

**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 25, 2009

PROCEEDINGS AT
HEARING (DAY 30)

COPY

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

(ii)

Counsel for Government of Canada:	J. Brongers, H. Roberts
Counsel for Vancouver Airport Authority:	D. Stewart, C. Friesen, B. Ergun
Counsel for B.C. Civil Liberties Association:	G. Pastine, S. Dubinsky
Counsel for Government of Poland:	D. Rosenbloom
Counsel for Corporal Benjamin Robinson:	R. Harris
Counsel for Constable Gerry Rundel:	T. Beaubier
Counsel for Constable Bill Bentley:	D. Butcher
Counsel for Constable Kwesi Millington:	R. Hira, Q.C.
Counsel for Public Service Alliance of Canada:	C. Buchanan, B. Matthews
Counsel for City of Richmond:	J. Goulden, M. Kleisinger, G. Trotter
Counsel for TASER International, Inc.	D. Neave
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1
Cpl. Benjamin Robinson
Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 Vancouver, B.C.
2 March 25, 2009
3

4 THE REGISTRAR: The hearing will now resume.
5 THE COMMISSIONER: Yes, good morning. Yes, Mr.
6 Rosenbloom.

7 MR. ROSENBLOOM: Thank you, Mr. Commissioner. I see
8 Mr. Kosteckyj is not here yet. I don't know if
9 that's a concern to anybody or whether I should
10 proceed.

11 THE COMMISSIONER: I think you should proceed.

12 MR. ROSENBLOOM: Thank you.
13

14 CPL. BENJAMIN ROBINSON, a
15 witness, recalled.
16

17 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
18 GOVERNMENT OF POLAND, continuing:
19

20 Q Yesterday afternoon, Corporal, we had an exchange
21 in respect to a letter that your legal counsel,
22 Mr. Harris, wrote to the Commission dated March
23 the 2nd of this year, and it related to matters
24 regarding your version of the events of the night
25 in question, and there was an -- a discussion
26 among counsel and a meeting took place last night
27 which leads me to ask you the following question.

28 In the letter of March 2nd - and you're
29 familiar with it - your counsel indicates that
30 there are certain things that you wish to bring to
31 the attention of the Commission, and one is that
32 Mr. Dziekanski was not wrestled to the ground by
33 you or your officers, but rather, he fell
34 voluntarily. My question to you is at what point
35 in time, on what date approximately, did you come
36 to realize that your officers had not wrestled him
37 to the ground.

38 A In January I received my statement and had an
39 opportunity to view the video, and it was after
40 that, that I had discussions with my counsel,
41 because my statement was -- I didn't articulate
42 well that night. So look -- after a review and
43 looking at it, it was soon after that.

44 Q And when you say "in January", I don't want to ask
45 for an exact date, but approximately when did you
46 meet with counsel? It was not the counsel that
47 currently represents you, was it?

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

1 A No, it was the counsel --

2 Q A different counsel, Ms. Roberts?

3 A No, it was after -- in January when the Commission
4 -- or when the inquiry resumed, I met with my
5 lawyer, Reg Harris.

6 Q Okay. And that was sometime in mid-January?

7 A Sometime in January after the inquiry resumed.

8 Q Thank you. And it was soon after viewing the
9 statements and viewing the video that you came to
10 realize the situation about wrestling to the
11 ground, correct?

12 A Yes.

13 Q And what about the matter at paragraph 3 of the
14 letter? I don't know if you need to take it out,
15 but if you do, obviously feel free to refresh your
16 memory. In -- on paragraph 3, your counsel
17 reports that you'd rather use the word "brandish"
18 than "swinging" the stapler. You recall generally
19 that paragraph?

20 A In -- in a lot of instances. That's what we said
21 in the letter.

22 Q Yes.

23 A Yes.

24 Q And when did you come to the realization that that
25 was a more appropriate term to use?

26 A After -- well, after reviewing my statement and
27 the video, I used the word "swinging" to
28 encapsulate everything, all the movements, and it
29 was better to break it down.

30 Q Okay. So, again, it was around the same time in
31 January some time that you came to that
32 realization?

33 A Well, after I got my statement, reviewing the
34 video and meeting with my counsel.

35 Q Yes. You appreciate, Officer, that we only came
36 to that realization that that was your evidence in
37 a letter of March the 2nd, which is a week into
38 the inquiry where the police officers were being
39 examined, and that's why I've asked you those
40 questions.

41 I'd like to move on if I may, and I want to
42 focus on your communication with your fellow
43 officers after the event out at the airport on the
44 14th of October of 19 -- of 2007. At what point
45 in time did you return to the sub-detachment
46 office at YVR that evening?

47 A Just prior to giving my statement, so just before

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

- 1 5:45.
- 2 Q And so between two o'clock, which was the
3 approximate time of the pronouncement of death
4 until you went back for your statement, you were
5 at the airport throughout that period?
- 6 A Yes.
- 7 Q And does that also apply -- does that evidence
8 also apply to your fellow officers? Did they all
9 remain out there until approximately that time?
- 10 A They -- they went down prior to me going down to
11 the sub-detachment.
- 12 Q Can you give some estimate of the time when they
13 went back to the sub-detachment office, or left
14 the airport?
- 15 A They would have left after IHIT was there, because
16 they're not going to be released until the IHIT
17 members say that they can go down.
- 18 Q When did IHIT investigators first arrive
19 approximately?
- 20 A I believe it was approximately 4:00, 4:00 a.m.
- 21 Q 4:00. So it is fair to say that you and your
22 fellow officers were at the airport from the
23 incident until approximately 4:00 a.m.
- 24 A Well, we're -- yes, we were present at the
25 airport.
- 26 Q Yes, throughout that time until 4:00 a.m.
- 27 A Yes.
- 28 Q And so from the period of the pronouncement of
29 death until some of your officers left the
30 airport, there were approximately two hours.
- 31 A Yes.
- 32 Q And might I ask what were -- firstly, focusing on
33 yourself - what were you doing during those two
34 hours?
- 35 A I was dealing with people from the airport, the
36 YVR authority. I was also dealing with the main
37 detachment in Richmond as well as communication of
38 getting relief members into the airport and
39 another supervisor out there.
- 40 Q Yes. And with your fellow officers, would the
41 same thing apply in terms of your observation of
42 how they passed the time between 2:00 and
43 approximately 4:00 a.m.?
- 44 A I did not view them the whole time, but after I'd
45 advised them the situation, the fact that I had --
46 I had called IHIT --
- 47 Q Yes?

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

- 1 A -- or I made the call to the main detachment and
2 IHIT was coming out.
- 3 Q Well, I assume that during those two hours there
4 were a lot of conversations between you and your
5 fellow officers?
- 6 A Yes.
- 7 Q Yes. And the discussions that were taking place
8 during those two hours obviously related to the
9 incident in question?
- 10 A Generally.
- 11 Q Generally. And it was a first in-custody death,
12 it turns out, for not only yourself but for these
13 other officers?
- 14 A I can only speak for myself, but...
- 15 Q Yes. Well, there's been testimony to that effect,
16 fair enough. Now, when you say you spoke
17 generally about the incident in question, I assume
18 you went over some of the incidents as they
19 sequentially took place that evening?
- 20 A Generally.
- 21 Q Yes, generally. And, by generally, what does that
22 mean, if I can try to be a little more -- seek
23 from you to be a little more precise. You talked
24 to them about the dispatch that led to you going
25 out to the airport?
- 26 A No.
- 27 Q You talked about your arrival at the scene of Mr.
28 Dziekanski's presence?
- 29 A No.
- 30 Q You didn't?
- 31 A No.
- 32 Q You talked about the conversations that took place
33 between you, your fellow officers and Mr.
34 Dziekanski at the luggage area?
- 35 A No.
- 36 Q You spoke about the command for the tasing and
37 the actual deployment of the Taser?
- 38 A No.
- 39 Q Sorry, I'm getting a little confused then. When
40 you say you spoke generally about the incident
41 during the approximate two hours from 2:00 a.m. to
42 4:00 a.m., what were you talking about when it
43 related to the incident?
- 44 A There was questions regarding witnesses, and I
45 told them just to take down their names and just
46 to gather their details and not to take any
47 further statements.

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

1 Q Yes. And at no time was there any discussion
2 between you and your fellow officers about the --
3 about the demeanour of Mr. Dziekanski during your
4 initial encounter?
5 A No.
6 Q No discussion whatsoever about the tasing and
7 how many deployments had taken place?
8 A No.
9 Q No discussion about the medical aftercare after he
10 had been handcuffed?
11 A No.
12 Q Officer, can you explain to me why you did not, as
13 superior officer, feel it necessary to discuss the
14 incident in question with your fellow officers at
15 the scene?
16 A Because I had called in IHIT and everyone had to
17 be giving statements. Since we're all involved,
18 it was to not to discuss the specifics but just to
19 get state -- or just get the names of the people
20 there and they will be interviewed.
21 Q And you then testified that you and your fellow
22 officers returned to the sub-detachment office and
23 had the IHIT interviews that are now part of the
24 evidence of this proceeding, correct?
25 A They attended the sub-detachment.
26 Q Yes.
27 A Yes.
28 Q And the -- you never spoke to any of your fellow
29 officers from that date of the 14th of October
30 concerning the incident in question up until the
31 period of the release of the video. Is that your
32 testimony?
33 A Can you repeat that one more time?
34 Q Yes, I will.
35 A Yeah.
36 Q Let's first get a time frame. The release of the
37 video was approximately five weeks after the
38 incident, correct?
39 A Yes.
40 Q And during those five -- approximately five weeks,
41 there was no discussion between you and your
42 fellow officers about the incident?
43 A No.
44 Q None whatsoever, Officer?
45 A Just the -- the only thing that we ever discussed
46 was how everyone was feeling.
47 Q Yes. And nothing else?

6

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

(cont'd)

1 A No.
2 Q And the period between the incident and the
3 release of the video, you and the three officers
4 in question were all still in the YVR detachment
5 or detail, was that not correct?
6 A After the incident, we were still there, yes.
7 Q Yes. So you were seeing Constable Millington,
8 Rundel and Bentley on a regular basis out at the
9 airport, day --
10 A Yes.
11 Q -- in, day out?
12 A Yes.
13 Q And no discussion?
14 A No.
15 Q And after the release of the video until this very
16 moment, it's your testimony that you have never
17 had conversations with these officers regarding
18 the incident?
19 A No.
20 Q All right. There is evidence before us of a
21 debriefing incident, or I believe it was called a
22 critical incident debrief that took place with
23 yourself and other -- the other officers. You
24 spoke briefly about this in your testimony a day
25 or two ago, correct?
26 A Yes.
27 Q And there is evidence that has been given under
28 oath by Constable Bentley that each of you told
29 their version of events that transpired that
30 evening. I'm using his words. Are you aware that
31 he has given that testimony under oath?
32 A No.
33 Q Were there discussions comparing or -- let me
34 rephrase that. Did -- were there occasion -- was
35 there an occasion when the officers gave their
36 version of the events of that night at that
37 debriefing session?
38 A It's an emotional well-being to see how you're
39 doing.
40 Q That may be, and I appreciate that, and nor do I
41 want to intrude on the privacy of that aspect of
42 that meeting. My question is did that meeting
43 also include a -- where officers were speaking of
44 their version of the events of the night in
45 question?
46 A Speaking of our feelings of the event.
47 Q Yes, and I speak not of your feelings of the

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

1 events but of the material facts that transpired
2 that evening.
3 A Material facts?
4 Q Mm-hmm.
5 A I can't recall anything.
6 Q So when Constable Bentley testified that you all
7 told your version of events that transpired that
8 evening, you agree or disagree with his testimony?
9 A I -- do I agree or disagree? That's his version.
10 I can't recall anything. And it was more a mental
11 well-being check to see how I was feeling, how the
12 members were doing.
13 Q And you remember nothing being said at that
14 meeting that reported to you from the other
15 officers what they did during that incident or
16 what their observations were of that incident?
17 A They're just going through how they're -- how they
18 feel about the event.
19 Q Yes.
20 A And, other than that, I can't recall anything.
21 Q Have you been watching these proceedings on the
22 internet?
23 A No.
24 Q Have you been reading transcripts?
25 A No.
26 Q Now, I want to go into your background a bit. We
27 learned as of the last two days that you were 11
28 years with the force as of the time of the
29 incident?
30 A Yes.
31 Q And you've been a corporal -- you had been
32 corporal for approximately three-and-a-half years
33 at the time of the incident; is that correct?
34 A Plus or minus time.
35 Q Fair enough. And you had been posted at the
36 Richmond detachment starting in '05?
37 A Yes.
38 Q And went out to the YVR detail in '07?
39 A Yes.
40 Q We learned yesterday -- and again, correct me if
41 in any way I have misstated your evidence -- that
42 you took your first aid certification in 1995?
43 A Yes.
44 Q And again, as I learned yesterday, you never had
45 that certification upgraded; is that correct?
46 Upgraded meaning you never took another first aid
47 course?

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

1 A No, I did.

2 Q You did? And when was that?

3 A I can't remember. I remember it expired in March
4 2002, but -- so if there was three or -- three
5 years.

6 Q Okay. And it expired in 2002 and it was not
7 redone by you before this incident in 2007.

8 A No, I was not certified.

9 Q So it was, put a certain way, it was stale-dated
10 for five years.

11 A That's correct.

12 Q All right. Now, can you tell me is it an
13 obligation of each officer within the force to
14 maintain their certification with, for example,
15 first aid training?

16 A To the best of your ability to keep current, yes.

17 Q Yes. Best of your ability. Are you directed by
18 the force that it is your responsibility to ensure
19 that at all times you have been properly certified
20 with first aid?

21 A I was expired. We were aware of that. And I just
22 did not have the opportunity to fulfil the second
23 part of the training. I had done the theory part,
24 but it's -- you have to -- it has to be combined
25 with the practical. With my movement, my
26 transfers, and also with the change in training, I
27 was not given the opportunity to recertify.

28 Q Was there, in your -- to your knowledge, any
29 police directive of the RCMP that in the event
30 that an officer is not current with his
31 certificate for first aid, that he or she should
32 not be in charge of the first aid treatment of a
33 subject?

34 A There's nothing that I'm aware of.

35 Q No. You do not believe that the RCMP would be
36 critical of an officer handling the first aid of a
37 patient where he or she did not have current
38 certification?

39 MR. BRONGERS: Mr. Commissioner, Jan Brongers for the
40 Government of Canada. The witness has indicated
41 his knowledge of the policies. We've explained to
42 Commission counsel that RCMP witnesses who are
43 familiar with policy will be testifying at a
44 future date. Might I suggest that this type of
45 questioning would be more appropriately directed
46 at the policy witness, not to a factual witness
47 who has indicated his -- the extent of his

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

1 knowledge of the policy.

2 THE COMMISSIONER: There's some merit in that, Mr.
3 Rosenbloom.

4 MR. ROSENBLOOM: Yes. I don't so much seek out of this
5 witness the policy information which we'll get
6 from someone else, but rather seek from this
7 witness whether he knew of any policy that should
8 impair or restrict his application of first aid.
9 That's my question.

10 MR. HARRIS: It's Reg Harris. My notes of the question
11 was, "Would the RCMP be critical of someone with a
12 lapsed first aid providing first aid treatment."
13 That was the question, and I don't believe my
14 client can speak to how the RCMP may or may not
15 respond.

16 THE COMMISSIONER: I don't think that was the recent
17 question. I think Mr. Rosenbloom learned a little
18 from the objection.

19 MR. ROSENBLOOM:

20 Q I'll attempt to ask the question again, Corporal.
21 Did you have any reason to believe that without
22 first aid certification, you should or should not
23 have been applying first aid on the night in
24 question?

25 A Just -- can you repeat that one more time.

26 Q Yes.

27 A It's somewhat lengthy.

28 Q Each time I think it turns out a little
29 differently --

30 A Yes.

31 Q -- but in any event, on the -- on the night in
32 question, did you believe that without proper
33 certification, it was appropriate to apply first
34 aid to a subject?

35 A That's not like a yes or no. Do I believe it's
36 appropriate?

37 Q Did you believe on that night it was appropriate,
38 without certification, to be doing the first aid
39 on this subject?

40 A Yes.

41 Q Were you aware that some of your fellow officers
42 were current in their first aid studies?

43 A Yes.

44 Q Did you feel in those circumstances that you were
45 more qualified to handle the first aid than your
46 fellow officers?

47 A I may not be certified, but given the situation, I

10

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

1 felt competent in my ability to monitor the
2 breathing.
3 Q Now, we also learned yesterday that you did have
4 some training on CPR?
5 A Yes.
6 Q And I assume that went in conjunction with your
7 first aid courses that you spoke about?
8 A Yes.
9 Q Have you ever done CPR on a subject other than in
10 a classroom?
11 A Yes.
12 Q We learned from your fellow officers that in their
13 cruisers, in the trunk of some of their cruisers
14 are first aid kits. Did you have a first aid kit
15 in your trunk?
16 A Yes.
17 Q And what's in it, or what was in it?
18 A If you're -- it's a standard first aid kit,
19 bandages, cold packs. It's a standard kit. In
20 it, different size of bandages, tensors.
21 Q Air bag?
22 A Air bag?
23 Q A mask and bag?
24 A Yes, there's masks but not the bag. There's
25 mouth-to-mouth masks.
26 Q Thank you. Now, in respect to the Taser course,
27 again, we learned that on October of '07, you were
28 out of date with your certification; is that
29 correct?
30 A Yes.
31 Q Again, were there obligations imposed upon you by
32 the force to keep that certification current?
33 A Can you rephrase that one more time?
34 Q Yes. Again, were there obligations imposed upon
35 you by the police, by the force, to keep your
36 certifications current when it came to Taser
37 studies?
38 A I wasn't current at that time. That's why I
39 wasn't carrying it. If I was -- if I was going to
40 carry it, I was going to have to be recertified.
41 Q Yes. But what I'm trying to learn from you is
42 when your certification again got stale-dated --
43 A Yes.
44 Q -- was there some responsibility upon you to go
45 off and take that course again and get
46 recertified?
47 A If I want to carry it, yes.

- 1 Q But it wasn't otherwise important for you? It
2 wasn't otherwise an obligation for you to keep
3 current, is --
- 4 A I advised training that my currency was going to
5 expire, but there was not an opportunity to take a
6 recertification course.
- 7 Q All right. And not having retaken the
8 certification course, were you in any way informed
9 that it was inappropriate for you to give
10 instructions to your fellow officers to deploy a
11 Taser when you hadn't been --
- 12 A No.
- 13 Q -- certified. All right. Can I assume that the
14 Taser courses you've taken, in part, inform you of
15 current policy of the RCMP regarding deployment?
- 16 A Yes.
- 17 Q And that that's where you would learn about the
18 current policies, isn't it?
- 19 A Yes. But it's also incumbent on you to review
20 policy as well.
- 21 Q Yes. In the course of taking your last Taser
22 course, which I believe was in what year, Officer?
- 23 A That would be 2003.
- 24 Q 2003. Did you learn anything about the
25 consequences of multiple taserings?
- 26 A I would have learned it, yes.
- 27 Q And what did you learn in respect to the health
28 consequences of multiple taserings?
- 29 A Do you want to qualify that a little bit?
- 30 Q Yes. What did you learn, if anything, about the
31 risk to medical -- to medical well-being with
32 multiple taserings?
- 33 A Multiple taserings, more than -- and I think I
34 talked about this -- more than 15 to 20 seconds of
35 continuous use may be hazardous.
- 36 Q And what about repeated taserings, meaning
37 sequences of less than 20 seconds, but multiple in
38 nature?
- 39 A Again, that would fall under -- they advise
40 against -- or not advise against, but there's
41 things that -- medical concerns that may arise and
42 you -- to be aware of that.
- 43 Q All right. I'll come back to that a little
44 further on in my cross-examination. Have you been
45 tasered in training?
- 46 A Yes.
- 47 Q Yes. And you were asked about this yesterday, the

12

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

1 day before. You are unsure whether -- were you
2 tasered more than once --
3 A Yes.
4 Q -- in your life? Again, in training. How many
5 times were you tasered approximately?
6 A I've been tasered twice in training, and I've been
7 tasered in the field.
8 Q In a training program or accidentally tasered?
9 A I was accidentally tasered.
10 Q By a fellow officer?
11 A Yes.
12 Q And when you were tasered in training, you told us
13 yesterday, I believe, that you're unaware as to
14 the duration of deployment of the Taser; is that
15 correct?
16 A Yes.
17 Q It could have been one second?
18 A Yes. 'Cause there was two applications, I can't
19 tell you how long it was deployed for. I can't
20 recall.
21 Q Have you ever seen any officer of the RCMP in the
22 training tasered more than on one deployment?
23 A Can you repeat that? I'm not -- not sure where --
24 Q Yeah.
25 A -- that --
26 Q During your training sessions where officers are
27 tasered, have you ever observed where an officer
28 was tasered more than on one deployment, one
29 cycle?
30 A I can't recall. But you're tasered more than
31 once, so -- like in my training when I went
32 through, I recall being tasered twice at it.
33 Q On the same day?
34 A On the same day.
35 Q Within seconds of the first --
36 A No, I wasn't tasered more than -- within seconds
37 getting another deployment.
38 Q But --
39 A So I've never -- I'm recalling from my training.
40 Q You don't recall ever seeing an officer being
41 tasered repeatedly or even a second time in
42 sequence?
43 A Not -- not that I can recall.
44 Q And you've never seen an officer tasered for a
45 duration more than five seconds, have you?
46 A Not that I can recall.
47 Q Yes. Now, I want to focus for a moment on the

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

1 IHIT investigation that took place shortly after
2 this incident. You've told us it was your first
3 in-custody death. Such investigations were
4 considered very important in your mind, weren't
5 they?
6 A Important?
7 Q Yes, important.
8 A Yes.
9 Q Yeah, you seemed to hesitate in responding to my
10 question. Could -- why is that? Is there any
11 other answer that you would give?
12 A Oh, no, I'm just -- the "important", I'm looking
13 at what you -- what you're looking for there.
14 Q Well, I'm looking for whether your state of mind
15 on that evening was this had been an in-custody
16 death and it was critical, Officer, to give as
17 accurate a report to the investigators of what you
18 believed happened that night.
19 A Yes.
20 Q Yes. You're trained to observe and accurately
21 record your observations, aren't you?
22 A Yes.
23 Q And you recognized the importance of providing
24 accurate and reliable evidence to your superiors,
25 correct?
26 A Yes.
27 Q Your first statement was given to Corporal David
28 Teboul on October the 14th, 2007. Firstly,
29 Corporal Teboul, at the time of this
30 investigation, was a member of IHIT, correct?
31 A Yes.
32 Q Did you know him?
33 A No.
34 Q You'd never met him?
35 A No, not to my knowledge, no.
36 Q Did you know what detachment he had come out of
37 before joining IHIT?
38 A No.
39 Q Okay. You'd never seen him before he arrived at
40 the sub-detachment office for the statement,
41 correct?
42 A I can't say. I may have seen him at the airport
43 before we went down to the sub-detachment.
44 Q Okay. But that night --
45 A Yes.
46 Q -- was the first time. And he interviewed you and
47 you gave that statement. Have you had any contact

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

1 with him since?
2 A I can't recall if I got any -- or an e-mail 'cause
3 I got e-mails from IHIT. I can't --
4 Q Have you had any personal contact with --
5 A No.
6 Q -- him since? We come to the second statement of
7 Corporal Derek Brassington. Again, a statement
8 you gave on October 18th of 2007. My friend, Mr.
9 Kosteckyj asked you some questions. You knew
10 Corporal Brassington, didn't you?
11 A I was aware of him, yes.
12 Q Aware of him, or you were acquainted with him?
13 A I was -- I'll say acquainted.
14 Q And you were acquainted in the sense that you knew
15 him by first name "Derek"?
16 A I recall seeing him and -- 'cause I believe we
17 went through training around the same time, so I
18 remember seeing his face but as far as knowing
19 him, no.
20 Q No? So that when he presented himself to you for
21 the statement on October 18th, you had never
22 socialized with him?
23 A No.
24 Q And had never -- you didn't know what detachment
25 he had come out of before he joined IHIT?
26 A No.
27 Q Thank you. And what about Sergeant Attew, A-t-t-
28 e-w who took some of the statements. Did you know
29 him? He took statements from some of the other
30 officers involved in this incident. Did you know
31 him?
32 A No.
33 Q Thank you. Testimony was given by Constable
34 Rundel in these proceedings that after this
35 incident, he took note of the fact that there had
36 been misinformation being given out to the public
37 by RCMP spokespeople. Did you monitor in any way
38 the RCMP pronouncements to the public about this
39 incident after the 14th of October?
40 A I did not monitor.
41 Q Were you aware of any misinformation that was
42 being given out to the RCMP -- excuse me, that was
43 being given out to the public.
44 A Not specifically.
45 Q Now, I want to go into your statements that you
46 gave to the -- that you gave to the IHIT
47 investigators, and I want to break down my

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

1 examination here into four very distinct periods.
2 I'm going to be focusing the first period on your
3 arrival and first contact with Mr. Dziekanski
4 until he arrives at the counter, and you know what
5 I mean by the counter.
6 A Yes.
7 Q The second period I'm going to be focusing on is
8 the arrival at the counter until he is tasered.
9 The third, from tasering until being handcuffed,
10 and the fourth, handcuffing until the EHS arrives.
11 Each period I want to go over what you informed
12 the investigating officers happened and then I
13 want to go into some detail of what you believe
14 now happened.
15 You've told us -- and incidentally, Officer,
16 as I do this, I'm going to try to speed it up
17 since you've gone over some of this with my
18 learned friends in examination, and if at any time
19 when I'm making reference to the fact that you
20 said something in a statement and you're
21 uncomfortable that I'm being accurate about,
22 please tell me and I'm happy to take you right to
23 the statement, all right? Is that in agreement?
24 A Yes.
25 Q Yes. Firstly, you knew there was a language
26 barrier.
27 A Yes.
28 Q You informed the investigators in the statement
29 that he had luggage stacked against the door,
30 correct?
31 A Yes.
32 Q And you've testified yesterday or the day before
33 that indeed you recognize now that the luggage was
34 not stacked up at the door, correct?
35 A Yes.
36 Q You told the investigators that he seemed agitated
37 because his hands were moving and he became quite
38 aggressive? You've said in the statement at one
39 point you were -- he was in an agitated state, he
40 was angry, he was pissed off, correct?
41 A Yes.
42 Q That he was just wired up, correct?
43 A Yes.
44 Q Okay. You've had the opportunity to view the
45 video - and I don't want to belabour this - you'd
46 agree with me that in observing Mr. Dziekanski
47 from first contact until he starts moving away

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

- 1 from the luggage, he is calm, isn't he?
2 A I don't know if you'd use the word "calm", but if
3 you're saying it's -- because at the -- or the
4 interaction happened so quick and I blended it
5 into my statement, and I admit that. But at that
6 point, he complied with my first directions. He
7 didn't comply with my second, so I don't know if
8 we use the word "calm" to encapsulate that short
9 period of time.
10 Q Okay. I think we're talking about two separate
11 things, about compliance and resistance on the one
12 side, and the issue of calmness. And I'm talking
13 now about whether he was calm from your first
14 contact until he started moving away from the
15 luggage to the counter. You agree with that,
16 don't you?
17 A Yes.
18 Q Yes. Now, as for the issue of compliance or
19 resistance from first contact until he reaches the
20 counter, we have learned in testimony from another
21 officer, and this I gather is news to you, but
22 that Constable Millington did request of Mr.
23 Dziekanski that he produce his passport and ID.
24 And you have learned that since giving --
25 A Yes.
26 Q -- your testimony. You never heard that?
27 A No, I did not.
28 Q Now, then, you gave your order to Mr. Dziekanski
29 not to go to the luggage, correct?
30 A Yes.
31 Q And he was totally compliant, wasn't he?
32 A Yeah, he stopped going for it so he complied, yes.
33 Q Sorry, I didn't hear that?
34 A He stopped going towards his luggage, so he
35 complied, yes.
36 Q So you will join me in saying total compliance,
37 right?
38 A He complied.
39 Q Yes. And you then ordered him to head to the
40 counter, correct? You directed him to the
41 counter.
42 A Yes, I directed him to the counter.
43 Q Yes. And as we observe the video and he's
44 approaching the counter, he's, at that point in
45 time, if we can freeze-frame just about that
46 point, he is still in total compliance with every
47 order that you gave to him; is that --

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

1 A No.
2 Q -- correct? Why do you say no?
3 A Because I -- I believe I put it clear where I
4 wanted his hands, and he moved back a bit, so he
5 didn't immediately go where I thought it was clear
6 where I wanted his hands to go. So...
7 Q I see. This is new to me. You are saying that
8 you wanted him to place his hands in a certain
9 spot on the counter --
10 A Yes.
11 Q -- and he was not placing his hands at the spot
12 that you wanted them placed; is that correct?
13 A Yes.
14 Q Okay. Now, I'm going to ask that the video be
15 shown, but before it's shown, how did you
16 communicate to Mr. Dziekanski that you wanted his
17 hands placed on the counter at a certain location?
18 How was that done? Was it done by language?
19 A Hand signals.
20 Q Hand signals. And I wonder if you could show us
21 the hand signals that you carried out with him
22 that night that you believed would be understood
23 by him.
24 A Are we going to play the video first, or do you
25 want --
26 Q No, no, let's first see your evidence -- your
27 evidence.
28 A I had put my hand out, told him just, you know, to
29 stop.
30 Q Now, let's stop there for a moment.
31 A Yes, yes.
32 Q I'm going to ask you as you inform us of the
33 various steps you took, is that visible on the
34 video?
35 A No.
36 Q Okay. Carry on.
37 A And --
38 Q And is that -- I apologize, Officer.
39 A Okay.
40 Q But at that moment that you put your hand up like
41 this, are you still all assembled around the
42 luggage?
43 A Yes.
44 Q Yes. So as you're around the luggage, you've
45 already given the command not to go to the
46 luggage, correct?
47 A Yes.

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

- 1 Q And you have put your hand up like this?
2 A I had -- I put my hand up and I stepped forward,
3 because I'd -- I was standing back initially and
4 letting the members deal with it, and that's when
5 I stepped forward was when he went for the
6 luggage.
7 Q Okay. And so you -- you were stepping a little
8 forward and you had a right hand with the palm
9 exposed, correct?
10 A Yes. And I said, "No."
11 Q And you said "No," speaking of him going to the
12 luggage?
13 A Yes.
14 Q Yes? And so what -- at that point, the purpose of
15 your body language was to tell him not to go to
16 his luggage, correct?
17 A Yes.
18 Q Okay. Carry on in sequence.
19 A And after that, I did -- I did -- I said the
20 words, "Calm down," and I'm using my hand, just
21 little motions. Then I went like this for "Put
22 your hands" --
23 Q Okay. Let's --
24 A -- and I --
25 Q I'm sorry, I'm only stopping you 'cause I want to
26 do this in sequence and I want this to be totally
27 fair to you --
28 A Yes.
29 Q -- and that it gets recorded appropriately for the
30 Commission. You say the next thing you do is with
31 your hands, you're telling him to calm down.
32 A It's more like to the side is what I'm doing.
33 Q And at this moment you're doing that, are you
34 still all assembled around the luggage?
35 A I'm looking at him and I know that the members are
36 right beside me, but I couldn't tell you -- so,
37 yes, we're right beside the luggage, I guess.
38 Q All right. He hasn't turned around and started
39 heading to the counter?
40 A For the "calm down"?
41 Q Yes.
42 A No.
43 Q No. And so you've done this movement with your
44 hands to calm down. What -- why did you feel it
45 necessary to be asking him to calm down when in
46 fact you told me a few minutes ago he was calm
47 around the luggage?

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

1 A I noticed like in -- I said -- and like his hands
2 were moving. And given the initial call and how
3 it came in was -- there's not a lot of time -- or
4 there wasn't a lot of time to keep or assess where
5 you're looking at. He's possibly intoxicated. We
6 haven't ruled that out yet. The report of
7 damaging property, and there's property that I see
8 damaged, and so it just -- what I was articulating
9 to him was, "Calm down," because the hands were
10 moving. It's not like where he's totally still.
11 Q Do you see his hands moving in the video?
12 A Do you see his hands moving? Not at that point
13 that I was doing the "calm down".
14 Q Well, is there any point in the video where the
15 video does not observe Mr. Dziekanski's demeanour
16 during this period around the luggage?
17 A Yes.
18 Q There is? Okay, we'll look at the video a little
19 later. But just let's carry on with your
20 testimony. So you're telling him to calm down in
21 spite of the fact you've testified that he was
22 calm in your opinion, correct?
23 A He was calm initially is what I said.
24 Q Yes.
25 A And at that point, and I'm in there and I went,
26 "Stop," and he stopped, right? But the hands are
27 still moving and so I'm just doing -- 'cause I
28 don't -- I don't know if he was intoxicated or
29 what.
30 Q Right, I understand.
31 A So it's -- I'm just going through the "calm down".
32 Q Okay. And we don't see that in the video, do we?
33 A No.
34 Q No. And then what happens next?
35 A I made the motion to -- and I put my hands out and
36 it was telling him to put his hands and -- on the
37 counter that was right beside us.
38 Q Well, how did you do that? Because we're, at this
39 point in your testimony, still assembled around
40 the luggage, correct?
41 A Yes.
42 Q And the luggage was approximately six feet from
43 the counter approximately?
44 A No.
45 Q No? How close were you to the counter at the
46 point where you're still all assembled at the
47 luggage and the first point?

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

- 1 A We're pretty close to the counter, and that's why
2 I was just going like this, to put his hands on
3 the counter and I pointed to it.
- 4 Q Okay, one moment. So it's your testimony that Mr.
5 Dziekanski was approximately how many feet from
6 the counter when you had your first contact with
7 him at the luggage?
- 8 A It's a short distance, so it can be plus or minus
9 a couple of feet.
- 10 Q Okay. You say a couple -- plus or minus a couple
11 of feet, and you're further away from the counter,
12 aren't you, at --
- 13 A Yes.
- 14 Q -- that point. You're, what, another three, four
15 feet?
- 16 A Not at that point. It all happens really quick
17 and close proximity where it's -- he's -- he's
18 close enough distance where when I went to put his
19 hands there and I pointed to it and that's where I
20 thought he was moving to initially.
- 21 Q So -- so you're at the luggage and you're telling
22 him to calm down.
- 23 A Yes.
- 24 Q What were your -- what was your body language to
25 then indicate to him that you wanted him to go
26 over to the counter and to put his hands on the
27 counter?
- 28 A I made the motion of -- in a -- I went like this
29 and I pointed to the counter top.
- 30 Q It's important that the Commissioner sees this
31 more than anybody else.
- 32 THE COMMISSIONER: I saw it.
- 33 MR. ROSENBLoom: Thank you.
- 34 Q Do it again, please?
- 35 A For the Commissioner in turn?
- 36 Q No, well, for everybody, yes. For me.
- 37 A Okay. And I -- what I -- what I did was I went
38 like this and I told him to put the hands on the
39 counter, and then I pointed at it. That's when I
40 thought he was going to do (sic).
- 41 Q And this motion, as you've shown it, this movement
42 as you've shown it, you believed would --
- 43 A It's not just like going like this. I'm -- I'm
44 reaching out like that and putting to the
45 countertop.
- 46 Q So you reach out like this and then you pointed to
47 the countertop. Did you go back to this movement

1 as you're approaching the counter, or was it a
2 constant point to the counter?
3 A It was a constant point to the counter.
4 Q And we don't see this motion or movement that you
5 describe other than the pointing to the counter;
6 is that accurate? In the video.
7 A Yeah, you can't see --
8 MR. HARRIS: Well, I'm going to rise for a second.
9 Frame triple 5-1 does show that precise movement
10 of the hand like this. Mr. Rosenbloom has put it
11 to him that it doesn't show that, and that's not a
12 correct position to put to a witness when there's
13 evidence that's been filed to the contrary.
14 MR. ROSENBLOOM: Well, I'm very happy to go over this
15 once we start looking at the video. It's frame
16 number...?
17 MR. HARRIS: Frame 5551, triple 5-1. It'll show the
18 hand --
19 MR. ROSENBLOOM: Thank you. We'll -- I'm going to go
20 over the video with you and, by all means, point
21 that out to me, okay?
22 Q So you then point to the counter and you remain
23 with a pointed finger to the counter up until Mr.
24 Dziekanski arrives at the counter, correct?
25 A Yes.
26 Q And then what happens in terms of your
27 communication with him?
28 A Well, I kept pointing to the counter, and he threw
29 up his hands and kind backed away just a bit, and
30 that's when I started moving, just to keep
31 pointing at the counter just to indicate where I
32 wanted his hands.
33 Q Were you talking during that time?
34 A Yes.
35 Q What were you saying?
36 A Same thing of -- the "Calm down, put your hands"
37 -- I was still verbalizing it.
38 Q You were verbalizing, so --
39 A Yes.
40 Q -- "Put your hands" -- what else did you say?
41 A "On the counter".
42 Q Okay. And you knew that was meaningless in terms
43 of a man --
44 A Yes.
45 Q -- without language.
46 A Yes.
47 Q Without English.

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

1 A Yes.

2 Q And so you knew that the extent of your
3 communication with him would have to be by an
4 accurate sign language signal, right?

5 A Yes.

6 Q All right. And then he goes to the counter and
7 you're pointing to the counter. This before he
8 picks up the stable (sic) -- stapler?

9 A Pointing at the counter, yes.

10 Q And do you -- do you continue to point to the
11 counter up to the moment that he picks up the
12 stapler?

13 A Yes.

14 Q You never saw him pick up the stapler?

15 A No.

16 MR. ROSENBLROOM: I wonder if we can now take a look at
17 the video.

18 Q First of all, if we can focus on where you believe
19 Mr. Dziekanski is moving his hands around leading
20 you to believe it was necessary to tell him to
21 calm down.

22 If, when the operator does this video, you
23 want to go further back, please instruct us.

24 THE COMMISSIONER: Well, I do suggest we begin a little
25 earlier in the video.

26 MR. ROSENBLROOM: I wonder if we could have the lights
27 down, please. Thank you.

28

29 (VIDEO BEING PLAYED)

30

31 MR. LUNN: Would you like me to go back further?

32 A 'Cause, well, you're not -- you're not going to
33 see a lot of interaction because he's panning
34 around.

35 MR. ROSENBLROOM:

36 Q Pardon me, because of what?

37 A The camera is going around a beam or something.

38 Q Yes, but let's start on first contact if we may,
39 so as you and your fellow officers arrive at the
40 scene. I'm first asking you to look at this in
41 the context of your testimony that you felt it
42 necessary to tell him to calm down even though
43 you've testified he was calm, but you found his
44 hands were moving.

45 A So you're going to have to stop it there. I don't
46 -- like my computer screen isn't all that clear.

47 Q It isn't?

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

1 A There, you can see -- like on mine, I can see my
2 hands moving.
3 Q No, I'm sorry, Officer, you may have misunderstood
4 me.
5 A Yeah.
6 Q I'm first asking you to look at this video in the
7 context of where you said Mr. Dziekanski's hands
8 were moving in such a way that you felt it
9 necessary to --
10 A Oh, okay.
11 Q -- tell him to calm down.
12 A And you're not going to see the initial
13 interaction, so you're going to miss parts of it
14 because --
15 Q Why am I going to miss parts?
16 A Because -- because my initial contact with him, it
17 was -- he was panning around, or the video is
18 panning around that beam, so you're not going to
19 see my initial contact with him 'cause you're not
20 going to see me put my hands out and saying stop.
21 Q So let's go back to the beginning, okay? You're
22 satisfied this was the beginning?
23 A Of contact by the members, or...?
24 Q Yeah, contact by the members. You're still
25 arriving.
26 A Yeah, but this is prior to my hand signals, yes.
27 Q All right. Carry on and tell us to stop where you
28 believe his hands started going erratically.
29 Well, you didn't use the word "erratically".
30 A No, I didn't.
31 Q Sorry.
32 A Okay, you're going to have to stop as soon as you
33 -- or go a little further 'cause you're going to
34 miss parts of my interaction. Can we back up just
35 a bit, just a frame? 'Cause I don't -- 'cause
36 maybe -- okay, go ahead. See, you're probably
37 seeing my hand go up now and me going forward.
38 Q Can you -- can you, with the laser -- do you have
39 the laser pointer there? Excuse me, Officer. Do
40 you have the --
41 A No.
42 Q -- laser so you can point that out to us in the
43 big screen?
44 A You're going to see my hand there.
45 Q You're just going in the door at this point.
46 A Yeah, I'm just going in the door, but that's the
47 most you're going to see. Then you're not going

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

1 to see me for a second.
2 Q Sorry, but that's the motion --
3 A No, no, no. Like that's just me going in.
4 Q Yes, okay.
5 A Okay?
6 Q Okay.
7 A Then you're not going to see me. Okay, there goes
8 up my hand.
9 Q There goes your hand, your arm.
10 A Yes.
11 Q Yes? But, I'm sorry, Officer, I am specifically
12 asking you now to focus on the issue of Mr.
13 Dziekanski's hands being so active that you felt
14 it necessary to ask him to calm down by way of
15 sign language.
16 A And this is what -- like you're looking -- this is
17 behind glass and the small little movements of the
18 hands, whether it be shaking just like -- a little
19 bit like this, you're not going to see that.
20 Q Did you see that?
21 A In my statement and what I remember is his hands
22 were moving. I'm not saying they were up like
23 this. I'm saying you can see the hand -- the
24 movement of the hands.
25 Q Well --
26 A So just -- can we just continue going through?
27 Q Fair enough.
28 A And even when we're slowing down -- if we play it
29 in real time first? Or take it just back, then
30 and play it through real time, because when you
31 slow it down, you're not going to see any type
32 of...
33 MR. LUNN: I'll just take it up (indiscernible - not at
34 microphone).
35 A 'Cause even -- like before he throws up his hands,
36 you'll see just barely little movement, but I'm
37 there and I see it and it's movement of hands.
38 MR. ROSENBLOOM:
39 Q You mean almost a --
40 A Like your hand is not steady like this. It's
41 moving. Like the hands are moving, like the
42 fingers. There's things that I noted. And you're
43 not going to be able to see the movements or --
44 like the movement of the hands. It's not going to
45 be a huge movement, but it's going to be where
46 they're not steady.
47 Q But Officer, you've already told me you observed

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

1 that his demeanour was calm generally.
2 A Generally.
3 Q You agreed with me that he was totally observant
4 to your orders leading to him approaching the
5 counter, correct?
6 A He -- he complied.
7 Q He complied. Why do you always resist saying
8 "totally complied"? Was -- was it something short
9 of total compliance? Tell me.
10 A He complied with my direction, but when you're
11 using the word "total", he didn't comply with
12 everything that I -- that I directed him to do.
13 Q Leading up to his approach to the counter?
14 A And it comes down to -- for compliant, you may
15 comply with one, right? He didn't comply with the
16 second, but I'm still assessing things at this
17 point.
18 Q So we then -- you pointed to your arm coming up,
19 and again, do we have this laser so that you can
20 point -- where you can get to the frame where you
21 wanted to draw our attention to your arm? There,
22 that's it, right?
23 A Yes.
24 Q And your arm is pointed out and your hand is doing
25 what at this point?
26 A It probably would be doing -- or not probably,
27 it's doing like a "stop" and I'm doing "no".
28 Q Okay. And you continue with that hand signal up
29 until the counter?
30 A The "stop"? Like no --
31 Q Yes.
32 A No, not till the counter 'cause I'm doing the
33 "calm down" and then I'm pointing towards the
34 counter.
35 Q Doing "calm down". Sorry, so at that moment
36 you're arm's up?
37 A Yes.
38 Q I'm going to suggest to you you're pointing to the
39 counter.
40 A No.
41 Q You're not? Okay. Carry on with the frames in
42 slow motion. Mr. Dziekanski at this point doesn't
43 even appear to be looking at you directly, is he?
44 Now, let's stop there for just a moment where
45 we see his hands go up in the air. Much has been
46 made of this in testimony. How did you interpret
47 his body movement when he put his hands up in the

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

1 air? I have suggested to witnesses -- witnesses
2 that it's resignation, that he's acknowledging to
3 him a command to stay away from his luggage. Do
4 you agree with that?
5 A I'm still assessing. I wouldn't say it's
6 resignation. I wouldn't say he -- it just -- he
7 didn't put his hands on the counter, his hands
8 went up, and I was just still assessing. I'm not
9 making the determination that it's resignation or
10 anything else. I'm still assessing.
11 Q Well, hold it. He's not at the counter at the
12 moment he puts his hands up, right? So I'm asking
13 you what is your interpretation of his hands going
14 up as they did?
15 A I was still assessing. I wasn't making a
16 determination. I was taking it all in.
17 Q You didn't interpret it immediately to be
18 resistance of any sort?
19 A No, I didn't.
20 Q No. Okay. Carrying on with the frame by frame if
21 you'd watch that. Now, stop there for a second.
22 You agree with me, Officer, as we see your
23 hand, your arm, your hand at that point, and put
24 the laser beam to that spot if you would, please,
25 Corporal?
26 A Oh.
27 Q Sorry. You're pointing, aren't you?
28 A Yes.
29 Q And so I'm going to suggest to you that when your
30 arm went up until we see your fingers pointing,
31 that you were pointing throughout to the counter
32 for Mr. Dziekanski to go to the counter.
33 A No.
34 Q You're saying from the earlier frames to this
35 frame, you changed the --
36 A I know what I did. And --
37 Q Yes?
38 A -- I told you what I did.
39 Q Well, we're seeing what we see here.
40 MR. ROSENBLOOM: Carry on with the frames.
41 Q And you continue pointing all the way to the
42 counter, don't you? Let's watch.
43 A Yeah.
44 MR. ROSENBLOOM: Now, if the operator could go back two
45 or three items for a moment. Do we have two
46 lasers here or just the one? Because I'd like to
47 -- thank you.

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

1 Q Officer, would you agree with me --
2 MR. ROSENBLOOM: Just carry on one frame or two.
3 Q Would you agree with me that what we see right
4 there is the stapler?
5 A I -- I can't see that at that point.
6 Q You can't? Okay.
7 A If we can -- and if that's what you're asking,
8 we're going to have to go through it a couple of
9 times where --
10 MR. ROSENBLOOM: Yes, okay. We'll come back to that in
11 a moment and I'll ask the operator to go to a
12 certain time. Just carry on.
13 Q Your hand is still pointing out, isn't it?
14 A Yes.
15 Q It's pointing now?
16 MR. ROSENBLOOM: There. Stop.
17 Q Still pointing?
18 A Yes.
19 Q Yes. At that moment, you are not motioning for
20 Mr. Dziekanski to put his hands on the counter.
21 You're pointing, aren't you? That's all that
22 you're communicating to Mr. Dziekanski at that
23 moment.
24 A At that moment, yeah, I'm just pointing.
25 Q Yes. Is there a point after this moment where you
26 ask him -- or not ask him, where you, with body
27 language, are directing him to put his hands on
28 the counter?
29 A I've already -- I already done the hand motion to
30 put his hands on the counter. Now I'm just
31 pointing to the countertop.
32 Q Okay. So we can be satisfied that, from this
33 point on, you have not asked him to -- you have
34 not ordered him, by body language, to put his
35 hands on the counter, correct?
36 A No, I done -- I did the motion. I'm pointing at
37 the countertop.
38 Q You did the motion --
39 A Yes.
40 Q -- back --
41 A Yes.
42 Q -- at the earlier period with the luggage, in the
43 period where we can't see it on the --
44 A And now that you're looking -- continue here. Now
45 I'm just pointing at the countertop is what I'm
46 doing right at this moment.
47 MR. ROSENBLOOM: Okay. Carry on. All right. Now, I

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

1 would like to go back to 3:39, please, three
2 minutes, 39 seconds.
3 Q 'Cause I want you to pay attention to where the
4 stapler --
5 MR. ROSENBLOOM: There, stop there for a moment.
6 Q And again, with the laser -- you see the stapler
7 there, don't you?
8 A Yes, on the video, yes.
9 Q Yes. And I want you to pay attention to where
10 that stapler is located aligned to items on the
11 counter. You would agree with me if you look at
12 what appears to be an audio speaker and a wire
13 that goes down to --
14 A Okay.
15 Q -- the lower counter, correct?
16 A Yes.
17 Q And you'll agree with me, sir, that the stapler at
18 that moment is located what -- approximately just
19 to the right of where the wire joins to the lower
20 counter?
21 A On the video, yes.
22 Q On the video. Okay. So I want you to keep that
23 in mind.
24 MR. ROSENBLOOM: Now, can we now go to --
25 MR. LUNN: It's frame number...?
26 MR. ROSENBLOOM: Frame number 5595 -- 5595.
27 Q Now, you'd agree with me, at this moment the
28 stapler hasn't been picked up, has it?
29 A I can't see that.
30 Q No. But, from your recollection of when it was
31 picked up, it wasn't when you were all still
32 approaching the counter, was it?
33 A I can't say that.
34 Q Okay. Now, I'm pointing with my laser of where
35 the stapler would be located if it hadn't been
36 picked up. Would you agree it's approximately
37 where I'm pointing? In other words, just to the
38 right of where the wires come in.
39 A Like -- because it looks distorted on this side
40 and I don't know -- we're getting glare back there
41 on what we're looking at.
42 Q Well -- well, it's somewhere in the vicinity right
43 here, isn't it, where the stapler would be, or had
44 been?
45 A Yes.
46 MR. ROSENBLOOM: Okay. Carry on with it and go from --
47 in slow motion from 55 -- 5571 -- no, 5595 to

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

1 5603, please.
2 Q Let me suggest to you --
3 MR. ROSENBLOOM: Stop there for a moment, please.
4 Q Let me suggest to you, Officer, that you are
5 pointing in the general area of the stapler at
6 that very moment. Do you -- where the stapler was
7 or was still located, having shown you where the
8 stapler was a moment earlier, do you agree?
9 A No, I just wanted him to put his hands at the end
10 of the counter. That's what I wanted. But I know
11 what the video is showing. And I'm -- I'm moving
12 my body at this point and I'm still pointing
13 towards the counter.
14 Q Yes. And you're pointing towards the stapler,
15 aren't you?
16 A No.
17 Q You're not? You're not willing to agree with me
18 that the stapler hasn't been picked up yet, that
19 the stapler was just about at that very location
20 that you appear to be pointing to on the counter.
21 MR. HIRA: Mr. Commissioner, the witness has not said
22 that the stapler hasn't been picked up yet. This
23 is the assertion of counsel.
24 MR. ROSENBLOOM: I've said -- I've tried to be careful
25 about that.
26 Q If the stapler was still there, you were pointing
27 to its -- the location where it had been located?
28 A No.
29 Q Or was still located?
30 A No.
31 Q No? You say it's -- you're pointing somewhere
32 else?
33 A I'm pointing at the countertop but I'm pointing at
34 the -- the end of the counter. That's what I'm
35 doing, but I'm walking at the same time.
36 Q Sorry, to me the end of the counter is where this
37 -- this speaker box is, isn't it? I don't
38 understand.
39 A Well, if you're look -- if you're looking -- I'm
40 just back from the counter, and I pointed
41 initially to it, and I'm moving, I'm walking now
42 'cause I'm looking at him, trying to get him to go
43 back is what I'm trying to do, but I wasn't
44 pointing in the direction of the stapler.
45 Q You're trying to get him to go back?
46 A Well, I'm trying to get him to put his hands at
47 the end of the counter is what I was doing, but

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

1 he --

2 Q And, sorry --

3 A -- he's moved -- he's moved away from where I want
4 him to immediately put his hands.

5 Q Well, one assumes you want him to put his hands
6 where you're pointing. That's not the end of the
7 counter, is it?

8 A I was pointing at the end of the counter that
9 night. That's what I was doing.

10 Q Okay. Now, you're not prepared to agree that you
11 were pointing in the general direction of the area
12 of the counter where the stapler had been located
13 or was still located. You're not prepared to
14 admit that?

15 A No.

16 Q Okay. Now, up to this moment when Mr. Dziekanski
17 picks up the stapler, up to that moment, you're
18 going to agree with me that there has been total
19 compliance -- or, sorry, there has been compliance
20 of Mr. Dziekanski, correct?

21 A Yes.

22 Q And he has remained calm up to that moment.

23 A Where he stopped?

24 Q Yes.

25 A Relatively, yes.

26 Q Yes, all right. Now, I want to focus on the
27 second period which is the arrival to the counter
28 until he's tasered.

29 MR. ROSENBLOOM: If we can turn the lights up, please,
30 I'd appreciate it.

31

32 (VIDEO STOPPED)

33

34 MR. ROSENBLOOM:

35 Q Again, I'm going to summarize your evidence from
36 your statements and if you feel in any way I've
37 misrepresented what you said, just stop me.

38 You told the investigators generally that he
39 was trying to -- Mr. Dziekanski was trying to --
40 you were trying to tell him to put his hands on
41 the counter. You showed him, in -- in body
42 language, which is not on the video, correct?

43 A My finger-pointing -- yeah, but the initial part,
44 yes.

45 Q Yes. I'll stand corrected, Officer, and I'll have
46 my learned friends jump in immediately if I'm
47 misrepresenting the evidence. No officer, prior

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

1 to your testimony, has testified that you were
2 ordering Mr. Dziekanski to put his hands on the
3 counter.

4 MR. HIRA: Well, is that a question or a statement?

5 MR. ROSENBLOOM:

6 Q Well, I'm saying that from my memory of the
7 evidence, none of the three other officers have
8 testified, either by way of statements to IHIT or
9 under oath at these proceedings, that you were
10 directing Mr. Dziekanski to put his hands on the
11 counter. Now, assuming I'm accurate in what I've
12 given you as the evidence to this point, can you
13 explain why your fellow officers, who were also
14 present, did not observe you making that command
15 to Mr. Dziekanski?

16 MR. HARRIS: I'm troubled by the way the question is
17 framed. My difficulty is this. It needs to be
18 established - and out of fairness to the witness -
19 whether or not that specific question was put to
20 those other officer witnesses.

21 MR. HIRA: That isn't the only problem. What is being
22 asked of this witness is to explain yet the
23 reasons why the officers --

24 THE COMMISSIONER: No, I think the latter part is all
25 right. I'm a little more concerned with the first
26 part. I'm reaching back in my memory and I must
27 say I don't recall any of the other officers
28 commenting on this point, but likewise, I cannot
29 recall that anybody asked them about this point,
30 except in the general sense of what happened.

31 MR. ROSENBLOOM: Mr. Commissioner, with respect, I take
32 the position that there was exhaustive cross-
33 examination of all three officers about their
34 observations of these critical moments in the
35 incident.

36 THE COMMISSIONER: Yeah, that's correct.

37 MR. ROSENBLOOM: They were -- there was exhaustive
38 cross-examination about where these three officers
39 believed there had been resistance or non-
40 compliance to orders. I take the position that
41 with all three officers having been given an
42 opportunity to give total recollection of what
43 transpired in those precious moments, that none of
44 those officers ever gave evidence to suggest --

45 THE COMMISSIONER: Let me hear you frame your question.

46 MR. ROSENBLOOM:

47 Q Corporal, none of your fellow officers testified

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

1 of the command that you are indicating you gave to
2 Mr. Dziekanski to put his hands on the counter.
3 My question is can you explain how you gave that
4 command to Mr. Dziekanski but your fellow officers
5 did not appear to make observation?
6 MR. BUTCHER: With respect, I have the same objection
7 as Mr. -- Mr. Hira. I'm not sure at all how this
8 witness can explain anything about the other
9 officers' evidence.
10 THE COMMISSIONER: I think the question should be do
11 you know why.
12 MR. ROSENBLROOM:
13 Q Do you know why?
14 A All I can say is what I did.
15 Q But are you suggesting that your command was
16 demonstrative, that it was well articulated to Mr.
17 Dziekanski that he would understand what you were
18 ordering of him?
19 A What are -- what do you mean?
20 Q What I mean is are you suggesting that the command
21 you gave for him to put his hands on the counter
22 was -- would have been easily understood by Mr.
23 Dziekanski?
24 A The hand signals?
25 Q Yes.
26 A He complied with my initial to stop going to the
27 luggage.
28 Q Yes.
29 A Yes.
30 Q Because you said "no", right?
31 A And I put my hand up, yes.
32 Q Yes. And the word "no" would likely be a word
33 fairly common to people that weren't fluent in
34 English, right?
35 A (No audible response.)
36 Q All right. Right?
37 A I don't know if you can make that --
38 THE COMMISSIONER: Mr. -- Mr. Rosenbloom, I think
39 you're really arguing your case here rather than
40 asking questions that could be properly answered.
41 MR. ROSENBLROOM: All right.
42 Q What I'm trying to establish from you, Corporal,
43 is did you believe that the directive you gave to
44 Mr. Dziekanski to put his hands on the counter was
45 well articulated so that he would understand what
46 you were asking of him?
47 A I believe I made it as clear as possible.

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

1 Q Do you believe that it was likely that he
2 understood that order when we have testimony from
3 three other officers that make no mention of this
4 command of yours?

5 MR. HIRA: That's, with respect, argument. The second
6 part is argument, the first part is proper.

7 MR. ROSENBLOOM:

8 Q Are you --

9 THE COMMISSIONER: You're in trouble here, Mr.
10 Rosenbloom.

11 MR. ROSENBLOOM:

12 Q Are you surprised that the three previous officers
13 have not spoken about this command?

14 MR. HIRA: What does it matter if he's surprised or
15 not?

16 MR. ROSENBLOOM: I think it may well matter, because I
17 will then ask the witness, "Why are you surprised?
18 Did you believe that your fellow officers had
19 understood your" --

20 THE COMMISSIONER: Mr. Rosenberg, you've made your
21 point.

22 MR. ROSENBLOOM: Thank you.

23 Q Now, you testify again in your statements to the
24 IHIT that when Mr. Dziekanski grabbed the stapler,
25 there was a lot of articulation on our part. Can
26 you tell me what that articulation was that you
27 were speaking about in the statement?

28 MR. HARRIS: Can you take us to a page reference?

29 MR. ROSENBLOOM: Yes, I can.

30 THE COMMISSIONER: I think we'll take the morning
31 break.

32 MR. ROSENBLOOM: Thank you.

33 THE REGISTRAR: The hearing will now recess for ten
34 minutes.

35

36 (WITNESS STOOD DOWN)

37

38 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

39 (PROCEEDINGS RECONVENED)

40

41 CPL. BENJAMIN ROBINSON, a
42 witness, recalled.

43

44 MR. VERTLIEB: Mr. Commissioner, just to mention we'll
45 need to break today at noon, and if we could then
46 start back at 1:45, just for some technical
47 reasons.

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

1 THE COMMISSIONER: Yes, that's fine then. We may have
2 to sit a little late. We'll see how that goes.

3 MR. BUTCHER: None of us heard that.

4 THE COMMISSIONER: Say again?

5 MR. BUTCHER: None of us heard that, Mr. Vertlieb.

6 MR. VERTLIEB: We're going to break at 12:00 and come
7 back at 1:45.

8 MR. BUTCHER: Thank you.

9 MR. ROSENBLOOM: Thank you.

10

11 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
12 GOVERNMENT OF POLAND, continuing:

13

14 Q Officer, just before the coffee break I was
15 directing your attention to statements that you
16 had given to the IHIT investigators, and I had
17 spoken about a statement that you gave on October
18 the 18th, 2007 where you said that after Mr.
19 Dziekanski grabbed the stapler "there was a lot of
20 articulation on our part", these are your very
21 words. Your counsel asked for reference to that
22 passage. I gave it to him during the break. 714,
23 or that's the IHIT number, it's page 10 of your
24 second statement. My question to you is having
25 said that in your statement, can you tell us what
26 articulation you did give to Mr. Dziekanski after
27 he picked up the stapler?

28 A After he picked up the stapler?

29 Q Yes. In other words, what are you referring to in
30 the statement to IHIT that, quote:

31

32 ...there was a lot of articulation on our
33 part um, and then it was; a decision was made
34 and I instructed Constable MILLINGTON to
35 deploy the TASER.

36

37 A I think I was referring to at that point it was
38 just there was raised voices in the room. Like
39 there was nothing I could distinguish, but it's
40 where there's an elevated, like -- and there was
41 noise. I think that's what I was referring to at
42 that part.

43 Q Sorry, I'm having a lot of trouble, I'm not
44 understanding --

45 THE COMMISSIONER: I think we should refer to it, to
46 the paragraph, Mr. Rosenbloom.

47 MR. ROSENBLOOM: To the full paragraph?

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

1 THE COMMISSIONER: Yes.

2 MR. ROSENBLOOM: To read the full paragraph? I'm happy
3 to.

4 THE COMMISSIONER: Because on my reading of it the time
5 sequence in the sentences of his answers in the
6 statement are -- jump around.

7 MR. ROSENBLOOM: Fair enough. I will read your whole
8 response to the question. I don't know how far
9 the Commissioner wants me to go back. I'm happy
10 to go back to the previous page if the
11 Commissioner thinks that --

12 THE COMMISSIONER: Well, I think you should start "I'm
13 not" at the bottom of page 9.

14 MR. ROSENBLOOM: Yes.

15 THE COMMISSIONER: And stop at the next page in the
16 centre beginning with the word "Okay".

17 MR. ROSENBLOOM: Yes.

18 Q So, in fact, just before that, Corporal
19 Brassington says:

20

21 And, and tell me more about that cause I'd
22 ah, I didn't ask you about that but ah, I
23 mean expand on that, tell me how - about him
24 recognizing as you said that, that you were
25 that police.

26

27 You said:

28

29 I'm not - just by his verbal, just saying
30 "the policia" and the members were still
31 ahead of me at that point and we went through
32 the secure side and so I gestured to him and
33 ah, and I, and I --

34

35 - I don't even, I can't read this word -

36

37 -- leiuded up to - or I spoke about that on
38 the; my previous statement was; I was able to
39 at least give him, and talking using my
40 hands, to put his hands on the counter, which
41 he initially started to do before and he
42 quickly grabbed a stapler and turned on us.
43 So I was trying to talk him and calm him
44 down, get his hands somewhere where I can see
45 them.

46

47 Cpl. D. BRASSINGTON: Hm, hm...

1 You say:

2
3 ...and then ah, it was a quick - he grabbed
4 the stapler, turned and that's where ah, we
5 took a step back and it was a quick um,
6 trying to calm him down, I know there was
7 articulation, there was a lot of articulation
8 on our part um, and then it was; a decision
9 was made and I instructed Constable
10 MILLINGTON to deploy the TASER.

11
12 I'm not sure how that helps you, Corporal, but I'm
13 suggesting to you clearly you're saying in that
14 statement that after he picked up the stapler
15 there was lots of articulation -- a lot of
16 articulation.

17 A No, and I do jump around quite a bit. I refer
18 back to -- and we can see that where:

19
20 ...I was able to at least give him, and
21 talking using my hands, to put his hands on
22 the counter, which he initially started to
23 do...

24
25 So I'm going back to prior to him grabbing the
26 stapler.

27 Q So your reference to there being a lot of
28 articulation is a reference to the period before
29 he picked up the stapler?

30 A Yes.

31 Q I have trouble with that, but in any event, if
32 that's your testimony, are you suggesting that
33 there was any articulation by you to Mr.
34 Dziekanski after he picked up the stapler?

35 A No.

36 Q All right. Now, there is then -- then statements
37 given by you to the IHIT investigators regarding
38 Mr. Dziekanski with the stapler, and I want to
39 just very, very briefly go over this. It has been
40 dealt with exhaustively in these hearings. But
41 you've said, and again at any point you or your
42 counsel can ask me for reference and I'm happy to
43 go right into the statement, but I'm trying to
44 speed it up for everybody's purpose. You said
45 the:

46
47 ...male [was] in his combative

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

1 state...swinging a stapler...

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...he grabbed the stapler and started swinging [it] at us.

These are separate passages, they're not continuous.

He just started swinging [the stapler].

...I remember him taking a step forward and then he was swinging the stapler ...like he's swinging the stapler like the um, up high and then he's just like he's swinging it...an attempt to hit us.

It's aggressively step, swing...

Then you said at a passage:

...step forward, swing, step back...

I want to come back to that in a moment.

First of all, you have now made clear through your counsel's letter of March 2nd and testimony you've given that he never had the stapler up high, did he?

A He never had it over -- the initial part, he never had it over his head until after he was tasered.

Q He never had it even above his shoulders, did he?

A No.

Q No. And, Officer, when you use the term in your statement that he had the stapler up high, what did you believe you were conveying to the investigators about the location of that stapler?

A What do I believe I was conveying to them?

Q Yeah, what did you mean by having told the officers that the stapler was up high?

A That -- I referred to it as high. I didn't elaborate on it, and I was never asked was it above his head, below the shoulders, I wasn't asked at the time. I used the reference at the time "high".

Q And at the time you gave that statement, did you believe Mr. Dziekanski had in fact placed the stapler above his shoulders?

A When I gave it?

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

1 Q Yes.

2 A The initial part he didn't have it above his
3 shoulders until after he was tasered.

4 Q No, I'm not asking what we now know --

5 A Mm-hmm.

6 Q -- and what is now your testimony. At the time
7 you gave your statement to the investigator, what
8 did you mean by telling him that the stapler was
9 high? Did you mean below the shoulders or above
10 the shoulders?

11 A Below.

12 Q So you never believed that the stapler was above
13 the shoulders when you gave that statement to the
14 IHIT investigators?

15 A It was above the shoulders after he was tasered,
16 but up high, it is my reference to high. I never
17 expanded on it at the time and I was never asked
18 to expand on it.

19 Q But, Officer, when you stated to the IHIT
20 investigators that he:

21
22 ...like he's swinging the stapler like the
23 um, up high and then he's just like he's
24 swinging it...

25
26 You're speaking about the period before he was
27 tasered, correct?

28 A Can you refer me into what you're looking at?

29 Q Yes, I can. To your --

30 A Because you have to remember, too, I'm blending
31 the whole interaction and I jump around in every
32 statement.

33 THE COMMISSIONER: It's page 11.

34 MR. ROSENBLUM: Yes.

35 Q It is page 11 of your statement of October 15th --
36 it's October 14th. I might say there are errors
37 at the top of each page, it shows it's October
38 15th, but we all know it is October 14th. Page
39 11.

40 Officer, I want to, just before you focus too
41 much on the statement, I'm curious when you speak
42 about how it blended together. I'll allow you
43 lots of time to read your statement. I just want
44 you to concentrate --

45 A Mm-hmm.

46 Q -- on my question for a moment. You speak about
47 blending together. You do recognize, do you not,

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

1 the critical necessity to distinguish between the
2 events that took place before the tasing as
3 opposed to the events that took place after the
4 tasing, correct?
5 A Yes.
6 Q Yeah. It's not something that should be casually
7 blended together because it misleads the
8 investigators, doesn't it?
9 A Mm-hmm. I did the best job I could. I admit
10 there's inaccuracies and we've gone over this.
11 Q Yes.
12 A And like when I -- and I think I mentioned this
13 many times is I didn't break it apart, I didn't
14 break it down this second to that second to this
15 second. I gave an account to the best of my
16 ability of the events.
17 Q Yes. But you were aware that the investigators
18 were trying to determine from you what were the
19 risks to your safety that caused you or justified
20 the use of the force that you applied, the taser,
21 correct?
22 A Yes.
23 Q So it was critical for them to compartmentalize
24 the period before the tasing and to be informed
25 by you of precisely what the risks were that you
26 faced before the tasing; is that not correct?
27 MR. HARRIS: That's two questions broken into one, and
28 as well it's also asking the witness to comment on
29 what's critical for the IHIT investigators. I
30 don't believe he can do that.
31 MR. ROSENBLUM:
32 Q Well, Officer -- thank you.
33 Officer, you've informed me that you knew
34 that it was important to distinguish events prior
35 to tasing from events after tasing, correct?
36 A I gave a recount to the best of my ability.
37 Q Yes. And in giving that recount -- as you were
38 giving that recount, you knew it was important to
39 distinguish events before tasing and after
40 tasing, correct?
41 A I knew it was important to give account of the
42 entire event, yes.
43 Q Yes. And to give an accurate account of all of
44 the events as you recollected them leading up to
45 the tasing, correct?
46 A Important recollection of the events after/before,
47 yes.

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

1 Q Yes. And not to blend them together.

2 A Yes.

3 Q Yes. And I'm asking you whether in giving the
4 statement you gave and you -- in fact, let's take
5 you now to the statement you were reading at a
6 point in time, and we're at page 11, and I lead
7 you mid-page where -- one-third of the way down,
8 Corporal Teboul says:

9

10 Okay. So he grabbed the ah, he grabbed the ah
11 stapler. And um, what does he do with the
12 stapler?

13

14

You answer:

15

16

Um, he take, I remember him taking a step
17 forward and then he was swinging the stapler
18 and that's um, ah, like he's swinging the
19 stapler like the um, up high and then he's
20 just like he's swinging it um, to try to push
21 us back or ah, an attempt to hit us. So we, I
22 didn't know at that point where he's gonna
23 go, because it wasn't like he was swinging...

24

25

And then it goes on from there. You saw that --
26 you see that paragraph?

27

A Yes.

28

Q Okay. Are you telling us now, correct me if I'm
29 misleading you, are you telling us now that what
30 you were telling the investigator there were the
31 incidents after he was tasered?

32

A In this one the "push us back", that's prior to us
33 tasering him.

34

Q Yes. And you knew that when you were answering
35 that question?

36

A I'm not too sure what you're --

37

Q That passage I just read to you, you are speaking
38 in that passage of the events before the tasering,
39 correct?

40

A Yes.

41

Q Okay. And you use the term that the stapler was
42 high?

43

A Yes.

44

Q And I'm going to suggest to you, Officer, that
45 that term "high" would suggest something well
46 above the shoulder. You don't agree?

47

A It could suggest, but I knew what I meant.

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

1 Q Well, you knew what you meant. Officer, if you
2 are on patrol and you encounter a suspect on some
3 incident and you ask them to put their hands up
4 high, show me how you'd expect them to put their
5 hands. Just please show me in the witness stand.

6 A I don't think that's a fair reference.

7 Q Why?

8 A When I gave this, I didn't -- I did the best job I
9 could when I said "high" and if I didn't say he
10 was swinging over his head, and that's not what I
11 said in this part.

12 Q So you in using the term "high", you would still
13 apply the term "high" to the placement of the
14 stapler at his chest area?

15 A It's the -- the chest/shoulder height, it's below
16 shoulder height, chest height. And that's what I
17 said at the time and that's -- I did the best job
18 I could. And if I -- if they wanted more
19 elaboration, maybe the question should have been
20 asked, "What do you mean by 'high'?"

21 Q And they never did ask.

22 A No.

23 Q Now, you also say in your statement that, again
24 before tasing, he took a:

25
26 ...step forward, swing, step back...

27
28 I want to focus on that for a moment. What -- I
29 don't think anyone's asked you up until now about
30 that particular passage. A step forward and a
31 step back, do we see that in the video? You'd
32 gotten to the point, in responding to my learned
33 friend, Mr. Kosteckyj, where you showed us in the
34 video where you believe there is an indication of
35 a step forward.

36 A Yes.

37 Q Correct? You recollect that with my friend.

38 A Mm-hmm.

39 Q Can you show us on the video where there is a step
40 back?

41 A A step back by me?

42 Q A step back, no, as I -- let's go to the
43 statement. I believe you're speaking of Mr.
44 Dziekanski when you say a:

45
46 ...step forward, swing, step back...

47

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

1 MR. HARRIS: Page, please?

2 MR. ROSENBLOOM: Yes, happy to do that. It is page 12
3 of your statement of the 14th of October. It's
4 right at the top.

5 Q Do you have that in front of you now, Officer?

6 A What page?

7 Q Page 12.

8 A Page 12, I was on 11, sorry.

9 Q Sorry, next page at the top. Corporal Teboul goes
10 "Mm hmm."

11 THE COMMISSIONER: I think there's a difference in
12 paging. Are you talking about the paragraph
13 immediately after the one you referred to
14 previously?

15 MR. ROSENBLOOM: Yes.

16 THE COMMISSIONER: Well, at least on mine it's still
17 page 11.

18 MR. HARRIS: My concern, Mr. Commissioner, is taking
19 snippets from the statement about stapler
20 placement or movement is very misleading, and the
21 best example is on page 11 where Corporal Robinson
22 says at the bottom:

23
24 Which um, at that point, it was just like I
25 remember I took a step back.

26
27 And then over on page 12, Teboul says:

28
29 Mm hmm.

30
31 And then Robinson says:

32
33 To create a little bit of distance. And but
34 ah...

35
36 And what my friend has done is he's taken only a
37 small bit of portion out of Corporal Robinson's
38 comments on page 12 where he starts the paragraph
39 by saying "To create a little...distance," and
40 it's misleading to formulate the question without
41 the entire paragraph and just taking portions of
42 it.

43 MR. ROSENBLOOM: Excuse me one moment, it may speed
44 things up.

45 Rather than taking time now, during the lunch
46 break I'll reflect upon that and talk to my
47 learned friend. I appreciate his intervention in

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

1 that regard.

2 Q Now, when you observed the step forward, as you
3 saw it and you brought that to our attention on
4 the video, it was subsequent to that moment that
5 you called out for Corporal -- to Constable
6 Millington to deploy the Taser, correct?

7 A Yes.

8 Q And I think you testified you said, "Hit him with
9 it. Hit him with it." Is that right?

10 A Yes.

11 Q You said it twice?

12 A I said "Hit him again," after the first time.

13 Q So your entire command to him was what again?

14 A I gave Constable Millington, I said, "Hit him with
15 it." And before I could yell the word "Taser,
16 Taser," which I said yesterday, Constable
17 Millington deployed the Taser.

18 Q So you said only once to him "Hit him with it"?

19 A I said, and I think I've gone over this a couple
20 of times, I said, "Hit him with it," then when he
21 immediately didn't go down I said, "Hit him
22 again."

23 Q I'm not speaking of that second command. I'm
24 speaking about the initial command when he first
25 made what you believe was an advancement towards
26 you, correct?

27 A Yes.

28 Q And you said to him, "Hit him with it," correct?

29 A I said, "Kwesi, hit him with it."

30 Q "Kwesi, hit him with it." You'd agree with me
31 that that saying "Kwesi, hit him with it," takes
32 approximately a second, second and a half?

33 A A second.

34 Q Second, say, and a half. So when viewing the
35 video and drawing our attention to the spot where
36 you believe that Mr. Dziekanski is advancing
37 against -- towards you, I would like to go to that
38 spot and I'd like to do a second and a half
39 approximately of time from that point on, and I
40 want you to tell me whether there is a continuing
41 advancement of Mr. Dziekanski towards you at that
42 moment.

43 Do we have the frame number of where the
44 witness said that he saw that advancement?

45 MR. HARRIS: We don't have the frame numbers, so
46 perhaps we just go frame-by-frame.

47 MR. ROSENBLOOM: Do you have the frame number -- you

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

1 don't, okay.

2 MR. LUNN: Is this an appropriate place to start?

3 A We'll just go from here.

4

5 (VIDEO BEING PLAYED)

6

7 MR. HIRA: If you start at frame 5668.

8 MR. LUNN: 5668.

9 MR. HIRA: Try 5661 and advance forward to frame
10 number --

11 MR. LUNN: Okay, we're at 5661.

12 MR. HIRA: -- 5721. We're at 27. If you go on a
13 frame-by-frame basis you can see it.

14 A So what is your specific question again?

15 MR. ROSENBLOOM:

16 Q The question is first to identify approximately
17 which frame you believe shows the initial
18 advancement on you.

19 A 'Cause I'm already backing up there. There's
20 movement there.

21 Q Is that frame approximately where you believe
22 there is the initial advancement?

23 A Can we play it in real time because it --

24 Q Fair enough.

25 A -- happens really quick and you're looking at --
26 what we just played yesterday, of you're looking
27 at the top with the white and the grey to see the
28 clear advance forward, and just right after then
29 the Taser's deployed.

30 So from there you've already seen the clear
31 movement if we were looking at the top.

32 Q So go back, and will you identify to me where the
33 clear movement is.

34 A Okay. Like, if we're going to take it back to
35 what we did, was it yesterday and the day before,
36 just with his head here.

37 Q Well, right, and you spoke about that.

38 A Yes.

39 Q I had a lot of trouble with that yesterday, but it
40 will be for the Commissioner to grapple with, not
41 myself.

42 MR. HARRIS: I'm going to rise for a moment. Several
43 times my learned friend has said comments like "I
44 have difficulty with that evidence". In my
45 respectful submission, that's not appropriate
46 comments for counsel to make on the quality of
47 evidence. That's for Commissioner to make those

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(cont'd)

1 determinations at the end of the day.

2 MR. ROSENBLOOM: I don't agree with my friend, but I'm
3 happy to try to respect his comments.

4 Q So is that frame approximately where you believe
5 there is the initial advancement?

6 A Can we -- I had it -- back it up to where his head
7 should be.

8 Okay, yeah, back.

9 So where you're looking at the head, at a
10 certain point, and this happens within split
11 seconds, he makes a clear advance from here and
12 because this is through glass it's the same thing,
13 2-D, which I spoke about yesterday. This is one
14 of the ways you can see. Any other way you can
15 see other than what I'm telling you what happened,
16 the video's not totally clear other than this, you
17 can see the clear movement.

18 Q Well, I haven't been concentrating so much on
19 those two rectangles up in the ceiling as you have
20 drawn to our attention.

21 A Yes.

22 Q I've been concentrating on the movement of his
23 shoulder blades. If there is movement, I would
24 have expected some demonstrative movement of the
25 shoulder blades. And so I have trouble
26 appreciating where that movement is, and I'm
27 simply asking you if you can show us where you
28 believe there is that first movement. And is that
29 about the right -- the frame?

30 A We're talking like the clear step forward.

31 Q Yes.

32 A Okay. It's -- forward it for me. Just go
33 forward.

34 Okay. So take it back, because probably
35 where his head is here, then after that it's going
36 to be a quick thing of him moving to this...

37 So hit it to as far back as --

38 Now he's going forward there.

39 Okay, this probably will be the start because
40 in a split second you'll see it go from here to
41 here.

42 Q So that's the start of it?

43 A Okay, and advance it forward really quick for me.

44 And, yeah, so back it up to here where he's
45 straight up to there. And right after that is
46 when the clear movement comes forward.

47 Q Okay. So let's be satisfied, or you be satisfied

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

1 with the frame approximately where you think
2 there's a commencement of movement or advancement.
3 It's about there?
4 A Sure, approximately there.
5 Q Okay. And that is frame number?
6 MR. LUNN: 5701.
7 MR. ROSENBLOOM: 5701.
8 Q Now, up to that moment, he's reasonably
9 stationary, isn't he, he's not advancing on you
10 obviously -- up to this frame.
11 A 'Cause he -- he turned quickly with the stapler,
12 and this is where you have the clear movement,
13 so...
14 Q But I've asked you to inform of us approximately
15 at what frame he starts his advancement on you.
16 A It's approximately there, and after then he makes
17 a clearer movement forward.
18 Q And when he makes a clear movement forward you
19 have to digest that and obviously give
20 instructions to Constable Millington, right?
21 A Yes.
22 Q So you've got to digest the fact that it looks
23 like he's going to advance on us and I'd better
24 get him tasered, correct? Fair enough?
25 A Fair enough.
26 Q Fair enough. So then -- so we -- we need a few
27 frames for you to digest what's going on for you
28 to interpret that he is making that advancement,
29 right? Obviously.
30 A Yeah.
31 Q Yes. And then you call out to Constable
32 Millington, you agreed with me approximately a
33 second and a half to say "Kwesi, Taser him" --
34 A And how --
35 Q -- or excuse me, "Kwesi, hit him."
36 A However long that took me to say.
37 Q Yes, well --
38 A A second, second and a half.
39 Q Okay.
40 A A second.
41 Q So can we have a second or a second and a half of
42 -- of the tape. Because just as the operator is
43 doing that, you'd agree with me one would expect a
44 continuing movement of Mr. Dziekanski towards you
45 during that second, second and a half that you're
46 giving the orders, right?
47 A The advance forward, other than -- he advanced

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

1 forward. I don't know what you mean after that.
2 Q Well, no, I'm saying that once you observed him to
3 be advancing forward, you've told us that you then
4 instructed Constable Millington to deploy the
5 Taser.
6 A Yes, I gave him the command.
7 Q And you've agreed with me that that would normally
8 take approximately a second, second and a half,
9 right?
10 A Yes.
11 Q So I'm simply wanting to have the operator here
12 give us another second, second and a half of
13 video, and for you to -- and you would agree with
14 me, would you not, one would expect Mr. Dziekanski
15 to continue his advancement towards you during
16 that second and a half, correct?
17 A Sure.
18 Q Okay. You're about --
19 MR. LUNN: We're into the next second now.
20 MR. ROSENBLOOM: Pardon me?
21 MR. LUNN: We're into the next second now.
22 MR. ROSENBLOOM: So into -- so we're one second.
23 There, let's stop there for a moment.
24 Q Is there, in your opinion, from your viewing of
25 the video, any evidence of continuing advancement
26 of Mr. Dziekanski from the moment you believe you
27 observed him to advance until one second has
28 lapsed in this video?
29 A I'm losing you.
30 Q Sorry.
31 A Say it one more time.
32 Q I'll try again.
33 A Yes.
34 Q From the moment that you believe he starts his
35 advancement, there is a minute that --
36 A A second.
37 Q -- excuse me, a second that has elapsed in this
38 video, is there, in your opinion, you observed Mr.
39 Dziekanski continuing any advancement on you, your
40 members at that moment?
41 A I just remember him coming forward and me giving
42 the command.
43 Q Do you see it in the video with the second that we
44 have --
45 A Well, you see he's clearly moved forward in the
46 video.
47 Q You believe he has.

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

1 A Yeah. And if you look at the top part, and we've
2 gone over this yesterday, like I see an advance.

3 Q Okay. And then why don't we do a -- can you do
4 another, so a second and a half, as opposed to
5 just a second?

6 So there we know him to be tasered.

7 A Yes.

8 Q So during the time between when you see the first
9 advancement to the tasering is approximately a
10 second, second and a half; is that correct?

11 A Whenever he was tasered at. I gave the command
12 and it -- he was tasered.

13 Q Yeah. Well, Officer, you'd agree with me in the
14 viewing of the video that at no time does Mr.
15 Dziekanski lunge towards any of you, does he?

16 A Well, what do you mean by "lunge"? He took a step
17 forward.

18 Q Step forward, or one left foot in front of the
19 right with his arm starting to prepare for an
20 attack. You don't see anything like that in the
21 video, do you?

22 A What do you mean, you can't see what you just did
23 on the video, no.

24 Q No. You don't see what would appear to be someone
25 about to attack, do you?

26 A I see --

27 Q You do.

28 A -- someone that's going to attack.

29 Q And your evidence of that is seeing what you
30 believe was an advancement towards you; is that
31 correct?

32 A Yes.

33 MR. ROSENBLUM: Okay.

34 THE COMMISSIONER: I'm going to interrupt here. I
35 think this is a place to pause. We have to
36 adjourn at 12:00 because there's a technical
37 problem happening, and so we'll adjourn now till
38 quarter to 2:00.

39 THE REGISTRAR: The hearing is now adjourned until
40 1:45.

41

42 (VIDEO STOPPED)

43

44 (WITNESS STOOD DOWN)

45

46 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

47 (PROCEEDINGS RECONVENED)

Cpl. Benjamin Robinson
Cross-exam by Mr. Rosenbloom (for Government of Poland)
(cont'd)

1 THE REGISTRAR: The hearing is now resumed.

2

3

CPL. BENJAMIN ROBINSON, a
witness, recalled.

4

5

6

THE COMMISSIONER: Yes.

7

MR. ROSENBLOOM: Thank you.

8

9

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

10

11

12

Q Officer, Constable Millington gave a statement to
IHIT about the period of time that you gave your
statements, and he said to the investigator that
he perceived Mr. Dziekanski prior to being tasered
as being more paranoid than angry. Do you agree
with that observation?

13

14

15

16

17

A Of Constable Millington's observation?

18

19

20

21

22

Q Do you agree with Constable Millington's
observation when he stated in his statement that
he perceived Mr. Dziekanski to be more paranoid
than angry prior to being tasered?

23

24

A That's his perception. That was not my perception
at the time.

25

26

Q You don't have to agree with him. You don't agree
with that perception?

27

28

A I can't speak on behalf of his perception.

29

30

Q Pardon me?
A I'm not speaking on behalf of him.
Q Of course not. I'm not asking you to. I'm asking
you whether you also were of the opinion from your
perception of the man's demeanour that he was more
paranoid than angry?

31

32

33

A At the -- are you saying just prior to being
tasered?

34

35

Q Yes.

36

37

A That wasn't my perception.

38

39

40

41

42

43

44

45

46

47

Q All right. Now, you may or may not be aware that
testimony was given here in the proceedings, and
the testimony related to an enhanced audio of the
Pritchard videotape. And in the course of an
examination of that enhanced audio, the Commission
retained a translator to listen to the Polish
being spoken by Mr. Dziekanski and having that
Polish translated. And it is Exhibit 33 to these
proceedings. In that translation, the translator
was asked to translate Mr. Dziekanski's Polish

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

1 spoken word just before being tasered. And the
2 translation, Exhibit 33, gives the following --
3 following translation of his comments. He said:

4
5 How long do I still have to wait.
6

7 And then at another time, which is 2:06 -- I might
8 add, is that 2:06 of the -- based upon the
9 Pritchard tape? I assume it is? Yes, thank you.
10 So that would be two minutes and six seconds into
11 the Pritchard tape he says:
12

13 So you will not let me go? You will not let
14 me out of here?
15

16 And then at three minutes, exactly 3:00:
17

18 Police, Police.
19

20 3:43 he says, and I'm led to believe this is when
21 he is at the counter and just before the
22 deployment of the Taser, the translation is:
23

24 Leave me alone. Leave me alone! Did you
25 become stupid. Why?
26

27 Now, let me stop there for a moment. I am further
28 informed, I wasn't in the proceedings when this
29 testimony was given, but the translator said that
30 the term:
31

32 Leave me alone. Leave me alone! Did you
33 become stupid.
34

35 Can also be translated:
36

37 Are you crazy?
38

39 Now, accepting that that is the evidence, would
40 you agree with me, Officer, that if that those
41 statements given by Mr. Dziekanski clearly speak
42 of a person in fear.

43 MR. HIRA: (Indiscernible - away from microphone).

44 THE COMMISSIONER: Well, I don't know that he can
45 answer this, counsel.

46 MR. ROSENBLUM: All right.

47 Q The -- I want to come to the third period of the

- 1 events, and I told you I wanted to approach this
2 in four periods. The third period is from
3 tasering until he is handcuffed. You've told us
4 that you were not qualified to use the Taser on
5 the -- during the period in question, correct?
6 A Yes.
7 Q When had you last read the RCMP manual in respect
8 to tasering prior to this incident?
9 A I don't recall.
10 Q Might it have been some significant time before
11 this event?
12 A I can't recall that.
13 Q Do you recall at the time of this incident being
14 familiar with the manual as it related to repeated
15 or continuous deployment of the Taser?
16 A Had I read it? Yes, I've read it.
17 Q You were mindful or knowledgeable about that
18 provision of the manual on the 14th of October?
19 A Yes.
20 Q And what was your memory at that time of the
21 cautionary notes of the manual with respect to
22 repeated tasering?
23 A And we're covering this again in the 15 to 20
24 seconds, the continuous cycling? That's what
25 you're asking for?
26 Q That is right, I am.
27 A Yes. It makes note in there that it may be
28 hazardous, any more than 15 to 20 seconds of
29 continuous deployment -- or continuous cycling,
30 sorry.
31 Q Does it not state that multiple deployment or
32 continuous cycling of the CEW may be hazardous to
33 the subject?
34 A May be hazardous.
35 Q Yes. So you would agree with me there is in that
36 provision of the manual a cautionary note both
37 about multiple deployment and continuous cycling,
38 correct?
39 A Yes.
40 Q And they're two separate things, aren't they.
41 A Yes.
42 Q And you were knowledgeable about that directive
43 from the manual on the evening in question?
44 A Of multiple uses of it, yes, it may be hazardous.
45 Q Now, we know that no warning was given by
46 Constable Millington before the tasering?
47 A Yes.

Cpl. Benjamin Robinson

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

- 1 Q You testified -- you didn't testify, you provided
2 statements to IHIT, and again at any point if you
3 ask for reference, I'll give it to you in your
4 statements. You said after deployment, you said
5 he was still "standing at that time", he still had
6 his "clenched fist", "quite aggressive", "trying
7 to fight through the taser". Let me stop there
8 for a moment.
- 9 This term, "fighting through the taser", is
10 that a term often used by police in respect to
11 tasering incidents?
- 12 A It's the term that I use. I can't speak about
13 anybody else.
- 14 Q Have you ever heard any other officer use that
15 term, "fighting through it"?
- 16 A I can't recall. That's how I refer to it as.
- 17 Q And does that mean exactly, in your mind,
18 "fighting through" a taser deployment?
- 19 A Well, it didn't have instantaneous effect. He
20 didn't drop, and he still had -- he was still
21 standing. And because he still has the stapler,
22 it -- he's resisting the effects of it.
- 23 Q Forgive me, Officer, I'm not so much wanting to
24 personalize it to the event of the 14th --
- 25 A Oh.
- 26 Q -- when I pose this question to you. I'm asking
27 you generally what do you mean by the term
28 generally "fighting through" a deployment of a
29 taser?
- 30 A And I can only use that in this context of the
31 night I used it.
- 32 Q Okay, in which case, go ahead.
- 33 A What I meant "fighting through it" is it didn't
34 have the immediate effect. He still had partial
35 control and he still hadn't dropped the stapler.
36 And that's what I meant, and that's what I said at
37 the time.
- 38 Q Okay. So you have given statements to IHIT saying
39 that you then instructed Millington to use the
40 deployment -- use the Taser a second time, as the
41 male was not going down, and the Taser had not
42 dropped him. Now, you, of course, now had the
43 opportunity to review the video numerous times and
44 I think you are conceding, are you not, or maybe
45 you're not, that the first tasering of Mr.
46 Dziekanski was a five-second cycle, correct? Or
47 six -- five-second cycle, correct?

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

- 1 A That's what it says, five seconds, yes.
- 2 Q Yes. And you are now of the understanding, are
3 you, that five seconds from the moment of tasering
4 Mr. Dziekanski is indeed falling to the ground and
5 is at the ground?
- 6 A And that's what we did before. I guess it was
7 right around five, wasn't it?
- 8 Q Yes.
- 9 A Earlier, yeah.
- 10 Q And that he's down.
- 11 A Yes. And so you are now conceding, are you not,
12 that the second deployment of the Taser was a
13 deployment after Mr. Dziekanski was on the ground?
- 14 A I did not know that.
- 15 Q No, you didn't know it at the time.
- 16 A Yes.
- 17 Q You know it now.
- 18 A Yes.
- 19 Q All right. Now, I want to focus on your
20 statements that the first tasering did not take
21 him down and it wasn't effective. These are words
22 that I think you've used. As one views the video,
23 we can look at it again if we have to, at what
24 point during your observations of those five or
25 six seconds did you believe that Mr. Dziekanski
26 was going anywhere other than down? Was there any
27 point after the moment of tasering, as you
28 observed those precious seconds, that you felt Mr.
29 Dziekanski was going anywhere other than down?
- 30 A Yes.
- 31 Q And at what point, and again we'll go to the video
32 if you want, but at what point during the -- after
33 the deployment did you believe that he was going
34 to maintain his stability and remain on his feet?
- 35 A And this happens within split seconds. He did not
36 drop and I gave the command to hit him again.
- 37 Q Well, when you say, "He did not drop" are you
38 saying that on tasering he did not simply wilt and
39 drop where he was standing. Is that what you
40 mean?
- 41 A Yes.
- 42 Q And your purpose in deploying the Taser or your
43 reason for commanding the deployment of the Taser
44 was to bring this man down, correct?
- 45 A Taking control of him, yes.
- 46 Q To gain control. And to gain control it -- you
47 wanted this man down, did you not?

Cpl. Benjamin Robinson

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

- 1 A Yes.
- 2 Q Was it terribly important to you whether the
3 effect of the Taser deployment was that he wilted
4 on his feet as opposed to collapsing as he does on
5 the video. Did it really matter as long as he
6 went down?
- 7 A He moved, yes, but I still at that point when I
8 gave the command, I thought he still had the
9 ability to still do harm.
- 10 Q Well, you gave the command for the second tasing
11 after the first tasing had been completed?
- 12 MR. HARRIS: That wasn't the evidence.
- 13 MR. ROSENBLOOM: I ask. I ask. I ask.
- 14 A Say that one more time?
- 15 Q Your command to Constable Millington to deploy the
16 Taser a second time, can I assume that was after
17 the first cycle had been completed?
- 18 A No.
- 19 Q Well, at what point in time did you give the
20 command for the second cycle?
- 21 A Immediately after he was tasered, he didn't drop
22 and I gave it -- and I gave the command for him to
23 hit him again.
- 24 Q Okay. Well, when we look at the video and we see
25 the five-second transition, are you able to tell
26 us, and obviously not to the precise millisecond,
27 are you able to tell us at what point during that
28 five-second transition you commanded the second
29 tasing?
- 30 A To the exact second, no. I gave it immediately
31 after.
- 32 Q Immediately after what?
- 33 A After I gave the first command and the Taser is
34 deployed and he didn't drop, I gave the command
35 again to hit him again.
- 36 Q Yes. But what I'm trying to establish is how much
37 time did you give between the first deployment and
38 when you gave the command for the second
39 deployment?
- 40 A And -- and when I made reference to it, like, I'm
41 not looking at my watch. We're not counting down
42 five seconds. I'm not seeing when the cycle ends,
43 right? Because in the split second and after it
44 was deployed he didn't drop, he still had the
45 stapler. I gave the command to hit him again.
46 And after which he did go down.
- 47 Q After which --

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

1 A Oh, he -- he went down soon after I gave the
2 second command.

3 Q Well, I wonder if we could see the video and get
4 to the point where he is hit with the first
5 deployment, and I want to understand from you
6 after that deployment -- at what point after that
7 deployment did you have reason to believe he
8 wasn't going to go down. So if we could start the
9 frames, and I guess we'll first do it in normal
10 speed, and then we can -- we can freeze frame.

11
12 (VIDEO BEING PLAYED)

13
14 MR. ROSENBLOOM:

15 Q Okay. Having seen that five seconds, can we go
16 back and can you tell us, or just respond to my
17 question if it's easier for you, at what point
18 after deployment were you concerned that he was
19 not going to go down during those five seconds?

20 A And I'm not going to be able to tell you to the
21 second, but he's still standing and it's quick
22 when I say, and it's quick when I say it again,
23 because he's still up after it's deployed. And
24 he's still at that point swinging the stapler and
25 he still has it in his hand.

26 Q But you --

27 A And I would have given it at the -- during that
28 point.

29 Q But, Officer, surely your observations of him
30 after deployment was that it was having some
31 effect.

32 A I know it was having some effect, but it wasn't
33 having the instantaneous effect I expected.

34 Q Well, the fact that it didn't have the
35 instantaneous effect that you expected, would you
36 agree with me that it was effective in clearly
37 causing this man involuntarily to collapse?

38 A It had some effect, but --

39 Q And it wasn't -- I'm sorry, go ahead.

40 A It had some effect but he didn't -- it didn't give
41 instantaneous control.

42 Q It didn't what?

43 A It didn't have -- like, he still had the stapler
44 in his hand and it didn't have the immediate, the
45 instantaneous effect I expected.

46 Q Well, within a second and a half to two seconds
47 would you believe -- excuse me. Within a second

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

1 or two you would agree the stapler was flung out
2 as he was involuntarily collapsing?
3 A And again as this was happening in real time and
4 I'm looking at it, he still had it when I gave the
5 command. It's still in his hand.
6 Q When you gave the first command, is that what you
7 mean?
8 A No, I think I said it twice now where --
9 Q Yes.
10 A -- he still had it in his hand. He had it in his
11 hand when we gave the first command, and then I
12 gave it again when he still had it in his hand.
13 Q And so you gave the second command for tasering
14 when Mr. Dziekanski --
15 A Was still standing, yes.
16 Q And you -- were you aware that generally the
17 automatic cycle to a Taser is five seconds?
18 A Yes.
19 Q Yes. And so you were giving a second command for
20 tasering when in fact you knew that the first
21 cycle had not been completed, is that your
22 testimony?
23 MR. HARRIS: I rise. That's putting the cart before
24 the horse and there's evidence already where he's
25 testified he didn't know the first cycle had
26 completed or not.
27 THE COMMISSIONER: Well, that wasn't the question.
28 MR. HARRIS: All right.
29 THE COMMISSIONER: No, no, that wasn't the question.
30 Go ahead.
31 MR. ROSENBLROOM:
32 Q And if you want --
33 A Can you --
34 Q -- the question repeated?
35 A Yes, I'd like the question again.
36 Q My question is are you testifying here today that
37 you gave the second command to taser before the
38 first cycle was completed?
39 A I would have given it before the first cycle was
40 completed when you look at it now. But when you
41 time it down, because I in -- and we've discussed
42 this, in critical incidents I can't see time and
43 you get a distorted view of it, and I'm not
44 sitting there going, counting the time or looking
45 at a clock, or there's nothing there to look at,
46 to see. You can't tell when the first cycle ends.
47 Q Well, when you observe the demeanour of Mr.

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

1 Dziekanski after he's hit with the Taser on the
2 first occasion, you would agree with me that his
3 movement towards his collapse is lateral and not
4 towards any of you officers. You would agree with
5 that?
6 A No.
7 Q You wouldn't. Where do you believe he's heading
8 after being hit?
9 A He's moving along aside us from this, but when I'm
10 looking at him he's going off to my -- to my left,
11 and at any point the probes can come dislodged.
12 Q I'm sorry, what can be dislodged?
13 A The probes can come out.
14 Q Yes.
15 A And -- and you see my movement, and I'm going with
16 him. Yeah, you're right, it's having some effect,
17 but I gave the second command when he was still
18 standing.
19 Q Well, you are agreeing with me, are you not, that
20 during the five seconds his collapse is a lateral
21 collapse, lateral to the table, counter -- to the
22 counter, correct?
23 A Lateral, like he's right alongside of just going
24 down to one side?
25 Q He's close to it. He's not attacking any of your
26 officers at that moment, is he?
27 A When he hits the ground, no.
28 Q No. Nor when he's on -- in the process of
29 collapsing. During those five seconds he is not
30 approaching or advancing on your officers, is he?
31 A He's moving away from me. I can't see the
32 perception that they're looking at.
33 Q Officer, did you believe at the time that during
34 those five seconds he had voluntary control of his
35 body?
36 A He had some control.
37 Q Really. What control do you believe he had of his
38 body, and what do you evidence do you believe in
39 witnessing the video today, what was the control
40 he had of his body?
41 A He still had the stapler in his hand.
42 Q But the staple flew -- stapler flew out of his
43 hand during that process, didn't it?
44 A Yes, it did. Not immediately, but it did fly out
45 at some point.
46 Q You have testified, have you not, that you
47 commanded Officer Millington to deploy the Taser a

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

1 third time, correct?

2 A No, I said I don't rule that out that wasn't me.

3 Q Yes. And we got into this evidence yesterday
4 about hearing a voice ordering a third deployment;
5 is that correct?

6 A Yes.

7 Q Yes. And you'd agree with me that as you're the
8 superior officer it's unlikely that one of the two
9 other officers ordered Constable Millington to do
10 the deployment? Did I not understand you to say
11 it likely was you?

12 A I said I don't rule it out it was me.

13 Q All right. And you would agree that that order
14 given, be it by yourself or someone else, was when
15 he was already on the ground?

16 A Yeah, when we were wrestling on the ground, yes.

17 Q Yes. And then you've told us that you were not
18 even aware of the fourth or fifth deployment until
19 quite recently?

20 A Yes.

21 Q You didn't know about it at the time?

22 A No.

23 Q You never saw Constable Millington do the push-
24 stun mode on Mr. Dziekanski?

25 A And we went over this yesterday; no, I didn't.

26 Q No. And you never spoke to him about it after?

27 A No.

28 Q I want to come to the final period as I have
29 approached this cross-examination, and that deals
30 with the period from handcuffing until the
31 ambulance EHS people arrive at the scene. You
32 said -- you gave some testimony yesterday to my
33 learned friend, Mr. Kosteckyj, regarding two
34 passages in your statements to IHIT, and I'd like
35 to spend a little bit of time on it. And these
36 two statements, and I'm happy to lead you to the
37 passages, but I think you'll remember them when I
38 go over them with you. You said at one point:

39

40 ...I put him out, 'cause I was the one
41 positioned on the top of him?

42

43 And then Mr. Kosteckyj gave you another reference
44 at another page altogether where you said:

45

46 ...and I say you know, I put him out. Just
47 cause I'm the one applying pressure to the

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

1 top part.
2

3 I listened to your evidence very carefully
4 yesterday and maybe I missed something. What did
5 you mean when you reported to IHIT that you put
6 Mr. Dziekanski out?

7 A And I know I covered this yesterday. It was to
8 bring attention that he possibly went unconscious.
9 He was no longer pushing up on me and I heard
10 snoring. It was to alert them that that's why I
11 was getting off of him and then we were rotating
12 him to check on him.

13 Q Are you saying that in having applied the term "I
14 put him out" you really meant to say he was
15 unconscious?

16 A Or he's out, in --

17 Q And we know that your testimony is that he became
18 unconscious. My question is why would you have
19 used the term "I put him out", and you didn't use
20 the term once, you used it twice in separate areas
21 of your statement to IHIT, "I put him out".

22 A Yes.

23 Q And you're telling us that what you were saying
24 was that he was unconscious but it wasn't your
25 doing?

26 A Yes.

27 Q In Monday of this week you testified again in
28 response to my learned friend, Mr. Kosteckyj, or
29 it might have been in fact to Commission counsel,
30 about how you were assisting in securing Mr.
31 Dziekanski to the ground. And you were asked
32 whether you -- how you applied your body to secure
33 him to the ground. And I have in front of me the
34 transcript of Monday's proceedings, and I just
35 want to go over it with you, in fairness, before I
36 ask you some questions. I'm happy to put that
37 page in front of you and give one to your counsel
38 if that helps. And I guess one to the
39 Commissioner. Pardon me? Yes, I will give all
40 that. It's the transcript of March 23rd and it is
41 page 86, and it's the cross-examination -- I'm
42 sorry, I was wrong. It was the cross-examination
43 -- I'm sorry, I'm not -- by Mr. Harris, so that
44 isn't really cross-examination, it was his in
45 chief examination of you. And at line 14 you were
46 asked by Mr. Harris, your counsel:

47

1 Can you tell Mr. Commissioner where the
2 placement of your knee was?
3 A My knee is across the shoulder blades. So it
4 comes across -- it comes across when you put
5 your knee on the shoulder to prevent him from
6 pushing up. I was never trained to control
7 or do anything on the neck. By putting it on
8 the shoulder prevents them and it takes up a
9 greater area where they can't roll themselves
10 or pick themselves up. And at no time did I
11 put my knee on his neck.
12 Q In fact, have you ever received instructions
13 about being aware of the neck?
14 A Yes.
15 Q And what were those instructions you
16 received?
17 A We're taught not to do that because a
18 potential for harm is there. And you'll gain
19 better control over a subject by doing it in
20 the mode I just described.
21
22 Now, you obviously were asked those questions and
23 gave those answers?
24 A Yes.
25 Q Yes. And you would agree with me the reason you
26 were trained not to interfere with the neck and to
27 apply pressure to the neck area is that there are
28 a number of vital structures in the area of the
29 neck if you were applying pressure to that area,
30 correct?
31 A Yes.
32 Q And you'd agree with me further that we would be
33 focused, or all of -- anyone prudent would be
34 focused on everything from the carotid artery,
35 correct?
36 A Sorry, again?
37 Q In the neck, the --
38 A The carotid artery, yes, is in the neck.
39 Q Yes. You'd be -- which is the major artery
40 providing blood to the brain, you'll agree with
41 that?
42 A Yes.
43 Q You'd agree that you'd be concerned about it
44 because of the jugular vein, which brings blood
45 back to the heart?
46 A Yes.
47 Q Yes. You'd agree that it would also be of concern

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

1 because of the larynx, which is the air passage in
2 the neck which supplies oxygen to the lungs?

3 A Yes.

4 Q You'd agree further that you'd be trained to
5 protect the neck area because of the concern of
6 trauma to the spinal cord?

7 A Yes.

8 Q I'm going to suggest to you, Officer, that you did
9 precisely what you were trained could cause
10 potential harm, and to that end I'd like to give
11 you the opportunity to -- to respond to questions
12 I have once the video is shown. And I would like
13 the video to be shown at frame number -- starting
14 at -- at time 5:07. Mr. Operator, would you like
15 frame number or time?

16 MR. LUNN: Frame number is fine.

17 MR. ROSENBLOOM: Okay. Frame 7691. And I would ask
18 you, Mr. Operator, if you would increase the
19 brightness if you're able to, on the screen.

20 MR. LUNN: (Indiscernible - away from microphone).

21 MR. ROSENBLOOM: Thank you.

22

23 (VIDEO BEING PLAYED)

24

25 MR. ROSENBLOOM: Now, is that the first frame?

26 MR. LUNN: Yes, that's 7691.

27 MR. ROSENBLOOM:

28 Q Okay. Before we go on any further, Officer, would
29 you agree with me, and it will become more obvious
30 later - I'm with my laser, if you look behind you
31 at the big screen - I see a dot there. That's the
32 dot on the sole of your shoe, isn't it? And if
33 you're not sure, we'll -- we'll -- it will become
34 more obvious as we go on with this. You're not
35 sure?

36 A No.

37 MR. ROSENBLOOM: Okay, fair enough. So if we can carry
38 on with the frames and get to frame 7752.

39 MR. LUNN: A frame at a time?

40 MR. ROSENBLOOM: Yes, frame at a time but slow motion.

41 Q Now, let's get back to the frame. You would agree
42 with me this appears to be the upper skull of Mr.
43 Dziekanski, isn't it, the top of his -- the top of
44 his head?

45 A I can't tell that.

46 Q Okay. Well, let's carry on. I think you will be
47 able to. Tell me when we get to 7752, please.

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

1 MR. LUNN: 7752.
2 MR. ROSENBLOOM: Okay. Now, if we can go 7752 in slow
3 motion to 8368.
4 Let's stop there for a moment. You -- stop
5 there for a moment.
6 Q You see that dot there, that's the sole of your
7 shoe, isn't it?
8 A Yes.
9 Q Yes, okay. And for the record, where do you see
10 your shin or knee located in that depiction?
11 A You're looking -- you're looking at the back of my
12 foot.
13 Q Yes.
14 A And I thought we -- or I went over this yesterday,
15 like, I know where my knee was. It was not on
16 there.
17 Q Okay. What about your shin?
18 A No.
19 Q Well, I'm sorry. If that's your foot, I assume
20 that your shin is obviously further up on that
21 limb, right?
22 A I know -- I know where my knee was and it was
23 nowhere near his neck.
24 Q Okay. Well, let's not just concentrate on knee.
25 Let's concentrate on shin. We're concentrating on
26 the issue of whether, Officer, you applied
27 pressure to the back of the neck of Mr.
28 Dziekanski, okay?
29 A I did not.
30 MR. ROSENBLOOM: Okay, you did not. So let us carry
31 on. We're at frame number...?
32 MR. LUNN: 7791.
33 MR. ROSENBLOOM: 7791, and if we would carry on to --
34 slow motion to 8368, and if you would watch it,
35 Officer.
36 Okay, stop there for a moment. Sorry, can we
37 go back.
38 Q Officer, you would agree with me that right here
39 is the head of Mr. Dziekanski, isn't it?
40 A Yes.
41 Q Your answer is yes? You said yes?
42 A Yes.
43 MR. ROSENBLOOM: Okay. So carry on, please.
44 Now, stop there for a moment.
45 Q There again is Mr. Dziekanski's head, correct?
46 A Yes.
47 Q There is your right foot?

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

1 A Yes.
2 Q The sole of your foot?
3 A Yes.
4 Q Is there any interpretation that you can give to
5 that video, other than that you have applied
6 pressure to the back of the neck of Mr.
7 Dziekanski?
8 A I didn't apply pressure to the back of the neck.
9 Q You did not.
10 A I did not.
11 Q Okay. I appreciate you're saying you did not.
12 I'm asking you in looking at this video, can you
13 give any interpretation of your posture there,
14 other than that you applied pressure to the back
15 of the neck of Mr. Dziekanski?
16 A I did not apply pressure to the back of the neck.
17 Q So what are you doing there, then?
18 A My knee's on his shoulder.
19 Q And your shin?
20 A My shin is behind me.
21 Q "My shin is behind me". Your shin is obviously
22 your lower limb between the sole of your foot and
23 your knee.
24 A It's behind my head. I know where I put the
25 pressure and the pressure was solely on his
26 shoulders.
27 Q But, Officer, in that posture - I don't want to
28 belabour this - but how can you possibly suggest
29 to us that that depiction does not indicate that
30 you were applying the knee or the shin of your leg
31 on the back of the neck of Mr. Dziekanski?
32 A I know how you're interpreting it, but that's not
33 what I was doing.
34 Q I know you keep coming back to "that's not what I
35 was doing", but you appreciate that it's the
36 responsibility of the Commission to view the video
37 and then to obviously come to conclusions about
38 things, and I'm inviting you to inform me what
39 possible or plausible explanation can you give for
40 what you're doing with the back of Mr.
41 Dziekanski's neck, other than applying pressure?
42 Is there any other plausible explanation?
43 A My -- my knee's on his shoulder.
44 Q Yes. We see your knee there, do we not? I'm
45 pointing with the laser. Is that your knee?
46 A I can't tell that.
47 Q You can't. Isn't this the -- your right leg going

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

1 down there? I'm --
2 A I know where my leg is, but if you're looking at
3 this, I can't say that's it.
4 Q You can't. In looking at this video that where
5 I'm pointing the video - I'm not very steady, am I
6 - that is your right leg from your knee to your
7 hip joint, isn't it, down to the knee.
8 A It's -- it's my leg, yes.
9 Q Yes. And so if that is your leg and it's the
10 upper leg, right? It's hip to knee, right?
11 A Yes.
12 Q We presumably find your knee at this point, the
13 bottom of the -- of your upper limb, correct?
14 A Yes.
15 Q Yes. And that knee's not on his shoulder, is it?
16 A My -- my knee is on his shoulder, that's --
17 Q I know you keep coming back to what it was, but
18 I'm asking you to look at the video. Does that
19 video depict the knee on the shoulder?
20 A I know how you're interpreting it, but I'm telling
21 you what I did.
22 MR. ROSENBLROOM: Carry on now, if we can, to frame --
23 slow motion to 8368, please. Where are we at
24 right now in frame number?
25 MR. LUNN: 7942.
26 MR. ROSENBLROOM: Thank you.
27 Okay, let's stop there for just a moment.
28 Q Officer, would you agree with me that I see the
29 yellow stripe of your pants right there?
30 A Yes.
31 Q That would be your right limb, would it not?
32 A Yes.
33 Q And you would agree with me that where we see that
34 yellow stripe would pretty much be your knee,
35 wouldn't it, where your knee would be?
36 A It's -- it's on my leg.
37 Q Pardon me?
38 A It's on my -- I can't say that specifically if
39 you're looking at my knee joint, if that's what
40 you're trying to infer.
41 Q No, the area of your knee.
42 A Well, that would be the area of my knee.
43 Q And your knee at that point is not on the back of
44 Mr. Dziekanski, is it?
45 A I know where I put it.
46 Q Well, I know you know where you put it, but I'm
47 asking you from observing this video, does this

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

1 video not depict your knee at a location other
2 than the back of Mr. Dziekanski?

3 A I know where you're interpreting it. I know where
4 it was.

5 MR. ROSENBLOOM: Thank you. If we can carry on with
6 this to frame 8368.

7 MR. LUNN: Right there is 8368.

8 MR. ROSENBLOOM: That's it.

9 Q Now, Officer, you would agree with me from the
10 video depiction that whatever posture you had, it
11 remained in that state for the entirety of what
12 we've just shown you from frame 7752 to frame
13 8368; is that correct?

14 A If that's what --

15 Q Yes.

16 A -- if that's what you showed me, yes.

17 Q And I am further informed by the operator that the
18 time period in question is from five minutes and
19 ten seconds on the Pritchard video to five minutes
20 and 34 seconds on the Pritchard video, and the
21 operator has just affirmed to me that I'm giving
22 you correct information. You have no reason to
23 disbelieve that, do you?

24 A No.

25 Q And therefore if it is over that duration, you
26 would agree with me that if you -- if one depicted
27 in that video that you were applying pressure to
28 the neck, the back of the neck of Mr. Dziekanski,
29 it was for a period of 14 seconds, from 5:10 to
30 5:34, correct?

31 A Yes.

32 Q Yes. Thank you.

33 My learned friend says that I may have said
34 to 5:24. The timeframe we are talking about is
35 from 5:10 to 5:34, which is 24 seconds.

36 A Correct.

37 Q Okay, Corporal? Do you understand what I'm
38 saying?

39 A Yes.

40

41 (VIDEO STOPPED)

42

43 MR. ROSENBLOOM:

44 Q Now, I want to focus on your medical treatment
45 that you provided to Mr. Dziekanski from the point
46 where he was handcuffed. You had taken a first
47 aid course. It was some time earlier than this

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

1 incident and you weren't qualified or certified at
2 the time of this incident, but you remember the
3 ABCs of rescue and you responded to some questions
4 from my friends about that yesterday?
5 A Yes.
6 Q And you understood the importance of protecting
7 the airways and the breathing and the circulation
8 of a human being during moments of distress,
9 correct?
10 A Yes.
11 Q Now, when you joined the Airport detail, which was
12 approximately two years before this incident, were
13 you given some sort of orientation program so that
14 you become familiar with the airport facility and
15 what the airport facility would offer to you as an
16 officer if there was a medical emergency?
17 A I got to the airport in April 2005. I wasn't
18 there for two years.
19 Q I'm sorry, April of --
20 A April 2007, sorry. I got to Richmond August 2005.
21 I wasn't at the airport for two years.
22 Q I see. I'm sorry, when -- indeed. When you got
23 to the airport were you given an orientation
24 program?
25 A A program?
26 Q Program, meaning did they walk you through the
27 facility; did they show you where the
28 defibrillators would be?
29 A No.
30 Q No? Were you --
31 A That's almost two questions. Like was I given an
32 orientation? Yes, I did go through the airport.
33 Q And were you during that orientation informed
34 about the medical services that would be offered
35 at the airport?
36 A There's ambulance and ERS there, yes.
37 Q It's not so much what there was as were you told
38 about that at the time?
39 A I'm not sure what you're asking.
40 Q Well, I guess what I'm asking, to be point-blank,
41 is by the 14th of October, before this incident,
42 were you familiar with what the airport offered in
43 the way of emergency medical services?
44 A If you're talking the ERS, yes, I was aware of
45 that.
46 Q If I'm talking what?
47 A The emergency -- the Fire, Airport Fire

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

- 1 Department, yes.
- 2 Q Yes. And were you familiar with whether or not
3 the airport terminals had defibrillators?
- 4 A You're making a distinction between the airport
5 and ERS?
- 6 Q No, I'm talking about the terminal buildings,
7 Domestic and International, were you familiar with
8 whether these terminal buildings had
9 defibrillators?
- 10 A Well, there was Emergency Services there, so the
11 expectation is, yes, they would have them.
- 12 Q Okay. Putting aside Emergency Services, and
13 you're speaking of ERS, are you not?
- 14 A Yes.
- 15 Q Put that aside. They have a building of their
16 own, do they not, or --
- 17 A Yes.
- 18 Q Yes. Putting them aside and what they would bring
19 to the table in terms of their tools, were you
20 aware whether or not the terminal buildings had
21 defibrillators in various locations around the
22 terminal buildings?
- 23 A No.
- 24 Q And you didn't know that on the 14th of October?
- 25 A No.
- 26 Q Do you know that today?
- 27 A No.
- 28 Q Were you aware whether there was oxygen available
29 in the terminal buildings other than through ERS?
- 30 A There's ambulance station in there, as well.
- 31 Q And tell me just a little bit about it. Maybe
32 everybody else knows about this already. I wasn't
33 in the hearings from the beginning. The ambulance
34 facility is at the ERS office, is it?
- 35 A There's -- we're talking the ambulance personnel
36 that ride around on bikes, as well as they have --
37 at the time they had their office set up in the
38 International section.
- 39 Q I see. And I believe I may have been informed
40 during these proceedings that those officers are
41 not on shift during the period in question here,
42 which would have been one o'clock in the morning,
43 was that your understanding, or did you believe
44 they were available?
- 45 A I can't recall what their shifts were.
- 46 Q Okay. And were you aware whether the airport
47 terminals, separate and apart from the ERS, had

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

1 bag and masks available in the -- in case of an
2 emergency?
3 A Outside of ambulance and ERS?
4 Q Yes.
5 A No.
6 Q No, you were not aware?
7 A No, I wasn't aware.
8 Q Okay. Now, you've testified Mr. Dziekanski became
9 unconscious shortly after handcuffing, correct?
10 A Yes.
11 Q That was a significant finding or observation by
12 you, was it?
13 A That he went unconscious?
14 Q Yes.
15 A It's a finding.
16 Q Pardon me?
17 A I'm not too sure what you mean, like he --
18 Q It's significant. Did you find it significant,
19 did you consider it to be alerting you to the fact
20 that there might be a dangerous medical situation
21 arising?
22 A Yes, that's why we called for Code 3 and we called
23 for an ambulance.
24 Q Okay, but one moment. First -- the first call was
25 not for Code 3, was it?
26 A No, that wasn't the initial call.
27 Q No. And in fact the calls to the Ambulance
28 Service were carried out by your colleague,
29 Constable Bentley, wasn't it?
30 A Yes.
31 Q Okay. And on your observations that he was
32 unconscious did you come to any mindset of what
33 was -- what had caused his unconsciousness? Did
34 you have any theory that you were working on at
35 that moment?
36 A Any theory?
37 Q Yes. Did you consider what may be causing his
38 unconsciousness?
39 A That's when you do the -- the checks. You're
40 going through, like pulse, breathing,
41 responsiveness, you're assessing that, or are you
42 talking something further?
43 Q No. So you were concerned about what might be
44 causing the unconsciousness, is that your
45 testimony?
46 A Yes.
47 Q Yes. And you've stated in the IHIT statements

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

1 that he started snoring.
2 A Yes.
3 Q Yes. What in your mind was the significance of
4 hearing him snore?
5 A I -- the snoring?
6 Q Yes.
7 A When I -- and I went over this before, with the
8 snoring is that -- and him not pushing out,
9 alerted me that he possibly went unconscious, and
10 that's when we -- I got off him and we rotated
11 him.
12 Q I know that, I'm --
13 A Yeah.
14 Q -- asking you a different thing, though. I'm
15 asking you what you read into the fact that you
16 heard him snoring at that point in time? Was that
17 significant in your mind?
18 A That he went unconscious, yes.
19 Q Pardon me?
20 A That he went unconscious, yes.
21 Q No, that's not my question. We know he was
22 unconscious. I'm asking what significance, if
23 any, did you take from the fact that you were
24 hearing him snoring?
25 A It's an observation.
26 Q Yes, and an observation that had significance to
27 you, or not?
28 A I don't know what you're asking. A significance,
29 like it's something of note, something to observe,
30 and you're going through and doing the checks.
31 Q In your opinion, Officer, was it medically
32 consequential that you were hearing him snore?
33 That's my question.
34 A One more time. I'm --
35 Q In your opinion --
36 A In my opinion.
37 Q -- did you consider it medically consequential
38 that he was snoring. Did it have meaning to you?
39 A It's an observation. I'm not a trained medical
40 personnel. It's something that I noted and we
41 called for an ambulance.
42 Q You'd agree with me that Constable Bentley noted
43 at one point that his breathing was faint?
44 A Yes.
45 Q Yes. And that there's been testimony given here,
46 even by Constable Rundel a few weeks ago, that his
47 breathing was laboured, these were his words,

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

1 laboured breathing.
2 A Yes.
3 Q You agree with that?
4 A Yes.
5 Q And in respect to the discolouration, you've
6 testified that you saw one ear turning blue; is
7 that correct?
8 A Yes.
9 Q Now, you didn't see both ears turning blue?
10 A No.
11 Q And you didn't see his face turning blue?
12 A No.
13 Q Okay. Now, let's stop at this for a moment about
14 the ear turning blue. In your training when you
15 did take the first aid course long before this
16 incident, were you informed that -- do you know
17 the term cyanosis?
18 A Yes.
19 Q And cyanosis is indeed where there is
20 discolouration of the skin, correct?
21 A Yes.
22 Q And it's discolouration of the skin that is caused
23 by a lack of oxygen in the bloodstream, correct?
24 A Yes.
25 Q Yes. And would you agree with me that you were
26 taught when you did take the course that the first
27 areas of the body where cyanosis will become
28 evident are the extremities of the body?
29 A Yes.
30 Q Yes. And you would agree with me the ear and the
31 earlobe is considered one of the extremities of
32 the body?
33 A The ear?
34 Q Yes. That it's common to expect cyanosis to
35 appear in the earlobes as one of the first signs
36 of cyanosis because it's one of the extremities of
37 the body. Do you agree that that's what you knew?
38 A No.
39 Q You did not. Do you agree the earlobes are one of
40 the extremities of the body?
41 A I'm not a trained medical person.
42 Q All right. Now, we have testimony under oath from
43 Constable Bentley, and I'm happy to take you to
44 the transcript, but I'm trying to speed this up
45 unless it's necessary. Constable Bentley
46 testified that Mr. Dziekanski's face turned blue,
47 his face, not his ears, but his face. Now, you

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

1 have no reason to disbelieve Constable Bentley's
2 observations on that night, do you?

3 A If that's his observations.

4 Q Yes. Can you explain how it is that Constable
5 Bentley made that observation but you didn't? You
6 were as close as he was to Mr. Dziekanski, weren't
7 you?

8 THE COMMISSIONER: Well, I don't think that he can
9 explain that.

10 MR. ROSENBLROOM:

11 Q Did you have the same opportunities to observe Mr.
12 Dziekanski as did Constable Bentley, you were as
13 close to Mr. Dziekanski as he was?

14 A I can't -- I don't know how close he was.

15 Q All right. And you testified that he called for
16 Code 3?

17 A Yes.

18 Q You didn't order him to do so. He decided in his
19 own discretion, didn't he?

20 A As I stated before, if he didn't, I would have
21 told him to.

22 Q All right. And why would you have told him to?
23 What was it that you were seeing to cause you to
24 believe it was elevated to a Code 3 call?

25 A Because he's unconscious.

26 Q And the discolouration, as you witnessed it, as I
27 understood your testimony yesterday, was likely
28 because of bruising of the ear, that was your --

29 A Because he was breathing, yes.

30 Q I heard your evidence yesterday about that, I want
31 to explore this. The fact that he was breathing
32 for some reason causes you -- or caused you to
33 believe that the discolouration was not cyanotic
34 -- a cyanotic condition and was bruising; is that
35 right?

36 A Yes.

37 Q It's really important, I want to understand why
38 you say that. Are you suggesting that a person
39 who is cyanotic is not breathing? Are you
40 suggesting that if you see cyanosis you're not
41 likely to hear breathing?

42 A You're still breathing and you can still get
43 cyanosis. Yes.

44 Q And so I don't understand why you were of the
45 belief that this discolouration you spoke of was
46 bruising as opposed to cyanosis because he was
47 breathing.

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

- 1 A He was breathing, and you've got to remember there
2 was quite a struggle before we actually got him
3 down and got him handcuffed, and he actually hit
4 the ground. So I'm not too sure if he hit his
5 head, and that's what I said before.
- 6 Q Yes. Now, as you were having to make this
7 judgment call, whether he was cyanotic or whether
8 he was -- it was from bruising, you'd agree with
9 me that both theories were plausible, that he was
10 cyanotic or that he might be a situation of having
11 been bruised? You'd agree that both were
12 plausible possibilities, right, or did you
13 completely exclude the possibility of cyanosis
14 here?
- 15 A He was breathing at the time, so I assumed that it
16 was because of the struggle and the fall and him
17 hitting the ground.
- 18 Q Constable Bentley further testified in these
19 proceedings that again speaking of the period
20 before the Fire Department arrived, he testified:
21
22 I knew it was a serious medical matter.
23
- 24 Unquote. Do you agree that your opinion at that
25 time it was a serious medical matter?
- 26 A Yes.
- 27 Q Did you consider that Mr. Dziekanski at that point
28 in time, before the arrival of Richmond Fire, was
29 seriously medically compromised?
- 30 A Would I agree that he was seriously medically
31 compromised?
- 32 Q Yes.
- 33 A No.
- 34 Q So you're agreeing with me that it was a serious
35 medical matter, but you did not feel that he was
36 medically compromised, is that correct, or
37 seriously medically compromised?
- 38 A And as I stated before, that was my reluctance to
39 remove the handcuffs. I thought he would gain
40 consciousness and come swinging again.
- 41 Q Had -- all right. I want to focus on the pulse
42 taking by you and your team after he was
43 unconscious. I want to focus for a moment on Mr.
44 Trevor Enchelmaier. You knew him before this
45 incident, didn't you?
- 46 A I've worked with him at the airport, yes.
- 47 Q Yes. And you worked with him and took lunch

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

1 breaks with him?
2 A Lunch breaks? No.
3 Q No, you never had a meal with him?
4 A I've had morning coffee when we have a debrief in
5 the morning after the morning meetings.
6 Q And that was a common thing for you to do with Mr.
7 Enchelmaier, wasn't it?
8 A And Ambulance, ERS, and Operations, yeah, it was
9 something that we did.
10 Q And you were friendly with Mr. Enchelmaier, first
11 name basis?
12 A Yes.
13 Q Yes. And in fact you socialized with him?
14 A No.
15 Q Not at all?
16 A No.
17 Q You never saw him outside of the YVR area, YVR
18 terminal area?
19 A No.
20 Q In your notes you sometimes refer to him simply as
21 Trevor, is that because you were very familiar
22 with him?
23 A For Trevor, the last name writing out Enchelmaier,
24 I usually wrote down Trevor, YVR Security.
25 Q Now, you were wearing gloves during the takedown
26 and during the handcuffing. I believe you pointed
27 to us yesterday where you believe it shows,
28 depicts in the frames that you took your gloves
29 off at one moment, at one point in time, correct?
30 A Yes.
31 Q And then you put them back on?
32 A Yes.
33 Q How regularly were you monitoring the pulse of Mr.
34 Dziekanski from the moment of handcuffing until
35 the first responders arrived?
36 A How many times? I did it continuously.
37 Q What does that mean? Can you give me some sense,
38 and I know we're trying to pin you down here, but
39 we're talking about a period of approximately ten
40 minutes, I believe, I stand corrected, but about
41 ten minutes. Are we talking about taking pulse
42 every 15 seconds or every minute or every two
43 minutes, approximately?
44 A No, I routinely monitored the breathing and I
45 remember Trevor had stepped in and checked him as
46 well. I can say he did it more than once, or did
47 it once. But I can tell you for myself I

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

- 1 continually monitored him.
- 2 Q Okay. I'm not speaking just a monitoring. I'm
- 3 now focused on the taking a pulse, and I'm asking
- 4 you approximately how frequently you took the
- 5 pulse of Mr. Dziekanski from handcuffing until the
- 6 first responders arrived?
- 7 A How many times? I couldn't tell you.
- 8 Q Well, do you have any memory whether it was once,
- 9 twice, ten times, 20 times, is there any figure
- 10 you can give us to assist us in our approximation?
- 11 A I did not keep track of how many times I checked
- 12 him.
- 13 Q And each time you did take his pulse you removed
- 14 your gloves, took the pulse, put your gloves back
- 15 on; is that correct?
- 16 A Yes.
- 17 Q Why did you keep putting your gloves back on?
- 18 A As I stated before, I thought he'd gain
- 19 consciousness, and he'd come up swinging, so I was
- 20 -- had my gloves on to have to deal with him in
- 21 that case.
- 22 Q Forgive me, but is it important for you to have
- 23 your gloves on if he does regain consciousness and
- 24 comes to?
- 25 A They gloves are a safety precaution, and I've
- 26 always done that.
- 27 Q So each time you took his pulse you took the
- 28 gloves off, did the pulse, put the gloves back on,
- 29 then did this repeatedly?
- 30 A I took it -- well, I took it off not to just take
- 31 the pulse, but to feel the chest, to observe and
- 32 -- but, yeah, I had to take the gloves off to
- 33 check his pulse.
- 34 Q And you have no idea --
- 35 A How many times I did it.
- 36 Q -- how many times, how many times you did it.
- 37 Now, you were checking air passages, were you,
- 38 airways?
- 39 A Noting breathing, yes.
- 40 Q Sorry. Now, isn't that a different matter about
- 41 breathing? So you were checking his breathing by
- 42 putting your ear close to him; is that correct?
- 43 A Yes.
- 44 Q You never did check the airways by putting him on
- 45 his back and bringing the back of the head --
- 46 A No, I didn't do that.
- 47 Q All right. You remember from your courses that

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

- 1 that's an appropriate thing to do to check for
2 obstructions in the air passages?
- 3 A Yes.
- 4 Q And that when one is unconscious one can be
5 suffocating from the obstruction of the tongue?
- 6 A If you put him on his back, yes.
- 7 Q No, even when he's not on his back, that a tongue
8 can be obstructing an air passage?
- 9 A Yes.
- 10 Q Yes. And you have testified that you placed him
11 in a recovery position; is that correct?
- 12 A Yes.
- 13 Q I want to spend some time with you now about
14 testimony given by the captain of the Richmond
15 Fire Department, Captain Kirby Graeme. Do you
16 know him?
- 17 A No.
- 18 Q No. You've never met him?
- 19 A Other -- other than that night.
- 20 Q Other than that night.
- 21 A No.
- 22 Q No. He has come forward to this Commission, and
23 he's testified under oath and he -- and again with
24 any of this testimony if you want me to read the
25 portions of transcript of his testimony, I'm happy
26 to do it. He's testified under oath that when the
27 Richmond Fire Department arrived, Mr. Dziekanski
28 was not in a recovery position. Now, let me come
29 at it this way. Firstly I want to ask you when
30 did you first notice Richmond Fire first
31 responders arriving at the scene, when they walked
32 into the secure room?
- 33 A Yes.
- 34 Q All right. And at that moment he testifies that
35 Mr. Dziekanski was not in a recovery position. Do
36 you agree with that?
- 37 A And I said before, he's handcuffed so it's not
38 going to be, it's -- I called it the -- a modified
39 recovery, because I have him on his side.
- 40 Q Do you consider that he was in a three-point prone
41 position, is that what you're saying?
- 42 A I don't know what you mean by that.
- 43 Q You don't know, okay. Mr. -- Captain Graeme's
44 testimony, as I understand it, is that he can --
45 he observed on his first entry into the area Mr.
46 Dziekanski flat down and not in any way in a
47 three-quarter or recovery position. You would

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

- 1 deny that that was his position at the point where
2 the Fire people arrived?
- 3 A I know what I had him in, and that's -- I can't
4 comment on what he said.
- 5 Q Okay. Now, leading up to Richmond Fire's arrival,
6 you've told us you were familiar with the ERS
7 services right at the airport.
- 8 A Yes.
- 9 Q We're led to -- we're informed through this
10 Commission and through testimony that they're
11 about 800 metres away from the scene of this
12 incident, correct?
- 13 A 800 metres?
- 14 Q Approximately. Less than a kilometre.
- 15 A Yes.
- 16 Q Yes. Did you as the officer in charge ever
17 request of the YVR people that were in the
18 vicinity to call ERS into this situation?
- 19 A That's not what we do as police.
- 20 Q That's not what we do, what does that mean?
- 21 A We call in emergency services and we don't ask for
22 specific I want ambulance, I want ERS, I want --
23 you don't ask for the specific medical personnel.
24 When you call it in, and the expectation is the
25 nearest possible or the closest available
26 emergency services would be there.
- 27 Q Did you ask Mr. Enchelmaier, since he was there
28 with you, why isn't ERS here?
- 29 A Not that I can recall.
- 30 Q Were you surprised that they weren't attending
31 when they were so close?
- 32 A Was I surprised?
- 33 Q Were you surprised?
- 34 A My expectation is when I called that I'd get the
35 -- the -- or the closest available emergency
36 services.
- 37 Q All right. Did you ask any of the YVR people in
38 the vicinity -- well, you didn't ask them to bring
39 a defibrillator because you didn't know they were
40 in the terminals; is that correct? You never
41 asked for one?
- 42 A No.
- 43 Q Did you at any time leading up to the first
44 responders' arrival, the Fire Department, place
45 Mr. Dziekanski on his back?
- 46 A No.
- 47 Q Remove his handcuffs and place him on his back?

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

1 A No.

2 Q Captain Graeme stated further, and I want to go to
3 the transcript, because it's important for you to
4 hear it verbatim as to what he said in this
5 hearing and I want your response to it. And I am
6 going to a transcript of these proceedings of
7 January the 27th. It's the in chief examination
8 of Mr. Vertlieb with Captain Graeme, and it's
9 right -- I'll give you the page, I'm sorry. I
10 haven't got the page previous and if there's any
11 issue here, during the break we can get the
12 preceding page. But at the top of page 38 you
13 give an -- Captain Graeme gives an answer:

14
15 Well, generally if it was from here to the
16 back of the room --

17
18 - he's speaking of when he was arriving -

19
20 -- they -- I -- you could see them just
21 standing. And the same with the security
22 people, they were just standing. Nobody
23 seemed to be doing anything.

24
25 And he's speaking of you and your officers when he
26 says "they were just standing". Do you see that?

27 A Yes.

28 Q At another portion of the transcript, I'm going to
29 ask for your comments about this, and this is
30 transcript again of Captain Graeme, cross-
31 examination by Mr. Kosteckyj, he says -- I'm
32 sorry, I'll let you -- if you'd go to page 49,
33 which is in front of you, question, line 33,
34 Officer. Line 33:

35
36 Q Now, when you arrived, I think your evidence
37 was that you were about 40 metres away from
38 the scene and you could see the scene for
39 about 40 -- from about 40 metres away; is
40 that correct?

41 A Yes, sir.

42
43 And then line 43:

44
45 Q All right. And I think at the time you said
46 that there were at least four Mounties
47 standing within about probably ten metres of

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

1 the patient, but that nobody was monitoring
2 him; is that correct?

3 A Yes, sir.

4

5 Next page, question, line 1:

6

7 How far away were they standing from Mr.
8 Dziekanski?

9 A I'd say the three that were together were
10 about ten metres and maybe the -- and the one
11 other guy was five metres away.

12

13 Now, that is the evidence under oath of Captain
14 Graeme. He is testifying that when and his team
15 arrived at the scene of Mr. Dziekanski, none of
16 you, not yourself nor your officers, were in
17 attendance around Mr. Dziekanski, in fact, you
18 were metres away. Do you accept Captain Graeme's
19 testimony as being accurate?

20 A I was with him till I turned him over to the
21 emergency personnel.

22 Q Well, and Captain Graeme was part of the emergency
23 personnel; is that correct?

24 A Like I -- like I told you before, I don't know who
25 I was dealing with at the time.

26 Q Well --

27 A Like, what their names were or who they were. I
28 remember dealing with the female, the one that --

29 Q Well, I believe the testimony is that Captain
30 Graeme came in with a female assistant as part of
31 his team. So let's assume the testimony is that
32 they arrived together. My question is when the
33 first responders arrived at the scene, is Captain
34 Graeme correct in having testified under oath that
35 you and your fellow officers were metres away from
36 Mr. Dziekanski?

37 THE COMMISSIONER: I'm sorry, you know, the proper way
38 to put that is: Do you agree with that view or
39 those facts, not with the witness.

40 MR. ROSENBLOOM:

41 Q Do you agree with that view and with those facts
42 as Constable -- excuse me, as Captain Graeme as
43 testified?

44 MR. BUTCHER: It's not facts, with respect, it's
45 evidence. It's contested evidence, as we all
46 know.

47 THE COMMISSIONER: I see nothing wrong with terming it

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

1 as facts, because we're dealing with the testimony
2 of a witness.
3 A Okay, do you want to ask me again?
4 MR. ROSENBLOOM:
5 Q I bet you want me to ask the question again.
6 A Yes, because everyone was -- yeah.
7 Q My question is, having read to you the portions of
8 evidence given by Captain Graeme, do you agree
9 that his evidence accurately states what was
10 happening when they first arrived?
11 MR. HIRA: With respect, it's improper to have one
12 witness testify as to the accuracy of another
13 witness's evidence. But if the question were
14 posed as follows: Do you agree that when the
15 firefighters first arrived you were ten metres
16 away or five metres away, I can see no objection
17 to that.
18 THE COMMISSIONER: Well, this is not a criminal trial.
19 MR. HIRA: I appreciate that.
20 THE COMMISSIONER: Technically you're quite correct but
21 on the other hand, Mr. Rosenbloom is pretty close.
22 So go ahead.
23 MR. ROSENBLOOM: Well, then of course I'll do it again
24 and there will be an objection from one of the
25 last RCMP counsel that hasn't yet objected. I
26 like this tag-team approach to things, but not
27 when I'm victimized by it.
28 Q The question is, Officer, I've given you the
29 portions of evidence from Captain Graeme. He
30 states in his evidence that you and your officers,
31 fellow officers were metres away from Mr.
32 Dziekanski when he approached the scene. Is his
33 evidence accurate, based upon your memory?
34 A I was kneeling with him and I was beside him until
35 I turned him over.
36 Q And that being the case, I am assuming that you
37 are contradicting the evidence that was given by
38 Captain Graeme; is that correct? They're
39 contradictory, aren't they, if you were right at
40 Mr. Dziekanski until he was turned over, that
41 contradicts what Captain Graeme --
42 THE COMMISSIONER: Mr. Rosenbloom, I think you should
43 move on. It's not appropriate for one witness to
44 comment on the evidence of another witness. I'm
45 trying to give you lots of leeway here, but you
46 shouldn't do it this way.
47 MR. ROSENBLOOM: Okay.

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

1 THE COMMISSIONER: The witness is giving his view of it
2 and you're putting certain things to him. I think
3 you have your answers.
4 MR. ROSENBLUM: Thank you.
5 Q Now, I come to the issue of the removal of the
6 handcuffs, or the request for the removal of the
7 handcuffs. Did I understand you yesterday to be
8 saying that you do not recollect being asked to
9 remove the handcuffs by the Richmond Fire team?
10 A I remember speaking to a female, and that was the
11 one I was having conversations with.
12 Q Yes.
13 A If this is the same person, like if -- and I'm
14 pretty sure you would have interviewed her by now,
15 but that was the one I was dealing with and I was
16 having this discussions of the removal with.
17 Q Yes. And it was with that woman that you informed
18 her that it was -- you would not have the
19 handcuffs removed at that point in time; is that
20 correct?
21 A No, I -- and I told her "It took four of us to get
22 it on, like I'm reluctant to remove them. Can't
23 you" -- and I told her, "Can you work on him with
24 them still on?" right, or "Assist him with them
25 still on?" And she said, "No, can you remove
26 them." I said, "Okay, then you have to be
27 prepared to back away because it took four of us
28 to get it on. And so you have to be ready to move
29 in case we have to control him again."
30 Q Yes. And so you refused to have them taken off?
31 A I didn't refuse. I was reluctant.
32 Q Well, reluctant in that they would only be removed
33 if you so directed, correct? You were in control.
34 A Yes.
35 Q Richmond Fire weren't able to remove the handcuffs
36 without obviously your intervention.
37 A Yes.
38 Q And you weren't approving that -- you weren't
39 allowing that to happen, were you?
40 A I -- I asked her if they can work on him with them
41 on, and she goes, "No, can you take them off."
42 And I said, "Okay, then you have to be ready."
43 Initially I was reluctant but, no, when they asked
44 the second time I said, and I gave them the
45 warning, and then I had them removed.
46 Q Let's put aside for a moment the second time. I'm
47 focused on the first time. You were asked by

1 Richmond Fire to remove them and you said no,
2 correct?
3 A I was reluctant.
4 Q Reluctant and the bottom line is you said no, you
5 didn't have it done, did you?
6 A From the first request? No.
7 Q No. And you were aware that they were requesting
8 that the handcuffs be removed for their purpose of
9 assessing the state of Mr. Dziekanski, is that
10 fair to say?
11 A And that's why I asked them, "Can you do it with
12 them on, with the handcuffs on," and that's when
13 they asked to remove. Then I gave them the
14 warning that us four taking it off, or --
15 Q And when -- I'm sorry. And when you asked if they
16 could do it with the handcuffs on, they said no,
17 right?
18 A Yes.
19 Q But you didn't remove them.
20 A No, then I gave them the warning, then they were
21 removed.
22 Q Well, that was after the EHS ambulance people
23 arrived, is that not fair to say?
24 A All I can recall is I dealt with a female and we
25 had this discussion before they were removed.
26 Q Well, the testimony before these proceedings is
27 that the handcuffs remained on Mr. Dziekanski
28 until the EHS arrived at the scene, which was a
29 minute to a minute and a half after the arrival of
30 Richmond Fire. Do you understand that?
31 A All -- all I can tell you is what I did and who I
32 had discussions with.
33 Q Yes.
34 A And that's all I can recall.
35 Q And what you recall is being requested to remove
36 the handcuffs at first instance, saying no to
37 that, and then subsequently removing them at a
38 later time, correct?
39 A Yes.
40 Q Is that your testimony? Okay. Captain Graeme
41 also testified in these proceedings - just give me
42 a moment, please - that on their arrival and
43 attempting the best assessment they could do in
44 the circumstances, that the woman you speak of,
45 who was part of his team, attempted to detect a
46 pulse and found that there was no pulse
47 whatsoever. You understand that was the testimony

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(cont'd)

1 given?

2 A If that's what you're telling me.

3 Q At what point prior to Richmond Fire's arrival are
4 you saying you took the last pulse?

5 A I can't tell you.

6 Q No idea?

7 A No idea.

8 Q A minute, two minutes, three minutes?

9 A I couldn't tell you.

10 THE COMMISSIONER: Now, Mr. Rosenbloom, I'm just
11 wondering how we're doing here.

12 MR. ROSENBLOOM: I think we're doing quite well in
13 terms of timing, and I think that's the question
14 you're asking. I would like just a few more
15 minutes, to then take a coffee break, and I am
16 confidently going to conclude within half an hour
17 following the coffee break.

18 THE COMMISSIONER: All right. I am very -- I would
19 like to finish this witness today if at all
20 possible.

21 MR. ROSENBLOOM: I am --

22 THE COMMISSIONER: All right, go ahead.

23 MR. ROSENBLOOM: I am confident at my side of it that I
24 will be completed within 20 minutes to half an
25 hour in the latest, which hopefully will afford my
26 learned friends the re-examination.

27 THE COMMISSIONER: All right, go ahead.

28 MR. ROSENBLOOM: Thank you.

29 Q Captain Graeme further testified that in his
30 opinion on the arrival of Richmond Fire Mr.
31 Dziekanski was dead. My question is --

32 MR. HIRA: (Indiscernible - away from microphone) if
33 you've got a transcript reference I'd like to see
34 it. I don't recall that.

35 MR. ROSENBLOOM: I'm happy to do that.

36 MR. HIRA: I stand to be corrected.

37 MR. ROSENBLOOM: I refer my learned friend to the
38 transcript of January the 28th. I don't have a
39 lot of copies, so I'll give one to Mr. Harris and
40 he can -- I'll pass one up to the Commission and
41 one to the witness.

42 Q I am referring you to page 29 of the transcript of
43 January 28th. I'm referring to line 41. This is
44 examination by Mr. Harris of Captain Graeme.
45 Question 41:

46

47 And, sir, at the point where you went to this

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(cont'd)

1 gentleman and your officer Cameron did his
2 assessment - and we're talking before B.C.
3 Ambulance arrived - what was your view, sir?

4 A My view of the patient?

5 Q Yes.

6 A That he was dead.

7

8 Do you recollect Captain Graeme informing you of
9 that fact --

10 A No.

11 Q -- around that time?

12 A No.

13 Q When did you learn or when were you informed that
14 in fact Mr. Dziekanski had passed away?

15 A When I was informed that he passed away? After
16 the ambulance emergency personnel were dealing
17 with him.

18 Q All right. I'm going to suggest to you, Officer,
19 that your efforts in caring for Mr. Dziekanski
20 after he was handcuffed fell short of what would
21 be expected of you as an officer of the RCMP. I'm
22 going to further suggest to you that in fact --
23 I'm going to suggest that you were reckless with
24 the life and death of this man. Do you deny that?

25 A Yes.

26 MR. ROSENBLOOM: Okay. I have further examination to
27 do, but this may be an appropriate moment.

28 THE COMMISSIONER: All right, ten minutes.

29 THE REGISTRAR: We will recess for ten minutes.

30

31 (WITNESS STOOD DOWN)

32

33 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

34 (PROCEEDINGS RECONVENED)

35

36 THE REGISTRAR: The hearing is now resumed.

37

38 CPL. BENJAMIN ROBINSON, a
39 witness, recalled.

40

41 CROSS-EXAMINATION BY MR. ROSENBLOOM ON BEHALF OF THE
42 GOVERNMENT OF POLAND, continuing:

43

44 Q Officer, on Monday of this week you testified that
45 this incident should never have happened, and at
46 the beginning of my examination of you yesterday I
47 asked for you to explain yourself as to what was

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(cont'd)

1 meant by you when you said that. You informed me
2 at the beginning of my examination that you felt
3 that this incident wouldn't have happened if Mr.
4 Dziekanski had not picked up the stapler, correct?
5 A Yes.
6 Q I'm going to suggest to you now that I'm at the
7 end of my cross-examination of you, that a
8 contributing factor in how this incident unfolded
9 and in Mr. Dziekanski's death was how you and your
10 fellow officers handled the events of that
11 evening. Are you willing to agree with me about
12 that?
13 A We handled it consistent with our training.
14 Q Okay. Let's put aside your training. Would you
15 agree with me that the way you and your fellow
16 officers handled the evening contributed to how
17 this event unfolded and led to Mr. Dziekanski's
18 death?
19 A No.
20 Q You wouldn't do anything differently?
21 A No.
22 Q Now, Officer, we've spoken about your training to
23 acutely observe events that unfold around you in
24 the course of your duties, and you'd agree with me
25 that the recording of incidents by you after an
26 event can determine the innocence or guilt of
27 citizens who are often dependent upon the accuracy
28 of your recorded observations of an incident. You
29 agree with that, don't you?
30 A Yes.
31 Q And so as a result you are trained to be so
32 careful in how you transcribe events that you have
33 witnessed because so much is at stake for the
34 general public, is that fair to say?
35 A Yes.
36 Q Now, I've been struck by the consistencies with
37 the errors that each of you, meaning the four
38 officers, have made during your testimony during
39 these last three weeks, and I'm speaking of the
40 raised stapler; I'm speaking of the yelling; I'm
41 speaking of the advance movements of Mr.
42 Dziekanski; I'm speaking of the second tasing
43 while still standing, when in fact he was down;
44 I'm speaking of the officers having tackled him to
45 the ground. What became evident to me was the
46 consistency in the reporting of these mistakes by
47 all four of your officers, and my question is

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(cont'd)

1 this --

2 MR. HARRIS: Sorry, I am going to interject. My friend
3 has given a laundry list of things that are not
4 the same in all the officers' statements nor the
5 same in their evidence, and he's lumped it
6 together like it is consistent inconsistencies
7 amongst all the officers in a laundry list like
8 that is incorrect.

9 MR. ROSENBLOOM: Well, I can go item by item. I will,
10 if this comforts my friend in any way, I will say
11 generally --

12 THE COMMISSIONER: Mr. Rosenbloom.

13 MR. ROSENBLOOM: Yes.

14 THE COMMISSIONER: What do you hope to gain by this?

15 MR. ROSENBLOOM: What I hope to gain by this is to
16 suggest to the witness that as the testimony is
17 that they have not spoken to each other.

18 THE COMMISSIONER: Yes.

19 MR. ROSENBLOOM: That there -- I'm going to suggest,
20 that it isn't a coincidence that there are these
21 version of events given by each officer that I am
22 suggesting is --

23 THE COMMISSIONER: And the Corporal is going to say --
24 we all know exactly what the Corporal is going to
25 say to your question.

26 MR. ROSENBLOOM: Yes.

27 THE COMMISSIONER: And that's indeed what he's said all
28 along.

29 MR. ROSENBLOOM: Yes. To which I am going to suggest
30 to the Corporal that you and your and your fellow
31 officers collaborated to fabricate your story in
32 the expectation that it would justify your conduct
33 the night that Mr. Dziekanski died. Do you deny
34 that?

35 A I deny that.

36 Q I am going to further suggest that you and your
37 fellow officers were fast at work at the scene
38 cooking up the story and you continued your
39 collaboration at the detachment office. Do you
40 deny that?

41 A Yes, I deny that.

42 Q And lastly, officer, I'll be less charitable. I'm
43 going to suggest to you that you and your fellow
44 officers intentionally misled the IHIT
45 investigators and you continued to lie under oath
46 before this Commission. Do you deny that?

47 MR. HARRIS: Those are two questions again.

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(cont'd)

1 MR. ROSENBLROOM: I'll break them down.

2 MR. HARRIS: Break them down, please.

3 MR. ROSENBLROOM: I'm happy to break them down.

4 Q I'm going to suggest to you that you and your
5 fellow officers intentionally misled the IHIT
6 investigators.

7 A No, we did not.

8 Q And I'm lastly going to suggest to you that you
9 have been lying under oath before this Commission.

10 Do you deny that?

11 A I've been telling the truth.

12 MR. ROSENBLROOM: I have no further questions.

13 THE COMMISSIONER: All right. Is there any further
14 questions?

15 All right, Officer, thank you very much.

16 You're excused.

17

18 (WITNESS EXCUSED)

19

20 MR. VERTLIEB: Wisely or otherwise, we have concluded
21 the available evidence for today. We

22 anticipated --

23 THE COMMISSIONER: I would have thought so.

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(cont'd)

1 MR. VERTLIEB: Yes. We thought we might, just based on
2 the way it was going and to accommodate people's
3 scheduling, we should break now, if we may, and
4 then start tomorrow at 10:00. The first witness
5 tomorrow will be from the Ambulance Service. We
6 have two of those people in the morning. I am not
7 sure if we can get through all four ambulance
8 attendants tomorrow or not. I think we'll just
9 have to see how that goes. If we can, we will.
10 But the hope might be in the most optimistic world
11 that we'll do the four ambulance attendants
12 tomorrow and then for next week we will be dealing
13 with the evidence of the people in Poland. And so
14 because that will be a bit more of an uncertain
15 event with translation time and time changes, if
16 we don't finish the ambulance people tomorrow,
17 then we may not bring them back next week until we
18 know for sure what's happening.

19 THE COMMISSIONER: Yes.

20 MR. VERTLIEB: But if you're comfortable with that, I
21 think that's what we should --

22 THE COMMISSIONER: Oh, yes, I understand that. Yes,
23 Mr. Neave.

24 MR. NEAVE: Thank you, Mr. Commissioner. I spoke to my
25 learned friend, Mr. Vertlieb, on the issue of the
26 rounding up point that I alerted you to.

27 THE COMMISSIONER: Yes.

28 MR. NEAVE: And I have been able to confirm that the
29 rounding up occurs at 10 milliseconds. So at 5.1
30 would roll up to 6 on the download.

31 THE COMMISSIONER: All right, thank you very much.

32 MR. NEAVE: Thank you.

33 THE COMMISSIONER: All right, then. We understand
34 where we're at and I think that counsel was clear.
35 The difficulty is, is that when we're dealing with
36 the witnesses from Poland it's going to be, as I
37 understand it by way of telephone and by way of
38 video, is it, and times will be difficult and we
39 don't quite know how that will go. So in the
40 event that the ambulance people are not finished
41 tomorrow, that procedure from the witnesses from
42 Poland will not be interrupted.

43 All right, thank you. Ten o'clock tomorrow.

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

46 (PROCEEDINGS ADJOURNED TO MARCH 26, 2009 AT
47 10:00 A.M.)