      A     I don't recall that, no.
- 23      Q     So unless the subject dropped to the ground on the  
24         deployment, you were trained to go at it a second  
25         time, even though you were observing the  
26         individual clearly having been affected by the  
27         Taser?
- 28      A     Say the question again, please.
- 29      Q     Your training was, was it, that in the event that  
30         you did not secure a total -- let me rephrase  
31         this. In the event that the subject did not drop  
32         to the ground as you expected him to, and that  
33         therefore there was something less than an ideal  
34         deployment, you were trained to deploy it a second  
35         time even when you saw the subject falling down?
- 36      A     Like I said, I didn't see him falling down at  
37         the -- during the first Taser deployment, and my  
38         view was that he still had the stapler in his hand  
39         so he was still the combative male that we had  
40         first encountered when he picked up the stapler.  
41         So yes.
- 42      Q     Oh, did he still have the stapler in his hand?
- 43      A     My recollection at the time is that he did.
- 44      Q     But officer, you've now seen the video. The  
45         stapler is flung out in the air as he falls,  
46         correct?
- 47      A     A few seconds after, yes.

- 1 Q Yes. Well, we're talking about a six-second  
2 segment here. You apply the trigger for a second  
3 taser, I believe, in second number 7, correct?  
4 There's a one-second interval between the cycle of  
5 six and your second taser?  
6 A Yes, I believe so.  
7 Q Yes. So two seconds maybe he's holding the Taser,  
8 correct?  
9 A The stapler.  
10 Q And five seconds, he isn't holding the Taser  
11 before you --  
12 A I don't know how many seconds he was holding the  
13 stapler for.  
14 Q Do you want to look at it? Would you agree with  
15 me that in the early stages of deployment the  
16 stapler is flung off into the floor?  
17 A At some point during the first deployment, it was.  
18 Q Well, officer -- and I'm happy to look at this  
19 video one more time -- are you suggesting that he  
20 clutched the stapler right to the point where he  
21 fell to the ground, hit the ground?  
22 A I didn't say that. I said that he was holding it  
23 for some of the portion.  
24 Q Yes. But for the early portion.  
25 A I don't know how long he was holding it for.  
26 Q No. But if I suggest to you it is less than two  
27 seconds, are you going to disagree with me?  
28 A I said I don't know how long he was holding it  
29 for.  
30 MR. ROSENBLOOM: Mr. Commissioner, I don't know how  
31 long you're planning to sit today.  
32 THE COMMISSIONER: We've had quite a long day. I think  
33 it is time that we should adjourn. Are you able  
34 to estimate in any manner how much longer you may  
35 be?  
36 MR. VERTLIEB: While Mr. Rosenbloom is doing that, Mr.  
37 Commissioner, what I was thinking, given the time  
38 and the early start, is that after we break, I  
39 will consult with all of my colleagues and try to  
40 get a sense of just where we're at. And if you  
41 don't mind waiting until tomorrow, and if it turns  
42 out that we just don't think we will be able to  
43 complete Cpl. Robinson before the end of the day  
44 Thursday, we can have a discussion with you. But  
45 I'm thinking that if all counsel meet following  
46 the session now and see where we stand and how  
47 long people anticipate being with the corporal,

1           we'll have an idea of whether we can finish him by  
2           Thursday or simply have to put him over until  
3           after the break. Would that be a sensible  
4           approach?

5       THE COMMISSIONER: Yes. I would think it would be wise  
6           not to only have part of Cpl. Robinson's evidence.  
7           It should be all or nothing.

8           All right. Thank you for that suggestion.  
9           We'll adjourn now and I'll wait to see what  
10          happens.

11       MR. HIRA: Is my friend able to tell us -- he was  
12          looking through as to how much longer he was going  
13          to be.

14       THE COMMISSIONER: Well, I thought that would be part  
15          of your meeting.

16  
17                           (WITNESS STOOD DOWN)

18  
19                           (PROCEEDINGS ADJOURNED TO MARCH 4, 2009, AT  
20                           10:00 A.M.)  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47