

**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.

May 13, 2009

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PROCEEDINGS AT  
HEARING (DAY 53)

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Counsel for Constable Bill Bentley:	D. Butcher
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1  
Michael Charles Webster  
Cross-exam by Mr. Butcher (for Constable Bill Bentley)

1 Vancouver, B.C.  
2 May 13, 2009  
3

4 THE REGISTRAR: The hearing is now resumed.

5 THE COMMISSIONER: Good morning, all.

6 MR. BUTCHER: Mr. Commissioner, Mr. Hira and I have  
7 traded places in the order of cross-examination of  
8 this witness. I wonder if the witness could  
9 please be given Exhibits 146 and 147, his report  
10 and *curriculum vitae*.

11 DR. WEBSTER: Thank you, Mr. Giles.  
12

13 MICHAEL CHARLES WEBSTER, a  
14 witness, recalled.  
15

16 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE  
17 BILL BENTLEY:  
18

19 Q Dr. Webster, I'm going to begin -- I should say I  
20 should begin by introducing myself. I'm David  
21 Butcher. I act for Constable Bentley.

22 A Good morning, Mr. Butcher.

23 Q I'm going to begin by reviewing your academic  
24 training, some of your career milestones and the  
25 work you've done for law enforcement in the last  
26 20 or so years.

27 A Okay.

28 Q And I'm relying mainly on your c.v., Exhibit 147  
29 and the evidence that you gave earlier. You  
30 received a Master's Degree in Counselling  
31 Psychology in 1973?

32 A 6, I believe, 1976 it says here.

33 Q I'm sorry, you're correct. You had earlier then  
34 received your teacher's certification at Simon  
35 Fraser?

36 A Correct.

37 Q And I saw on your resumé that you remain a member  
38 of the B.C. Teachers' Federation to this date.

39 A I'm not sure. I haven't paid dues in many years,  
40 but...

41 Q Your resumé on the fourth page says that you're a  
42 member of the B.C. Teachers' Federation from 1975  
43 to present.

44 A Yes.

45 Q Is that -- is that not correct?

46 A We'd have to check and see if my dues are paid up.  
47 I haven't paid in a while. This could be

1 incorrect, and it might need to be corrected.

2 Q What I was wondering about that was whether you'd  
3 continued to teach in schools in the last --

4 A No.

5 Q -- 20 years.

6 A No.

7 Q So you then received your degree in counselling  
8 psychology in 1976. I'm a little curious about  
9 the difference between the various fields of  
10 psychology.

11 A Yes.

12 Q There appears to be clinical psychology,  
13 counselling psychology, forensic psychology. Are  
14 there any other major fields?

15 A Many.

16 Q Can you tell us the difference between counselling  
17 and clinical psychology and forensic psychology?

18 A Forensic psychology is -- I'm not a forensic  
19 psychologist. Forensic psychology is -- anything  
20 is forensic when it intersects with the law. So  
21 forensic psychology is psychology intersecting  
22 with the law. These would be the kinds of  
23 psychologists who would perhaps investigate  
24 serious crimes, serial sexual homicides, make  
25 inferences from evidence at the scene as to the  
26 type of perpetrator. I'm not a forensic  
27 psychologist.

28 When I took my doctorate, the major  
29 difference between counselling psychology and  
30 clinical psychology was that counselling  
31 psychology was more focused on therapy, actual  
32 counselling, whereas clinical psychology was more  
33 focused on research and preparing people to teach  
34 in university. I decided that I wished to be more  
35 of a clinician so I --

36 Q A practitioner rather than a theoretician.

37 A Exactly.

38 Q And so both your masters degrees and Ph.D. or  
39 doctorate in education, in fact, were in the  
40 counselling psychology fields rather than --

41 A Both, actually. I took coursework in both. I had  
42 a combined doctorate.

43 Q And we see that that -- your master's thesis was  
44 on "Self-Esteem and School Adjustment". It was an  
45 educational thesis.

46 A Correct.

47 Q And did you actually work in the school system for

- 1 a --
- 2 A I did.
- 3 Q -- period of time?
- 4 A I did.
- 5 Q How many years?
- 6 A Less than five. Probably three, four years as a
- 7 -- one as a teacher, and the rest as a district
- 8 counsellor.
- 9 Q Your interest in conflict appears to have arisen
- 10 during your Ph.D.; is that fair?
- 11 A Not entirely. My interest in conflict actually
- 12 began when I consulted with the RCMP at the --
- 13 during the mid-1970s, early 1970s, the two
- 14 infamous hostage takings that occurred there at
- 15 the prison. This is where my interest in conflict
- 16 first began.
- 17 Q Now, you -- I think if I just heard you correctly
- 18 that you just said in the early 1970s, but my note
- 19 says that you worked as a psychologist for the
- 20 prison system between 1984 and 1987. Have I got
- 21 that wrong?
- 22 A Well, I think -- on my page here, it says '76 to
- 23 '78. Those were the years that I spent at the old
- 24 B.C. Pen, so it would have been during that time.
- 25 Mid-'70s rather than early '70s.
- 26 Q I'm sorry. And what sort of work did you do as a
- 27 prison psychologist?
- 28 A I assessed inmates and I had counselling sessions,
- 29 therapy sessions with them, was involved in
- 30 programs. Actually my job there, I was assigned
- 31 to the Special Handling Unit in the old B.C. Pen,
- 32 so I was in and out of the special handling unit
- 33 talking to very -- very serious and violent
- 34 criminals.
- 35 Q And in fact I'd missed that early part of your
- 36 career, but after you got your Ph.D., you went
- 37 back to work for the Correctional Service of
- 38 Canada.
- 39 A I did. I was then the psychologist at William
- 40 Head on Vancouver Island.
- 41 Q And what sort of work were you doing with inmates
- 42 there?
- 43 A The same sort of work. I would be assessing them,
- 44 perhaps intake assessments, parole assessments and
- 45 also doing some therapy with them.
- 46 Q You then, in 1988, contemplated a career change
- 47 and went to the RCMP Depot.

- 1 A That's correct.
- 2 Q And I understand that you never went to your first  
3 assignment.
- 4 A I did not.
- 5 Q I understand from your evidence in the previous  
6 session that you had hoped to be assigned to a  
7 specialist position straight away and the RCMP  
8 could not accommodate that.
- 9 A That's correct.
- 10 Q That specialist position was with something called  
11 ViCLAS.
- 12 A That's correct.
- 13 Q Can you tell us what that is?
- 14 A That -- at that time, in the mid to late '80s, the  
15 RCMP was contemplating and was in the process of  
16 creating their Violent Crime Analysis Section.  
17 This was an attempt to bring together data, large  
18 amounts of data that existed across the country on  
19 violent criminals in an attempt to be more  
20 coordinated and organized, and they were looking  
21 for criminal investigative analysts, and I thought  
22 that perhaps I could -- with my experience and my  
23 training, that I could fit in there.
- 24 Q Now, it seems that your -- your academic training  
25 and your work in the Corrections Services would  
26 have provided a very good background for that.
- 27 A I thought so.
- 28 Q Now, your letterhead describes your practice as  
29 being one in consultation and instruction for law  
30 enforcement.
- 31 A Correct.
- 32 Q And indicates that you've got a business called  
33 "Centurion Consulting Services".
- 34 A Yes, sir.
- 35 Q How long have you operated that business?
- 36 A I'm reaching here, but probably operating under  
37 the name of Centurion Consulting Services,  
38 probably 15 to 20 years.
- 39 Q Now, I want to deal with various aspects of the  
40 work that you've done during that 15 to 20 years.  
41 Some of it is set out in the resumé.
- 42 A Much of it is not because I couldn't list it all.  
43 I used to have -- that's what I was looking for  
44 yesterday when I was talking to Mr. Harris. There  
45 was a note in here where I used to say "for  
46 further information on such a topic -- on such a  
47 topic, you could get a hold of me," so it isn't

- 1 all listed there, you're correct.
- 2 Q But is this a general resumé that describes your  
3 experience overall?
- 4 A Yes, it's designed to give -- if I was to submit  
5 this resumé to a prospective customer, it would be  
6 designed to give them a sort of flavour of the  
7 kinds of things I've been involved in.
- 8 Q And I'm going to suggest that one of the things  
9 you've done a fair bit of over the years is  
10 training law enforcement agencies.
- 11 A Correct, yes.
- 12 Q And I'm going to suggest that you've trained in  
13 both proactive investigative fields and reactive  
14 police work.
- 15 A You'll have to explain that to me, Mr. Butcher.  
16 I'm not sure what you're saying there.
- 17 Q Well, it seems to me that one of the things that  
18 you've done is that you've provided a lot of  
19 training with what you've -- in what you've  
20 described as source development.
- 21 A When did I describe that? In this or to you?
- 22 Q If you look on the last two pages of your  
23 resumé --
- 24 A Yes.
- 25 Q -- it seems to me that you've taught courses on  
26 source development, not only to the RCMP but to  
27 international police forces in Brazil, Columbia,  
28 Mexico, Australia, Germany and Sweden. So I'm  
29 using your phrase, Dr. Webster.
- 30 A Yes.
- 31 Q What is source development and what have you been  
32 training?
- 33 A May I -- may I consult with the Commissioner for a  
34 moment?
- 35 Mr. Commissioner, much of what Mr. Butcher is  
36 about to get into is on the national security side  
37 of my work and it's top secret information. I'm  
38 not sure what kind of a security clearance Mr.  
39 Butcher or the rest of the people in the room  
40 have, and whether --
- 41 Q Mine was once quite good, but they took it away  
42 from me.
- 43 THE COMMISSIONER: I'm not cleared at all, so you  
44 better not tell me.
- 45 A I'm sorry, Mr. Butcher, I'm not meaning to be  
46 oppositional here, but there are some things that  
47 I am bound not to talk about in this area. Many

1 of those countries that you've listed there are  
2 countries that I have done conflict resolution  
3 work with, crisis management work. They're not  
4 all source work.

5 MR. BUTCHER:

6 Q Well, with respect, Doctor, they are. I took them  
7 from your resumé.

8 A All of them?

9 Q Yes.

10 A Well, I've got the Columbians here which isn't.

11 Q Page -- page 1, Brazil.

12 A I've got Iceland here --

13 Q Columbia.

14 A -- which isn't. I've got the United Arab Emirates  
15 which isn't. I've got -- again, the United Arab  
16 Emirates, a second visit, which isn't.

17 Q No, the bottom of your first page, you've got  
18 source development issues in Brazil.

19 A I've got --

20 Q No, Dr. Webster, can you just -- before straying,  
21 can you stay --

22 THE COMMISSIONER: No, no, the doctor is not straying.  
23 He's answering the question. You go ahead, sir.

24 A There are those that are not that I've just  
25 listed. The others, you're correct, they are.  
26 And you're also correct, Mr. Butcher, following  
27 9/11 in New York City a great pressure was put  
28 upon the Canadian government, upon the RCMP by the  
29 Americans to gather intelligence, and a new  
30 section within the RCMP was created. Its primary  
31 focus was to gather intelligence, and I've been an  
32 integral part of that up until early April when my  
33 contract expired and I was advised I was no longer  
34 needed.

35 MR. BUTCHER:

36 Q I'm just trying to get out some of the areas where  
37 you do have expertise, Doctor.

38 A Thank you, Mr. Butcher, I appreciate that.

39 Q And I understood from your resumé that what you  
40 had been doing in these particular courses all  
41 around the world was teaching police officers  
42 about psychological aspects of development and  
43 treating informants -- developing and dealing with  
44 informants; is that fair?

45 A That's fair. Not only was I doing that, I was  
46 involved with them.

47 Q On a case-by-case basis?

Michael Charles Webster

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

- 1 A Correct.
- 2 Q Sometimes operationally as well as theoretically?
- 3 A Correct.
- 4 Q I'm not going to be very interested in the  
5 operational matters, Dr. Webster, so you don't  
6 have to be concerned about security issues.
- 7 A Okay.
- 8 Q I'm just interested in probing the areas that you  
9 have expertise as a psychologist.
- 10 A All right. I understand.
- 11 Q How much of your time in that last 15 or 20 years  
12 -- sorry, before I go on to that question, you've  
13 also listed a slightly different subject of  
14 teaching courses on covert investigative  
15 techniques and dealing with undercover and special  
16 operations units, both for the RCMP and the FBI.  
17 Is that correct?
- 18 A It's part and parcel of the same work you were  
19 previously speaking of.
- 20 Q And that's what I meant by my phrase "proactive  
21 police work". I meant police work in which the  
22 police are actively engaged in their own  
23 operational techniques before an incident occurs.
- 24 A Okay. I understand now.
- 25 Q And that some of your reactive police work has  
26 been in the hostage and kidnapping kind of cases  
27 where the police tend to get involved after the  
28 incident has occurred.
- 29 A Okay, all right. I understand these are your  
30 definitions, and now that you've fleshed it out  
31 for me, I can comprehend.
- 32 Q Now, your resumé, under Roman numeral large III on  
33 the third page from the end, doesn't attach any  
34 dates to the principal university and department  
35 teaching responsibilities. Can you tell us when  
36 you taught for the FBI, or would the courses that  
37 are under that heading have been taught in the  
38 dates in the heading above?
- 39 A No, they -- they continue to be taught  
40 periodically. They -- each of these -- let me  
41 review for a moment, if I might. Each of these  
42 headings here -- each of these agencies in these  
43 headings would run these courses possibly two,  
44 three, four times a year, so it would be difficult  
45 to put down the dates. There'd be a lot of dates.  
46 I've been doing it for many years. I've been  
47 doing them for many years and they hold two or

- 1 three a year. So that's the way I dealt with  
2 that.
- 3 Q When was this resumé produced?
- 4 A Quite a while ago, but I try and update it, right?  
5 I mean the first draft in this form I'm sure I did  
6 five, seven years ago or whatever, but I try and  
7 keep it updated.
- 8 Q From this resumé, it seems to me that your work  
9 for the FBI ended in 2006. Is that --
- 10 A Yes. I haven't done any work for them since that  
11 time, that's correct.
- 12 Q Now, the global question that I have for you is  
13 how much of your time in the last 15 or 20 years  
14 has been involved in training police officers in  
15 these -- in the psychology of undercover  
16 techniques, covert police operations, source  
17 development?
- 18 A If you were to look at all of my teaching  
19 responsibilities, possibly half of my time goes to  
20 that, and half goes to conflict management, crisis  
21 intervention and conflict resolution.
- 22 Q And I'm going to come later, because I know that  
23 you've had an active practice counselling police  
24 officers.
- 25 A Yes, you do.
- 26 Q And how much of your time over the last 15 or 20  
27 years has been divided between those two areas of  
28 work, instruction in psychological matters  
29 relating to policing and a practice of counselling  
30 police officers.
- 31 A Yes. When you and I first dealt with each other,  
32 I was living in Abbotsford at the time and I had a  
33 large clinical practice and a smaller consulting  
34 practice. I have since moved from the Valley and  
35 gone to the Island. I now have a large consulting  
36 practice and a small clinical practice.
- 37 Q Okay. So I'm trying to get a sense of  
38 percentages.
- 39 A You -- some numbers?
- 40 Q Yes.
- 41 A All right. So let's say previously when you and I  
42 first had dealings together, it was probably 75  
43 percent clinical and 25 percent consulting. Now,  
44 it's probably the opposite, 75 percent consulting  
45 and 25 percent clinical -- maybe even a touch  
46 less.
- 47 Q And is your clinical practice still restricted to

1 police officers?  
2 A It is.  
3 Q Has it been restricted to police officers for the  
4 last 20 years?  
5 A Always. Always. I mean, I've had the odd  
6 civilian come and see me, but my practice is  
7 pretty much 99.9 percent police persons.  
8 Q Now, getting back to this issue of teaching on the  
9 proactive side of policing, what percentage of  
10 your time has been devoted to that?  
11 A Pretty soon I'm going to start sounding like Yogi  
12 Berra here, that -- you know, that 99 percent of  
13 the game is physical and 50 percent mental. Ask  
14 me your question again, Mr. Butcher. I'll try --  
15 Q I'm just trying --  
16 A -- and give you numbers.  
17 Q -- to get a sense of --  
18 A I'll try and give you --  
19 Q -- so that we understand --  
20 A I appreciate that.  
21 Q -- what you've done in the last 20 years, Doctor,  
22 that's what I'm --  
23 A I wish I could remember it. At my age --  
24 Q -- getting at.  
25 A -- I wish I could remember what I did in 20 years.  
26 Q So you're not able to provide us with an  
27 accurate --  
28 A I'm going to try. You direct me and I'm going to  
29 try.  
30 Q I'm going to ask how much of your time has been  
31 devoted to this aspect of source development,  
32 undercover work, providing the police with  
33 psychological assistance in those areas.  
34 A I -- didn't I just say that if we were to take my  
35 teaching responsibilities and divide them in half,  
36 half of that would be spent with the source  
37 development stuff and half would be spent with the  
38 conflict management stuff.  
39 Q Okay. Now, I take it from your report and your  
40 resumé as well that you have developed a real  
41 expertise in hostage and kidnapping situations.  
42 A You know, I'm going to leave that to my customers  
43 to say whether they regard me as an expert or not.  
44 That's not something I would call myself. I leave  
45 that to my customers. They continue to hire me;  
46 they must see something there.  
47 Q And your report, Exhibit 146, documents that

1           you've been used in that field in many places,  
2           again, in North America and around the world.

3           A     Correct.

4           Q     And again, without giving away any operational  
5           secrets, can you just describe for us what the  
6           role is of a psychologist in those kind of  
7           matters?

8           A     When I'm attending a hostage-taking or barricaded  
9           incident?

10          Q     Yes.

11          A     Or a kidnapping? Yes, I would provide -- you  
12          should be familiar now as a result of your  
13          proceedings here, you've had police people come  
14          and talk to you, you've had some use-of-force  
15          experts come and talk to you. They talk to you  
16          about the practical side. They give you a police  
17          overview of the application of force, of how to  
18          deal with an incident when the police are in  
19          conflict with a subject.

20                 My -- there's another side to these things.  
21          Yes, use of force does have a practical side where  
22          we talk about force options and we talk about  
23          generic decision-making models and so on. But  
24          there's another side and that's the psychology of  
25          this business. We're dealing with human beings  
26          and we have to -- are there certain ways that it  
27          is in our interest that would make it easier for  
28          us to influence someone to -- to persuade someone,  
29          to get someone to cooperate with us, to comply  
30          with us, to agree with us, to obey us. So I'm  
31          there to provide that sort of consultation to  
32          incident command and crisis negotiators and  
33          tactical operators.

34          Q     And so let's provide a hypothetical. If a  
35          prominent politician's teenage child were abducted  
36          in this city today --

37          A     Yes.

38          Q     -- and you were consulted, who would be the police  
39          personnel that you would deal with in a case like  
40          that?

41          A     Likely the incident commander would be the first  
42          person that I would have contact with to -- he --  
43          I would advise him that I was present, he would  
44          apprise me of the situation, what they were  
45          dealing with, what kind of intelligence had been  
46          gathered, what sort of interactions they've had  
47          with the subject at this particular time, and then

1 he would take me and we would go off to the crisis  
2 negotiators and tactical operators and begin our  
3 work.

4 Q And the police personnel that you'd be dealing  
5 with would be highly-trained specialists.

6 A Correct.

7 Q And you would be providing them with psychological  
8 insight into the problem that they were facing.

9 A Correct.

10 Q And providing your academic training to doctorate  
11 level and your 20 years of experience in dealing  
12 with these people, or these situations, you'd be  
13 providing that background and knowledge and  
14 experience to assist the police in resolving the  
15 situation.

16 A I'd be attempting to do that, yes.

17 Q And I don't want you to be too modest about this,  
18 Doctor. I take it that that, again, would be  
19 recognized as a highly-specialized area that you  
20 have. Highly specialized area of expertise that  
21 you have.

22 A I'm sure there's going to be a cost to me saying  
23 that, yes, it is.

24 Q I want to turn now to some -- the flip side of  
25 your --

26 A Before we do that, could I add something to what  
27 you just said --

28 Q Certainly.

29 A -- Mr. Butcher? Although it's a highly-  
30 specialized area, I mentioned yesterday - and I  
31 think it was when I was talking to Ms. Roberts - I  
32 mentioned that the principles of conflict are the  
33 same whether they run through an interpersonal  
34 situation, between you and your spouse at home, or  
35 between the Palestinians and the Israelis in the  
36 Middle East. The fact that -- or the assumption  
37 that you're making that this is a highly-  
38 specialized area and these are highly-specialized  
39 individuals, really is tangential to the whole  
40 thing.

41 The principles are always the same. These  
42 are like themes that run through all kinds of  
43 conflict whether it's your members at the airport  
44 dealing with Mr. Dziekanski or whether it's me in  
45 your hypothetical situation and those members that  
46 I'm with dealing with this politician's -- the  
47 abductor of this politician's child.

1 Q I want to turn now to your clinical counselling  
2 practice and some aspects of --

3 A Mm-hmm.

4 Q -- your experience in that regard. You told us  
5 that you had worked for the RCMP Members'  
6 Assistance Program.

7 A That's correct.

8 Q How long did you do that?

9 A I'm still doing it as far as I know.

10 Q The members who would be referred to you would  
11 come with a broad spectrum of issues.

12 A Just like anything you'd encounter on the street,  
13 any psychologist working on Main Street would  
14 encounter with the general public.

15 Q Some of those members would be sent to you because  
16 they had been involved in critical incidents such  
17 as the one that this Commission is examining.

18 A That's correct. Now, those who would be -- very  
19 infrequently would a member be mandated to come  
20 and see a person like me, a psychologist. Most  
21 often those concerns are taken care of in the  
22 debriefing process. If this acute response that  
23 the member has had to whatever traumatic exposure  
24 there was becomes a chronic response -- if we now  
25 go into the four, six, eight, ten months and still  
26 not able to function, rarely, but on occasion,  
27 someone would be referred. Most members refer  
28 themselves.

29 Q And just so that I'm clear about this difference  
30 between acute and chronic issues, acute issues  
31 would be those that would arise in the minutes,  
32 hours, days and weeks after an event like this?

33 A Correct.

34 Q And chronic issues would involve situations which  
35 did not -- where the member did not resolve any  
36 psychological issues that flowed from their  
37 involvement --

38 A Correct. Maybe --

39 Q -- in a situation like this.

40 A -- a month, month-and-a-half afterwards if we're  
41 still not able to function in significant areas of  
42 his or her life. Now we'd be considering that  
43 this may be a chronic response.

44 THE COMMISSIONER: Mr. Butcher, I hesitate to  
45 interrupt, but we've been doing this now for 40  
46 minutes, and I must say I haven't seen any  
47 relevance yet to what we're doing.

1 MR. BUTCHER: Well, with respect, Mr. Commissioner,  
2 that's going to be a matter for submissions.

3 THE COMMISSIONER: Go ahead. We've heard about  
4 hostage-taking, we've heard about some of the RCMP  
5 who may or may not have an after-problem. I don't  
6 see any of this has got much to do with what  
7 happened at the airport.

8 MR. BUTCHER: Well, I'm trying to make the point that  
9 this is the wrong expert, Mr. Commissioner.

10 THE COMMISSIONER: Well, I know that and I've been  
11 sensitive to that, but I haven't detected it yet.

12 MR. BUTCHER: There are some other points that I think  
13 this -- some other evidence that I think this  
14 witness maybe able to assist this Commission,  
15 given his experience that I've just elicited from  
16 him.

17 Q What's the purpose of a critical incident  
18 debriefing? Why are they needed?

19 A Actually, they don't.

20 Q Sorry?

21 A Actually, they don't.

22 Q They don't need them?

23 A No.

24 Q Okay.

25 A There's been an accumulation of literature over  
26 the fast -- the past five to ten years that  
27 suggests that these critical incident debriefings  
28 are counter-productive. They actually do more  
29 damage than they do to help anybody.

30 Q Okay. What's the intended purpose?

31 A You mean the deluded purpose?

32 Q Well, if you know. I asked the intended purpose,  
33 but --

34 A Well, I'll give you the deluded --

35 Q -- if you think it's deluded, that's fair enough.

36 A It is deluded. I run an evidence-based practice,  
37 Mr. Butcher, and the evidence suggests that  
38 critical incident debriefings are counter-  
39 productive. They do more damage than they do any  
40 help. Consequently, I don't use that model that  
41 Mr. Kosteckyj was talking about yesterday.

42 Q Okay. So what model do you use?

43 A I use an educational model. I simply go in and  
44 teach people about acute and chronic responses to  
45 stress. I leave a business card, and if they feel  
46 like they need to talk to somebody, they can call  
47 me or call a psychologist of their choice and go

- 1 and talk to them.
- 2 Q And from a psychologist's perspective, what are  
3 the acute responses to stress that officers suffer  
4 in, let's say, the first hours and days after an  
5 event like this?
- 6 A People would perhaps be somewhat anxious, have  
7 difficulty sleeping and eating, they might be  
8 short-tempered, irritable. That sort of thing.
- 9 Q And have you --
- 10 A Ruminating about the event.
- 11 Q Have you had any experience in assessing the  
12 memories of officers who've been involved in these  
13 kind of incidents?
- 14 A No, I haven't.
- 15 Q Have you had any experience with officers'  
16 memories in these kind of incidents?
- 17 A Well, now, I'm getting confused. In terms of  
18 supporting a member who goes through a traumatic  
19 event, his memory is not in issue. It's not an  
20 investigation. We're not investigating anything  
21 here to see if his memory is accurate or not.  
22 It's supposed to be a therapeutic intervention.  
23 Memory doesn't come up.
- 24 Q Okay. Has it been your experience that officers  
25 facing -- or having gone through a situation like  
26 this might have an incomplete or fragmentary  
27 memory of what happened?
- 28 A Yes, it's possible.
- 29 Q Is it your experience that their memories can be  
30 inaccurate?
- 31 A Yes, it's possible, and that's considered in that  
32 Mitchell model that Mr. Kosteckyj was talking  
33 about, and that's why they do that fact-finding  
34 round where they sit and they rehash the event.  
35 They talk about what each one of them did in an  
36 attempt to demonstrate to the other the missing  
37 pieces so that they all have the pieces to the  
38 puzzle, and then they go on after that and talk  
39 about their thoughts in relation to: Now that we  
40 have the complete picture of what happened, now  
41 they talk about their thoughts in relation to that  
42 and then they talk about their feelings in  
43 relation to that.
- 44 Q From a psychological perspective, what would be  
45 the causes of a fragmented or inaccurate memory?
- 46 A Well, yesterday -- and again, I believe I was --  
47 and I can't -- I was probably talking to Mr.

- 1 Harris and I mentioned the Yerkes-Dodson law that  
2 people learn and perform best in moderate states  
3 of arousal. And likely their memories would be  
4 incomplete as a result of hyperarousal.
- 5 Q So at some point during the process of becoming  
6 hyperaroused, the memory process is impaired, is  
7 that what you're telling us?
- 8 A No. What I'm saying is that your ability to  
9 perceive is impaired, and if your ability to  
10 perceive is impaired -- if you're not perceiving  
11 something, then it's not getting in. There won't  
12 be memory. That's what I'm saying.
- 13 I'm not saying that this happens all the  
14 time, right? I'm making a general comment.
- 15 Q And is it your experience that officers engaged in  
16 situations like this become hyperaroused?
- 17 A Sometimes they do, yeah. Although I have found,  
18 and I think this is interesting, those that know  
19 what they're doing don't become hyperaroused.  
20 People that know what they're doing don't get  
21 stressed out. It's only when you don't know what  
22 you're doing that you get stressed out.
- 23 Q In your report, you make a comment about -- this  
24 is under sub (i), "Only 'Fools Rush In'", about  
25 some of these members being "such junior members".
- 26 A Yes.
- 27 Q Do you see that?
- 28 A I do, yes.
- 29 Q I'm going to tell you that my client had 17 months  
30 experience as a police officer.
- 31 A 17 months?
- 32 Q At the time of this incident.
- 33 A Yes.
- 34 Q Given what you've just told us, is he somebody  
35 who's going to be more prone to being hyperaroused  
36 in an incident like this, and more prone therefore  
37 to memory fragmentation and to memory loss?
- 38 THE COMMISSIONER: Just a moment, now. You're wanting  
39 a diagnosis of your client on this one fact?
- 40 MR. BUTCHER: No, I've specifically asked whether --  
41 the question was whether or not he's more prone to  
42 it. I haven't asked for a diagnosis.
- 43 A Well, I -- and I would have to bounce off Mr.  
44 Commissioner's comment and say to you I would need  
45 to -- is it -- is it Constable Bentley?
- 46 Q Yes.
- 47 A Okay. I would need to -- it all depends on who

- 1 Constable Bentley is and I don't know who  
2 Constable Bentley is. It would all depend on the  
3 kind of support network that he has, the work  
4 situation, if he felt comfortable, supported,  
5 rewarded in his work and on and on and on and on,  
6 the context in which Constable Bentley is doing  
7 his work. I don't know who he is so I can't  
8 really answer your question.
- 9 Q All other things being equal.
- 10 A Now we're getting into the frog with the glass bum  
11 again.
- 12 Q Would you agree that a junior officer in a  
13 situation like this is more likely to become  
14 hyperaroused than a more senior and experienced  
15 officer?
- 16 A It would all depend who that junior officer is,  
17 because I know some senior members who have a  
18 great likelihood to get hyperaroused even though  
19 they've got over 20 years' service.
- 20 Q Oh, I think we've probably -- a fair number of  
21 those have probably ended up in my officer over  
22 the years. But I'm asking you about general  
23 situations.
- 24 A It's difficult, Mr. Butcher, for me to make a  
25 general comment like that because it's such an  
26 individual and specific thing. It depends on the  
27 member.
- 28 Q And you're obviously not able to make any  
29 diagnosis of whether or not Constable Bentley was  
30 hyperaroused in --
- 31 A I can't.
- 32 Q -- this situation.
- 33 A I can't. I can't make -- I can't tell you what  
34 Constable Bentley was arousing (sic) any more than  
35 I can tell you what Mr. Dziekanski was  
36 experiencing with any great degree of certainty  
37 from watching a video.
- 38 Q Let's get back to some basic things that I think  
39 you do agree with. I think you've told me that  
40 memory fragmentation and inaccurate or incomplete  
41 memory --
- 42 A Which are two different things. Memory  
43 fragmentation and inaccurate memory or incomplete  
44 memory are two different things.
- 45 Q -- can both arise in a -- or result from a state  
46 of hyperarousal?
- 47 A Yes, they could.

- 1 Q Now, if you could, tell us the difference between  
2 those two things and what causes the difference?
- 3 A Between -- I've lost my place. Between memory --
- 4 Q Memory fragmentation and an inaccurate memory.
- 5 A Well, memory fragmentation, then, would be bits  
6 and pieces of memory, broken memory. Whereas an  
7 inaccurate memory would be a misperception.
- 8 Q And from a psychological perspective, what causes  
9 those two things?
- 10 A Well, the same -- one of the causes could be what  
11 you and I are talking about right now,  
12 hyperarousal.
- 13 Q And maybe I've asked this question, but why does  
14 that happen?
- 15 A Why does the hyperarousal happen?
- 16 Q No, why does hyperarousal cause that memory  
17 fragmentation or an inaccurate memory?
- 18 A Again, Yerkes-Dodson. Human beings learn and  
19 perform best in moderate states of arousal. So if  
20 you go outside that -- that midsection there, that  
21 moderate state of arousal either way, then it  
22 would have some affect such as you're asking  
23 about.
- 24 Q Okay. I'm accepting that. I'm asking if you can  
25 explain that from your knowledge of psychology.
- 26 A I can't. Now you -- we're going to get into  
27 neuropsychology, and --
- 28 Q So we're going outside of your field?
- 29 A Outside of my field, right.
- 30 Q Okay. Fair enough. Your general knowledge about  
31 these kind of memory issues arises from your  
32 training and experience, but you lack sufficient  
33 expertise to explain its cause or origin. Is that  
34 fair?
- 35 A Yes, that's fair. I mean I understand the  
36 workings of memory, but now you're starting to get  
37 into the chemistry of memory and that's beyond me.
- 38 Q In your report, in a number of places --
- 39 A Yes.
- 40 Q -- last words in paragraph (i) --
- 41 A Yes.
- 42 Q -- you describe Mr. Dziekanski as being a  
43 hyperaroused subject.
- 44 A Yes.
- 45 Q In the middle of your first paragraph under "Low  
46 and Slow", you describe Mr. Dziekanski as an  
47 emotionally distraught individual.

- 1 A Yes.
- 2 Q In paragraph (iii), you've made reference to  
3 somebody in a state of hyperarousal.
- 4 A Yes.
- 5 Q And in paragraph (v), you've asked a rhetorical  
6 question about a person being in a state of  
7 hyperarousal.
- 8 A Okay. Hang on for a second till I find --
- 9 Q That's at the very bottom of page 3.
- 10 A And in the first sentence of (v), I used  
11 "hyperarousal".
- 12 Q Yes, that's what I'm referring to.
- 13 A Oh, is it? Okay, is that the question? Yes,  
14 okay.
- 15 Q I took it, when I read this report --
- 16 A Yes.
- 17 Q -- that you were trying to convey your opinion  
18 that Mr. Dziekanski was in a state of  
19 hyperarousal, and that's the underlying  
20 presumption or assumption in this report. Is that  
21 a fair reading?
- 22 A I've had to -- I have had to -- in order to write  
23 my report, I have had to come up with some way of  
24 describing Mr. Dziekanski's state, his mental  
25 status at the time. Unlike many of the witnesses  
26 that you've had here, my ethics don't allow me to  
27 make a clinical diagnosis of Mr. Dziekanski from  
28 watching a video. The best I could come up with  
29 was -- and I don't think I'm stretching it here.  
30 I don't think there are many people in this room  
31 that wouldn't agree that Mr. Dziekanski was  
32 hyperaroused. I've also called it an emotional  
33 crisis.
- 34 Yesterday when I was talking to Mr. Harris,  
35 in his fine cross-examination, I said that Mr.  
36 Dziekanski was not quite himself. They're all  
37 synonymous. I hesitate to go as far as some of  
38 the professionals and use-of-force experts who  
39 have stepped out and made diagnoses based on a  
40 film. I hesitate to do that. That's the term  
41 that I chose.
- 42 Q Okay. I think in the end we're -- we're -- well,  
43 you have to recognize there's a difference between  
44 the way that a behavioural scientist like yourself  
45 might approach or describe this person's character  
46 or behaviour, and the way that a medical person  
47 might describe it.

- 1 A Yes, I do, and I have to also recognize that many  
2 of those medical people weren't trained in the  
3 behavioural sciences.
- 4 Q And then there's a different set of language that  
5 the police officers in their training use to  
6 describe it.
- 7 A Yes, and I was -- I was quite amazed at the  
8 language that the police officers were using. My  
9 gosh, I mean, they were even educating us on  
10 neuroscience. The workings of the memory and on  
11 and on and on. I was quite amazed at that.  
12 You're right, I did recognize that.
- 13 Q But what really matters, rather than the labels  
14 that the different disciplines apply to describing  
15 Mr. Dziekanski, is the behaviour that he was  
16 exhibiting and the psychological or psychiatric  
17 circumstances that he found himself in. Is that  
18 fair?
- 19 A I lost you when you described his circumstances as  
20 psychiatric and psychological. I don't -- those  
21 words don't fit for the circumstances that I saw  
22 him in there.
- 23 Q Okay. That's -- let's go -- you've described it  
24 in your report as hyperarousal. What are the  
25 characteristics of a person who's in a state of  
26 hyperarousal?
- 27 A It's a temporary state of disorganization where an  
28 individual has lost his mental balance as a result  
29 of being unable to cope with some immediate  
30 situation. His usual coping mechanisms aren't  
31 functioning for him here.
- 32 Q And before the police became involved, we see on  
33 the video Mr. Dziekanski destroying property,  
34 smashing a table against the glass. What are the  
35 conditions or what do you assume caused him to be  
36 in that state of -- to your words, not being not  
37 quite himself.
- 38 A What conditions?
- 39 Q Yes. What are the circumstances and what's his  
40 state of mind?
- 41 A Well, I think they -- they began some hours ago  
42 with the long flight and the extended period of  
43 time that he had to wait in the Customs Hall, and  
44 then the frustration of not meeting his mom, not  
45 being able to meet his mom, and then, you know, he  
46 comes out into the International Reception area  
47 there and I think he came out into the meet-and-

1 greet area and encountered the fellow who yelled  
2 at him, and then we had the airport security  
3 people strutting back and forth. We get some  
4 insight into his state, his mental status, his  
5 emotional state when he says, "You're not going to  
6 let me out," and I'm paraphrasing here. I don't  
7 have the words exactly, but, "You're not going to  
8 let me -- how long must I stay here? You won't  
9 let me out."

10 I think that he felt trapped. He felt  
11 contained. He -- I believe he perceived -- I'm  
12 offering an opinion. I believe that he perceived  
13 that he was being contained in there by these  
14 fellows, and now he -- and I might have my timing  
15 wrong here. I could be corrected. But now he  
16 starts to step his behaviour, his acting out, up a  
17 little bit and -- in an attempt to express  
18 himself.

19 Q And other experts who have given evidence before  
20 this Commission have suggested that he might have  
21 had a fight or flight response to being contained,  
22 as you've suggested. Would you accept that  
23 characterization of his response?

24 A Well, I think what they were -- it's not a term  
25 that I use, "fight or flight". I think what they  
26 were trying to tell you is that his emergency  
27 response got turned on.

28 What happened, Mr. Butcher, to risk confusing  
29 matters even more here, these people that Mr.  
30 Dziekanski encountered triggered his behavioural  
31 reactance.

32 Q By "these people" --

33 A The man who yelled at him, the airport personnel,  
34 now the police come -- and we've got to  
35 distinguish here. Mr. Harris made a good point  
36 yesterday about the initial appearance of the  
37 police as they come in from outside, and now they  
38 come to the doorway and Mr. Dziekanski was -- he  
39 had calmed down. The hands were down by his side.

40 But now something goes wrong. Now this kind  
41 of cooperative kind of welcoming of the police, we  
42 get into an oppositional and antagonistic  
43 combative kind of thing around the luggage, and it  
44 triggers his reactance. And this had been  
45 simmering, I'm sure, since he got off his long  
46 flight and had his difficulty in the Customs Hall  
47 and ran into the fellow outside the doors and on

1 and on and on and on.

2 Q I'm going to go back -- I've given you a copy of  
3 your evidence before the Study Commission.

4 A Yes.

5 Q I'm going to go back to some evidence that you  
6 gave there about the definition of hyperarousal.  
7 I do have a copy of this, and I'm going to ask you  
8 to go to page 27. Twenty-seven.

9 A 27?

10 Q And to go back a page or two in your evidence, you  
11 were critical of the concept of excited delirium.

12 A Yes. Are you asking me to read that? Should I  
13 read --

14 Q No.

15 A No.

16 Q I'm not going to go back to that just at -- just  
17 at this point.

18 A Okay.

19 Q I'm dealing now with what you told the Commission  
20 on the last day that you were here about this  
21 state of hyperarousal. Beginning at line 13.

22 A 13, yes, okay.

23 Q On page 27.

24 A I'm there.

25 Q

26 That is, they are in crisis.

27

28 A Yes.

29 Q

30 They are experiencing a temporary state of  
31 disorganization in which they are unable to  
32 cope with immediately stressful situation  
33 using their day-to-day coping mechanisms. In  
34 these states, people are affected on several  
35 levels. Cognitively, their ability to  
36 process information is disrupted and  
37 disorganized. They don't use good judgment,  
38 they don't make good decisions, and they're  
39 not very good problem solvers. Their  
40 emotions are labile and their behaviour is  
41 random and unpredictable. It is --

42

43 And then you went on to say:

44

45 It is neither --

46

47 I'll just leave it there for a moment, because

1           that's the description that you've given of the --  
2           of the nature of the state of arousal and the  
3           effect it has on a person's conduct and emotions.  
4        A     Yes.  
5        Q     Do you, today, adopt that description?  
6        A     Yes, I do.  
7        Q     And indeed, I'm going to suggest that we saw that  
8           Mr. Dziekanski's emotions over the period of time  
9           that he's captured on the video were labile and  
10          unpredictable.  
11       A     They wouldn't meet my definition of labile.  
12          Labile is rapidly changing. I didn't see them  
13          rapidly changing, back and forth, back and forth,  
14          back and forth.  
15       Q     Well, I'm going to suggest we have a situation  
16          where at one point he's apparently angry and  
17          smashing property. When the police arrive, he  
18          becomes calm, and then he becomes confrontational  
19          again. Isn't that a backward and forward --  
20       A     Yes, it is, but it's -- again, his emotion has  
21          changed but it's not quite what I would mean by  
22          labile which would be rapidly changing over a  
23          period of time.  
24       Q     Over what period of time?  
25       A     Well, I can't give you a period of time. All I'm  
26          saying is I'm having difficulty agreeing with your  
27          use of the term "labile" in regards to what I saw  
28          of Mr. Dziekanski.  
29               And also, Mr. Butcher --  
30       Q     Instead of "labile", what term would you attach to  
31          those --  
32       A     Change.  
33       Q     -- changes?  
34       A     Change. That's it. Nice word. Change. And may  
35          I add something, Mr. Butcher? In -- you're making  
36          the same error here today that Mr. Harris made  
37          yesterday in your questioning of me in this area.  
38          You seem to be making - and I don't want to put  
39          words in your mouth - but you seem to be making  
40          the assumption that Mr. Dziekanski was behaving in  
41          a vacuum, that he was doing this all by himself.  
42          I suggested yesterday, and I'll suggest again  
43          today, human behaviour is interactional, Mr.  
44          Butcher. These two parties, Mr. Dziekanski and  
45          the police were locked in a dance, each one  
46          influencing the other and being influenced by the  
47          other all at the same time.

- 1                   What the police saw unfolding in front of  
2                   their faces, they had a hand in creating. We  
3                   could say the same thing for Mr. Dziekanski. What  
4                   he saw unfolding in front of his face, he had a  
5                   hand in creating. However, the overruling factor  
6                   here is he is the client. The police are the  
7                   authorities. They are the ones who are trained.  
8                   He is not. And it is their job to make changes  
9                   here so that we can bring him under control.
- 10            Q       Well, you keep using the word "they" and "their"  
11                   but you have to agree that the officers had quite  
12                   different roles in this -- in this event.
- 13            A       Yes, they did. They were all over the map.
- 14            Q       And some of them were much more involved than  
15                   others.
- 16            A       That's correct.
- 17            Q       My client backed off and tried to get away from  
18                   Mr. Dziekanski when he waved the stapler.
- 19            A       I understand your interest, Mr. Butcher. I  
20                   understand your interest. The point I'm trying to  
21                   make here when I make this point is not meant to  
22                   deep-six your client. I'm making a general  
23                   comment about these police persons. And I'm  
24                   saying what you saw --
- 25            Q       And I'm suggesting that making general comments is  
26                   not necessarily --
- 27            THE COMMISSIONER: Just a moment. You're interrupting  
28                   the doctor. Go ahead.
- 29            A       I'm sorry. I forgot what I was suggesting. Could  
30                   you --
- 31            MR. BUTCHER:
- 32            Q       I'm suggesting that making general comments is not  
33                   necessarily fair.
- 34            A       Well, let me go at it this way then: I won't make  
35                   a general comment about the police. All I'll say  
36                   is behaviour is determined interactionally, not  
37                   dispositionally. You and I right now, Mr.  
38                   Butcher, are locked in a dance. You can feel it  
39                   and I can feel it. What I do influences you, and  
40                   what you do influences me. If I change something,  
41                   you're more likely to change something. If you  
42                   change something, I'm more likely to respond  
43                   differently to that stimuli. Every cause is an  
44                   effect; every effect becomes a cause.
- 45                   Mr. Dziekanski, he was helped to behave the  
46                   way he did in that IRL.
- 47            Q       But almost all of that behaviour that we've seen

1 occurred before the police arrived.

2 A I'm not -- I'm not talking about -- those comments  
3 I made, the film running in my head as I'm making  
4 those comments is happening inside the IRL. Let  
5 me -- please allow me, Mr. Butcher, to finish this  
6 thought. Allow me to finish this thought if you  
7 might.

8 Those policemen, including your client, had  
9 that situation under control the moment they  
10 walked in the front doors, 15 or 20 metres away it  
11 was over. Hands down to the side. He sees the  
12 yellow stripe. "Police. Police," he says, "help  
13 me." They come. Hands down to his sides. Now --

14 Q Not the --

15 A I'm not done yet. And now, around the luggage,  
16 they lose it. They had it and now they lose it.  
17 Let me finish, Mr. Butcher, please. Around the  
18 luggage they lose it and now they become  
19 oppositional. Now they become combative. Now  
20 they become antagonistic, and it's in tone and  
21 it's in -- and I'm going to -- let me use the  
22 notorious pillar here. I can't see it all either  
23 that happens behind the pillar. However, I'll  
24 guarantee you that what you see in Mr. Dziekanski  
25 is a response to what was going on with those  
26 police people.

27 Now, may I -- may I -- and I know I'm ranting  
28 here, but may I -- Mr. Commissioner, may I speak  
29 metaphorically for a minute? I want to paint a  
30 picture here.

31 THE COMMISSIONER: Yes, go ahead.

32 A I'm sorry to do this to you, Mr. Butcher. You're  
33 doing a good job. I live in the bush and around  
34 me -- and I want -- please, Mr. Butcher, I want  
35 you to listen carefully to this because these  
36 concepts, they're embedded in this little story.  
37 Your members -- your member and the rest of these  
38 fine -- your learned friends in here, their  
39 members were trained. They know these concepts.

40 I live in the bush. Around me I've got all  
41 kinds of deer across my property all the time,  
42 constantly. I love these creatures. I want to  
43 get close to them. If I look them right in the  
44 eye like I'm looking you in the eye and I walk  
45 quickly towards them in a straight line, bang,  
46 they're gone. I'll never get close to them.

47 If I make myself -- now, here's the part I

1 want you to listen to carefully, please. If I  
2 make myself lower than her, this beautiful little  
3 doe over here, I sit myself on the forest floor  
4 sideways to her and I start to inch patiently,  
5 taking my time, patiently inching towards her. I  
6 show her I'm understanding -- and she doesn't  
7 speak English. I'm understanding, I'm willing to  
8 listen to her. I'm worthy of her respect. I'm  
9 non-threatening. I can inch myself across that  
10 forest floor, because not too many predators move  
11 like crabs, and I can get right next to her.  
12 Your members knew those concepts. They were  
13 trained in those concepts in their basic training.  
14 They panicked. They didn't know what to do. They  
15 abandoned their good basic training and they  
16 embraced some very questionable training that they  
17 had had more recently, and we ended up with a  
18 terrible tragedy. I'm sorry for that rant, Mr.  
19 Butcher.

20 Q One of the troubles with rants, Dr. Webster, is  
21 that it leads to more questions. So --

22 A I welcome your questions, Mr. Butcher. Fire away.

23 Q The problem with your analogy is that the doe was  
24 always just doing what nature intended for her to  
25 do. To graze gracefully and quietly in your  
26 meadow.

27 A Mr. Butcher --

28 Q She -- just let me finish now.

29 A Yes, I will, I'm sorry. I'm sorry.

30 Q She's not smashing property and she is never a  
31 threat to you, correct?

32 A Mr. Butcher, it was just a metaphor.

33 Q Is that correct?

34 A Just a metaphor. Loosen up a bit.

35 Q Is that correct?

36 A I wasn't -- my point was not the doe. My point  
37 was my behaviour to get close to something that I  
38 could lose if I behaved inappropriately. There's  
39 the -- there's the analogy there, Mr. Butcher. I  
40 didn't realize that it would go so far afield.  
41 I'm sorry.

42 Q Now, again, you have used the phrase "they" and  
43 "the police" in describing what happened.

44 A Yes.

45 Q And I think what you're referring to is the  
46 pointing of Corporal Robinson's finger in what  
47 you've described as the slashed glove or slash

- 1 glove.
- 2 A Slash gloves.
- 3 Q That's one of the things you're referring to,  
4 isn't it?
- 5 A One of the things, yes, it would be.
- 6 Q And the -- what you describe as the conflicting  
7 instructions being given by Corporal Robinson and  
8 Constable Millington, correct?
- 9 A That would be another thing. Tone, body posture.  
10 I can't tell you what they were, but I can tell  
11 you there was something there. Why? Because we  
12 respond reactively in situations. You certainly  
13 -- my behaviour is determined somewhat by my own  
14 disposition, just as yours is, Mr. Butcher.
- 15 However, equally determining our behaviour  
16 right here again between you and I is -- and you  
17 know exactly what I'm talking about when I give  
18 that metaphor of the deer. You know exactly what  
19 I'm talking about because you're doing it to me.  
20 You are a skilled lawyer. You want to get close  
21 to me like I wanted to get close that deer and  
22 you're walking a fine line. You want to direct  
23 me, you want me to respond in an affirmative  
24 fashion to you, and you don't want to scare me  
25 off. You don't want to shut me down. You don't  
26 want to make me antagonistic. You're a skilled  
27 lawyer. You know how to do that. That's what I'm  
28 talking about.
- 29 Q You kept using the phrase "they" and "the police".  
30 What do you say Constable Bentley did to aggravate  
31 this situation, other than being there in uniform  
32 with a blue strip -- with a yellow stripe on blue  
33 trousers.
- 34 A I didn't ever suggest that a yellow stripe on blue  
35 trousers aggravated anything, did I?
- 36 Q No.
- 37 A I said -- I may have misunderstood your question.  
38 But I thought that was the --
- 39 Q So the question is what did Constable Bentley do  
40 in this dance that changed Mr. Dziekanski's  
41 behaviour? Can you tell us a single thing?
- 42 A I don't -- I don't think -- in my mind, my memory  
43 right now, I can't discern all the different  
44 players, the things they said, the things they  
45 did.
- 46 Q So you --
- 47 A I can't do that. I'm not willing to --

- 1 Q So you can't --
- 2 A -- assign degrees of blame. I understand your  
3 interest here, but I can't -- I'm just not willing  
4 to damn other members and absolve Constable  
5 Bentley. I don't have the -- I don't feel like I  
6 have the evidence here, the data to do so.
- 7 Q Then, simply put, you can't tell the Commissioner  
8 today anything that Constable Bentley did to  
9 change Mr. Dziekanski's behaviour in this dance.
- 10 A I can say that I can't remember what Constable  
11 Bentley did that was any different than anybody  
12 else. I can't remember that.
- 13 Q Let's go a bit -- back with this analogy of a  
14 dance. Is that a commonly used phrase in  
15 psychology or -- to describe this kind of  
16 interaction between people?
- 17 A Dancing?
- 18 Q Yes.
- 19 A No, that's just something I said.
- 20 Q It's a concept you've invented for this report, I  
21 presume.
- 22 A Dancing?
- 23 Q Yes.
- 24 A No, I think dancing has a long history. I didn't  
25 -- I --
- 26 Q In psychology?
- 27 A In dancing. I haven't invented dancing. If  
28 you're talking about the concept of behaviour  
29 being interactional, yeah, that's a well-accepted  
30 psychological concept.
- 31 Q Oh, I -- I understand that, but is this phrase, "a  
32 dance", your phrase that you've used in this  
33 report?
- 34 A Yeah, I've used it before.
- 35 Q And I'm going to ask you to agree that one of the  
36 problems here is that Mr. Dziekanski had been  
37 dancing, to use your analogy, on his own or with  
38 others for a very long time before the police  
39 arrived.
- 40 A He wouldn't be dancing -- the way I use "dancing",  
41 he wouldn't be dancing on his own, because I'm  
42 suggesting that dancing is an interactive thing,  
43 although of course dancers would disagree with me  
44 because some of them like to solo dance. The way  
45 I use it, I'm suggesting two people dancing. So,  
46 yes, your -- the other part of your question I  
47 would agree with, that, yes, he had danced with

1 others. He does that every day of his life.

2 Q And I'm going to suggest that you could use the  
3 analogy of a solo when Mr. Dziekanski is on his  
4 own behind the glass smashing the computer,  
5 smashing the table.

6 A Now you're making me sorry I ever used this  
7 dancing thing, Mr. Butcher. I'm having difficulty  
8 with the solo part, I'm sorry.

9 Q Okay.

10 THE COMMISSIONER: I think at this stage, having  
11 listened to hostages and deers and dancing, we'll  
12 have a little break.

13 MR. REGISTRAR: The hearing will now recess for ten  
14 minutes.

15

16 (WITNESS STOOD DOWN)

17

18 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

19 (PROCEEDINGS RECONVENED)

20

21 MICHAEL CHARLES WEBSTER, a  
22 witness, recalled.

23

24 THE COMMISSIONER: Gentlemen, I think my attempt at  
25 humour was misguided. Go ahead, Mr. Butcher.

26

27 CROSS-EXAMINATION BY MR. BUTCHER ON BEHALF OF CONSTABLE  
28 BILL BENTLEY, continuing:

29

30 Q Yesterday, you criticized Constable Bentley for  
31 being rude.

32 A I did.

33 Q What do you think his first words were to Mr.  
34 Dziekanski?

35 A I think there was some sort of a greeting, "How  
36 are you doing," and, "How are you -- how are you,  
37 bud," or something like that. I was referring to  
38 the "How are you, bud" part.

39 Q And if in fact he addressed Mr. -- could I have  
40 Exhibit 92, please, just so I get this right --  
41 that if in fact his opening words with Mr.  
42 Dziekanski were, "Hi, how are you, sir?" "How is  
43 it going, bud?" would you withdraw that comment  
44 about him?

45 A No. It still pertains to the "How's it going,  
46 bud" part.

47 Q And what standard do you say that doesn't meet?

- 1 A It doesn't meet the standard of attempting to show  
2 someone respect. If you're going to get someone  
3 to cooperate with you or comply with you, I don't  
4 think a good way to start is to say -- to ask him,  
5 "How're ya doing, bud?"
- 6 Q So --
- 7 A I like what he said first. I have no problem with  
8 that.
- 9 Q And I'm going to suggest that's a formal  
10 respectful address.
- 11 A I'll agree with that.
- 12 Q And the second comment is a --
- 13 A Erases the first one.
- 14 Q Sorry?
- 15 A Erases the first one.
- 16 Q You wouldn't take that as an attempt to respond in  
17 the vernacular to somebody?
- 18 A You don't respond in the vernacular to someone  
19 that you're attempting to influence. You don't  
20 call -- if we could put ourselves in that  
21 situation, Mr. Butcher, and somebody was coming to  
22 sell us something and they addressed us a "How're  
23 ya doing, bud?" I don't think we'd be very happy  
24 customers. You have to earn the right to use the  
25 vernacular with somebody. You have to earn the  
26 right to even call somebody by their first name,  
27 especially when he's older than you.
- 28 I like what he said at first. If he'd have  
29 continued with that, then I'd be happy.
- 30 Q Now, I took from your paragraph (i) in your report  
31 about "Only 'Fools Rush In'" --
- 32 A Yes.
- 33 Q That you were more critical of the corporal for  
34 not leading this contact than you were of the  
35 junior members; is that a fair reading?
- 36 A I -- I did single out the NCO in charge there  
37 because I -- I thought we needed a quarterback. I  
38 thought the senior man should have stepped forward  
39 as he's been trained to do. However, I'm -- when  
40 I'm talking about -- in this paragraph about  
41 planning, all of them should have formulated some  
42 sort of a tentative plan on their way to this  
43 call, constantly revising it as more data comes  
44 in, as they arrive at the scene and they enter the  
45 area and so on, right? So I'm suggesting that  
46 everyone should have been kind of working on a  
47 plan here.

- 1 Q And what I understand the police response to that  
2 is -- is that they were responding to a situation  
3 where they had a report of somebody acting very  
4 strangely and was in -- currently damaging  
5 property. In other words, it's a crime in  
6 progress. They have said -- that's the officers  
7 and their supervisors have said that the first  
8 task was to identify Mr. Dziekanski as the subject  
9 of a complaint, and then locate him and then  
10 isolate him. I take it that you take no issue  
11 with that process.
- 12 A That's part of the plan.
- 13 Q So the question was you take no issue with them  
14 undertaking that kind of process.
- 15 A No, I said -- farther on here, I'm suggesting that  
16 it would have been nice if they'd have had a  
17 complete plan. If they would have completed what  
18 you've just begun there.
- 19 Q And they've also said that their first task was to  
20 prevent the continuation of the conduct.
- 21 A Pardon me?
- 22 Q That one of their first tasks, I should say, was  
23 to prevent the continuation of the conduct that  
24 had brought them to the airport in the first  
25 place. Would you agree that that's a logical step  
26 for the police to take?
- 27 A It might be, but I'd phrase in a different way.  
28 They have been taught this.
- 29 Q Well --
- 30 A Their first objective would be to calm him down.  
31 He's not going to respond to any kind of  
32 direction. His cognitive process is not one that  
33 is able to sort out these instructions, commands,  
34 demands and so on. Before we can get control of  
35 him, we're going to have to calm him down, if  
36 that's what you meant. I'm not sure.
- 37 Q Well, you keep saying they've been taught that,  
38 but you're not actually involved personally in the  
39 training of police officers at Depot, are you?
- 40 A May I show you? May I show you where they're  
41 taught that?
- 42 Q Sorry?
- 43 A May I show you where they're taught that?
- 44 Q Well, if you've got something to show me, show me.
- 45 A Yes. Well, here's the planning business, right?
- 46 Always plan -- seven key stages. Assessing --
- 47 Q You're -- you're referring to the IMIM model.

- 1 A Yes.
- 2 Q And I don't know if this is an exhibit. Has  
3 somebody given you this?
- 4 A I got it -- you can get it offline from their  
5 website.
- 6 Q Yes, but I wondered if it was something -- if one  
7 of the lawyers had given you something that was an  
8 exhibit in these proceedings, Dr. Webster.
- 9 A I got this off --
- 10 Q Off --
- 11 A -- line at my office.
- 12 Q Okay. All right. So you're referring --
- 13 A To the --
- 14 Q -- to the IMIM.
- 15 A To the narrative that accompanies the IMIM. I'll  
16 just go back here. This is probably the best  
17 place to show you. Verbal intervention, crisis  
18 intervention techniques, verbal and non-verbal  
19 communication, anger management, conflict  
20 resolution. They get this training. One-fifth of  
21 their classroom time, Mr. Butcher, is spent  
22 dealing with conflict resolution, conflict  
23 avoidance and on and on and on and on.
- 24 Q I think we've heard some evidence of that. My  
25 question for you --
- 26 THE COMMISSIONER: Mr. Butcher, we're having trouble  
27 with the hearing. Could you go back to your mike?
- 28 MR. BUTCHER: If I can just have a moment.
- 29 Q Yesterday you made reference to a report that  
30 you'd brought with you that had some notes on it.  
31 I wonder if I could just have a quick look at  
32 that.
- 33 A That's my report that you're talking about.
- 34 Q Yes. Could I have a look at that with your notes  
35 on it?
- 36 A Sure.
- 37 Q Thank you. I'll go back.
- 38 In paragraph 2 of your report, of (ii), you  
39 make reference to a scale of 1 to 10 and coming in  
40 at a 3 or 4, and then making it impossible to go  
41 to a 8 or 9 or 10.
- 42 A No, no. I don't think it says I make it  
43 impossible to go to an 8 or 9. I'm saying if you  
44 come in at an 8 or 9, it makes it kind of  
45 impossible to expect to calm someone down is what  
46 I was saying.
- 47 Q I -- all right. Sorry if I misinterpreted that.

1           What's the scale that you're referring to and  
2           where does it come from?  
3       A     It's an arbitrary scale, Mr. Butcher.  
4       Q     Sorry?  
5       A     Arbitrary scale. I could have picked 1 to 5. I  
6           could have picked 1 to 25. I chose 1 to 10.  
7       Q     It's something you've made up?  
8       A     I just made it up.  
9       Q     And so maybe you can help us with what a 3 or 4  
10           is, and what an 8 or 9 is, and what a 1 or a 10  
11           is.  
12       A     Well, let's say a 1 would be as low as you can get  
13           on a scale of 1 to 10, and a 10 would as high as  
14           you could get on a scale of 1 to 10.  
15       Q     I appreciate that, but I'm wondering if you can  
16           tell us what kind of behaviours you would put at a  
17           3 and 4, and what would you put at an 8 and a 9?  
18       A     Well, let's say -- at the lower end of the scale,  
19           let's say we're making an attempt here -- to be  
20           metaphorical again, and I know this creates all  
21           kinds of problems, but remember me sneaking up on  
22           that doe? That's at a 3 or a 4, down at that end  
23           of the scale. So now you're members are going to  
24           be indicating to Mr. Dziekanski willing to listen,  
25           understanding. And remember, he's got his hands  
26           at his sides, he's calmed down. Willing to  
27           listen, understanding, worthy of respect, non-  
28           threatening. We're getting closer and closer to  
29           this doe. We may even be able to touch her.  
30           Careful, don't spook her. You've got to be  
31           careful, now. Don't say anything wrong, don't  
32           look at him wrong, conduct ourselves, all four of  
33           us, in a proper manner. And again, they've been  
34           trained in this. I'm not hypothesizing here.  
35       Q     But again, with the doe analogy, you don't have a  
36           duty to deal with the doe or to arrest the doe, do  
37           you. They've got --  
38       A     You know what? I'm going -- I'm going to leave  
39           the doe alone, Mr. Butcher. You're just not able  
40           to grasp this, are you? It's a lousy metaphor.  
41       THE COMMISSIONER: I thought it was a pretty good  
42           metaphor if I may say so.  
43       A     Thank you, Mr. Commissioner.  
44       THE COMMISSIONER: And I don't have any trouble with  
45           your 1 to 10 either.  
46       MR. BUTCHER:  
47       Q     I'm going to turn to some comments that you made

- 1 in paragraph 4 about Mr. Dziekanski dropping his  
2 hands to his side.
- 3 A 4, yes.
- 4 Q How long do you remember Mr. Dziekanski dropping  
5 his hands to his sides whilst --
- 6 A Okay, I'm just -- if you could give me one moment,  
7 Mr. Butcher.
- 8 Q It's in the middle of Roman numeral (iv).
- 9 A In the middle. Where I say:
- 10  
11 Just like it's supposed to, "presence" and  
12 "communication" worked like a charm.
- 13
- 14 Q Yes.
- 15 A
- 16 Mr. Dziekanski dropped his hands to his sides  
17 and engaged the "contact" member.
- 18
- 19 Q Now, so the question is, how long did he remain  
20 with his hands by his side?
- 21 A Well, the thing that impressed me most is when  
22 they came to his side, right? When he -- he --  
23 the policemen now approach him, and he's -- he's  
24 welcoming them. The thing that impressed me so  
25 much -- and it begins back at the door as they  
26 enter the airport itself, is how effective  
27 presence and communication was. Bang, he -- down  
28 go the hands. He's welcoming the police.
- 29 In my mind, you're asking me -- here's your  
30 question. You're asking me how long do I remember  
31 him holding his hands like that? Well, they  
32 changed a little bit as we begin to move towards  
33 the luggage, of course, because now he's in motion  
34 and he's got to start moving. Is that where you  
35 would like me to say they leave his sides?
- 36 Q I'm going to suggest to you that it was for a  
37 moment, maybe a second that he put his hands to  
38 his side. Maybe less than a second.
- 39 A Well, I'm not sure exactly how long it was. What  
40 impressed me was that they went to his sides.
- 41 Q I take it you took that as a sign of relaxation by  
42 him?
- 43 A This situation was under control at that point.  
44 Presence and communication had done its job. If  
45 now we begin to use some of the things we've been  
46 taught during our basic training, the ones I just  
47 showed you in the outline of the cadet training

- 1 program, if we now begin to use those things,  
2 we've got this situation resolved. But we didn't.
- 3 Q Well, it's not resolved, because this is a person  
4 who's committed a crime and has to be arrested.
- 5 A Well, by resolution, I mean we've now got the --
- 6 MR. KOSTECKYJ: With respect, I don't know that it's  
7 been established that there was a crime committed  
8 that was arrestable, so I have some issue with  
9 that question.
- 10 A To respond to you and recognize what Mr. Kosteckyj  
11 has added, the resolution -- if Mr. Dziekanski  
12 needed to be apprehended in any way or guided,  
13 given a direction, he's more likely to take it  
14 now. That's what I meant by this situation is now  
15 under control.
- 16 MR. BUTCHER:
- 17 Q But in your basic training at Depot, you would  
18 have surely been taught that the police don't  
19 consider a person to be under control until  
20 they've been handcuffed.
- 21 A Okay, two things on that one. Number one, my  
22 training --
- 23 Q First of all, was that your basic training?
- 24 A My training at Depot is going to be vastly  
25 different than the training these members got at  
26 Depot because I was there before them, long before  
27 them. Secondly, no, I disagree with you. People  
28 can be -- can be under control and not handcuffed.  
29 It's not the only way to control somebody, is not  
30 to -- to restrain them. I can verbally control  
31 you.
- 32 Q The question was, was that your training whilst  
33 you were at Depot, that a person -- from the  
34 police perspective, a person is not under control  
35 until they're handcuffed.
- 36 A No, that was not my training.
- 37 Q I've just got one last area to ask you about and  
38 it's in your Roman numeral (vi), "Is it, or isn't  
39 it?"
- 40 A Okay. Hang on a sec.
- 41 Q About five lines down you say this:
- 42
- 43 During these proceedings those who see the  
44 stapler as a credible threat have focused on  
45 the policemen's perceptions, and quite  
46 rightly have stated that the policemen's  
47 perceptions were their reality.

1 I just want to ask you what you meant by that  
2 comment, that the policemen's perceptions were  
3 their reality.

4 A Well, you -- you had two use-of-force experts here  
5 who both were telling you that the police  
6 perception is their reality and I agree with them.  
7 What -- if they saw that weapon -- that stapler as  
8 a credible threat, then in their minds it was a  
9 credible threat. The point I'm trying to make  
10 here is there was a piece missing. You have to  
11 add to that tactical considerations. In these  
12 use-of-force models, police perception doesn't  
13 stand alone. It is interrelated to tactical  
14 considerations. The two are reciprocal. My point  
15 was if we were to do that, then this would reduce  
16 the credibility of the stapler as a threat.

17 MR. BUTCHER: Those are my questions.

18 A Thank you, Mr. Butcher.

19  
20 CROSS-EXAMINATION BY MR. HIRA ON BEHALF OF CONSTABLE  
21 KWESI MILLINGTON:

22  
23 Q Doctor, my name is Ravi Hira and I represent  
24 Officer Millington, and again, if you have some  
25 difficulty hearing me, remind me. It's my job to  
26 be heard.

27 A Okay. Good morning, Mr. Hira.

28 Q Now, let's deal with this chronologically. First,  
29 it's pretty obvious that you were not involved in  
30 training any of these four officers. Is that a  
31 fair statement?

32 A That's a fair statement.

33 Q Thank you. Next, when you were at Depot, the  
34 model CAPRA, I'm going to suggest, did not exist.  
35 Would you agree with that statement?

36 A I would agree with that.

37 Q Next, when you speak of client in the sense of  
38 CAPRA, would you agree with the proposition that  
39 the client not only includes Mr. Dziekanski, but  
40 includes the airport, the public, passengers and  
41 airport staff.

42 A I do.

43 Q Next, dealing with this chronologically, have you  
44 taught at Depot at any time?

45 A I have.

46 Q And when was that last?

47 A Perhaps three to five years ago, somewhere in that

1 area.  
2 Q So you're talking about 2002, is that -- sorry, I  
3 beg your pardon, 2004?  
4 A Early 2000s, sure, 2003, 2004, around there.  
5 Q Thank you. And this is teaching new recruits?  
6 A No.  
7 Q Who were you teaching?  
8 A I was teaching the people that Mr. Butcher was  
9 inquiring about.  
10 Q The incident commanders, people of that nature?  
11 A Source recruiters.  
12 Q Thank you. Now, just dealing with this  
13 chronologically, moving on to November of 2007, as  
14 I recall your evidence when I cross-examined you  
15 on qualifications, you saw the video shortly after  
16 it was released to the public. Is that a fair  
17 statement by me?  
18 A I saw the video shortly after it was released to  
19 the media, yes, that's a fair statement.  
20 Q And that was around November 2007. Is that a fair  
21 statement by me?  
22 A That's a fair statement.  
23 Q Then you attended at the -- at the study session  
24 of the Inquiry; is that correct?  
25 A That's correct.  
26 Q And you have your transcript regarding the  
27 evidence that you gave at the study session of the  
28 Inquiry and I -- for the record, I'm going to get  
29 you to agree that you gave certain items of  
30 evidence.  
31 A Okay.  
32 Q First --  
33 A Should I go to a page?  
34 Q I'm going to put some general propositions.  
35 A Okay.  
36 Q First, would you agree with me that you have given  
37 no training regarding use of force to the police.  
38 A No, I wouldn't agree with you.  
39 Q All right. You've --  
40 A Everything I do in training, excluding what Mr.  
41 Butcher was talking to me about, is use of force.  
42 Q Would you agree with me that you've given no  
43 training regarding the IMIM?  
44 A I would agree with you.  
45 Q Thank you. Next, would you agree with me that you  
46 are critical of these use-of-form -- sorry, use-  
47 of-force frameworks like the national use of force

1 policy and the IMIM.

2 A I am. I have certain criticisms of them, yes.

3 Q And your primary criticism is that they are based  
4 upon officer perception.

5 A Wrong, no. That's not my primary criticism.

6 Q That is one of the criticisms, correct?

7 A No, it's not.

8 Q What is your primary criticism of these use-of-  
9 force wheels?

10 A Well, they're -- they're crude and convenient  
11 fictions, because -- would you like me to explain?  
12 That's a criticism. Would you like me to explain  
13 it?

14 Q Go ahead. They're crude and convenient fictions.  
15 Yes?

16 A Yes. Crude because they don't grasp all uses of  
17 force. They're not sensitive enough to grasp all  
18 uses of force, all examples of police force. For  
19 example, if -- let's see. If a policeman comes  
20 upon a group of activists -- I'm thinking of this  
21 now because in Toronto today we've got the Sri  
22 Lankans having a demonstration. If a policeman  
23 comes upon a group of Sri Lankans in a  
24 demonstration and begins to talk to them, there's  
25 a use of force, right? His presence is there.  
26 He's beginning to talk to them. If another  
27 policeman comes along now and has a camera on his  
28 shoulder and starts filming the people in the  
29 group, that's another use of force not recognized  
30 in this model.

31 So gross -- and convenient, it's convenient  
32 because it gives the police, it gives us a way to  
33 talk about force options in generic decision-  
34 making models.

35 Fictional? It's fictional, because people  
36 don't behave in little categories or little boxes.  
37 I can be cooperative and actively resistant with a  
38 police person all at the same time. I can be  
39 walking along beside him as he's escorting me away  
40 from the front of a premise, and I can be pulling  
41 my arm away from him at the same time. What are  
42 you going to call it? Are you going to call it  
43 cooperative or are you going to call it actively  
44 resistant?

45 Those are some of my objections to these  
46 colourful wheels.

47 Q So is it fair to say that these wheels which, as

- 1 we understand it, form the basis of use-of-force  
2 training --
- 3 A Yes.
- 4 Q -- for all police forces in Canada, you find  
5 crude, convenient and fictional.
- 6 A In some regards I do, yes. I mean I understand  
7 what purpose they serve for the police. They give  
8 them an opportunity to ensure that their use of  
9 force is standardized across a variety of  
10 different applications, and so on. It gives them  
11 a way to teach, it gives them a way to talk about  
12 -- but I have criticisms of them, certainly. I  
13 think most people would. I think you'll find many  
14 police people have criticisms of them as well.
- 15 There are many police people -- actually,  
16 many, many police people, who don't even  
17 understand the things, they're so complex.
- 18 Q Thank you. I just want to be sure you're -- your  
19 compendious criticism is that they're crude,  
20 fictional and convenient.
- 21 A I wouldn't call it compendious. It's a moderate  
22 criticism, Mr. Hira. Just a moderate criticism.
- 23 Q Now, moving on, at the -- sorry, at the study  
24 session of the Commission, and I'm referring to  
25 page 26 --
- 26 A 26, okay.
- 27 Q -- lines 28 and 29.
- 28 A Okay. Hang on one second, 26. What were the  
29 lines again?
- 30 Q 28 and 29. You gave evidence that delirium can be  
31 of the activity (sic) variety and resemble the  
32 behaviour of Robert Dziekanski.
- 33 A Mm-hmm.
- 34 Q Is that "yes"? I'm sorry, you've got to say "yes"  
35 or "no" for the record.
- 36 A I did say that, yes, and the key word there is  
37 "can be", or the key words are "can be".
- 38 Q Thank you. And that continues to be your view of  
39 matters today, that delirium can be of the active  
40 -- of the active variety and resemble the  
41 behaviour of Robert Dziekanski.
- 42 A Vast difference between this sentence and actually  
43 saying that's the way he was behaving, if that's  
44 what you're driving at. I'm not saying that's the  
45 way he was behaving. I'm saying it could be.
- 46 Q Thank you. You're saying that it can resemble the  
47 behaviour.

- 1 A It could.
- 2 Q Thanks. Now, you will agree with me that the type  
3 of training, type of intervention that you write  
4 of in your report of April 17, Exhibit 146, I  
5 believe, is not the type of training offered by  
6 the RCMP.
- 7 A Could you direct me to which type of training --  
8 where -- where am I talking of the training in --
- 9 Q Well, let's put it another way.
- 10 A -- in my report.
- 11 Q Crisis intervention training --
- 12 A Yes.
- 13 Q -- taking it low and slow --
- 14 A Yes.
- 15 Q -- the type of behaviours that you expected of the  
16 police in your report --
- 17 A Yes.
- 18 Q -- is not the type of training that is delivered  
19 by the RCMP.
- 20 A I just showed Mr. Butcher where it is in the cadet  
21 training objectives. Would you like me to show  
22 you too, Mr. Hira? It's right here. I pulled  
23 this off the RCMP website, and it outlines the  
24 cadet training model and it talks about how the  
25 training I'm talking about in my report that  
26 you're referring to now is offered to the cadets.
- 27 Q All right. Well, let's deal with it another way.
- 28 A Actually, it's under "Verbal Interventions",  
29 crisis intervention techniques, verbal and non-  
30 verbal communication, anger management, conflict  
31 resolution. Yeah, I think it's offered by the  
32 RCMP.
- 33 Q Okay. Well, let's deal with it another way.
- 34 A In basic training.
- 35 Q Would you consider the circumstances as -- the  
36 circumstances that the police were facing as they  
37 entered the airport and commenced their dealing  
38 with Mr. Dziekanski as a crisis intervention  
39 circumstance?
- 40 A I would.
- 41 Q All right. Then I'd like to refer you to two  
42 excerpts in your evidence at the study session,  
43 and I'm going to read both of them to you.
- 44 A Okay. Could I read along with you?
- 45 Q Yes, absolutely. I'm going to just tell you what  
46 I'm going to do, and I'm going to refer you to  
47 them. Then you're going to go there, and I'm

1 going to read it and then I'm going to ask you  
2 whether that continues to be your position.

3 A I'm sorry, I was rushing you. I'm sorry.

4 Q That's okay. The two excerpts that I'm referring  
5 to are, one, page 27.

6 A 27.

7 Q Starting at line 35.

8

9 The first rule of crisis intervention is: no  
10 more crisis. During a review of Taser  
11 tragedies, it is not difficult to see  
12 numerous violations of this rule. This type  
13 of training is not offered routinely by all  
14 police training academies, nor as an in-  
15 service course in Canada. Locally, it is  
16 provided by the Vancouver Police Department  
17 to its patrol personnel. It is my  
18 understanding that the RCMP, following the  
19 death of Robert Dziekanski, has undertaken  
20 this type of training in the Lower Mainland.

21

22 Firstly, have I read that correctly?

23 A You did.

24 Q And does that continue to be your position today?

25 A No. I was wrong, and I was corrected by Depot.

26 Q All right.

27 A They told me about this crisis intervention  
28 training that is offered to cadets, and I  
29 apparently overlooked it. I was unfair when I  
30 made these remarks during the study phase, and  
31 I've since come to understand that all the police  
32 who go through the cadet program now get crisis  
33 intervention, crisis resolution, conflict  
34 management, anger management training, Mr. Hira.

35 Q So let me be clear, even more particular in this  
36 regard. And I'm going to take you to page 28,  
37 starting at line 42. At this stage you're being  
38 asked questions by Mr. McGowan. You told us --  
39 and this is his question:

40

41 You told us of this crisis intervention  
42 training, and you're personally involved in  
43 delivering this training to police forces?

44 A I am.

45

46 A Yes.

47

- 1 Q
- 2 Q Which police forces in British Columbia have
- 3 you been involved in delivering this training
- 4 to?
- 5 A To my knowledge, there's only one and I'm
- 6 involved with that one, and that's the
- 7 Vancouver Police Department. Now I
- 8 understand the RCMP has undertaken this since
- 9 the death of Robert Dziekanski.
- 10
- 11 Q Firstly, you were asked those questions and you
- 12 gave those answers?
- 13 A I did.
- 14 Q And your evidence is you've now learned that those
- 15 answers are incorrect with respect to the RCMP.
- 16 A Yeah, let me read the second one again to make
- 17 sure. So with regards to your second question,
- 18 yes, I still believe that Vancouver Police
- 19 Department offers this training and that I'm
- 20 involved in it, and my understanding is still that
- 21 the RCMP offered one course, an advanced course --
- 22 this is not the basic one that you and I a moment
- 23 ago were talking about that the cadets get. This
- 24 is a -- I'm assuming now -- a more advanced one.
- 25 They offered it once, to my understanding - I
- 26 could be proven wrong - since the death of Mr.
- 27 Dziekanski.
- 28 Q All right. So who is the RCMP officer that
- 29 contacted you and told you you were wrong with
- 30 respect to the evidence?
- 31 A I could show you the e-mail but I'm not going to
- 32 give you his name because I'm not convinced that
- 33 the RCMP wouldn't make a hell out of his life for
- 34 giving me this information.
- 35 Q Fair enough. That's not the purpose of my
- 36 question. Let's deal with it another way. When
- 37 did you learn that you were incorrect in that
- 38 regard?
- 39 A I learned this maybe a couple of months ago.
- 40 Q So you access the IMIM a couple of months ago. In
- 41 other words, doing the math, sometime in March
- 42 2009?
- 43 A I had been told before that I was incorrect about
- 44 the crisis intervention training. It was
- 45 confirmed in an e-mail a couple of months ago. I
- 46 knew about it not long after making these
- 47 comments, because these comments were public and

1 the members, members that I know, were aware of  
2 them and they straightened me out. It was  
3 confirmed -- I was writing -- I am presently  
4 writing a paper on crisis intervention and I got  
5 some data -- I wanted some data from the training  
6 academy and it was confirmed by my source at the  
7 training academy that these subjects are taught to  
8 the cadets.

9 Q So when did you physically access that IMIM  
10 document that you showed Mr. Butcher?

11 A I don't --

12 Q Do you have a date on the bottom?

13 A -- know. Would there be a date on it? I don't  
14 know.

15 Q Yeah, just give me the date.

16 A I'm not much of a computer guy. Four-19-2009.

17 Q Thank you. April 19, 2009. Thank you. We're  
18 going to come to that in a moment.

19 And just finishing off and -- with the  
20 evidence at the study session. I asked you this  
21 question in the context of your qualifications.  
22 Mr. Commissioner refused to allow me to ask this  
23 question. I'm going to ask it again and I'd ask  
24 you not to answer it until the Commissioner allows  
25 you to answer it.

26 A Okay.

27 Q Just so that we understand each other.

28 A Okay.

29 Q And I'm referring to page 34 of the transcript.

30 A Okay, hang on.

31 Q My question is starting at line 8 and going to  
32 line 20. Sir, were you asked this question and  
33 did you give this answer:

34 Mr. Commissioner, I'm proposing to read that  
35 question and answer. I'm mindful of your ruling.  
36 I don't wish to read it if you're of the view that  
37 you've ruled on the matter and I'm not permitted  
38 to go there.

39 THE COMMISSIONER: Well, I think at this stage of the  
40 hearing it's probably all right.

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

42 THE COMMISSIONER: I'm not sure where it's going, but  
43 anyway...

44 MR. HIRA: Thank you, Mr. Commissioner. It'll become  
45 apparent, I hope.

46 Q Sir, were you asked this question:  
47

1 Q And just finally, Dr. Webster, what's your  
2 motivation for being here today and sharing  
3 your thoughts with us? What is the --

4  
5 Sorry.

6  
7 What's underlying your concern and what's the  
8 reason you've come here today?

9  
10 Q You were asked that question by Mr. McGowan; isn't  
11 that correct?

12 A That's correct.

13 Q And your answer was:

14  
15 A I'm not anti-police. I've [been working]  
16 worked with the police for over 30 years, and  
17 as I said a moment ago, I'm embarrassed to be  
18 associated with organizations that Taser sick  
19 old men in hospital beds and confused  
20 individuals, immigrants arriving to the  
21 country. Frankly I find it embarrassing.  
22 And again, it's not the best of Canadian  
23 policing. I don't think it's what Canadians  
24 -- we as Canadians want our police services  
25 to look like.

26  
27 You gave that answer.

28 A I did.

29 Q And you'd seen the video prior to giving that  
30 answer?

31 A I had.

32 Q And you were expressing an opinion about the  
33 conduct of these four officers.

34 A I was.

35 Q Thank you. Now, let's move forward  
36 chronologically. After expressing that opinion  
37 about the conduct of these four officers, you  
38 were --

39 A I'm unclear about one thing before we move  
40 forward. What is the opinion that you think I  
41 expressed?

42 Q Doctor, it's one of these occasions where I have  
43 the privilege of asking the questions and I can  
44 only request that you answer them. I don't answer  
45 questions. I will continue questioning.

46 A Okay. I'm sorry for offending you. I'll --

47 Q You didn't offend me. I was just making sure we

1 understood the rules.  
2 A I'll have to make an assumption then. I would  
3 find it difficult to proceed with you if I'm  
4 uncertain as to what you think this opinion is.  
5 Q Well, let me continue with my questions. When  
6 were you retained to provide the opinion you  
7 expressed in Exhibit 146 in these proceedings.  
8 A I'm not sure what Exhibit 146 is. Is that my  
9 report?  
10 Q That is your report.  
11 A Yes.  
12 Q When were you retained?  
13 A I can't really remember. I would have to check  
14 with my wife who keeps my dates.  
15 Q Well --  
16 A I can't remember exactly the date, Mr. Hira.  
17 Q Commission counsel has provided me, at a quarter  
18 to 11:00 this morning at my request last night  
19 with a file of e-mails between you and Commission  
20 counsel --  
21 THE COMMISSIONER: You'll have to be louder.  
22 MR. HIRA: I'm sorry, Mr. Commissioner. It's not what  
23 my wife says to me, though.  
24 Q Commission counsel has provided to me a file of e-  
25 mails at quarter to 11:00 this morning at my  
26 request made last night.  
27 THE COMMISSIONER: I'm sorry, what's the relevance of  
28 quarter to 11:00?  
29 MR. HIRA: Well, I'm -- it's just part of the record as  
30 far as I'm concerned, Mr. Commissioner.  
31 THE COMMISSIONER: All right. I thought you had a  
32 point.  
33 MR. HIRA:  
34 Q Let me start again. Commission counsel has  
35 provided to me a file of e-mails exchanged between  
36 you and Commission counsel regarding this report.  
37 A Yes.  
38 Q The e-mails start on March 30, 2009.  
39 MR. VERTLIEB: Just -- I hate to interrupt. You have  
40 the only file that we have, Mr. Hira. We got  
41 those for you. I think they're from Ms.  
42 Stooshnov; they're not from me. But I might be  
43 wrong. You've got the only file. I think it's  
44 Ms. Stooshnov, is it not?  
45 MR. HIRA: If I have the only file, I have made a  
46 couple of underlinings. I -- well, let's deal  
47 with it this way then.

1 Q The first e-mail that I have is an e-mail from a  
2 Christine Chung. Her e-mail address is  
3 ChristineChung@braidwoodinquiry.ca sent on March  
4 30, 2009 at 9:54 to Jessica McKeechie and Cathy  
5 Stooshnov re non-delivery of documents to Dr. Mike  
6 Webster. It reads [as read]:  
7

8 Hi Jessica,  
9

10 Please inform Dr. Webster that the documents  
11 could not be delivered to him due to no one  
12 in the house and that he should pick it up  
13 himself. Thanks,  
14

15 Christine.  
16

17 Did you receive some documents around March the  
18 30th, 2009?

19 A If you won't hold me exactly to the date, yes, I  
20 did receive documents but I can't remember the  
21 dates exactly. I received the binders of the  
22 testimony, the evidence of the police members and  
23 the video, the Pritchard video and enhanced sound  
24 by Sharp.

25 Q And that was around March 30, 2009.

26 A I believe so.

27 Q And in fact there's an e-mail here of March 30,  
28 2009 at 1:37 p.m. from Cathy Stooshnov of the  
29 Braidwood Inquiry to Mora -- Moira/Mike Webster re  
30 non-delivery of documents. Does that -- and it's  
31 in response to an e-mail sent five minutes earlier  
32 from Moira/Mike Webster saying that the package  
33 arrived on Friday. So would you agree with me  
34 that you received the materials around March 30,  
35 2009?

36 A Again, in my mind the dates aren't clear, but yes,  
37 yes, I'll...

38 Q Now, the -- I read your report and the question  
39 that I have for you is what is the question that  
40 you were asked to opine on? What is the matter  
41 that you were asked to provide an opinion on?

42 A I was asked to provide an opinion on the  
43 intervention of the police members based upon  
44 their training and based upon crisis intervention  
45 techniques, theory, the psychology of conflict.

46 Q All right. Where do I find that in your report?

47 A The entire report deals with their intervention

1           and most of the foundation for my criticism is  
2           based on the psychology of conflict and their  
3           training. I think --  
4        Q     Where do I find -- sorry.  
5        A     -- I even mention, Mr. Hira, that these members  
6           would have been trained in, these members would  
7           have learned, these members would understand.  
8           That's what I'm -- I'm attempting to address the  
9           question.  
10       Q     Where do I find the question, sir, in your report?  
11       A     It isn't there.  
12       Q     Thank you. Now, I've gone through these e-mails  
13           and I can't find the question in these e-mails.  
14           I'm happy to give you the e-mails that I have been  
15           given. Could you tell me when you received  
16           direction regarding the question and from whom?  
17       A     The direction I received regarding the question  
18           was from Mr. Vertlieb and it was over the  
19           telephone and I won't be able to tell you exactly  
20           when. I don't -- I can't recall the date.  
21       Q     Did you make a note of the question, sir?  
22       A     It was a mental note. I didn't need to write it  
23           down.  
24       Q     And this would have been sometime in around March  
25           30 --  
26       A     Sometime around the time that I received all the  
27           information. It's an overwhelming amount of  
28           information and I inquired what's the question,  
29           what would you like me to address myself to here.  
30       Q     Thank you. That's fine, and this was sometime  
31           around March 30. Is that a fair statement by me?  
32       A     Again, if you don't --  
33       Q     Either a few days before or a few days after?  
34       A     Fair statement. Fair statement.  
35       Q     Thank you. Now, did you raise at all with anybody  
36           the opinion that you'd already expressed regarding  
37           these four officers, that you were embarrassed by  
38           their conduct, prior to writing your opinion.  
39       A     Now, we come back to my question of you which was  
40           what is the opinion you think I have? If we go  
41           back to this answer, I say in my answer:  
42  
43       A     I'm not anti-police. I've worked with the  
44           police for over 30 years, and as I said a  
45           moment ago --  
46  
47       And "a moment ago" probably appears previous in

1 the transcript. I must have said I'm embarrassed  
2 about the members. This isn't an opinion. My  
3 opinion falls in the last couple of sentences and  
4 that is -- this is not -- my motivation for  
5 agreeing to come to the study phase and agreeing  
6 to come to this phase is that this is not the best  
7 of Canadian policing. My motivation is not that  
8 I'm embarrassed by these members. Right? You've  
9 misread that, Mr. Hira. My motivation for coming  
10 here is that this is not the best of Canadian  
11 policing and I believe, being a professional  
12 involved in the police universe for a number of  
13 decades now, that I have some things to say and I  
14 wanted to say them.

15 Q And this was an opinion that you had as early as  
16 May 2008, correct?

17 A That I didn't think this was the best of Canadian  
18 policing?

19 Q Yes.

20 A How could I not have that opinion?

21 Q Thank you. I'm just trying to --

22 A Three-quarters of the country would agree with me,  
23 Mr. Hira.

24 Q -- trying to establish a certain timeline. Now, I  
25 note that your report is dated April 17, 2009.

26 A Yes, it is.

27 Q It was faxed to the Commission around 2:30 on  
28 April 18 as best as I can make out from the  
29 header.

30 A I don't know, couldn't tell you.

31 Q I'll show you my marked-up copy which I received  
32 by e-mail. It seems to have a header at the  
33 bottom, a fax header.

34 A Show me what you -- where I should look --

35 Q Or a partial fax header.

36 A Okay, yes, 18th, yes.

37 Q Would you agree that you sent the report around  
38 2:30 on April the 18th, 2009.

39 A No.

40 Q When did you send your report dated April 17?

41 A I never sent it. My wife sent it. I don't  
42 operate those machines.

43 Q Thank you. Sorry, I didn't know that. Would you  
44 agree with me that your wife sent it around 2:30  
45 p.m. on April 18.

46 A It appears so.

47 Q Thank you. Now -- and the report was, of course,

1 completed on April 17.

2 A Correct, yes, I would have dated it --

3 Q Yes.

4 A -- the moment I -- I would have put that as a  
5 header as I was writing it, yes.

6 Q And there are no drafts, correct?

7 A Correct.

8 Q And there are no notes?

9 A Only the notes that I have on my copy.

10 Q And those are notes that you made after you wrote  
11 the report?

12 A Yes.

13 Q In other words, there are no notes regarding any  
14 of the materials prior to writing the report.

15 A Right.

16 Q Thank you. Now, I have an e-mail exchange, again  
17 part of the bundle of e-mails provided this  
18 morning, from Cathy Stooshnov to Moira/Mike  
19 Webster, Thursday, April 16, 3:51 p.m. Subject,  
20 "Circumstances" document. It reads [as read]:

21

22 Hello, Dr. Webster,

23

24 Art Vertlieb has asked me to send you the  
25 attached document "Robert Dziekanski -  
26 Circumstances".

27

28 And there's a responding e-mail from Moira/Mike  
29 Webster, April 16, 2009, 4:34 p.m. to Cathy  
30 Stooshnov, re "Circumstances" document [as read].

31

32 Hi Cathy,

33

34 I'm printing it off now and will give it  
35 directly to Mike. Thanks.

36

37 Would you agree with me that you received the 12-  
38 page "Circumstances" document, which has been  
39 marked as an exhibit here around 4:30, 4:34 on  
40 April 16?

41 A Again, I don't remember these dates, Mr. Hira. If  
42 that's what it's marked, then I'll say yes, but I  
43 don't remember.

44 Q I'm showing you the e-mail that I've read to you.  
45 Does that help refresh your memory and would you  
46 agree with me that you received the 12-page  
47 "Circumstances" document around 4:34 on April 16,

1 the day before you wrote your report.

2 A Yes, it certainly appears so.

3 Q Thank you. Now -- and your evidence, I gather, is  
4 that you were able to analyze the "Circumstances"  
5 document and write your report over the course of  
6 the next day.

7 A Well, it isn't a document that required a lot of  
8 analysis, Mr. Hira. It was a little story. I  
9 read the little story and I made a report. And I  
10 also read the voluminous binders of the police  
11 testimony, and you told me the date that I  
12 received those.

13 MR. HARRIS: Could you speak up, please, sir. I can't  
14 hear you at the back.

15 A Okay. Sorry, Mr. Harris. I also read the  
16 voluminous binders and you've reminded me of the  
17 date that I received those, and I watched the  
18 video several times and then, yes, I guess the  
19 "Circumstances" document came after that and just  
20 prior to me writing my report.

21 MR. HIRA:

22 Q Now, were there any papers or sources that you  
23 consulted to write your report?

24 A I have this all in my head, Mr. Hira. I do this  
25 every day. I work these kinds of incidents  
26 frequently. I have these principles in my head at  
27 my fingertips. I do lots of reading, but no, I  
28 didn't consult any sources. I have this stuff  
29 right there.

30 Q In particular --

31 A I'm not that old, Mr. Hira. I've still got --

32 Q I'm sorry?

33 A I still have some of my faculties. I'm not that  
34 old.

35 Q So your evidence is -- it's a bit of a lengthy  
36 answer, but I want to be sure, that you did not  
37 consult any papers or sources. You had it all in  
38 your head for the purposes of writing your report.

39 A I would -- I would qualify having the stuff in my  
40 head as ongoing consultation. I know these  
41 principles. I don't need to go back to the book  
42 and consult them again. I know about these  
43 principles. I know what is in training. I know  
44 what I saw before me. I read the little story.  
45 It doesn't take much, Mr. Hira, to put together a  
46 flimsy little six -- four-page report like that.  
47 It doesn't take the kind of research that you're

1 suggesting.

2 Q Fine. Let's talk about the flimsy little four --  
3 six-page report as you have described it. Let's  
4 deal with one particular sentence which was the  
5 subject of an exchange between you, Mr. Butcher  
6 and the Commissioner. That is at page 2, "Low and  
7 Slow". And I'm going to read the sentence to you.

8 A Okay.

9 Q

10

11 It is (sic) next to impossible to come in at  
12 an 8 or 9 and then expect to defuse an  
13 emotionally distraught individual.

14

15 Firstly, have I read it correctly?

16 A Yes, you have.

17 Q Second, do you have any authority for that  
18 proposition?

19 A Yes, my personal experience would dictate that to  
20 me as well as my understanding of hyperarousal and  
21 the techniques of conflict resolution and crisis  
22 intervention. If I needed to, I'm sure I could go  
23 into my library and pull you out several sources.  
24 No, I can't give you the names of them now.

25 Q Now --

26 A This is commonly accepted, Mr. Hira. This is --  
27 I'm not saying something that's never been said  
28 before here. Anybody in my position, a  
29 psychologist, or a police person who's been  
30 exposed to this -- Mr. Hira, the likelihood of  
31 these members getting out of their cadet training  
32 without being exposed to the very simple and basic  
33 concepts that I have in my report is about the  
34 same likelihood as you getting out of elementary  
35 school without ever being exposed to adding and  
36 subtracting.

37 Q You do not know where I went to elementary school,  
38 but having said that, I was asking about whether  
39 or not you had a source for that one sentence as  
40 opposed to police training.

41 A I've got -- I've got over 30 years --

42 Q Is your answer that you don't have a source?

43 A No, it isn't. I've got over 30 years of  
44 experience, and I've got my education, psychology  
45 of conflict. I deal with these -- come home with  
46 me, Mr. Hira, I'll take you to my library and  
47 we'll pull out a few books. We'll sit down over a

- 1 cup of tea and we'll have a read and I'll show you  
2 where they are, if that'll make you happy.
- 3 Q Thank you for your kind invitation, but may I  
4 continue?
- 5 A Yes, of course.
- 6 Q Now, I have some extracts from the College of  
7 Psychologists of British Columbia Code of Conduct.  
8 And I have the whole Code of Conduct if you need  
9 it, but I'm going to refer you to section 3.0,  
10 "General Standards for Competency," and in  
11 particular item 3.11. Before we go there, I  
12 notice that there's a date, November 2, 2006, that  
13 appears at the bottom of this document. Would you  
14 agree with me that this is the applicable Code of  
15 Conduct for psychologists practising in British  
16 Columbia?
- 17 A It appears to be. I don't know if it's been  
18 revised since that time or not. It appears to be.
- 19 Q I have a full copy of it that was pulled off the  
20 internet yesterday, and it appears to be the same  
21 section 3.11. So let's deal with that for a  
22 moment.
- 23 A Okay.
- 24 Q You were providing in your report a professional  
25 opinion; is that correct?
- 26 A That's correct.
- 27 Q That fell within section 3.11?
- 28 A It would.
- 29 Q And would you say that the opinion was objective  
30 and unbiased?
- 31 A Yes, I think so.
- 32 Q All right. And would you agree with me that when  
33 providing an opinion that you're obliged to rely  
34 on scientific and professionally derived  
35 knowledge?
- 36 A Yeah, in combination with my experience and my  
37 training and my readings, yes, certainly.
- 38 Q And I gather your evidence is that the opinion  
39 certainly does that?
- 40 A Yes, it does.
- 41 Q And I was looking at 3.14. It meets the  
42 requirements of 3.14; is that correct?
- 43 A [As read]:  
44  
45 ...must rely on scientifically and  
46 professionally derived knowledge when making  
47 scientific or professional judgments or when

- 1                   engaging in scholarly professional  
2                   endeavours.  
3
- 4                   Yes, it does.
- 5           Q       All right. And the 3.12 notes that the report  
6                   must accurately reflect the information provided  
7                   or available to you.
- 8           A
- 9                   (reading under breath)...must ensure that the  
10                  reports accurately reflect the information  
11                  provided or available to them.  
12
- 13                  Yes, correct.
- 14          Q       All right. Now, you make -- you, of course,  
15                  reviewed a lot of transcripts; is that correct?
- 16          A       I -- the police transcripts were the only ones  
17                  that I had, yes.
- 18          Q       And you drew certain behaviours from those police  
19                  transcripts?
- 20          A       I'm having difficulty with your words. "Drew  
21                  certain behaviours"? I --
- 22          Q       Well, let's --
- 23          A       I formed certain --
- 24          Q       Let's deal with it another way.
- 25          A       -- opinions.
- 26          Q       Fair enough. You drew -- you drew certain facts  
27                  from those police transcripts.
- 28          A       Yes, I did, yes. I think --
- 29          Q       You also drew certain facts from the videos.
- 30          A       Yes.
- 31          Q       And of course you have not set out where in the  
32                  transcripts or where in the video you found those  
33                  facts, correct?
- 34          A       No, I don't think that's correct.
- 35          Q       Well --
- 36          A       I think I gave you an idea of what I'm talking  
37                  about when I write the report.
- 38          Q       Well, you gave evidence -- and I want to make sure  
39                  that I've got this right. You gave evidence that  
40                  when the police entered, he was happy to see them  
41                  or -- I may be wrong about the word "happy", and  
42                  if I am, you will correct me.
- 43          A       Mm-hmm.
- 44          Q       And he put his hands by his side. Do you recall  
45                  giving that evidence?
- 46          A       Yes, I recall saying that, yes.
- 47          Q       Thank you. You also gave evidence yesterday that

1 as Mr. Bentley -- or, sorry, Officer Bentley  
2 approached him at the doors of the IRL, that his  
3 hands were by his side.  
4 A Constable Bentley's?  
5 Q No. Mr. Dziekanski.  
6 A Yes. Yes, Mr. Dziekanski.  
7 Q Incidentally, is that noted anywhere in your  
8 report, those two matters?  
9 A That Mr. Dziekanski's hands were by his side?  
10 Q Yes.  
11 A I think so. It might take me a minute to find it.  
12  
13 Just like it's supposed to, "presence" and  
14 "communication" worked like a charm. Mr.  
15 Dziekanski dropped his hands to his sides and  
16 engaged the "contact" member.  
17  
18 Q And where -- and that is under the paragraph -- if  
19 you could just tell me where that is, exactly?  
20 A That is on page 3 --  
21 Q Yes.  
22 A -- the "First Impressions" paragraph.  
23 Q Thank you.  
24 A And probably midway.  
25 Q I've got it. I had it underlined. Go on. Any  
26 other reference to hands by his sides?  
27 A I don't know if there's any other reference. Do  
28 you want me to look through and see if there is,  
29 or that's enough?  
30 MR. HIRA: That's fine. Now, Mr. Lunn, I wanted the  
31 Pritchard video played for 30 seconds. Well, I  
32 can do it too, I have the skill.  
33 THE COMMISSIONER: You should have given us some  
34 notice.  
35 MR. HIRA: I did. I did. I told Mr. Lunn that. I  
36 even gave him the time sequence. Now, thank you,  
37 Mr. Lunn. I wonder whether you could cue Prichard  
38 video number 2 to 3:00. Don't start playing it.  
39 Let me know when it's cued to that point.  
40 MR. LUNN: Yes, sir, it's just before that point now.  
41 MR. HIRA: Thank you. I appreciate that. I want you  
42 to play Pritchard video number 2 from 3:00 to 3:32  
43 which, just as a cue to you, Mr. Lunn, is when the  
44 camera starts to move off the IRL and starts to  
45 move behind a pillar.  
46 Q Doctor, while the video --  
47 MR. HIRA: Don't start it yet, Mr. Lunn.

1 Q -- while the video is being played, I'd like you  
2 to tell -- to observe, and be in a position to  
3 tell the Commissioner about when the hands were  
4 (a) down by his sides on police arrival, and (b)  
5 down by his sides as Mr. -- sorry, Officer Bentley  
6 was dealing with him at the IRL.

7 MR. LUNN: (Indiscernible - not at microphone).

8 MR. HIRA: Please.

9

10 (VIDEO BEING PLAYED)

11

12 MR. HIRA: Stop there, please. I'm sorry.

13

14 Q What did you --

15

16 A His hands were on the back of the chair. They're  
17 not at his sides, but they're on the back of the  
18 chair. They're not in a threatening manner. We  
19 can continue on and see if they go down to his  
20 sides. I don't find that threatening at all. I  
21 find that a calming, a relaxing of his previous  
22 behaviours.

23

24 MR. HIRA: Could you go to that point, Mr. Lunn, and  
25 give us a marker where the hands are noted as "by  
26 his sides". Keep going back, back. Is that the  
27 point --

28

29 A I didn't say "by his side". I said they're not by  
30 his sides but they're on the back of the chair.  
31 He seems relaxed there. The police have arrived.  
32 He's not behaving as he had previously. There's  
33 no aggression there.

34

35 MR. BUTCHER: Can we have a time on that, please?

36

37 MR. LUNN: 3:13.

38

39 MR. HIRA:

40

41 Q Would you agree with me that he is moving the  
42 chair, Doctor?

43

44 A Yes, he's moving the chair. I'd -- we'd have to  
45 -- Mr. Lunn would have to run the film to see if  
46 he's moving the chair back and forth in a nervous  
47 manner, Mr. Hira. I can't see it now; this is a  
48 still picture.

49

50 Q Thank you. But just a moment. I again will urge  
51 you to stop the video when you've got the hands by  
52 his sides on the -- for the police arrival or  
53 Constable Bentley's dealings with him.

54

55 MR. HIRA: Keep going.

56

57 A There's a lot that I can't see here. You can't  
58 see what's going on here.

59

60 MR. HIRA: Stop. Where are we now?

1 MR. LUNN: 3:22.  
2 MR. HIRA:  
3 Q And so there's a lot that you can't see, correct?  
4 A Correct. I may have got this from the  
5 "Circumstances" document, that it's at his sides.  
6 I might have, I could be corrected.  
7 THE COMMISSIONER: I think if you keep playing it,  
8 something more will become evident.  
9 MR. HIRA: Well, actually I have, and I don't believe  
10 that's the case, but I'm happy to do so until  
11 3:32, Mr. Commissioner.  
12 THE COMMISSIONER: Well, I seem to recall that, but I  
13 could be mistaken.  
14 MR. HIRA: That's -- I understand that, but you will  
15 see that his hands go down by his sides around  
16 3:30 for literally a moment, and they go back up.  
17 THE COMMISSIONER: Well, maybe we should see that.  
18 MR. HIRA: Thank you.  
19 MR. LUNN: Continue?  
20 MR. HIRA: Please. Stop right there. If you could go  
21 back --  
22 A Hold it. Where are they now?  
23 MR. HIRA: Could you go back?  
24 A He's dropped his hands now as the police enter the  
25 IRL.  
26 MR. HIRA: Could you go back for a moment, Mr. Lunn,  
27 three seconds, please.  
28 MR. LUNN: That's three seconds.  
29 MR. HIRA: Thank you. Now, if you could play that in  
30 -- what is the time spot there?  
31 MR. LUNN: 3:26.  
32 MR. HIRA:  
33 Q Now, do you see his right arm on the back of the  
34 chair, sir?  
35 A I do.  
36 MR. HIRA: Could you play that in slow motion from 3:26  
37 to 3:32, please? There's no need for the sound.  
38 A Hands come down.  
39 MR. HIRA: If you could do that again from 3:26 to 3:32  
40 in slow motion, please.  
41 A He's expressing himself.  
42 MR. HIRA: Are we at 3:26?  
43 MR. LUNN: Yes, we are now.  
44 MR. HIRA: Please play it in slow motion. Stop right  
45 there.  
46 A Hands at his sides. Should I stop saying "hands  
47 at his sides"? I've said it several times now.

1 Q That is what you're referring to, "hand at his  
2 side", correct?

3 A It looks like it's at his side to me.

4 Q Thank you. And what's the time sequence on that?

5 MR. LUNN: 3:29.

6 MR. HIRA: Keep going to 3:32, please.

7 Q And tell us what happens to that hand right there,  
8 sir.

9 MR. HIRA: Stop.

10

11 (VIDEO STOPPED)

12

13 A He raised it. He's beginning to now interact with  
14 the police. The contact member has made contact  
15 with him. He's beginning -- I'm making  
16 assumptions now. He's beginning to express  
17 himself.

18 Q I'm going to suggest to you that the hand would --  
19 one hand was at his side the entire time sequence  
20 from 3:00 to 3:32 for a moment, and went back up  
21 to wipe his brow. Would you agree with me?

22 A Mr. Hira, I don't care how long it was, and I  
23 didn't say how long it was in my report. What I  
24 said was his hands were at his sides. A hand -- I  
25 couldn't see the other one -- is at his side. In  
26 this business, it is small movements like that,  
27 that mean a lot. Influencing somebody happens by  
28 degrees, Mr. Hira. Not like this (snapping  
29 fingers). We don't talk about 180-degree turns  
30 here. We're talking about influencing people by  
31 degrees.

32 The presence and communication of those  
33 members at that time had an effect on Robert  
34 Dziekanski. This situation was in hand at this  
35 point. All we need to do now, Mr. Hira, is carry  
36 out our basic training.

37 Q Sir --

38 A And if we need to apprehend him, if we need to  
39 direct him anywhere, we've increased the chances  
40 that that's going to happen because we've shown  
41 him willing to listen, understanding, worthy of  
42 his respect, non-threatening. This, momentarily  
43 here, becomes oppositional, antagonistic,  
44 combative and goes downhill.

45 Q Sir --

46 A Yes.

47 Q You have written at page 3 of the report:

1  
2           Mr. Dziekanski dropped his hands to his sides  
3           and engaged the "contact" member.  
4

5       A     Yes.

6       Q     You'll agree with me that nowhere do you see that  
7           in the video.

8       A     No, I won't agree with you. I see a hand at his  
9           side. I can't see the other hand because there's  
10          something in the way, Mr. Hira. You're splitting  
11          hairs. You're going to drive yourself crazy. The  
12          man's hands were at his sides, and in response to  
13          the police. They did an excellent job to that  
14          point --

15      Q     Now --

16      A     -- even though they vaulted the barrier and  
17          introduced themselves rudely to him.

18      Q     Now, you gave evidence yesterday that you were  
19          following this on the web; that is, the inquiry  
20          phase of this Commission, correct?

21      A     When I had a moment, I would watch it, yes.

22      Q     You gave evidence that you, amongst other things,  
23          followed the evidence of Sergeant Fawcett.

24      A     I did catch some of Sergeant Fawcett's testimony,  
25          yes.

26      Q     And you caught the evidence of Sergeant Gillis --  
27          is that -- sorry, Corporal Gillis.

28      A     Corporal Gillis. He's going to like you. You've  
29          given him a promotion there. I caught some of it.  
30          He -- he came back a couple of times and I didn't  
31          get it all.

32      Q     So who else's evidence did you review for the  
33          purposes of coming here and testifying.

34      A     Are you asking about did I watch on the streaming  
35          video?

36      Q     I'm asking who -- what -- who else's evidence did  
37          you either watch or review?

38      A     I'm confused. We were talking a moment ago about  
39          catching their evidence on the streaming video,  
40          and now we're talking about reviewing printed  
41          evidence? I'm confused, I'm sorry.

42      Q     Let's put it another way.

43      A     Okay.

44      Q     I'm trying to find out from you apart from those  
45          matters that are listed at the bottom of page 1  
46          and the top of page 2 of your report, the four  
47          bulleted matters, what other things did you read

1 or watch regarding the inquiry phase of this  
2 Commission prior to coming here to give evidence.  
3 THE COMMISSIONER: I never said a word, but that's  
4 quite different from your first question.  
5 MR. HIRA: It certainly is because precision was  
6 brought to bear by the witness. I have to be  
7 precise when that happens.  
8 THE COMMISSIONER: Well, you see, you started out by  
9 saying what did you watch. Then you changed it,  
10 you upped it to what did you review, which is two  
11 totally different concepts.  
12 MR. HIRA: I totally agree. But as a cross-examiner,  
13 you know, these things are not all mapped out.  
14 You sometimes get your words wrong.  
15 Q So getting back to my question.  
16 A I didn't -- the only thing that we could add to  
17 this would be those occasions when I had a moment  
18 and could watch the proceedings on the live  
19 streaming video.  
20 Q So give me the names --  
21 A Oh, gosh, I couldn't --  
22 Q -- of those --  
23 A -- give you all of that. The -- my -- in our  
24 office setup, my wife has a laptop and -- there  
25 and I'm -- I have patients coming and going, I'm  
26 walking back and forth. When I have five minutes  
27 I could stop and have a peek. I couldn't tell you  
28 all of the peeks that I took, Mr. Hira.  
29 Q And of course those peeks form part of the factual  
30 foundation of your evidence, is that fair to say?  
31 A Of this evidence?  
32 Q Your evidence of --  
33 A Of my report?  
34 Q Not only the report, but also the evidence that  
35 you've given over the last two days.  
36 A That's correct. I was fortunate enough to be  
37 peeking when Sergeant Fawcett said some things  
38 that I've noted here on the margins of my report,  
39 and -- although I can't think of anything else  
40 that influenced me.  
41 Q Now, you talked about Sergeant Fawcett's, Corporal  
42 Gillis. Who else?  
43 A Who else did I watch?  
44 Q Mm-hmm, watch or read.  
45 A I read nothing more. I've told you that all I  
46 read were the binders that were provided for me  
47 and the circumstances documents, and I watched the

1 videos of -- that we just watched here, the  
2 Pritchard video with the audio, the enhanced  
3 audio. And then I thought we had come to an  
4 accord, you and I, around I have had many peeks  
5 passing through the office at the live streaming  
6 video that was on, but I couldn't possibly tell  
7 you when and who all those peeks were at.

8 Q Okay. Now, up to this pointing the video --  
9 MR. HIRA: And where are we at, Mr. Lunn?  
10 MR. LUNN: At 3:30.  
11 MR. HIRA:

12 Q As I understand your evidence, the officers are  
13 acting appropriately; is that correct?  
14 A Yes, I -- mostly I like what they're doing here up  
15 to this point, yup. I didn't like the vaulting of  
16 the barrier and I don't like that "bud" business.  
17 Q Now, my client, Officer Millington, you're aware,  
18 was trying to communicate using sign language,  
19 correct?  
20 A Yes, I think Mr. Harris and I discussed that  
21 yesterday.  
22 Q And that was appropriate?  
23 A Yes, it was.  
24 Q So I'm just trying to understand in terms of  
25 conduct prior to picking up the stapler, is there  
26 anything in your view that my client did wrong?  
27 A Now, I have -- I've got to admit to you as I  
28 admitted to -- I think it was Mr. Butcher -- I  
29 understand your interest here, Mr. Hira. However,  
30 it's difficult for me to damn some of these  
31 members and absolve others. I understand your  
32 interest. That's very difficult for me to do, and  
33 I'm reflecting back on a question Mr. Kosteckyj  
34 asked me yesterday about my -- how difficult it is  
35 for me to come here and be critical of the RCMP.  
36 Sir, I can't do that.  
37 Q Sir, I'm asking you the question again. In your  
38 opinion --  
39 A Yes.  
40 Q -- prior to the point of Mr. Dziekanski picking up  
41 the stapler, is there anything that my client did  
42 wrong?  
43 A They all did something wrong, Mr. Hira. When we  
44 get to the luggage here, it starts going downhill.  
45 They undo all the good work they've done to this  
46 point. It now becomes combative, antagonistic and  
47 oppositional and they all contributed to it. It

1           went downhill from there and ended in a tragedy.

2       Q     Is that your complete answer to my question?

3       A     That's my complete answer, Mr. Hira.

4       Q     You're unable to break it down any further as you  
5            have done in your report.

6       A     I'm not going to break it down any further.

7       MR. HIRA: Mr. Commissioner, I'd like the Code of  
8            Conduct marked as an exhibit for identification as  
9            it will be referred to.

10      THE COMMISSIONER: I'm very disturbed about the reading  
11           of 3.11 to this witness. Cross-examination can be  
12           far-reaching but for questions to be put, as you  
13           well know, it's professional to have some  
14           background to make it relevant. Now, what  
15           relevance is it, sir, counsel, that you're  
16           speaking about:

17

18                   A registrant must provide professional  
19                   opinions and interventions in an objective  
20                   and unbiased manner.

21

22                   What's your point?

23      MR. HIRA: My point is a very simple point. This  
24           opinion is not unbiased. His bias was  
25           demonstrated as early as his testimony given on  
26           May 13, 2008.

27      THE COMMISSIONER: Are you --

28      MR. HIRA: It's further going to be my position that he  
29           should not have been retained given the bias.

30      THE COMMISSIONER: You better put that to him. See,  
31           that's my point. It's totally unfair to make  
32           those kind of allegations without putting to the  
33           doctor.

34      MR. HIRA: And I'm happy to put it. I did not want to  
35           embarrass the doctor, because frankly, those are  
36           matter -- those are matters for argument.

37      THE COMMISSIONER: They're not matters of argument  
38           without putting it to the doctor. Yesterday I  
39           cited to you the **Brown** case, and that's what it  
40           says.

41      MR. HIRA: Well, I appreciate the **Brown** case and the  
42           criminal equivalent of **R. v. Dick** (phonetic). And  
43           I will put it to the doctor, but -- and I'll leave  
44           my position as it is on the record with respect to  
45           the other matter.

46      Q     Sir.

47      A     Yes, Mr. Hira.

1 Q Regarding item 3.13 --

2 A Okay. Stand by one -- here. I've got to find  
3 this paper again. I don't -- I've lost the paper.

4 Q Here, I'll give you --

5 A You go ahead, Mr. Hira. Don't leave your  
6 microphone, you're going to cause all kinds of  
7 problems. Go ahead and I'll take your word for  
8 it.

9 Thank you, Mr. Lunn. I have one, Mr. Hira.  
10 I have it.

11 Q Sir, I'm going to suggest to you that you had made  
12 up your mind regarding the conduct of these four  
13 officers as early as May 13, 2008, as being wrong,  
14 inappropriate and embarrassing.

15 A I formed an opinion about their behaviour, their  
16 intervention here and I'm taking your word on the  
17 date, 'cause I've told you that I don't remember  
18 the dates, but I formed an opinion at that time  
19 and I'll also add, Mr. Hira, that I'm a member in  
20 good standing of the British Columbia College of  
21 Psychologists who know what I have said and that I  
22 am here, at both of these phases of the inquiry  
23 and if you think I'm misrepresenting myself, I  
24 suggest you make a complaint to the College, and  
25 they'll turf me in an instant if they agree with  
26 you.

27 Q Sir, you formed an opinion that they had acted  
28 inappropriately and wrongly when you testified on  
29 May the 13th, 2008. Would you agree with me?

30 A Well, I'm having a little bit of a difficult --  
31 what -- what else are we going to put into an  
32 opinion if it's not saying something beneficial or  
33 you're agreeing with something that somebody does  
34 or you're disagreeing with it? What use would an  
35 opinion be, Mr. Hira? I formed a professional  
36 opinion, and of course I do not agree with some of  
37 this behaviour that I see before me. I don't  
38 believe that my opinion is beyond my education, my  
39 experience, my expertise. And if you think it is,  
40 you make a complaint to the College who knows full  
41 well where I am and what I'm saying, and I  
42 guarantee you, if I've extended myself, they'll  
43 turf me in an instant.

44 Q Sir, I'm going to suggest that after having formed  
45 the opinion -- and I'm going to suggest that the  
46 opinion was that they acted inappropriately and  
47 wrongly -- that you wrote the report.

1 A Well, wouldn't one write a report after one forms  
2 an opinion? It would be difficult to write a  
3 report before one forms an opinion. Yes, I formed  
4 an opinion, and it had to have some sort of  
5 comment in it, Mr. Hira, as to whether I agreed  
6 with what they were doing or I disagreed with what  
7 they were doing. I don't -- my report would have  
8 been useless if I didn't provide a professional  
9 opinion in it.

10 Q And you formed that opinion before you received  
11 the materials from the Commission, that is, before  
12 March 30, 2009.

13 A I had formed a partial opinion based on the  
14 viewing of the video that we have agreed was  
15 released to the media and I saw a number of times  
16 in that time period, and yeah, I had a partial  
17 opinion formed, certainly.

18 Q Well, it was more than a partial opinion. You  
19 found the behaviour embarrassing.

20 A Yes. Some of what I saw -- yeah, and I was also  
21 referring to the Kamloops incident. I think  
22 that's what triggered the embarrassing part. The  
23 idea of tasing a sick old man in a hospital bed,  
24 I could -- it just -- it just didn't sit right  
25 with me. I think the embarrassing comment, Mr.  
26 Hira, came more from that than from this.

27 Q And I put it to you, sir, that your report is not  
28 unbiased. It's biased by the opinion that you  
29 formed before you received materials and  
30 instructions from Commission counsel.

31 A That may be your opinion, Mr. Hira, but not mine.  
32 I formed an opinion based upon what was going on  
33 around me at the time, the material that I had  
34 and, as I say, my awareness of the -- and I -- let  
35 me go back to an exchange you and I had earlier.  
36 That's not my opinion. My opinion appears in the  
37 last two or three sentences. This business about  
38 embarrassment, I say here:

39  
40 A few moments ago I mentioned being  
41 embarrassed...

42  
43 Blah, blah, blah. That's not my opinion. That's  
44 not an opinion. It's a comment I made a few  
45 moments ago, and we'd have to go back in the  
46 transcript to find out what it is.

47 My opinion is this is not the best of

Michael Charles Webster

Cross-exam by Mr. Beaubier (for Constable Gerry Rundel)

1 Canadian policing, and I don't think I'm the only  
2 one that holds that opinion. I think,  
3 conservatively, three-quarters of the country  
4 holds the same opinion, Mr. Hira.

5 MR. HIRA: I'd ask that that be marked for  
6 identification.

7 THE COMMISSIONER: Yes, it'll be so marked.

8 MR. HIRA: Thank you. Those are my questions, Doctor.

9 A Thank you, Mr. Hira.

10 MR. REGISTRAR: It'll be marked as item V for  
11 identification.

12

13 EXHIBIT V FOR IDENTIFICATION: Excerpt from  
14 Code of Ethics of College of Psychologists of  
15 British Columbia

16

17 CROSS-EXAMINATION BY MR. BEAUBIER ON BEHALF OF  
18 CONSTABLE GERRY RUNDEL:

19

20 Q Dr. Webster, my name is Ted Beaubier. I'm counsel  
21 for Officer Rundel.

22 A Good afternoon, Mr. Beaubier, we're now into the  
23 afternoon.

24 Q We are. Do you know which of the four officers is  
25 Officer Rundel?

26 A I do. If I'm not mistaken, he would be the first  
27 one to give evidence?

28 Q That's correct.

29 A Yes, I remember him.

30 Q All right. An in relation to --

31 A And I also remember him because I think he's from  
32 the Island. I think he had a fish farm on the  
33 Island.

34 Q That's correct.

35 A And I'm from the Island so --

36 Q That's correct.

37 A -- I remember him.

38 Q And do you have a recollection of what he did and  
39 the sequence that he did things in with respect to  
40 this incident? Is that a "yes"?

41 A No, it's not. It's a "give-me-a-moment". I used  
42 to, but over the last couple of days here talking  
43 to your learned friends, I've kind of -- this is  
44 all --

45 Q Well, I have --

46 A -- getting a bit foggy now, but --

47 Q I appreciate that. I appreciate that. There's

1           been a lot of questions and a lot of people have  
2           been involved in terms of the officers and what  
3           they did or didn't do.

4       MR. BEAUBIER:   So, Mr. Lunn, perhaps you could put that  
5           video back on.  We'll just identify Mr. -- Officer  
6           Rundel --

7       A       Yes.

8       MR. BEAUBIER:   -- so we know who we're talking about.

9       A       Yes.  And you heard me, Mr. Beaubier, when I -- I  
10           mentioned this to Mr. Butcher and I mentioned it  
11           to Mr. Hira.  This part is very difficult.  I  
12           understand your interest here, and it's very  
13           difficult for me to damn some members and absolve  
14           others or assign -- that's not my job, I don't  
15           think, Mr. Beaubier.

16       Q       No.

17       A       I think that would be the job of the Commission  
18           here, if that's --

19       Q       Of course, no.

20       A       -- even an objective.

21       Q       I appreciate your hesitancy to go there, but  
22           that's a great deal of what this Commission is all  
23           about.  There -- our clients, respectively, the  
24           four officers have been extensively cross-examined  
25           on their -- what they did or they didn't do or  
26           their lack thereof.  So I think it's a fair  
27           question both on behalf of Mr. Hira and myself,  
28           Mr. Butcher and Mr. --

29       A       I'll -- I'll try my best.  I ask you to recognize  
30           my discomfort.

31       Q       I very much appreciate it.

32       A       I'm not attempting to be oppositional.

33       Q       I very much appreciate that.

34

35                   (VIDEO BEING PLAYED)

36

37       MR. BEAUBIER:

38       Q       Now, the officer we see here is Officer Bentley.

39       A       Bentley, right, yeah.

40       MR. LUNN:   Shall I just run that forward?

41       MR. BEAUBIER:  Yeah, just forward till the three  
42           officers come into viewing.  Back it up just a  
43           touch.

44       A       There he is?

45       Q       Yes.  Now, it's -- Officer Rundel is the one  
46           that's closest to the screen.

47       MR. BEAUBIER:  Okay.  Play it forward.  All right.

1 Stop it there.

2

3

(VIDEO STOPPED)

4

5

MR. BEAUBIER:

6

Q Now, you'll see Officer Rundel is again the -- the three officers are there. You have Millington on the right, Bentley in the middle and Officer Rundel to the left.

7

8

A Yeah. Is that you, Mr. Lunn, with the arrow?

9

MR. LUNN: Yes.

10

A Yes, okay. Yes, Mr. Lunn is pointing out --

11

MR. BEAUBIER: Yes, thank you.

12

A -- Officer Rundel.

13

Q Now, if you could address your understanding of the term "contact officer". What's your understanding of that term?

14

A Thank you, Mr. Giles. The contact officer would be the officer that makes primary contact. And sometimes -- I think you've had evidence, police people have come and talked to you, he now becomes the lead investigator. Other people drop back into a cover role. The -- the term "cover role" comes from an officer safety perspective, right?

15

Q Right.

16

A He's going to cover his partner here while his partner makes contact with the subject of complaint.

17

Q So in this case, the contact officer set the tone. Would you agree with that?

18

A The individual who is first speaking, yeah, would be -- yes, he's setting some of the tone, but all of the members would be contributing to this tone --

19

Q Certainly.

20

A -- because of -- I mean, I'm sure Mr. -- and I'm making assumptions here, but I'm sure Mr. Dziekanski has some awareness of the other members, their positioning, their body posture and so on. But -- but a large degree of the tone would be set by the contact officer.

21

Q All right. So we have actually two people that -- two officers that make this initial conduct if we can -- contact, if we can put it that way. That would be Officer Millington and Officer Bentley. You'd agree with that?

22

A They're the first two to --

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- 1 Q Right.
- 2 A -- through the door --
- 3 Q There's a verbal -- there's a verbal exchange
- 4 between Mr. Dziekanski and those two officers.
- 5 A Correct.
- 6 Q And from what you have seen in the video and
- 7 you've read in the transcripts and given testimony
- 8 here today, you're not critical of that initial
- 9 contact.
- 10 A No, I -- I think -- you know how in a -- in games
- 11 there's a turning point.
- 12 Q Yes.
- 13 A In a hockey game -- we've got hockey on now. In
- 14 every hockey game, there's a turning point, right,
- 15 where we know what's going to happen here. I
- 16 don't have a big problem with their behaviour up
- 17 until the turning point. The turning point to me
- 18 seems to be around the luggage here, and at -- at
- 19 this point here, I made some criticisms about
- 20 hopping over the barrier. That's inconsistent
- 21 with this idea of coming in low and slow. If we
- 22 were to put ourselves in Mr. Dziekanski's shoes,
- 23 you know, we question how we would view that. We
- 24 question how we are comporting ourselves as we
- 25 come through the door and so on.
- 26 The verbal exchange about the "bud" business,
- 27 I've talked about that.
- 28 Q Right.
- 29 A But, yeah, I don't have a big complaint about --
- 30 Q Overall --
- 31 A -- till we get to the turning point.
- 32 Q All right. So I've asked you also to -- at this
- 33 point, to comment somewhat on the cover -- cover
- 34 man or cover officer and what that term means and
- 35 what a cover officer is expected to do.
- 36 A Mm-hmm. Well, now, you see, what we need to
- 37 remember here is these are not typical calls.
- 38 There is a difference, and they would understand
- 39 this, Mr. Beaubier, from their training. There is
- 40 a difference between the regular general duty fare
- 41 that we get and an emotional crisis. They're
- 42 different.
- 43 In a situation like this, the contact --
- 44 there would be a contact officer. He's going to
- 45 move forward --
- 46 Q Right.
- 47 A -- and make contact with our subject. And the

1 understanding there is that the subject is going  
2 to be able to interact -- our objective is to  
3 create a safe non-threatening environment, to  
4 create a working alliance with this individual.  
5 The contact officer wants to create a working  
6 alliance with this individual so that we can begin  
7 to get the cover -- I'm coming to your question.  
8 Q Yeah.  
9 A The cover officer or officers are now backing him  
10 up an call like this.  
11 Q Exactly. Exactly.  
12 A So he's interacting with an individual who is  
13 hyperaroused, he's emotionally distraught.  
14 Q Let's assume that I take no issue with you on that  
15 point. But the role of the cover officer --  
16 A Yes.  
17 Q You appreciate that when the officers arrive, they  
18 have no idea completely with what they're going to  
19 be facing here.  
20 A Well --  
21 Q I mean they've received information via the radio  
22 transmission.  
23 A Yes.  
24 Q They've come through the meet-and-greet area where  
25 the public is -- they're not avoiding him, but  
26 there's some tension there, there seems to be.  
27 A Yes.  
28 Q And you have the two security officers walking  
29 back and forth.  
30 A Yes.  
31 Q They see some damaged property, so they're not  
32 quite sure of what it is they're facing. You'd  
33 agree with that?  
34 A Okay, now, the airport security officers, or the  
35 RCMP members?  
36 Q No, our officers, the four officers.  
37 A Yeah, I would agree with that, but my  
38 understanding is that, now, your -- I think your  
39 began your question by suggesting that only the  
40 cover officers would have imprecise information?  
41 Q No.  
42 A I would -- okay, I misunderstood you.  
43 Q Okay.  
44 A All of them would have -- I understand they came  
45 in separate vehicles, separate police cars.  
46 Q Right.  
47 A They had their radios on. They're listening to

1           this business. They would have, all of them, had  
2           some soft data --

3       Q     Of course.

4       A     -- about what they're going to encounter at this  
5           point.

6       Q     Yes. So the cover -- the purpose of the cover  
7           officer - just correct me if I'm wrong - is to be  
8           there to protect the situation, and particularly  
9           the two officers in this case that have made  
10          contact, in case something goes wrong.

11       A     Yes.

12       Q     Correct?

13       A     Yeah, now it suddenly occurs to me I need to  
14           qualify myself here. I'm not a policeman,  
15           remember? You're not -- I'm a psychologist. I'm  
16           a police psychologist. You'd probably get more  
17           acceptable or professional answers on this from  
18           your use-of-force experts or police trainers.  
19           However, I'll answer your question.

20       Q     You're familiar with the reason --

21       A     Very familiar.

22       Q     -- for the question.

23       A     Very familiar, yes. But as I begin to answer  
24           this, in the back of my mind I can see police  
25           people all across the country cringing now because  
26           I'm going to speak, right, especially RCMP  
27           officers across the country.

28            Anyway -- so I've babbled so much I forgot  
29           the question. Sorry.

30       Q     I've forgotten the question myself. So what I was  
31           asking was that the situation, the four  
32           officers --

33       A     Right.

34       Q     -- didn't have complete information at that point.

35       A     Right.

36       Q     The role of the cover officer is to --

37       A     Yes.

38       Q     -- protect the two officers in this case that have  
39           made contact.

40       A     There we go.

41       Q     In case something goes wrong, correct?

42       A     Okay. Correct, but remember, now, I qualified  
43           this and said this is a different call. Yes, he's  
44           there or they --

45       Q     But the officers -- excuse me, but the officers  
46           wouldn't know that at that point, would they?

47       A     The cover officers wouldn't know what, Mr.

1 Beaubier?

2 Q The four officers wouldn't know that this is a  
3 different call.

4 A Oh, yeah. Oh, they would. They -- I think, and I  
5 could be corrected, I think they told us in their  
6 testimony this was highly unusual. We had not  
7 heard about a person doing this and that ---

8 Q All the more reason to have a cover officer?

9 A Yes, yes. They would -- I think their basic  
10 training -- and I don't -- I don't profess to have  
11 a great knowledge of their applied police sciences  
12 training. This is where they would have learned  
13 about contact and cover or lead investigator.  
14 But, yes, the -- all coming to the scene, same  
15 amount of information, somebody's going to step  
16 forward and be the contact. The cover is going to  
17 drop back partially to protect, but in this kind  
18 of a call, partially to -- he's also listening to  
19 this exchange going on between --

20 Q Yes.

21 A -- these two, the contact officer and the subject,  
22 and he might coach the contact officer, because  
23 it's difficult for the contact officer to be in  
24 such a highly aroused situation. He might miss  
25 certain cues, and so now his cover officer gives  
26 him little prompts and so on.

27 Q Right. So if I understood your -- some of the  
28 answers that you gave to Mr. Hira in his previous  
29 examination, you felt that to that point, before  
30 -- just prior to the -- being directed to the  
31 luggage, what these four officers had done was  
32 excellent, if I recall you correctly.

33 A Yeah, I don't have a lot of -- yeah, I liked it,  
34 it was good, yeah.

35 Q So --

36 A And you understand why I'm saying that, and Mr.  
37 Hira took great exception to this, and we needed  
38 to put a time length on the hands down by the  
39 side, but because of the way he dropped the hand  
40 to his side, he -- I think he came forward, began  
41 -- it looked like he was expressing himself to the  
42 policeman. Very different than what had gone on  
43 before. So to answer your question, to confirm  
44 what you're saying, that yellow stripe on those  
45 pants, those dark blue pants, had done its job.  
46 Presence and communication, and now we've --

47 Q Again, let's assume that we accept that.

1           Something triggered him off.  
2       A     Yes.  
3       Q     And would you agree that from that point, things  
4           went very quickly, within seconds.  
5       A     They progressed --  
6       Q     I think it went from your perspective, and perhaps  
7           from the police perspective, very wrong. Do you  
8           agree with that?  
9       A     I do.  
10      Q     All right. So now I put to you this: From your  
11           observation, there was no time for the cover  
12           officer to advise or direct the contact officers  
13           at that point. Would you agree with that?  
14      A     As things unfolded, I agree with you, yes. But I  
15           -- I feel compelled to emphasize my point. We  
16           didn't need to get that far. We didn't need to  
17           have that turning point at the luggage, Mr.  
18           Beaubier, because they are trained in these  
19           principles.  
20      Q     I'm directing these questions on behalf of Officer  
21           Rundel.  
22      A     Who would have also had the training.  
23      Q     Of course. But he didn't have the time, did he?  
24           Given the events as they unfolded, he didn't have  
25           the time.  
26      A     Correct.  
27      Q     Now, given the events that we see in that video  
28           where Mr. Dziekanski, for whatever reason, turned  
29           and grabbed what we describe as weapon, changed  
30           his location now to in front of the console, the  
31           actions of the officers - in particular Officer  
32           Rundel is the one I'm addressing - changed his  
33           position from standing back from Mr. Dziekanski to  
34           arc around to the front of him.  
35      A     Okay. Now, you'd need to remind me. Is he on the  
36           -- as they're facing Mr. Dziekanski, is officer  
37           Rundel on the far left of that arc?  
38      Q     Officer Bentley is on the far left.  
39      A     Far left, and then...?  
40      Q     Officer Rundel is --  
41      A     And then Officer Rundel?  
42      Q     Immediately in front of Mr. Dziekanski or almost  
43           in front of him approximately eight to six feet  
44           away. Now, would you agree with me that that  
45           would be -- given the circumstances, and setting  
46           the reason aside -- given the circumstances, that  
47           was proper action for a cover officer to take.

Michael Charles Webster

Cross-exam by Mr. Beaubier (for Constable Gerry Rundel)

Re-exam by Mr. Vertlieb

- 1 A To -- to back up someone, or as they call it,  
2 tactically reposition --
- 3 Q Correct.
- 4 A -- themselves?
- 5 Q Correct.
- 6 A Yes, I think so, yes.
- 7 Q So in reviewing the facts that -- as you saw them,  
8 the video, the statements of the RCMP, the  
9 transcripts, is there anything that you can see in  
10 that -- or bring to this Commission any criticism  
11 of the cover officer, in this case Officer Rundel?
- 12 A No, there isn't. I would -- in my mind, I want to  
13 go back to the turning point at the luggage and I  
14 can't -- I can't see him --
- 15 Q Well, that's a whole different issue.
- 16 A I can't see him back there. I don't -- I don't  
17 know what he said, I don't know how he handled  
18 himself. I don't know how he comported himself,  
19 what his body posture was like. I don't know the  
20 tone of his voice. I don't know what he was doing  
21 with his eyes so --
- 22 Q But you did see the video. You've seen -- had the  
23 opportunity to --
- 24 A But what I'm saying is I can't see that in the  
25 video.
- 26 Q All right.
- 27 A I mean, this is the famous pillar --
- 28 Q But based on -- based on what you did see --
- 29 A -- is in the way. Yes, based on what I --
- 30 Q Thank you, sir.
- 31 A -- did see.
- 32 MR. BEAUBIER: Thank you, sir. Thank you, Mr.  
33 Commissioner.
- 34 MR. VERTLIEB: It appears everybody is finished. I  
35 just have a couple of quick questions.
- 36
- 37 RE-EXAMINATION BY MR. VERTLIEB:
- 38
- 39 Q Dr. Webster, we all know that the first phase last  
40 year wasn't to discuss Mr. Dziekanski's case so  
41 I'm not going to go into that with you.
- 42 A Okay.
- 43 Q But you were sent binders of evidence by the  
44 Commission to review, and you've mentioned that a  
45 number of times. Were you asked if you were  
46 willing and able to keep an open mind about the  
47 opinion you would give?

1 A I was, yes.

2 Q And did you do that?

3 A Yes, I think I did. Yes.

4 MR. VERTLIEB: Thank you.

5 THE COMMISSIONER: Doctor, thank you very much. Your  
6 evidence has been very helpful, it's been very  
7 clear. Thank you for your efforts.

8 A Thank you, Mr. Commissioner. Thank you very much.

9

10 (WITNESS EXCUSED)

11

12 THE COMMISSIONER: I think maybe we'll have an hour for  
13 lunch. We'll break until 1:30.

14 MR. REGISTRAR: The hearing is now adjourned until  
15 1:30.

16

17 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

18 (PROCEEDINGS RECONVENED)

19

20 MR. VERTLIEB: Just before we start Dr. Chambers,  
21 there's a witness name Fredericks, and Mr.  
22 Kosteckyj, I'm told, wants to argue admissibility.  
23 I expect it'll take some considerable time. Mr.  
24 Butcher doesn't want to do it today, and of course  
25 we don't want to do it today or even tomorrow  
26 until Dr. Chambers is finished, because he's been  
27 here a number of times and we just can't have him  
28 back and forth.

29 Mr. Butcher did ask if we could decide when  
30 we could have that argument on admissibility of  
31 Mr. Fredericks. I think that discussion might  
32 take a minute. So I thought we'd just do it right  
33 now rather bring --

34 THE COMMISSIONER: When do you suggest?

35 MR. BUTCHER: Tomorrow.

36 THE COMMISSIONER: After this witness?

37 MR. BUTCHER: Certainly. This is the problem. This  
38 witness is available this Friday. We were told  
39 that we were sitting on Friday, and he's next  
40 available two weeks Friday, at the end of the week  
41 when we would have been hearing submissions. He  
42 lives in Spokane, so I have to make arrangements  
43 to bring him here.

44 I think that what counsel seem to be agreeing  
45 to is that we make arguments with respect to  
46 admissibility tomorrow, and that his evidence be  
47 heard on the 29th. So given that that would

1 extend the evidentiary hearing of this matter, I  
2 thought I should raise that with you.  
3 MR. VERTLIEB: That's not an issue, Mr. Commissioner,  
4 except I just want to remind everyone we have Dr.  
5 Kerr by telephone tomorrow afternoon, and we had  
6 Dr. Janke as well tomorrow afternoon. So Mr. -- I  
7 know Mr. Butcher's, you know, doing the best  
8 obviously for his interests, but I want to mention  
9 that as well.  
10 MR. BUTCHER: I'm happy to do it next week if that's  
11 more convenient.  
12 THE COMMISSIONER: You mean the calling of the witness  
13 next week?  
14 MR. BUTCHER: No, the witness is not available next  
15 week. Making the argument on admissibility. I  
16 just -- I'm aware that at the moment we aren't  
17 scheduled to sit next week.  
18 MR. VERTLIEB: So maybe what we can do -- just hearing  
19 this, I thought Mr. Butcher might be a bit  
20 quicker. We want to get Dr. Chambers on. Our  
21 concern in a bigger picture is that nothing happen  
22 to change the time of the closings in June that --  
23 you've already extended that time and we don't  
24 want that to be changed again because it -- for a  
25 whole bunch of reasons that are important and  
26 obvious to everybody.  
27 MR. BUTCHER: If he's called on the 29th, I don't  
28 anticipate any difficulty with meeting that  
29 deadline.  
30 THE COMMISSIONER: What have you to say to the 29th?  
31 That's a Friday, isn't it?  
32 MR. VERTLIEB: Yes, it is.  
33 MR. BUTCHER: Yes.  
34 MR. KOSTECKYJ: It's premature for me to agree that I  
35 can be ready to examine this witness on the 29th.  
36 I got this report yesterday. It's a technical  
37 report. It was sent out apparently by e-mail the  
38 night before. For me to even get instruction or  
39 to be able to even track somebody down to give me  
40 some advice on how I would deal with this issue is  
41 going to take some time, and hopefully, I can  
42 advise Commission next week or in the next few  
43 days about whether the 29th works, but I can't  
44 agree to that absolutely today because I just  
45 don't know enough about the report.  
46 MR. VERTLIEB: Maybe we should just -- Mr.  
47 Commissioner, I regret even raising it now with

1 Dr. Chambers waiting. My error, I'm sorry. Maybe  
2 we could just revisit this tomorrow and see where  
3 we're at.

4 THE COMMISSIONER: Well, we certainly won't deal with  
5 it today. I do want to get through Dr. Chambers.  
6 You've identified some problems, so let's move on.

7 MR. VERTLIEB: Thank you. Thanks, Mr. Commissioner.  
8 Then, Dr. Chambers, will you please come forward.

9 THE REGISTRAR: Good afternoon, sir. Before you're  
10 seated, do you wish to be sworn or affirmed?  
11 Sworn is on the Bible --

12 THE WITNESS: Sworn.

13 THE REGISTRAR: Affirmed?

14 THE WITNESS: Sworn.

15 THE REGISTRAR: Sworn. Place your right hand on the  
16 Bible, please.

17

18 GORDON KEITH CHAMBERS, a  
19 witness, sworn.  
20

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

22 A Gordon Keith Chambers.

23 THE REGISTRAR: Thank you. You may be seated.  
24 Counsel.

25 MR. VERTLIEB: Thank you. Dr. Chambers, Mr.  
26 Commissioner, has expertise as an emergency room  
27 and family physician. He was a family physician  
28 for many years. He has expertise in the field of  
29 clinical epidemiology, with obviously an interest  
30 in health care, and I am tendering him as an  
31 expert in those two areas, and I have his  
32 *curriculum vitae* and his report. And I am not  
33 sure if there is any issue about his  
34 qualifications. I didn't anticipate any, but  
35 there may be.

36 THE COMMISSIONER: All right.

37 MR. VERTLIEB: Thank you.

38 THE COMMISSIONER: He will be accepted as an expert as  
39 defined, and we will have the report and his  
40 *curriculum vitae* marked as the next exhibit.

41 MR. VERTLIEB: Thank you.

42 THE REGISTRAR: The report will be marked as Exhibit  
43 148, and the *c.v.* will be marked as 149. Thank  
44 you.  
45

46 EXHIBIT 148: Dr. G.K. Chambers' report

47 EXHIBIT 149: Dr. G.K. Chambers' *c.v.*

1

2

EXAMINATION IN CHIEF BY MR. VERTLIEB:

3

4

Q Dr. Chambers, tell us where and when you obtained your medical degree.

5

6

A I obtained my medical degree in 1973 at the University of British Columbia.

7

8

Q And then for many years you've practised medicine in Vancouver?

9

10

A I did one year of internal medicine, then I went out and practised in Vancouver from about 1975 to '97.

11

12

13

Q You practised as a family physician. You have the certification as a family practitioner?

14

15

A That's correct.

16

17

Q You from time to time would work in emergency context in medicine, emergency room?

18

19

A I started working part time in emergency departments. I did three months in my internal medicine year working in the emergency department of VGH, and helped start the emergency department at Mount St. Joseph Hospital.

20

21

22

Q Now, you then went back to study in the field of clinical epidemiology.

23

24

25

A Yes.

26

27

Q You obtained your Master's in that field in 1990 from UBC?

28

29

A That's correct.

30

31

Q Tell us in a brief way what a clinical

32

33

epidemiologist does.

34

35

A Clinical epidemiology is really the science, if you like, of critically appraising research literature, especially, you know in health interventions, in the healthcare area. And then part and parcel of that is classic epidemiology, which goes along with it, which deals with such issues such as causation and where you find this disease and what causes it.

36

37

38

And to become an epidemiologist is an intensive

39

40

course of study?

41

A It's a Master's degree.

42

43

Q And it's full-time study?

44

45

A I did it part-time.

46

47

Q It took how many years to achieve that

qualification?

A It took me a year and a half.

Q Once you became a clinical epidemiologist by

- 1 training, then what did you do?
- 2 A My first job was as a consultant at Women's and  
3 Children's, and then I shortly after that in 1991  
4 for five years I became Director of the  
5 Undergraduate Program for the University of  
6 British Columbia for the Medical School. And then  
7 in 1995 I went essentially full-time at Vancouver  
8 General as the Assistant Director of the  
9 Epidemiology and Evaluation Unit.
- 10 Q So if somebody in a social setting says, "What  
11 does an epidemiologist do?" what's the -- what's  
12 the answer, in a social context to just help  
13 someone explain what you do.
- 14 A Classic epidemiology, as I said, is really trying  
15 to figure out what causes disease and how it's  
16 distributed in the community. But clinical  
17 epidemiology is really the critical appraisal,  
18 being able to look at medical research literature  
19 and understand it, and put it in context in what  
20 we call a hierarchy of evidence.
- 21 Q Okay.
- 22 A Now, this -- it can also include the design and  
23 conduct of clinical trials, as well. If you know  
24 how to criticize research, then you're probably  
25 pretty good at designing it.
- 26 Q Tell the Commissioner what you were asked to do in  
27 this case.
- 28 A The Commission asked me to give my opinion on  
29 causation surrounding the death of Mr. Dziekanski.
- 30 Q What is it about your training that would allow  
31 you to do this?
- 32 A Basically, from clinical epidemiology it would be  
33 my ability to go and research or critically  
34 appraise the -- the literature that's out there,  
35 then to apply rules of causation of classic  
36 epidemiology, and then last and least, drawing  
37 from my clinical experience.
- 38 Q Tell us, then, the approach that you took to this  
39 case to allow you to give an opinion to the  
40 Commissioner.
- 41 A Initially I just reviewed all the documents,  
42 reports, testimonies and records to try and get a  
43 handle on what had actually happened, the events.  
44 Sort of getting a history, if you like. Then I  
45 went and had a look at the -- and during that  
46 process, I tried to identify the potential risk  
47 factors that might have contributed to the death

- 1 of Mr. Dziekanski. Then I went to the published  
2 research and other documents, and even texts to  
3 try and sort out in some kind of an organized  
4 fashion what I think might have -- what factors --  
5 factor or factors might have contributed to the  
6 death of Mr. Dziekanski.
- 7 Q You have prepared a report for the Commissioner  
8 dated May 4, 2009. Do you deal with your history  
9 as it relates to Mr. Dziekanski's events, starting  
10 at page 2?
- 11 A That's correct.
- 12 Q Okay. I'm not going to take you through the  
13 history. I want to ask you just a couple of  
14 things. At page 2 you talk about Metaprolol, and  
15 you say "low dose", 25 milligrams twice a day.
- 16 A Metaprolol.
- 17 Q I'm sorry, thank you. You say "low dose", and why  
18 do you say that?
- 19 A I think that's an actual quote out of the  
20 translation from Dr. Jablonska. I think the word  
21 "miniscule" is in there somewhere.
- 22 Q Yes, it is. Thank you. I'm not going to, as I  
23 say, take you through your history. Let's then  
24 discuss what you then did in terms of your  
25 expertise. You've covered the history as it  
26 related to this gentleman. Let's go to the  
27 discussion about the risk factors. Tell the  
28 Commissioner, please, how you embarked on that  
29 analysis.
- 30 A Basically what I tried to do was just do a list of  
31 potential risk factors, sort of item generation,  
32 if you like, and then I tried to go through them  
33 and tried to rule out those ones I could, and then  
34 tried to assess the relative value of those ones  
35 that are left. I believe I identified six  
36 potential risk factors.
- 37 Q Just to take us through those risk factors in a  
38 brief way now, and I do intend to be brief with  
39 you, Dr. Chambers, to allow others here to  
40 question you at some length. What were the risk  
41 factors you identified that you wanted to consider  
42 in this case?
- 43 A I think from the records what was identified for  
44 me actually was the potential of delirium tremens;  
45 of excited delirium; pre-existing heart disease  
46 that might have increased the risk of an  
47 arrhythmia; a hyperadrenergic state, for want of a

- 1 better term to describe it, based on the stress of  
2 flight and the nine hours in YVR; then the  
3 physical restraint and the tasing.
- 4 Q Okay. We'll go through those very briefly one-by-  
5 one in a moment.
- 6 Tell us in the big picture what it was that  
7 you concluded was the cause of -- what it was that  
8 was the reason Mr. Dziekanski passed away.
- 9 A It's my opinion that Mr. Dziekanski died from --  
10 an electrical death due to a fatal arrhythmia. We  
11 may never know the exact nature of the arrhythmia.  
12 There was no monitoring at the time. The most  
13 significant contributing risk factors would be the  
14 tasing and the physical restraint.
- 15 Q Why do you say he died of electrical death?
- 16 A That's just a -- I stated in my report, that's a  
17 common term for when the wiring, if you like, in  
18 the heart fails to operate and fails to trigger  
19 effective contractions of the muscle of the heart.  
20 There's a lot of literature out there that shows  
21 when you have an autopsy that really doesn't point  
22 to any other cause of death, then the cause of  
23 death is presumed to be electrical.
- 24 Q At the bottom of page 7, do you have your report  
25 handy? It's been marked as an exhibit.
- 26 A Yes.
- 27 MR. VERTLIEB: Mr. Giles, do you have -- does he have a  
28 copy?
- 29 A I've got a copy.
- 30 MR. VERTLIEB: Thank you.
- 31 Q So turn to the bottom of page 7.
- 32 A Yes.
- 33 Q The subject of arrhythmia relates to electrical  
34 and ultimately electrical death. Do we have that  
35 correctly stated, Dr. Chambers?
- 36 A You're at the bottom of which page?
- 37 Q Seven.
- 38 A Yes.
- 39 Q Okay. You reference in the preceding paragraph an  
40 indication that he was -- he, meaning Mr.  
41 Dziekanski, "was noticed to be blue or cyanotic".  
42 You remember --
- 43 A Yes.
- 44 Q Thank you. So I want you to explain that last  
45 paragraph at page 7 to the Commissioner:  
46 The logical sequence of first developing an  
47 arrhythmia, then going unconscious and later

1           developing cyanosis makes intuitive sense.  
2           This is as opposed to the alternative order  
3           of going unconscious then developing an  
4           arrhythmia.  
5

6           Et cetera. Just take us through --  
7        A    Well, the usual way and the common sense way, if  
8           we understand it, if somebody was standing on a  
9           street corner and there weren't other events going  
10          around and they had a sudden death, you would  
11          expect the first thing to happen would be the  
12          arrhythmia, and that would cause him to lose  
13          consciousness. Then they might start snoring or  
14          turn blue, or whatever would happen after, based  
15          on pump failure.

16          But in this case, when I -- the way I read  
17          through the -- the records, what seems to be  
18          implied is that he -- there was a loss of  
19          consciousness and then the arrhythmia happened  
20          some time after, and that doesn't make intuitive  
21          sense to me. It's not the normal way I would see  
22          it happening.

23        Q    Why doesn't it make intuitive sense?

24        A    Because normally if in the absence of a blow to  
25           the head, or a seizure, or some other cause of  
26           somebody going unconscious, you'd expect the  
27           person that's developed the arrhythmia then go  
28           unconscious. And especially somebody who's lying  
29           on the ground as prone, as we all know if  
30           somebody's about to faint or suffer vasovagal  
31           syncope, the first thing you do is lower their  
32           head or lie them down. Mr. Dziekanski was already  
33           lying down. He was certainly being stimulated by  
34           pain, so it's, in my opinion, it didn't -- the  
35           logical sequence wasn't quite right.

36        Q    So you --

37        A    I can't explain it. It just doesn't -- it's just  
38           not logical.

39        Q    So the arrhythmia is the heart issue which causes  
40           ultimately the loss of consciousness, and then the  
41           failure to have the heart work ultimately results  
42           in the symptom being seen of turning blue.

43        A    Yes. I mean, in this case, I think it's -- I think  
44           we're all fairly certain that he died from an  
45           arrhythmia, and therefore one would expect that to  
46           come before the loss of consciousness.

47        Q    Did you find any other explanation for the loss of

1           consciousness other than arrhythmia on the facts  
2           known to you?

3           A     No.

4           Q     You then go on to the next paragraph and -- page  
5           8, you note that:

6  
7                     However, against this logical sequence of  
8                     events is the testimony that Mr. Dziekanski's  
9                     breathing and pulse were monitored during  
10                    this period.

11  
12          A     That's correct.

13          Q     Just taking the Commissioner to that concept, and  
14                you deal with it in your paragraph, I'm not going  
15                to read your words back to you, what is it you're  
16                saying?

17          A     I'm trying to work through in these two pages sort  
18                of what didn't quite make sense, which is the  
19                logical sequence against the testimony that his  
20                pulse was monitored and he was found to be  
21                breathing for a period of time long after he'd  
22                lost consciousness. So either that's a correct  
23                statement and he was monitored and his breathing  
24                -- and he was breathing and did have a pulse, or  
25                the assessment could have been in error in some  
26                way, either being inadequate or being an incorrect  
27                assessment.

28          Q     Just so we're clear, is it your belief that there  
29                could not have been any pulse or breathing after  
30                the cyanotic evidence is noted?

31          A     It would be highly, highly unlikely.

32          Q     Why?

33          A     The cyanosis is a lack of oxygenation, it takes  
34                time to develop. So you'd have to have  
35                significant pump failure for a period of time  
36                prior to cyanosis developing. And therefore that  
37                would argue that the arrhythmia had started  
38                sometime prior to the cyanosis developing.

39          Q     But against that you're aware of the evidence of a  
40                gentleman named Enchelmaier.

41          A     That's correct.

42          Q     Now, I want to ask you about the assessment of  
43                pulse. You looked at the video and you make a  
44                comment in the second paragraph of page 8:

45  
46                     This assessment of pulse can be viewed on the  
47                     Pritchard video. It lasted only 6 seconds

1                   which is very short period and inadequate, in  
2                   my opinion, to accurately assess Mr.  
3                   Dziekanski's pulse.  
4  
5                   Did you actually time that?  
6           A        Yes.  
7           Q        Tell us about accurately --  
8           A        From the tape.  
9           Q        From the tape.  
10          A        From the Pritchard tape.  
11          Q        Thank you. Tell us about accurately assessing  
12                   pulse. What -- what time does it take, how should  
13                   it be done?  
14          A        In a normal non-stressful environment, you'd  
15                   probably want to take it for at least 30 to 60  
16                   seconds. In a stressful environment such as this,  
17                   you want to be very careful that you're not really  
18                   feeling your own pulse. You want to make sure  
19                   that -- you've got to decide a few things: first  
20                   of all, is this really the pulse of the person  
21                   you're feeling; secondly, you want to be able to  
22                   know is this a normal rhythm or is this an  
23                   abnormal rhythm, and for those things it would --  
24                   and then you want to get some idea of timing. So  
25                   what we sometimes will do is we'll do it for 20  
26                   seconds and multiply by three, that kind of thing.  
27                   But to -- when I say "inadequate" and this is just  
28                   my opinion, I'm not sure how -- how a trained  
29                   physician could in six seconds assure that it was  
30                   -- in a stressful situation, assure that it was  
31                   the person's pulse they were taking, that it was a  
32                   regular pulse, and get some idea of the rate.  
33          Q        Have you seen mistakes on pulse being made even in  
34                   emergency hospital room settings?  
35          A        Yes. It is not uncommon, and I did -- my senior  
36                   research coordinator was a 30-year cardiac nurse,  
37                   and we talked about it, and we both -- we both  
38                   understand it is possible to make a mistake in  
39                   taking somebody's pulse if you're doing it over a  
40                   very short period of time in a stressful position,  
41                   and then sometimes feel your own pulse and think  
42                   it is the other person's. I'm not saying that  
43                   happened in this case, by the way. I'm just  
44                   saying that's -- that six seconds is a very short  
45                   period of time in which to accurately assess  
46                   somebody's pulse.  
47          Q        Now, I wanted to then move to the analysis of the

1 six possible reasons that Mr. Dziekanski could  
2 have died the electrical death you've told us  
3 about. And in no particular order, let's just  
4 start with delirium tremens. And you cover that  
5 at page 11, just for those following along in the  
6 courtroom. Do we gather that you can actually die  
7 from delirium tremens?

8 A If you -- if you read the literature, there is an  
9 increased rate of sudden death associated with  
10 delirium tremens. It's rare but it is quoted.

11 Q Did you eliminate delirium tremens in this case?

12 A Yes.

13 Q Tell us why?

14 A For a couple of reasons. First of all, I spent 20  
15 years as an East Vancouver physician. My practice  
16 was at 17th and Fraser, so I did see clinically  
17 people with DTs. It's -- if you actually see some  
18 people who have had it, you understand it's --  
19 it's a more active issue in terms of the hand  
20 tremor and what's going on than I witnessed in the  
21 video of Mr. Dziekanski.

22 I think the -- if you take the medical  
23 history, the other problem that you have is that  
24 virtually everybody that I'm familiar with, with  
25 DTs, has a long history. Like, you don't just  
26 suddenly first attack. So it's much more common  
27 that somebody would have had a long history, a  
28 medical history of alcoholism, maybe admissions to  
29 hospital, previous DTs. This was absent in this  
30 case, so I think the history argues against it.

31 I think the sequencing is wrong, that  
32 delirium tremens comes on over a period of hours.  
33 And so if you look at the testimony, you find that  
34 this man was calm and cooperative and there's no  
35 evidence of this right up until the last few  
36 minutes before the officers arrived. I think the  
37 sequencing is wrong. It would have come on too  
38 suddenly.

39 And thirdly, if you -- if you compare it with  
40 the DSM-IV criteria. I don't see that there's  
41 enough there to make the diagnosis. Again, the  
42 hand tremors is missing, there's no nausea,  
43 vomiting, there's a bunch of stuff there that I  
44 really don't think fits the picture. So I think  
45 given just looking at the video, the sequencing  
46 and the history, I think it's highly unlikely this  
47 man had DTs.

- 1 Q What about the possibility of him dying from a  
2 sudden cardiac arrest, a heart attack?
- 3 A Sorry, can you repeat that question?
- 4 Q I'm sorry. What about him dying from the sudden  
5 -- of him suddenly having a heart attack?
- 6 A Well, we know he didn't, because we have the  
7 autopsy. His coronary arteries were fine. No  
8 evidence of damage to the heart muscle.
- 9 Q We've heard discussion here from other  
10 professionals about a cardiomyopathy. I think  
11 I've pronounced that properly.
- 12 A Yes.
- 13 Q And tell us, you've turned your mind to that  
14 medical term as it might relate to this case?
- 15 A Yes.
- 16 Q Tell us what you think about that.
- 17 A Well, I think my first comment is I think the  
18 likelihood of a significant cardiomyopathy is low.  
19 If you look at the autopsy results, the width of  
20 the ventricle, left ventricle is 1.3 centimetres,  
21 which is within normal limits. The heart weighed  
22 370 grams, which is within normal limits, I  
23 understand. The microscopic -- I understand at  
24 the end of the day there was no fibrosis or no  
25 microscopic findings consistent with a dilated  
26 cardiomyopathy. And the point here is that  
27 there's different types of cardiomyopathies. In  
28 the dilated one, you would expect to see some  
29 damage to the muscles, that they would stretch,  
30 and you should see that on microscopic. The heart  
31 was apparently visibly dilated, so we're not sure,  
32 I'd have to -- we're not sure whether that's due  
33 to just the act of -- of I think Dr. Kerr may  
34 speak to this, but of the heart being in systole  
35 when he died, or whether there was a mild  
36 cardiomyopathy that was dilated with a normal  
37 microscopic exam. At the end of the day I think  
38 either there was no cardiomyopathy, or if there  
39 was, the risk due to it was very low.
- 40 Q So to this point in the discussion we're having,  
41 let me make sure that I'm tracking this properly.  
42 You've decided in your medical opinion that the  
43 cause of death was electrical.
- 44 A Yes.
- 45 Q You then have been telling us about the possible  
46 ways this could have happened, and you've so far  
47 now eliminated two. You've eliminated the DTs,

1 delirium tremens, and you've eliminated an actual  
2 heart attack, in layman's terms.

3 A That's correct.

4 Q Okay. So we still have left to cover excited  
5 delirium, as that term is sometimes used, the  
6 hyperadrenergic state, the Taser and the physical  
7 restraint.

8 A That's correct.

9 Q Okay. Well, let's then go to this excited  
10 delirium term, a term that you state, you discuss  
11 at page 12 of your report. You discuss the text  
12 by Ross.

13 A Yes.

14 Q Okay. Now, I wanted just to ask you about this  
15 sentence, you say:

16  
17 While this condition is not recognized as a  
18 true condition by many, including the  
19 American Medical Association, there are  
20 proponents for this being a recognized  
21 syndrome.

22  
23 So the question I want to just be clear about with  
24 you is did you bring an open mind to this concept  
25 of excited delirium, regardless of the medical  
26 controversy when you were considering its causal  
27 role, if any, in Mr. Dziekanski's death?

28 A Yes, I did.

29 Q Okay. So tell us what you concluded in the  
30 context of excited delirium as having any role in  
31 this event.

32 A There's a number of issues that are surrounded --  
33 that surround excited delirium. One is it's  
34 difficult to assess because it's not recognized in  
35 the DSM-IV-TR, or the 2000 version. It's not in  
36 the ICD-9, ICD-10 codes. So it hasn't gone  
37 through the -- enough length or enough validation  
38 to be actually nailed down as a diagnosis and  
39 accepted under those conditions. So the problem  
40 with this is that if you actually look at the  
41 current definition of excited delirium, it casts  
42 quite a wide net. And as a clinical  
43 epidemiologist, then I have to worry about the  
44 issue of sensitivity and specificity, and by that  
45 I mean if you cast your net wide enough in terms  
46 of the people that could fit into that group, then  
47 you'd have a very high sensitivity. In other

1 words, anybody -- you'd never miss anybody who had  
2 it. But the problem is the specificity that you  
3 might end up categorizing a whole bunch of people  
4 as excited delirium who don't have it. So that's  
5 an inherent problem with where excited delirium is  
6 now, as becoming a recognized syndrome.

7 Specifically to this -- to this case, though,  
8 if you -- the literature I reviewed, the -- what I  
9 was going to say, the population literature, when  
10 they look at people who have been diagnosed with  
11 this, I think, what, 50 -- over half have coronary  
12 artery disease, 80 percent are high on illicit  
13 drugs. It's typically a young person high on  
14 cocaine. There's a high percentage of people with  
15 severe mental illnesses. When you actually take  
16 the demographics of who's being diagnosed with it,  
17 I don't think Mr. Dziekanski actually fits into  
18 this group demographically: you know, he wasn't  
19 high on drugs; he didn't, as far as we know have a  
20 severe mental illness; there was no evidence of  
21 coronary artery disease, so that makes it more  
22 difficult to classify him as excited delirium.

23 The next step in my thought process was,  
24 okay, so it's unlikely. Well, let's go and look  
25 at this -- the common presenting symptoms as  
26 listed for excited delirium. And, you know, when  
27 I read them in the book by Ross, which is really  
28 what I'm referring to, I don't think he -- in my  
29 opinion, he doesn't fit that. You know, we're  
30 talking about violent behaviour, people jumping  
31 through windows. We're talking about screaming  
32 and shouting and, you know, absolutely  
33 uncontrolled by pain. And so even his symptoms, I  
34 don't think, quite fit with the diagnosis. So I'm  
35 worried about the specificity, given the disease,  
36 of the fact of misclassification. I don't think  
37 he fits it symptom-wise and his demographics are  
38 wrong.

39 Q So in the result you do not feel excited delirium  
40 has any role in this event to explain it?

41 A No, I don't.

42 Q Okay. All right. So we've eliminated three of  
43 the six factors. Let's then go to the  
44 hyperadrenergic state.

45 A Yes.

46 Q And that's a term we've heard others speak about,  
47 but I would like you to tell the Commissioner how

1           you view that. What do you mean when you use that  
2           term?

3       A     There's a number of different terms that are --  
4           are used to describe it. Stimulation of the  
5           sympathetic nervous system, I think is used in Dr.  
6           Di Maio's book on excited delirium. In Ross they  
7           are talking about acute stress, sort of neural  
8           hormonal response and adrenergic response.  
9           Basically what we're talking about is what -- this  
10          is a lay term, but it's a fight or flight  
11          response, that means if you are -- it's built into  
12          all of us that if -- if danger hits us, we're  
13          going to increase our adrenal levels, the  
14          circulating adrenaline and noradrenaline. We're  
15          going to release a bunch of neurotransmitters.  
16          The net effect of this is to get us ready for  
17          action, and it's -- typically it's supposed to be  
18          a short-term response. So a number of things  
19          happen. Your heart rate rises, your blood  
20          pressure rises. You start releasing energy stores  
21          from various parts of your body to get ready for  
22          action. So that's what I mean by hyperadrenergic  
23          state.

24                 What is known about it is it has certain  
25          changes on the heart such as it may constrict the  
26          coronaries a little bit, it can -- it can put the  
27          heart at increased risk of an arrhythmia, a fatal  
28          arrhythmia.

29       Q     So the layman's term is "fight or flight".

30       A     Correct.

31       Q     And medically you're referring it -- referring it  
32          in the terms hyperadrenergic state.

33       A     Yes.

34       Q     And adrenaline is one of the hormones at the core  
35          of this issue.

36       A     It's one of them, that's correct.

37       Q     Now, what's your view of hyperadrenergic state as  
38          it relates to this case?

39       A     At this -- you know, the problem with this, with  
40          Mr. Dziekanski is we don't -- we didn't have him  
41          hooked up to monitors, we didn't have his -- we  
42          couldn't take his blood pressure, pulse, and  
43          didn't measure his hormone level, so we have to go  
44          with more classic epidemiological thought  
45          processes. And so the first step is to say, okay,  
46          this man has been on a very stressful 20-hour  
47          flight. He's from a small town. He was nervous

1 about flying, apparently. Anybody in that  
2 situation would be a little stressed out and  
3 probably would have a little bit of a raised heart  
4 rate, raised blood pressure, they'd be tired. I  
5 think the nine hours at YVR would further  
6 exacerbate this response. He didn't speak  
7 English. His mother didn't arrive. And I think  
8 we're all aware at this point of all the problems  
9 that arose, including the altercation.

10 However, up until the point that the officers  
11 were called in and arrived, even if he'd had a  
12 mild cardiopathy, even if he'd been under stress  
13 for a long time, he'd almost proven by a test of  
14 fire that he was not going to have a fatal  
15 arrhythmia because of these two causes. So I  
16 think you can really rule them out as significant  
17 causes of his -- of his death. He'd lasted 20  
18 hours with whatever risk factor he had for his  
19 heart. He was fine when he got off the plane. He  
20 did a further nine hours in the airport. It  
21 really wasn't until the -- the restraint and the  
22 tasing that things suddenly went wrong. So the  
23 temporal sequence as such that it leads to a  
24 possible causal relationship with tasing and  
25 restraint.

26 Q So then that leaves us with tasing and the  
27 restraint that you just mentioned, and when you  
28 say "restraint", tell the Commissioner, please,  
29 what you mean.

30 A Physical restraint.

31 Q That's post-tasing.

32 A Post-tasing.

33 Q Thank you. So I want to then have you deal with  
34 these last two areas. There's one word I wanted  
35 you to explain, and I don't want to forget, it's  
36 page 15. You're talking about the tasing. Let  
37 me just go through this:

38  
39 It should be noted that the biochemical  
40 response to restraint is to some degree  
41 affected by the person's perception of the  
42 event. That is the more upset the person is  
43 based on the perception of what is happening  
44 to them, the more intense will be the  
45 physiological "fight or flight" response.

46 I think that's pretty clear to us reading that. I  
47 want to continue:

1  
2           Secondly, and considering the taser, the  
3 pathophysiological mechanism of risk of death  
4 due [to] a fatal arrhythmia triggered by the  
5 overwhelming fight or flight response as  
6 described above, would also apply to the  
7 response to stress caused by tasing.  
8

9           Now, I want you tell us what the word  
10 "pathophysiological mechanism", what does that  
11 mean?

12       A    When you look at rules of causation, you're  
13 looking for a biological mechanism, you know, how  
14 did it actually happen. And I think when you look  
15 at this carefully, you realize Mr. Dziekanski  
16 probably died from an electrical death due to  
17 fatal arrhythmia. The arrhythmia was probably  
18 triggered by severe stress, releasing all the  
19 adrenaline. So the next obvious question, if  
20 that's the pathophysiological mechanism, what --  
21 what were those factors that were most significant  
22 in driving the hyperadrenergic state, if you like.

23       Q    You said something that's interesting to us as  
24 lawyers in the judicial system. You said the  
25 "rules of causation". Now, in our profession we  
26 have rules of causation. In the world of  
27 epidemiology are there rules of causation?

28       A    In my -- in my world, Mr. Commissioner, we -- the  
29 first thing we want to start with is the hierarchy  
30 of evidence. We'd like to see systematic reviews  
31 in clinical trials, where we have comparison  
32 groups so we can look for known and unknown  
33 mechanisms. That's what we're after. If we come  
34 down, in trying to figure out what's going on, we  
35 come down to cohort studies, case control studies,  
36 case series, and there's a hierarchy that we all,  
37 in my business, understand. If we get to  
38 population areas or cases like this where we  
39 really don't have that literature nailed down,  
40 then we fall back on the classic epidemiology  
41 rules of causation. They were originally  
42 formulated by Sir Bradford Hill. There's nine or  
43 ten of them, and they were -- David Sackett, the  
44 Canadian, sort of upgraded them to sort of make  
45 them more modern. And these include, if there's a  
46 strong temporal relationship, if there's a  
47 biological mechanism, there's a bunch of rules,

1 dose response relationship. So these are -- these  
2 are kind of the thought processes that I'm using  
3 to -- to deal with this issue.

4 Q In your report you mention temporal relationship.  
5 So when you're using that, you're not -- you're  
6 using that advisedly in your expertise as an  
7 epidemiologist.

8 A That's correct.

9 Q Okay. So what you're saying, then, is if I  
10 understand it correctly, that in this case,  
11 because of the lack of the literature and evidence  
12 that you might like to see to draw epidemiological  
13 conclusions, you're left with more basic rules of  
14 causation that are still part of epidemiology.

15 A That's correct.

16 Q Okay. So you've explained the word  
17 "pathophysiological". Let's just then have you in  
18 the next paragraph -- well, let me finish that  
19 paragraph just to put it before us.

20  
21 In this case the hyper adrenergic state and  
22 risk of a fatal arrhythmia would be driven by  
23 the extreme pain and muscle feedback to the  
24 brain via spinal cord pathways due to the  
25 effects of repeated taserings. This plus the  
26 associated anxiety of being tasered, and the  
27 effects of immobility would certainly have  
28 caused a severe "fight or flight" response.

29  
30 Why are you -- why do you say that to us as an  
31 epidemiologist?

32 A Why do I say --

33 Q What are you -- well, maybe the better question  
34 was what are you saying to us and just tell us why  
35 you say that.

36 A Well, I think the extreme pain and muscle feedback  
37 to the brain by the spinal cord, that's -- that's  
38 in the material I have reviewed. And to me it's  
39 almost self-evident. If you look at the video,  
40 there was a huge, in my opinion, a strong response  
41 from Mr. Dziekanski when he got tasered. There  
42 must have been, and this is supposition, an  
43 anxiety on his part about being tasered. And  
44 then being immobile, which happens when one is  
45 tasered, you get -- the muscles get -- you lose  
46 control of the muscles. I think that would be  
47 quite frightening and likely, in my opinion, to

1 really exacerbate your fight or flight response.  
2 Q Then the next paragraph:

3  
4 Further, the sudden capture and tetany of  
5 nearly of all the large skeletal muscles of  
6 the body would have caused the release of  
7 lactic acid.

8  
9 The word "tetany", please, what does that mean?  
10 A Tetany means that the muscles have gone in  
11 isometric contraction, they're -- they're locked.  
12 You've lost control of them.

13 Q Why would that cause release of lactic acid?

14 A Why would that -- it just happens.

15 Q Okay.

16 A Lactic acid is you go into anaerobic metabolism,  
17 if I remember my physiology.

18 Q That's fine. You say:

19  
20 It has been argued that under study  
21 conditions this has not shown to be a major  
22 issue.

23  
24 Study conditions, which studies are you talking  
25 about?

26 A Some -- some of the authors, I think Dr. Ho's got  
27 one that shows lactic acid does go up when people  
28 are tasered. I don't have the exact -- but then  
29 he concludes it's not all that significant.

30 Q You've read works by Dr. Ho and others in  
31 preparation for giving an opinion to the  
32 Commissioner on the subject of --

33 A Yes.

34 Q -- this case. Thank you. I'm not going to take  
35 you through all of it. Others may. You mentioned  
36 "repeated taserings" at page 15. And you at page  
37 16 mention taserings "5 times or almost  
38 continuously for 49 seconds". Is the multiple  
39 taserings of significance to you in the opinion you  
40 give to the Commissioner?

41 A If my understanding of what happened is correct,  
42 that it's an electrical death due to a fatal  
43 arrhythmia brought on by just being over stressed,  
44 by stimulating your fight or flight response,  
45 you're creating an overwhelming hyperadrenergic  
46 state, then -- then the act of taserings five times  
47 is going to have a much greater effect than the

1 act of tasing once. So that's -- that's my  
2 understanding that that's a very -- to me that 49  
3 seconds is a fairly long period of time to be -- I  
4 think it was 31 seconds of actual tasing, with a  
5 12-second interlude and one other period. But for  
6 49 seconds, this man is being tasered nearly  
7 continuously.

8 Q You have a typo, page 16.

9 A Yes.

10 Q The first sentence, it should be "tasing" and  
11 not "tapering".

12 A My spell check failed.

13 Q That's fine.

14 A Tapering's a real word.

15 Q Now, you mention in the paragraph on page 16 about  
16 the possibility of direct capture, the possibility  
17 of the electrode being directly closer to the  
18 heart exists.

19 A Yes.

20 Q I want you to be clear with the Commissioner,  
21 because you raise the subject of possibility of  
22 direct capture, and when you say the term "direct  
23 capture", you mean, please? Tell us what you  
24 mean.

25 A If the electrical current can hit right on the T-  
26 wave, which is the most sensitive time for  
27 repolarization of the heart, it could capture the  
28 heart and cause a fatal arrhythmia.

29 Q Now, I want you to -- you've raised it in your  
30 report, I want you, though, to tell the  
31 Commissioner while you're here, what your view is  
32 of that in sort of the likelihood, as it were.

33 A I felt it was important to raise it because I  
34 think it's one of the overriding issues in this  
35 case. You know, could the -- the Taser have  
36 directly captured the heart. And so I spent a lot  
37 of time trying to look at the time difference  
38 between, you know, -- if he -- if he was tasered  
39 and dropped right there, then you'd start thinking  
40 well, maybe direct capture/ventricular  
41 fibrillation. It's certainly direct capture has  
42 been shown to be possible in the literature once I  
43 think in a pacemaker in a person, once in an  
44 internal defibrillator. It's certainly been shown  
45 in swine models.

46 But in this case, I think it's, you know, we  
47 have testimony that his pulse was ongoing

1 afterwards. We have a time delay of, depending  
2 how you count it, 51 seconds to a minute and a  
3 half. So I felt it important to raise it as a  
4 possibility, but it's not -- it's not really where  
5 I'm laying my -- you know, I'm not confident about  
6 it, so I'm not really ruling that in. I'm  
7 basically saying, no, I think it's something to  
8 think about, but in my real heart of hearts, my  
9 opinion is this, that this man died from a  
10 hyperadrenergic state and not -- and not due to  
11 direct capture.

12 Q So then to get to the ultimate causation, it  
13 leaves us Taser and physical restraint, and I  
14 think you discussed that. Starting in your  
15 report, you mentioned just in passing that:

16  
17 ...we are dealing with a rare or very low  
18 probability event.

19  
20 That's your opinion, based on your review of  
21 literature. Is that correct, Dr. Chambers, do I  
22 have that correctly?

23 A Where are you now?

24 Q Page 17.

25 A Yes.

26 Q Okay. So at the bottom of the page you tell us:

27  
28 In assessing the impact of the physical  
29 restraint by the officers and the effect of  
30 the tasing in contributing to the  
31 electrical death of Mr. Dziekanski, it is  
32 important to review the video tape by  
33 Pritchard.

34  
35 Now, do we fairly understand your opinion to be  
36 that these are the two factors that you rule in,  
37 as opposed to rule out, as to --

38 A That's correct.

39 Q -- this death. Fine. Now, let's then discuss  
40 those two topics that you rule in on the subject  
41 of causation. You deal with this, I think, in  
42 your "Summary Opinion". Without reading all of  
43 this to the Commissioner, and he will and everyone  
44 else can read very well, tell us why you come down  
45 to those two and what you ultimately have decided  
46 from your expertise?

47 A As I stated earlier, I start off in the position

1 of trying to identify what possible risk factors  
2 could have contributed to the death of Mr.  
3 Dziekanski. The autopsy ruled out a large number,  
4 including heart attack, drug overdose and those  
5 things. I think you -- I think in my opinion you  
6 can rule out delirium tremens and you can really  
7 rule out excited delirium, and you're really down  
8 to the point that this man's -- at the point of  
9 intervention by the officers, is alive and he's  
10 standing and he's -- and he's doing just fine from  
11 a heart point of view. Shortly thereafter two  
12 things happen, he gets tasered five times and he  
13 gets physically restrained, and during this  
14 process he has a fatal arrhythmia and he  
15 ultimately dies.

16 So I think that temporal relationship of  
17 being so close to it, we know we have a possible  
18 biological mechanism by which this could happen.  
19 So that -- that made me conclude that these are  
20 the two factors that were mostly likely to  
21 contribute to the death of Mr. Dziekanski.

22 Q Okay. Did you have a further opinion as to the  
23 relative role of those two factors?

24 A Well, then, the next question, the obvious  
25 question is which would have had a greater impact?  
26 And I think on reviewing the tape, I think if, you  
27 know, it's very clear to me if you had a hundred  
28 physicians and you just showed them the tape and  
29 said, okay, you know, which do you think would  
30 have the greater impact on the heart rate, blood  
31 pressure, anxiety and everything else? I think my  
32 own opinion, most would say, oh, the tasing was  
33 from a visual point of view had a far stronger  
34 impact.

35 Q You ultimately conclude:

36  
37 The extended period of tasing appears on  
38 the tape by Pritchard to have been a great  
39 deal more stressful to Mr. Dziekanski than  
40 the act of physical restraint. So while both  
41 most likely contributed to the death of Mr.  
42 Dziekanski, in my opinion, the act of  
43 tasing Mr. Dziekanski for 31 seconds over a  
44 period of 49 seconds, contributed more to his  
45 stress response and subsequent demise than  
46 physical restraint.

47 A That's correct.

Gordon Keith Chambers

In chief by Mr. Vertlieb

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

1 Q You've spent a great deal of time in coming to  
2 this opinion. Is there anything else that you  
3 wish to offer the Commissioner about your view of  
4 the case?

5 A No.

6 MR. VERTLIEB: Mr. Commissioner, I've intentionally  
7 tried to limit my questioning to as -- to be as  
8 brief as possible, I've been under an hour, out of  
9 respect for my colleagues who have questions. I  
10 have concluded, thank you.  
11

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

15 Q Doctor, my name is Walter Kosteckyj. I am counsel  
16 for Zofia Cisowski, and I just have a couple of  
17 questions.

18 With respect to your discussion on excited  
19 delirium, one of the things that you noted was  
20 that Mr. - I'm looking at page 12 of your report.  
21 - that Mr. Dziekanski was sensitive to pain. And  
22 maybe you could explain to the Commissioner why  
23 that figured into your reasoning?

24 A If you read the literature and in particular the  
25 textbook by Ross, *Sudden Deaths in Custody*, part  
26 of the list of criteria is people who supposedly  
27 have excited delirium are absolutely immune to  
28 pain. And in -- in another case, you know, you  
29 taser them, they just -- they just run off. I  
30 think the video shows me that Mr. Dziekanski, he  
31 cried out, he fell at the time of the second  
32 tasing. I think he was not immune to pain. And  
33 so that to me would not fit with excited delirium.

34 Q All right. Now, the second question I have for  
35 you, and this is kind of a broad-based question in  
36 the sense that when someone is tasered, would you  
37 agree with me that that is a different thing from  
38 using a different kind of weapon, like a baton,  
39 and I'm doing this in relation to the  
40 hyperadrenergic (phonetic) state.

41 A Adrenergic?

42 Q Adrenergic, thank you, Doctor. The difference  
43 being this, that you actually have something that  
44 looks like a gun pointed at you and you feel the  
45 projectile going into your body. Does that fact  
46 that those two things are present, does that  
47 increase that state, in your opinion?

1 A You've brought up a very good point that I tried  
2 to make earlier and I'd like to make it again,  
3 that one of the things we have to -- in my area,  
4 what we try and do is have comparison groups and  
5 control groups. So I'm always, when somebody says  
6 well, this man was profusely sweating, you know,  
7 I'm always going to say against whom? What group  
8 are you comparing with? If it's a bunch of normal  
9 people walking down the street, perhaps. If it's  
10 a bunch of rugby players who just got off the  
11 field, no, they're all going to be sweating. So  
12 the comparison would have to be against a  
13 comparable cohort.

14 So you started saying, well how would his  
15 stress response be compared to baton, I think?

16 Q Yes.

17 A And I would think you'd have to do that work. You  
18 know, I think I'd be amiss to say, you know, I can  
19 accurately say that if -- if a group of people got  
20 batoned, they would react more or less than  
21 somebody who got tasered. I think in this case we  
22 have the Pritchard video, which really shows a  
23 very strong response to the -- to the tasing,  
24 far less, you know, to the physical restraint, as  
25 far we're able. So I know what you're saying, it  
26 makes sense. I think the taser is a very powerful  
27 weapon, and I think the capture of your muscles  
28 and the barbs and everything else, common sense  
29 tells me that that could have a very strong  
30 response. But how it would compare to the baton,  
31 I mean, that's -- that would argue for doing the  
32 proper research.

33 Q And I guess one of the points I was making is that  
34 when you see the baton, you're seeing a stick.  
35 When you're seeing a Taser, you're seeing  
36 something that looks like a gun and you're feeling  
37 a projectile go into your body. And so it raises  
38 a lot of different issues psychologically and  
39 mentally, and I would -- and I would submit --

40 A That's certainly possible, yes.

41 Q All right. Now, one of the things that I -- and  
42 this is just my own ignorance as to how the  
43 electrical system fires to make the heart work,  
44 and maybe you could just give me some indication,  
45 what is it, we always talk about the heart as  
46 being -- this being an electrical event.

47 A Yes.

1 Q The heart pumping and so forth. Could you just  
2 explain for me and try to make it --

3 A Okay.

4 Q -- as simple as you can for me, as to what the  
5 firing mechanism of the electricity is to make the  
6 heart work?

7 A If you think of the heart as four chambers, with  
8 the two huge chambers down below the left-right  
9 ventricle, right, they have to contract from the  
10 bottom up. It's like toothpaste. You know, if  
11 they try and squeeze your toothpaste top and  
12 bottom, nothing happens. So it's -- it has to be  
13 a coordinated muscle contraction. So what happens  
14 is at the top of the heart there's a thing called  
15 the SA node, and that fires at a regular rate and  
16 it drives a current down the -- this bundle of His  
17 and Purkinje fibres that then spread out at the  
18 bottom, then they go to the muscle, and then the  
19 muscle is supposed to contract in a coordinated  
20 fashion upwards.

21 So when we -- so when we talk about  
22 electrical deaths, we're talking about a failure  
23 of that wiring system. And so what can happen,  
24 say, in ventricular fibrillation is rather than  
25 the -- the beat getting fired from the SA node at  
26 the top, it gets fired from multiple foci right  
27 within the ventricle, so you just get wiggling and  
28 nothing happens.

29 Q Yes. My previous question to you about the actual  
30 seeing the Taser and feeling the dart go --

31 A That's a short version, by the way.

32 Q Sorry, but, no, I thank you, and that's made it  
33 clear for me. I'm just going to take you back  
34 again to that question I asked you just before  
35 about the actual seeing of the weapon that looks  
36 like a gun and the feeling of the dart going in.  
37 And what I was thinking of was on paragraph -- in  
38 page 15 of your report, the second paragraph, it  
39 talks about that that the biochemical responses to  
40 restraint, and you're talking about:

41  
42 ...the more upset a person is based on the  
43 perception of what is happening to them, the  
44 more intense will be the physiological "fight  
45 or flight" response.

46  
47 And that takes us back to that argument about

1           whether it's more logical or not, that you're  
2           going to be more affected by --

3           A     The perception, yes.

4           Q     Yeah, okay. Now, the -- the last thing I want to  
5           talk to you about is on page 17, where you're  
6           talking about the lack of much needed data and  
7           research respecting the Taser --

8           THE COMMISSIONER: Just let me intercept for a  
9           moment --

10          MR. KOSTECKYJ: Sorry.

11          THE COMMISSIONER: -- and make sure I have this right.  
12          Your problem with the original question was the  
13          comparison aspect of it to a baton. But as I  
14          understand your response, you have agreed that in  
15          terms of the cluster of things that were  
16          occurring, the fact that this may look like a gun  
17          and you see and feel a projectile, may be part of  
18          those items that cause stress.

19          A     Absolutely.

20          MR. KOSTECKYJ: Okay.

21          Q     Now, the last area that I want to ask you about is  
22          this notion that you've discussed on page 17 of  
23          your report, which is the lack of data that  
24          relates to what the effects may be of the  
25          conducted energy weapon or Taser. And one of the  
26          questions I wanted to talk to you about here was  
27          that we had a Dr. Ho here this week, earlier this  
28          week, as I recollect, and you mentioned that you  
29          read some of his studies and so forth. And one of  
30          the questions that I asked him about was the size  
31          of the sample groups that he was using. And my  
32          recollection is that his sample groups were about  
33          45, in some cases, 50 in those studies. Am I  
34          right that those are just far too small, those  
35          sample groups, to get any meaningful results that  
36          you can rely upon?

37          A     I believe so. If I can just expand on that. In  
38          medical research what we do is we try and take  
39          bench research, or what we call pilot studies.  
40          And what we're trying to do is they're not  
41          designed to test what's going on in the real  
42          world, they're designed to give you some kind of  
43          idea of where to look, and the sample size. So  
44          what we try and do, we have to do two things, is  
45          try and measure the treatment effect or the  
46          potential side effect that we're after, and then  
47          we have to figure out, you know, how much power we

Gordon Keith Chambers

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

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

1 need to detect it.

2 So most of the -- so there's two things that  
3 are going on with these -- with these volunteer  
4 studies. First of all, they are volunteer  
5 studies. There's no comparison group. They're  
6 really designed to, is what I would call phase 1  
7 studies, where they -- they're just trying to give  
8 you some idea of any side effects. But they're  
9 not really going to measure what's going on in the  
10 real world. What -- if you went to do a phase 3  
11 clinical trial, where you were in -- where you  
12 actually did two comparisons, say baton and Taser,  
13 you would need sample sizes in the thousands  
14 probably. So the issue here is that repeatedly  
15 doing small sample size studies, you might just  
16 stay right under the -- under the radar of a very  
17 significant risk and never see it. And that's one  
18 of the risks that we -- that you have when you do  
19 small sample size studies.

20 Q And one, of course, the other concerns with Taser  
21 research are the ethical considerations, I take  
22 it. The fact that there is -- may be some danger  
23 to the research in getting people to cooperate.

24 A You mean the volunteers?

25 Q Yes.

26 A Well, as I said, volunteer studies are not  
27 designed to test real world situations. And  
28 there's a number of problems, and (1) is small  
29 sample size, (2) is no comparison group, and (3)  
30 is the interventions are often done under ideal  
31 situations, such as, you know, somebody's lying on  
32 a mat, or they're, you know -- they're not  
33 stressed out, you know, they're not under the real  
34 world conditions. So to draw conclusions from  
35 those kind of studies is very difficult.

36 MR. KOSTECKYJ: Thank you, Doctor.

37

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

40

41 Q Doctor, my name is Helen Roberts. I am counsel  
42 for the Government of Canada. I have some  
43 questions for you.

44 I'd like to start at the beginning with  
45 epidemiology, what that consists of. And you  
46 testified at the first phase of the Braidwood  
47 Inquiry back in -- on May 23rd, 2008, do you

1 recall that?

2 A Yes.

3 Q All right. And you provided some definitions at  
4 that time, and said at page 2:

5

6 Epidemiology, the classic form, is trying to  
7 find out the distribution and the  
8 determinates of disease in the community.

9

10 A That's correct.

11 Q All right. So that's the definition you gave then  
12 and you'd still agree with that now?

13 A Yeah. And that includes causation, yes.

14 Q Well, that's not something you mentioned, but I'll  
15 ask you about that in a moment.

16 A Well, no, that's the heading. Is the formal --  
17 the formal heading is "Distribution and  
18 Determinates of Disease", that's correct.

19 Q Okay. And then you go on to explain what clinical  
20 epidemiology is, and you say:

21

22 ... as the name implies, is more clinically  
23 oriented.

24

25 And by that, clinically, you mean actually  
26 treating patients, do you, or do you mean doing  
27 studies on real patients?

28 A It's the critical appraisal of research literature  
29 that involves usually health interventions in an  
30 -- in an attempt to improve care.

31 Q All right. And you went on to say:

32

33 What we're trying to do is figure out what  
34 works in healthcare. So our training would  
35 include how to design research studies, how  
36 to conduct them, and the analysis, including  
37 learning about biostatistics. We would also  
38 take courses in health economics, health  
39 program evaluation and that kind of thing.

40

41 A That's --

42 Q So would that be a fair summary of what clinical  
43 epidemiology is --

44 A No. No.

45 Q -- in your own words?

46 A No, because what's missing is the -- is the  
47 critical appraisal, that's the largest part of it.

- 1 Q All right. In neither of those definitions that  
2 you provided did you mention cause of death. Am I  
3 correct?
- 4 A When, which -- which definitions?
- 5 Q Well, I just read you the two definitions you  
6 provided to the Commission in May 2008.
- 7 A But I've just --
- 8 Q You defined epidemiology --
- 9 A -- I've just qualified classical epidemiology  
10 deals with causation.
- 11 Q All right. It deals with causation of disease in  
12 the community?
- 13 A Rules of causation following classical  
14 epidemiology, yes.
- 15 Q All right, thank you.
- 16 A Determinants of disease involves causation.
- 17 Q All right. I've reviewed your c.v. and I don't  
18 see anything in there in terms of papers or  
19 research about determining cause of death. Have I  
20 missed something in there?
- 21 A Yes, that's my academic c.v. I also have a  
22 consulting business where I have done a number of  
23 cases where causation's in issue.
- 24 Q All right. Is that a normal part of your  
25 practice?
- 26 A Sorry?
- 27 Q Is that a common part of your practice?
- 28 A That is my practice now.
- 29 Q To determine how people died?
- 30 A No, I have a consulting business where I -- where  
31 I do -- I deal with causation, life expectancy.
- 32 Q All right.
- 33 A I can give you examples if you want.
- 34 Q No, I think I understand. You look at people and  
35 determine how they develop diseases, and you look  
36 at people and determine based on diseases that  
37 they have, how long they might have been expected  
38 to live, barring say, a car accident?
- 39 A No. No, there's issues like on causation where  
40 one example is somebody standing on a chair, and  
41 they died suddenly and the issue is did they --  
42 did they have a sudden death and then fall, or  
43 fall and have a sudden death. Other things where  
44 somebody has metastatic cancer and the issue is  
45 what caused the metastatic cancer, is it -- is it  
46 -- was it some failure of a screening program  
47 early on, or was it natural disease; whole body

- 1 vibration causing degenerative disease of the  
2 spine; there's a number of causation cases I get  
3 involved in.
- 4 Q All right. Would you agree that normally cause of  
5 death is -- is something found within the  
6 expertise of a pathologist?
- 7 A A pathologist deals with autopsies.
- 8 Q Yes, and the purpose of the autopsy is normally to  
9 figure out the cause of death, is it not?
- 10 A If the autopsy doesn't reveal the cause of death,  
11 then it falls more to a clinical epidemiologist,  
12 in my opinion.
- 13 Q All right. Are you familiar --
- 14 A Or, sorry, can fall to a clinical epidemiologist,  
15 not necessarily. But a pathologist will look at  
16 the autopsy looking for a cause of death.
- 17 Q Are you familiar with a gentleman named Michal or  
18 Michael Freedman, who is an epidemiologist in  
19 Bethesda at the National Cancer Institute? Have  
20 you heard his name at all or read any --
- 21 A I may have.
- 22 Q -- of his work? All right. And are you familiar  
23 with Leon Gordis, who is a professor of  
24 epidemiology at the Johns Hopkins School of  
25 Medicine --
- 26 A No.
- 27 Q -- in Baltimore?
- 28 A No.
- 29 Q All right. They, together with a law professor,  
30 are the author of an article called the "Reference  
31 Guide on Epidemiology". Is that something you've  
32 come across?
- 33 A No.
- 34 Q All right. It is on the website of the Federal  
35 Judicial Centre, which is an education and  
36 research agency for the United States Federal  
37 Court system, and I just wanted to read you a few  
38 things from that and ask if you agreed with them.  
39 The first is their definition:  
40
- 41 *Epidemiology* is the field of public health  
42 [and medicine] that studies the incidence,  
43 distribution and etiology of disease in human  
44 populations...
- 45
- 46 Do you agree with that?
- 47 A Classic epidemiology.

1 Q I take it they're referring to classic  
2 epidemiology, yes.

3 A Well, sure, that's -- yeah, they're just saying  
4 distribution and determinates of disease, yes.

5 Q All right. And they go on to say:

6  
7 The purpose of epidemiology is to better  
8 understand disease causation and to prevent  
9 disease in groups of individuals.

10  
11 Would you agree with that?

12 A Classic epidemiology, yes.

13 Q And they have a section VII in their paper  
14 entitled "What role does epidemiology play in  
15 proving specific causation" and I'll read you this  
16 sentence by sentence, and perhaps you could tell  
17 the Commissioner if you agree or disagree with  
18 what they say:

19  
20 Epidemiology is concerned with the incidence  
21 of disease in populations and does not  
22 address the question of the cause of an  
23 individual's disease.

24  
25 Do you agree or disagree with that?

26 A Repeat that again?

27 Q  
28  
29 Epidemiology is concerned with the incidence  
30 of disease in populations and does not  
31 address the question of the cause of an  
32 individual's disease.

33  
34 A Then they're taking a very old-fashioned view of  
35 -- when was that published?

36 Q Sorry, the date isn't on the first page.

37 A A much more modern definition would be David  
38 Sackett's in his textbook, which I have here, and  
39 I can read it to you, which would -- would  
40 actually not agree with that.

41 Q All right. So you don't agree with that?

42 A By applying principles of epidemiology to the  
43 clinical area, deals with an individual, yes.

44 Q All right. Their next sentence is:

45  
46 This question, sometimes referred to as  
47 specific causation, is beyond the domain of

1                   the science of epidemiology.

2

3

Do you agree or disagree with that?

4

A Disagree.

5

Q All right.

6

A They're not dealing with clinical epidemiology.

7

I'm a clinical epidemiologist. I'm not a public

8

health person. I think you've -- you may have the

9

wrong area.

10

Q Well, in the introduction, sir, they say:

11

Judges and juries increasingly are presented  
with epidemiological evidence as the basis of  
an expert's opinion on causation.

12

13

14

15

In the courtroom epidemiological research  
findings are offered to establish or dispute  
whether exposure to an agent caused a harmful  
effect or disease.

16

17

18

19

20

Et cetera. So they're dealing with the  
presentation of epidemiologic evidence in the  
courtroom.

21

22

23

24

A Right.

25

Q I will go on:

26

Epidemiology has its limits at the point  
where an inference is made that the  
relationship between an agent and a disease  
is causal (general causation) and where the  
magnitude of excess risk attributed to the  
agent has been determined: that is,  
epidemiology addresses whether an agent can  
cause a disease, not whether an agent did  
cause a specific plaintiff's disease.

27

28

29

30

31

32

33

34

35

36

Would you agree or disagree with that?

37

38

A Well, yeah, but I -- you're talking -- what  
they're dealing with is exposures like PCBs,  
smoking, general environmental hazards. I don't  
think we're really talking about that here. We're  
talking about a -- we're talking about a health  
intervention.

39

40

41

42

43

44

Q All right.

45

A A specific intervention that acts like a health  
intervention.

46

47

Q So it's your view that you're qualified --

1 A I would prefer to take David Sackett's clinical  
2 epidemiology definitions, which take some of that  
3 stuff, but modern -- what I would consider  
4 modernizes it.

5 Q All right.

6 A And puts it in the context that if we have proper  
7 phase 3 clinical trials, they're probably  
8 inferring cohort studies, case control studies,  
9 weaker study designs. But in the clinical  
10 epidemiology field, we're talking -- we're really  
11 talking about trying to get higher quality  
12 studies, and in the absence of that, then we have  
13 to fall back on -- on other things, such as rules  
14 of causation. To say that you shouldn't use these  
15 tools, I think, is -- is wrong.

16 Q All right. Isn't your field more involved with  
17 looking at studies to determine things that happen  
18 in general populations, as opposed to studying a  
19 particular individual?

20 A Well, as I've explained, part of my consulting  
21 business, which I've been doing since 1999, has  
22 been exactly that, trying to assess causation in  
23 individuals.

24 Q And that's causation of disease?

25 A Causation of death.

26 Q All right.

27 A Such as the person standing on the chair who died  
28 suddenly.

29 Q All right. Well, the Commissioner has heard from  
30 a number of pathologists, four of them, I believe.  
31 Do you believe you're better qualified than they  
32 are to provide an opinion of cause of death for an  
33 individual?

34 A If a pathologist is not trained in clinical  
35 epidemiology, what happens out there in the  
36 community, they're really reliant on their autopsy  
37 findings, aren't they? It would be out -- they  
38 would be outside their clinical experience to give  
39 opinions about, say, something like delirium  
40 tremens, which I experience as an East End  
41 Vancouver physician. So it depends on what we're  
42 talking about here. But if my experience with  
43 pathologists is they probably would not see DTs in  
44 the real world, and therefore -- and would lack  
45 certain clinical experience and they would lack  
46 the clinical epidemiology knowledge which I --  
47 which I think I've been asked by the Commission to

1 bring here.

2 Q So you're saying that you're better qualified to  
3 talk about the cause of death than a forensic  
4 pathologist such as Dr. Di Maio, who has written  
5 one of the textbooks on the subject?

6 A If Dr. Di Maio, if there's an autopsy and there's  
7 a -- and there's -- and the autopsy shows the  
8 person died from heart disease or a coronary  
9 atherosclerosis, then I would -- I would defer on  
10 autopsy results.

11 Q All right. So are you -- all right, we have  
12 another pathologist who is the Chief Medical  
13 Examiner --

14 A If Dr. --

15 Q -- in Ontario. Dr. Pollanen is the Chief Medical  
16 Examiner in Ontario. Do you say you, as a  
17 clinical epidemiologist, would be better qualified  
18 to give an opinion on cause of death than he would  
19 be in his particular role? I'm not talking about  
20 him personally, but in his role?

21 A Well, I mean, I think it would be a very  
22 reasonable thing to go over each individual risk  
23 factor and take, for example, the DTs or -- and  
24 delirium, and take the DSM-IV criteria, and just  
25 -- and then we could -- we could see where we  
26 agree or disagree. I think the same thing would  
27 happen with the cardiomyopathy, that the original  
28 autopsy results showed, you know, there were some  
29 statements on the autopsy results that over time  
30 it -- I think the position changed.

31 So I don't think this thing is written in  
32 stone, but I think you have to take the risk  
33 factors that we have. These are not normal  
34 autopsy findings, are they? These risk factors,  
35 you know, there was no illicit drugs. He didn't  
36 die from an overdose. He didn't die from a heart  
37 attack. There was no cancer. He didn't die from  
38 a pulmonary embolism. So these things that are  
39 normally in the area of a -- of a forensic  
40 pathologist, there's no gunshot wound, are not on  
41 the table. What's on the table here is -- is a  
42 hyperadrenergic state, and what -- and what that  
43 would do to somebody. And that's available to  
44 read for all of us in literature such as this  
45 *Sudden Deaths in Custody* by Ross.

46 Q Were you familiar with that textbook on sudden  
47 deaths prior to preparing to testify at this

- 1 inquiry?
- 2 A No.
- 3 Q So you're bringing the knowledge that you acquired  
4 from reading in preparation for this inquiry, that  
5 that's what you're basing your opinion on is the  
6 reading that you did for this inquiry?
- 7 A What I'm bringing -- what I tried to say in the  
8 beginning, what I'm bringing is basic clinical  
9 epidemiology principles, which is the ability to  
10 review the published research and identify them,  
11 the animal studies as animal studies unable to  
12 show what happens in the real world, to review the  
13 volunteer studies, to review the actual  
14 literature, to go to the -- the DSM-IV, look at  
15 the criteria and compare them. So that's what --  
16 plus some clinical experience, having been a  
17 physician, that's what I'm bringing to the table.
- 18 Q All right. So in terms of understanding how the  
19 heart works, would you defer to the expertise of a  
20 cardiac electrophysiologist?
- 21 A Well, I've deferred to Dr. Charles Kerr, and I  
22 think he's presented a report to this Commission.  
23 I've reviewed my thoughts with him.
- 24 Q All right.
- 25 A And he's the head of cardiology here in Vancouver,  
26 right?
- 27 Q Sir, I don't think we have any difficulty with the  
28 concept that epidemiologists are qualified to  
29 compare studies and comment on case studies and  
30 things like that.
- 31 A Oh, no, it's much -- I think it's much more -- no,  
32 no, it's review of the -- of the published  
33 literature, review of medical literature, that's  
34 -- that's my strength, if I have one.
- 35 Q All right. But you had not reviewed the relevant  
36 literature to this death before you were asked to  
37 give the opinion. These are not areas in which  
38 you've given opinions before.
- 39 A What I bring to the table is my training. I can  
40 apply it, as I do in my consulting business, to  
41 different situations. It's like a carpenter  
42 showing up on a jobsite.
- 43 Q Right. But if I'm hiring a carpenter, I want --
- 44 A It's like saying --
- 45 Q -- to know he's built a deck before. Have you  
46 given an opinion --
- 47 A On causation, yes.

Gordon Keith Chambers

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

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

1 Q On causation in a sudden death during restraint  
2 before?

3 A I've given -- no, not during restraint.

4 Q All right. So you haven't had the opportunity  
5 before this to look at a case like this, or look  
6 at the literature with respect to sudden death  
7 during restraint.

8 A Prior to this, no.

9 MS. ROBERTS: Thank you.

10 THE COMMISSIONER: All right, we'll take a brief  
11 adjournment now.

12 THE REGISTRAR: The hearing will now recess for ten  
13 minutes.

14

(WITNESS STOOD DOWN)

15

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

16

(PROCEEDINGS RECONVENED)

17

18

GORDON KEITH CHAMBERS, a  
witness, recalled.

19

20

21 MR. NEAVE: Thank you, Commissioner Braidwood, David  
22 Neave for TASER International.

23

24

25 CROSS-EXAMINATION BY MR. NEAVE ON BEHALF OF TASER  
26 INTERNATIONAL:

27

28

29 Q Dr. Chambers, I am counsel for TASER  
30 International, I have a few questions for you.  
31 Just starting off I want to discuss briefly  
32 your background from your c.v. I understand  
33 there's two c.v.s. We've seen the one. You have  
34 one that's -- you have a c.v. with respect to your  
35 clinical practice; is that correct?

36

A My which?

37

38 Q You have a c.v. with respect to your clinical  
39 practice?

40

A No. No, that's an academic c.v. and includes my  
41 clinical practice.

42

43 Q Okay. So the c.v. --

44

A But I have a consulting business.

45

46 Q Okay.

47

A Consulting epidemiologist, which I've had since  
'99.

48

49 Q So the c.v. that's now marked Exhibit 149 is -- is  
50 your c.v., there's not two of them?

- 1 A That's my academic c.v.
- 2 Q Okay. And what's your other c.v.?
- 3 A That's it, but I have a consulting business.
- 4 Q Okay. No, I understand that. I thought maybe you
- 5 had one c.v. for an academic purpose --
- 6 A No. No, no, no, no.
- 7 Q -- and one for your consulting practice.
- 8 A No, no. No.
- 9 Q Okay. I just wanted to clarify that, thank you.
- 10 Now, the sense I have from reviewing your
- 11 c.v., and correct me if I'm incorrect, is that
- 12 you're primarily or first and foremost now a
- 13 clinical epidemiologist?
- 14 A Yes.
- 15 Q And you don't carry on as, looking at your c.v., a
- 16 family practice any longer?
- 17 A No.
- 18 Q And the last time that you were engaged...
- 19 A '97.
- 20 Q 1997, thank you. And how long have you been
- 21 acting as a clinical epidemiologist?
- 22 A 1990.
- 23 Q Thank you. Now, the sense I have from your
- 24 discussion with my colleague before, is -- is
- 25 this, with respect to how you function as a
- 26 clinical epidemiologist, and the sense I have is
- 27 this, is that what you do is you conduct a
- 28 thorough review of all the applicable literature
- 29 first; is that correct?
- 30 A No. In my role at the hospital or in my
- 31 consulting business?
- 32 Q In -- as a clinical epidemiologist, in formulating
- 33 the opinion that you arrived at in -- in the
- 34 opinion in --
- 35 A In this -- in this case.
- 36 Q -- this case.
- 37 A Okay.
- 38 Q So the first thing that you would do is review all
- 39 the --
- 40 A The history.
- 41 Q -- the history of the case.
- 42 A Correct.
- 43 Q Okay. Then you then look at the literature.
- 44 A No, then I -- then I would formulate from my
- 45 clinical experience or just from reviewing it what
- 46 was the risk factors that were raised.
- 47 Q Okay.

- 1 A If you go through all the records, you know,  
2 there's questions that have been raised along the  
3 way. So I basically just made a list of what I  
4 thought were plausible and potential risk factors  
5 that may have contributed to the death.
- 6 Q So you look at -- so you first look at the facts  
7 of the case, fair?
- 8 A That's correct.
- 9 Q Then you look at the various potential factors.
- 10 A Correct.
- 11 Q Then what do you do?
- 12 A Then you -- then you have to review all the  
13 literature you can trying to see how you -- what  
14 you can rule out and what you rule in. So that  
15 would include texts, published literature.
- 16 Q Okay. Let's talk about that. So it would include  
17 texts.
- 18 A Yes.
- 19 Q It would include classical clinical studies if  
20 there were with respect -- and what I'm talking  
21 about are -- are double-blind studies and -- and  
22 that kind of literature, fair?
- 23 A Fair, the hierarchy of evidence would be a  
24 systematic review, would be the probably the  
25 highest order we -- I would accept, then the  
26 randomized clinical trial.
- 27 Q Right. And there's none --
- 28 A Nothing more than one, there aren't any.
- 29 Q There aren't any here.
- 30 A No.
- 31 Q Fair? Okay. The -- what's the next highest form  
32 of literature that you would review in terms of --  
33 of testing, or scientific testing?
- 34 A Large -- large prospective cohort studies,  
35 probably.
- 36 Q Okay. And there are none here, fair?
- 37 A None.
- 38 Q Then what do you -- then what's the next thing you  
39 look at?
- 40 A Then you're just going right down the list till  
41 you get to, you know, case series, and at the same  
42 time you are -- what you're trying to do is see  
43 where they -- you're working from the top down,  
44 the bottom up.
- 45 Q Yes.
- 46 A So from the top down we've gone systematic review,  
47 randomized clinical trials, all down there, and

1           then from the bottom up you're starting with your  
2           bench research, which I called, or in this case  
3           animal studies.  
4           Q     Right.  
5           A     And then you're going up to the what I would call  
6           phase 1 or volunteer studies.  
7           Q     Okay.  
8           A     And then you want to see -- what you're trying to  
9           see of the -- have they set any -- you know, have  
10          they -- have they set any event rates, or anything  
11          like that, or have they -- sort of like power  
12          analysis, to hopefully go on and do, you know,  
13          larger studies or prospective cohort studies down  
14          the road.  
15          Q     Okay. And what I'm trying to do is just develop a  
16          list of what's there --  
17          A     Yeah.  
18          Q     -- and what isn't.  
19          A     Good.  
20          Q     And with respect to this opinion.  
21          A     Yes.  
22          Q     So we know, and I'm going to come back to these  
23          issues, but we know you received -- and I'll come  
24          back to the literature in a moment.  
25          A     Okay.  
26          Q     the facts that you look at, what facts did you  
27          receive and when did you receive them?  
28          A     Can you define "facts"?  
29          Q     Well, that's what I'm trying to figure out from  
30          you is what information or documentation did you  
31          receive upon which you relied in formulating the  
32          opinion that has been tendered here.  
33          A     Okay. The start for the history would be the --  
34          I've received the video.  
35          Q     Yes.  
36          A     I received a lot of the -- not testimony, but the  
37          interviews with various people involved in the  
38          case, from Lufthansa personnel right down through  
39          some of the testimonies that have come here in  
40          this place. I've reviewed some of the reports,  
41          the autopsy. I've met with Dr. Lee.  
42          Q     Okay.  
43          A     I met with Dr. Kerr. Received reports from Dr.  
44          Kerr and some of the other specialists involved in  
45          the case.  
46          Q     Okay. What other information besides that?  
47          A     So that would be setting up the history.

1 Q Okay.  
2 A Then identifying risk factors from those.  
3 Q Okay. Let's -- I --  
4 A Okay.  
5 Q I want to finish off the list. I want to know  
6 what you've looked at.  
7 A Okay.  
8 Q So we have the -- we have the video, the  
9 interviews which include witness statements and  
10 testimony that's been given before Commissioner  
11 Braidwood, that's in the form of transcripts, is  
12 that fair?  
13 A Yes.  
14 Q Okay. And you've received certain reports and  
15 you've spoken to Dr. Lee and Dr. Kerr?  
16 A Correct.  
17 Q And in addition to the reports that we've  
18 mentioned, what other -- what other expert reports  
19 did you receive and review in formulating your  
20 opinion?  
21 A There's, I mean, a number. I'd have trouble  
22 giving them all. There was reports by --  
23 Q Well, if I might help you out.  
24 A Good.  
25 Q Did you receive the report of Dr. Vincent Di Maio  
26 from Texas? You know who he is.  
27 A Yes, I've looked at his text online.  
28 Q Okay. Did you --  
29 A Which I see you have there.  
30 Q Yes. Did you receive his expert report that's  
31 been filed in this proceeding?  
32 A I'm not sure if I did, actually.  
33 Q Exhibit 79, please. Thank you, Mr. Registrar.  
34 A Forgive me, I've looked at so many reports,  
35 they're all --  
36 Q That's not a -- no, I agree.  
37 A They're starting to blend.  
38 Q No, I agree that's not an issue. I just want to  
39 get the list down.  
40 A No, I haven't seen this report.  
41 Q Okay. I'll be taking you back, to it at some  
42 later point. You don't need to review it right  
43 now. Did you receive the post-mortem examination  
44 report of Dr. Lee?  
45 A Yes.  
46 Q Okay. Did you receive the expert report of Dr.  
47 Pollanen, and he is the chief pathologist in

1 Ontario.  
2 A Could I have a look at that report? It doesn't  
3 seem familiar.  
4 Q Yes. I'll just show him my copy, if that's  
5 convenient, Mr. Registrar. It's Exhibit 80 in  
6 this proceeding. Have you seen that before?  
7 A I don't believe so.  
8 Q Okay. Did you see the expert report of Dr.  
9 Panescu from the United States?  
10 A Once again could I have a look at it?  
11 Q Yes.  
12 A I don't believe so.  
13 Q Okay.  
14 A No.  
15 Q Thank you.  
16 A If I did, I don't remember it.  
17 Q Do you have a working file, Doctor? Do you have a  
18 working file?  
19 A I have a working file here, but all -- all the  
20 reference material is -- it's this big, it's at  
21 home.  
22 Q Okay. That might be helpful if you could bring  
23 that, please. Did you receive the report of Dr.  
24 Butt, Dr. John Butt?  
25 A Yes.  
26 Q Okay. And just to confirm, Exhibit 111, please.  
27 I just want to confirm, Doctor, that that's the  
28 report that we're speaking about. That was a  
29 document that --  
30 A Yes.  
31 Q -- was provided to you. Okay. Did you receive  
32 the report of Dr. Tseng of San Francisco?  
33 A Yes.  
34 MR. NEAVE: And that Exhibit number - I'm sorry, Mr.  
35 Registrar, I don't have that with me - 135.  
36 THE REGISTRAR: 135.  
37 MR. NEAVE:  
38 Q For now, Doctor, I'm just confirming that we're  
39 talking about the same documents. I'll take you  
40 back through them as necessary. That's a document  
41 that you received?  
42 A Yes.  
43 Q Doctor, did you receive the report of Dr. Charles  
44 Swerdlow, also from California?  
45 A I believe so, yes.  
46 MR. NEAVE: A cardiologist, electrocardiologist. 104,  
47 I believe, Exhibit 104. Thank you, Mr. Registrar.

1 Q Is that a document that you received, Doctor?  
2 A I don't believe so.  
3 Q Thank you. Do you recall, Doctor, if you received  
4 the report of Dr. Lu, a psychiatrist? And that's  
5 Exhibit 77.  
6 A I'd have to check, I'm sorry.  
7 Q Yeah, we'll just take them one at a time. Were  
8 you provided with that, Doctor?  
9 A I'd have -- I'll have to check.  
10 Q Perhaps you can check your file this evening and  
11 bring it and we can confirm that tomorrow. And  
12 lastly, did you receive the report of Dr.  
13 Christian Sloane, it's Exhibit 78, please.  
14 A No, I haven't seen this.  
15 Q Okay, thank you. Thank you. And you received, I  
16 expect, Dr. Kerr's report.  
17 A I had Dr. Kerr's report.  
18 Q So it looks, then, by way of summary, you received  
19 the report of Drs. Kerr, Tseng, Lee and Butt.  
20 A And there are others, but I just have to go and  
21 check my records.  
22 Q What others?  
23 A I'm not sure at this point. I've got to go look.  
24 I thought I received Swerdlow's report, but it  
25 didn't -- that didn't look familiar to me, so...  
26 Q Okay, possibly Swerdlow, fair? Is that correct?  
27 A Yes.  
28 Q Any others that you can recall now?  
29 A No, I really should go and check the records.  
30 Q Okay. I'd like you to do that, please.  
31 A Okay. Now, your report -- well, firstly, when did  
32 you receive the reports of -- the report of Dr.  
33 Butt?  
34 A I don't recall -- recently. I believe it's a  
35 recent report.  
36 Q Okay. The report of Dr. Lee, do you recall?  
37 A The autopsy report?  
38 Q Yes.  
39 A That was quite a while ago.  
40 Q Okay. And that would have been -- that would have  
41 -- you would have received then --  
42 A Yeah, it was prior to --  
43 Q -- that report prior to the 4th of May, the date  
44 of your report?  
45 A Yes.  
46 Q Is that fair? And the report of Dr. Butt, do you  
47 recall if you received that before or after you

1 issued the -- you dated your report of the 4th of  
2 May?  
3 A I don't -- I don't recall.  
4 Q Okay. And how about Dr. Tseng, before or after  
5 your report was dated?  
6 A I don't recall.  
7 Q And the report of Dr. Kerr, before or after?  
8 A My bet is it would be after. These are all -- the  
9 reports you're mentioning are all very recent.  
10 Q Yes. I'm just trying to figure out the order.  
11 A Yes.  
12 Q Lee's -- Lee is not.  
13 A Hmm?  
14 Q Dr. Lee's report is (indiscernible - overlapping  
15 speakers).  
16 A His autopsy report is (indiscernible - overlapping  
17 speakers).  
18 Q No. And possibly Dr. Swerdlow, and you can't  
19 recall if you've got it or -- if you received, or  
20 if you did when.  
21 A I'll to look. No.  
22 Q Thank you. Did you note on your -- on any of  
23 these documents when you did receive them?  
24 A No.  
25 Q Okay. And how did you receive them?  
26 A How did I receive them?  
27 Q Yes, by what manner, e-mail or some other method?  
28 A I don't remember. They came by -- I don't think  
29 it was e-mail.  
30 Q Okay. And we've mentioned that your report is the  
31 one that's been filed that's dated the 4th of May  
32 2009, did you produce any draft reports?  
33 A No, electronic.  
34 Q And explain for me the mechanism, then, by which  
35 this document was produced. How did you write  
36 this document?  
37 A Basically I -- I start by getting all the material  
38 for the history together.  
39 Q Yes.  
40 A And then I organize it in what I think is the  
41 logical sequence, the way I'm going to write the  
42 report, and then I do electronically and just add  
43 to the report, and basically there's only one  
44 document.  
45 Q Okay. Are there handwritten notes?  
46 A There are some.  
47 Q Okay. I'd ask you to bring those tomorrow as

1 well, please.  
2 A They're here right now.  
3 Q Okay, thank you. When were you retained?  
4 A For this current...?  
5 Q Yes.  
6 A I don't remember, I'm sorry.  
7 Q Is there a retainer letter?  
8 A I don't know. I think I was requested, I think I  
9 got a letter saying, please show up for this  
10 Commission.  
11 Q Okay. Is there any letter that provides you with  
12 instructions with respect to the report you  
13 subsequently issued?  
14 A I think I was requested by the Commission to look  
15 at a causation.  
16 Q Yes.  
17 A That's why I'm here.  
18 Q Yes, I understand that.  
19 A Was there a formal letter?  
20 Q Yes.  
21 A I'd have to check.  
22 Q And with whom did you discuss your report prior to  
23 the 4th of May 2009, if anyone?  
24 A With whom did I --  
25 Q With whom did you discuss --  
26 A -- review the actual report?  
27 Q Well, did you discuss the report, either in draft  
28 or final form -- now, you've said that there's not  
29 a draft, that it's simply electronic. Did you  
30 discuss the contents of your report with anyone  
31 prior to this document being finalized? And by  
32 "this document" I'm referring specifically to your  
33 report of the 4th of May 2009.  
34 A I would have -- Dr. Kerr, I would have --  
35 Q Yes.  
36 A -- mentioned it to him.  
37 Q Yes.  
38 A Yes.  
39 Q And Dr. Lee you discussed certain issues with?  
40 A Dr. Lee, yes.  
41 Q Anyone else?  
42 A I had conversations with the Commission, but I  
43 don't think I really discussed the material part  
44 of the report.  
45 Q Okay.  
46 A There was -- there was some meeting over the AED  
47 printout.

- 1 Q With -- and who -- who was that meeting with?
- 2 A And I think Dr. Tseng may have been part of that,  
3 by telephone.
- 4 Q Okay. Tell me about that. How did that -- how  
5 did that come about?
- 6 A I think there was an issue in looking at the  
7 second AED printout whether there was -- whether  
8 this was pacemaker -- or sorry, compressions or  
9 whether this was actually some kind of actual  
10 rhythm.
- 11 Q Yes.
- 12 A And it was sorted out when the -- when the first  
13 AED was produced, it showed a flat line. So there  
14 was a question there that was being --  
15 conversation that was being carried on between the  
16 cardiologist and -- and of course that's very  
17 germane to what I was interested in.
- 18 Q Okay. So you had a conversation with Dr. Tseng  
19 with respect to the rhythm strip from the Lifepak  
20 12, that's what we're talking about?
- 21 A No, I think I was more listening than anything.
- 22 Q All right. Who else was on that conversation?
- 23 A Oh, boy. I believe the conversation was really  
24 between Dr. Tseng, who was worried about there  
25 being rhythm, and Dr. Kerr, and you know -- and I  
26 think at the end of the day it was decided this  
27 was asystole.
- 28 Q Dr. Kerr formed the view it was asystole?
- 29 A I think the problem initially was that the first  
30 printout wasn't available, so they were just  
31 looking at the second printout.
- 32 Q Okay. So this conversation is -- I want to get  
33 the participants nailed down first. We've got Dr.  
34 Kerr and Dr. Tseng, yourself.
- 35 A Right.
- 36 Q Who else?
- 37 A I'm trying to remember how it went down. There  
38 may have -- there may have been conversation with  
39 the Commission, but I'm not sure. I really don't  
40 have -- I can remember the gist of it, but I don't  
41 remember the exact --
- 42 Q Well, I'm trying to figure out who the  
43 participants are first. We've got yourself.
- 44 A Well, I can tell you --
- 45 Q Yeah. We've got yourself, Dr. Kerr.
- 46 A And Dr. Tseng.
- 47 Q And Dr. Tseng.

1 A Those are -- that's really the three participants.  
2 Q Okay. Who else is there that may not be  
3 participating in the conversation itself? Who --  
4 tell me --  
5 A I'm trying to remember where it took place, that's  
6 what I'm trying to remember, and I --  
7 Q Okay. That's my next question.  
8 A And I can't.  
9 Q Okay.  
10 A Sorry. It'll come to me. I'll try and think  
11 about it.  
12 Q Okay. When did this occur?  
13 A A couple of weeks ago, I mean...  
14 Q Was Dr. Butt also involved in this conversation?  
15 A No.  
16 Q Okay.  
17 A Not that I'm aware.  
18 Q And who set the conversation up?  
19 A You know, I'm not 100 percent sure, because this  
20 wasn't -- I didn't set it up. This was not of my  
21 making. I was just -- I was just trying to get  
22 information, you know. I was, as you understand,  
23 doing a report, it's very germane to my report  
24 whether this -- this was, you know, an arrhythmia  
25 or asystole.  
26 Q Yes, because you're not a cardiologist.  
27 A No. No.  
28 Q And in essence from --  
29 A But if somebody had said this was -- this was an  
30 arrhythmia at the time of the -- at the time of  
31 the AED --  
32 Q Yes.  
33 A -- reading out, then that's --  
34 Q Well --  
35 A -- that would have guaranteed a pulse rate at that  
36 time, right?  
37 Q Okay. Well, let's move back for a moment.  
38 A But I -- because I didn't instigate the meeting,  
39 I'm not 100 percent...  
40 Q Okay. Okay.  
41 A I can remember the -- the conversation, but I  
42 don't remember the details, sorry.  
43 Q Okay. Well, let's move back and we'll try and  
44 figure out what documents you're looking at first.  
45 We know that there was an AED hooked up first.  
46 You're aware of that.  
47 A Yes.

1 Q And that was replaced ultimately by the Lifepak  
2 12.  
3 A Right.  
4 Q And the AED doesn't have a printout, does it?  
5 A Well, I have two print -- there's two printouts  
6 that I saw.  
7 Q Yes. But the AED does not produce a printout as  
8 far as I'm aware.  
9 A Oh, at the time, no.  
10 Q And what happens is the Lifepak 12 actually  
11 produces the rhythm strips.  
12 A A strip, yes.  
13 Q And you're looking at a document, from my  
14 recollection of the exhibit, which is measured in  
15 the -- in the 20 or 30 pages of rhythm strips on a  
16 standard 8-by-11 sheet, is that -- is that what  
17 you were looking at, do you recall?  
18 A Yes.  
19 Q And do you -- do you have that?  
20 A I have that here, yes.  
21 Q May I see that, please.  
22 A I think that's it.  
23 Q Now, Doctor, do you recall if there were -- if  
24 there's a more extensive set of rhythm strips,  
25 other than -- that are -- other than on this  
26 document. There's only one -- two pages of rhythm  
27 strips.  
28 A No, I'm not aware. My -- my only interest was  
29 whether there was asystole or not.  
30 Q Yes.  
31 A So I wasn't part of the -- setting the  
32 conversation up or anything. I was just  
33 interested in the results.  
34 Q Okay. So that document's provided to you in -- in  
35 the material that you received from the  
36 Commission, is that fair?  
37 A That's correct.  
38 Q Okay. And you review that document when you get  
39 it, and you have some concerns as to whether it  
40 demonstrates asystole or some other form of  
41 rhythm; is that fair?  
42 A That's correct.  
43 Q And you raise those concerns in some manner to  
44 whom?  
45 A No, that's not the way it happened.  
46 Q Okay.  
47 A It was raised by the cardiologist and I was a

1 listener. I didn't raise it.  
2 Q Okay. So you're having a meeting with Dr. --  
3 A But at the point that it's raised, then I'm  
4 interested.  
5 Q Okay. And what I'm just --  
6 A So --  
7 Q Yes.  
8 A -- you understand it came and went fairly quickly,  
9 it was --  
10 Q Yes.  
11 A -- "Hey, how about this. I think there may be a  
12 rhythm on this strip," and then -- and then, "No,  
13 there isn't. There's this first one."  
14 Q So and that -- and I'm just trying to get the  
15 mechanics of what happened.  
16 A Mm-hmm.  
17 Q You're -- is that -- who is that discussion with  
18 that the concern over the rhythm is raised? You  
19 look at the sheet. Who are you speaking with and  
20 when does that occur?  
21 A You're thinking the location. I'm trying to --  
22 Q No, when.  
23 A Oh, recently.  
24 Q Okay.  
25 A Quite recently.  
26 Q And are --  
27 A I think there was a concern on the part of one of  
28 the cardiologists that there may have been an  
29 active rhythm, and the -- when the second -- when  
30 the first AED or the first strip came out, that  
31 preceded this one.  
32 Q Yes.  
33 A It was understood that there wasn't, it was  
34 asystole.  
35 Q And who had the concern, which of the two  
36 cardiologists had the concern over the presence of  
37 a rhythm?  
38 A I believe it was Dr. Tseng.  
39 Q He thought there was a rhythm?  
40 A He thought there might be a rhythm.  
41 Q Okay. And then during this, there's -- then this  
42 meeting, he's on the phone with --  
43 A He's -- he's in wherever he lives.  
44 Q Fair.  
45 A Yeah.  
46 Q San Francisco. He's on the phone --  
47 A And I can't remember where I was at the time.

1 Q Okay. And Dr. Kerr --  
2 A I'll try to remember.  
3 Q Are you with Dr. Kerr, or are you on the phone  
4 with Dr. Kerr?  
5 A I think it's all by phone, actually.  
6 Q Okay. So Dr. Kerr's on the line as well. You're  
7 all looking at the same documents?  
8 A I believe so.  
9 Q Okay. All right.  
10 A I'm sorry, but I just don't remember the exact  
11 facts.  
12 Q No, I appreciate that.  
13 A What I do remember is there was this dialogue  
14 about "This may be a rhythm"; "No, it isn't"; "Oh,  
15 have you seen the first one"; "Oh, it's asystole.  
16 This person's been, you know, his heart stopped."  
17 Q Okay. And from your recollection, Dr. Tseng  
18 initially thought there was rhythm?  
19 A I believe he was the one that was concerned it  
20 might be.  
21 Q Okay.  
22 A I don't know if -- you'd have to ask him if he --  
23 Q Well, unfortunately he's come and gone, but that's  
24 a different issue. And Dr. Kerr, did Dr. Kerr  
25 form the impression at that point in time that it  
26 was asystole?  
27 A What happened, in my recollection, is they were  
28 unaware of the first printout.  
29 Q Yes.  
30 A And then somebody, I think one of the members of  
31 the Commission, said, "Oh, there's a first one."  
32 And then that changed everything.  
33 Q And what does the first printout show?  
34 A Asystole.  
35 Q As -- and it showed asystole at the very --  
36 A Beginning.  
37 Q -- first, at the very beginning --  
38 A Yeah.  
39 Q -- of the rhythm strip for Mr. Dziekanski, is that  
40 fair?  
41 A That's correct.  
42 Q And that was the conclusion that both Dr. Tseng  
43 and Dr. Kerr ultimately --  
44 A Yes.  
45 Q -- arrived at, was that he was asystole when the  
46 monitor is hooked up.  
47 A That's -- that's my understanding, yes.

- 1 Q Okay. All right. And the reason you -- you're  
2 discussing this with -- with two cardiologists is  
3 probably because you're not one, is that fair?
- 4 A The reason I'm discussing it with two  
5 cardiologists is because somebody's raised a  
6 question there, you know, is -- as we're all aware  
7 here, the -- the issue of direct capture has been  
8 raised.
- 9 Q Yes.
- 10 A And I'm trying to either rule in or rule out the  
11 possibility of direct capture.
- 12 Q Right.
- 13 A Which, according to my report, I pretty ruled out.
- 14 Q Right.
- 15 A As less likely than the -- far less likely than  
16 the hyperadrenergic possibility.
- 17 Q Okay. And we're going to come back to this direct  
18 capture at the end.
- 19 A Mm-hmm.
- 20 Q But from what you were saying in your evidence  
21 previously today, and perhaps I'm mistaken, is  
22 that you don't attribute any direct capture in  
23 this case with respect to Mr. Dziekanski?
- 24 A No, I think it's unlikely.
- 25 Q Yes. Now, going back to this discussion over the  
26 -- the rhythm that we've talked about, and the  
27 first set of -- of rhythm strips which generated  
28 this issue, how was the second group of rhythm  
29 strips provided? What was the mechanism by which  
30 you got those?
- 31 A I think the Commission -- I believe the Commission  
32 handed me the strips.
- 33 Q And when was that?
- 34 A Around the time of the meeting. I got -- the  
35 second set came first.
- 36 Q Okay.
- 37 A Because it had the, you know, what looked like  
38 possible rhythm.
- 39 Q Okay.
- 40 A Which turned out to be compressions.
- 41 Q Okay. And that's the --
- 42 A And then that's when the concern was raised. And  
43 then this happened over a very short period of  
44 time, I'm...
- 45 Q Yes. And then you went back to --
- 46 A And then somebody said, oh, I think -- I believe  
47 somebody at the Commission produced a -- the first

- 1           AED and the issue was resolved.
- 2           Q    Oh, I see. Okay. And who at the Commission
- 3           produced that document for you?
- 4           A    I -- you know, I don't remember. I think it was
- 5           one of the people working for the Commission came
- 6           over and said, hey, but I --
- 7           MR. NEAVE: All right.
- 8           THE COMMISSIONER: I've got some excellent help.
- 9           MR. NEAVE: Apparently. I have no issue with that, Mr.
- 10          Commissioner.
- 11          Q    So other than the -- this discussion, and so let's
- 12          move Commission staff off the list, Dr. Lee off
- 13          the list, Dr. Tseng off the list, and Dr. Kerr off
- 14          the list, did you have discussions with anyone
- 15          else about matters giving rise to your opinion
- 16          before it was completed on the 4th of May?
- 17          A    No, not that I recall.
- 18          Q    Okay.
- 19          A    Oh, sorry, yes. Dr. Otto.
- 20          Q    And who is that?
- 21          A    He's a Polish-speaking doctor, he used to be my
- 22          partner when I was in family practice in East
- 23          Vancouver.
- 24          Q    Okay.
- 25          A    And I asked him to get the records translated.
- 26          Q    Okay.
- 27          A    I wanted to make sure about what was happening
- 28          prior to Mr. Dziekanski coming to Canada.
- 29          Q    Okay. And is that where the Metaproll (phonetic)
- 30          issue arise -- arose from?
- 31          A    Metaprolol?
- 32          Q    Yes, sorry.
- 33          A    Well, there was -- there was some translation
- 34          errors that didn't make sense.
- 35          Q    Oh, okay.
- 36          A    For example, he -- you know, he showed up with a
- 37          sore foot and a -- and compressing chest pain,
- 38          which turned out to be the doctor -- my
- 39          understanding the doctor pressed on his chest and
- 40          it was tender, so it was --
- 41          Q    And do you recall speaking with anyone else, then,
- 42          other than the people we've mentioned. Has that
- 43          -- has that exhausted the list?
- 44          A    I believe so.
- 45          Q    Okay. Am I correct, Doctor, that you yourself
- 46          have not engaged in any research with respect to
- 47          the effect on humans of Taser devices?

- 1 A No.
- 2 Q Your -- the extent of your review is a literature  
3 review; is that fair?
- 4 A No, the extent of my review is my training in  
5 epidemiology.
- 6 Q Okay.
- 7 A And my clinical experience to go -- to go through  
8 the history, figure out what risk factors might  
9 potentially cause the death of Mr. Dziekanski, and  
10 then try and rule them -- rule them in or rule  
11 them out, based on what's in the literature,  
12 what's my clinical experience in the case of DTs  
13 and what you can read about in texts such as  
14 psychiatric texts and the DSM-IV-TR.
- 15 Q And with respect specifically, then, to the  
16 possible effects of the Taser device on humans,  
17 that's entirely derived from a literature review?
- 18 A That's correct.
- 19 Q Thank you. And your c.v. appears to be related to  
20 evaluations of drugs versus medical devices, is  
21 that fair?
- 22 A No, at our centre we did evaluations on stents,  
23 endovascular stents, we did -- we were a clinical  
24 research support unit.
- 25 Q Have you done any work with respect to electrical  
26 medical devices?
- 27 A I'd have to think about it, but probably not.
- 28 Q Okay. Well, if you have, you can tell me  
29 tomorrow.
- 30 A Yes. We supported an awful lot of research in a  
31 lot of different areas, you understand, from --
- 32 Q No, I appreciate that.
- 33 A -- MRIs to --
- 34 Q Yeah.
- 35 A -- different types of surgery to -- so, no, I  
36 don't remember having a major interest in --
- 37 Q Right.
- 38 A Electrophysiology.
- 39 Q And I'm not quibbling with you, Doctor, I'm just  
40 trying to get the sense --
- 41 A Yeah.
- 42 Q -- of your background. Now, during the course of  
43 your review and interest in this case, did you  
44 review literature dealing with the phenomenon of  
45 sudden death during restraint?
- 46 A During the course of this case? Yes.
- 47 Q Well, or any other.

- 1 A Yes.
- 2 Q Okay. You would -- am I fair, or would it be fair  
3 for me to say that you're generally familiar with  
4 the literature with respect to sudden death during  
5 restraint?
- 6 A Yes.
- 7 Q And would you agree with me, then, Doctor, that  
8 that phenomenon is well documented in scientific  
9 peer-reviewed literature?
- 10 A In what way well documented?
- 11 Q Well, there are numerous articles in the medical  
12 literature with respect to the phenomenon that's  
13 been referred to as sudden death during restraint.
- 14 A Descriptive articles without control groups or  
15 anything like that, yes.
- 16 Q Yes.
- 17 A Yeah.
- 18 Q And you would agree with me, Doctor, that that  
19 phenomenon has been documented in the medical  
20 literature since around the mid-1800s?
- 21 A I've read that, yes.
- 22 Q And that's the so-called Bell's Syndrome that we  
23 know of.
- 24 A Yes.
- 25 Q You know what I'm talking about, right?
- 26 A Yes.
- 27 Q That's the new excited delirium, is that fair?
- 28 A Yes.
- 29 Q And it's been associated -- sudden death during  
30 restraint has been associated with the phenomenon  
31 of excited delirium since about that time.
- 32 A Yes.
- 33 Q And this is an easy question, well before the  
34 advent of the Taser.
- 35 A Yes. Depending on how you define -- I mean, again  
36 one of the problems is how do you define excited  
37 delirium.
- 38 Q Fair enough.
- 39 A But if you -- if you set your catchment too wide,  
40 you cast your net too wide, you're going to run  
41 into problems of sensitivity and specificity,  
42 which I discussed.
- 43 Q I understand that, and we'll come back to that.  
44 So let me help you out on the question.
- 45 A Okay.
- 46 Q With respect to the phenomenon known as -- as  
47 Bell's --

1 A Yes.  
2 Q -- sudden death during restraint has been  
3 documented since that time.  
4 A For a long time, yes.  
5 Q Yes. Many of those cases involved agitated males,  
6 fair?  
7 A That's correct.  
8 Q With an age range of somewhere between 20 and 50  
9 years is a common feature?  
10 A Yeah, the average age is young, though.  
11 Q Yes.  
12 A Twenties.  
13 Q The range is 20 to 50, fair?  
14 A Yeah, but I mean my current understanding of the  
15 literature is about 80 percent of the current  
16 cases are high on illicit drugs.  
17 Q Yes.  
18 A Probably over half have coronary artery disease,  
19 and the average age -- the typical would be a male  
20 in his mid- to late-twenties, who is high on  
21 cocaine.  
22 Q Yes. And you would also agree with me, Doctor --  
23 A And psychiatric disease is another thing  
24 associated with it.  
25 Q Yes. And there's also, you would agree with,  
26 Doctor, cases where there has been no underlying  
27 medical causation determined with respect to a  
28 person who has -- who has died during something  
29 called sudden death during restraint.  
30 A That's correct.  
31 Q The mechanism in those cases is simply unknown.  
32 A Unknown.  
33 Q Undeterminable.  
34 A There is a mechanism, it's unknown.  
35 Q Right. And we just don't know what it is, fair?  
36 We can surmise, but in those cases there's no  
37 determination, fair?  
38 A Yes. Yeah, I would agree.  
39 Q What is common is that they frequently occur with  
40 a collapse shortly after restraint, fair?  
41 A Are you talking about excited delirium?  
42 Q Sudden death during restraint generally, Doctor,  
43 thank you. Let me rephrase the question. In  
44 cases that you're aware of from your review of the  
45 medical literature on sudden death during  
46 restraint, the deaths frequently occur with a  
47 collapse shortly after restraint?

- 1 A Yes.
- 2 Q They often involve various forms of agitated  
3 behaviour, fair?
- 4 A They often -- they usually do, yes.
- 5 Q Yes. Whether it's excited delirium or something  
6 else, we have highly agitated individuals, is that  
7 fair?
- 8 A Yes.
- 9 Q They often show physiological features of  
10 excessive sweating, as an example.
- 11 A Profuse sweating is --
- 12 Q Yes.
- 13 A -- is what's described.
- 14 Q Thank you, yes. That's a better word than  
15 excessive.
- 16 A Yeah.
- 17 Q Thank you. They often, although not necessarily,  
18 involve law enforcement personnel, fair?
- 19 A Well if it's restraint. Most sudden deaths are  
20 not in restraint. They're not during -- they're  
21 just sudden deaths on the street.
- 22 Q Fair. And we're talking about the phenomenon  
23 of sudden death during restraint, and the  
24 literature --
- 25 A This is the phenomena that's described in -- with  
26 police -- I assume it's almost -- it's virtually  
27 always a corrections officer or a police officer,  
28 people like that.
- 29 Q Fair, thank you. They often occur in  
30 circumstances where there is behaviour where the  
31 decedent has barricaded himself or herself, fair?
- 32 A I'm not aware of that. More typical it's jumping  
33 through windows or jumping down stairways, or  
34 screaming, a lot of behaviour like that. But  
35 barricading, I haven't seen that listed.
- 36 Q Okay. Purposeless movement is a common feature.
- 37 A Wildly agitated purposeless movement, yes.
- 38 Q Okay. Wide eyes is another common indicia that is  
39 demonstrated in the literature.
- 40 A That's not one of the main -- I mean, I've seen it  
41 described, but that's not one of the cardinal  
42 features that I'm aware of.
- 43 Q I'm not asking cardinal, I'm just asking indicia.
- 44 A Do some of the people have wide eyes, yes.
- 45 Q And typically in these cases, the autopsies show  
46 minimal results.
- 47 A Sudden death during restraint?

1 Q Yes.  
2 A Well, typically they'd have illicit drugs.  
3 Q Okay. Remove that issue, where it's not a illicit  
4 drug case, but it's still a sudden death during  
5 restraint --  
6 A Without -- without heart disease?  
7 Q Yes.  
8 A So you get rid of illicit drugs.  
9 Q Yes.  
10 A You get rid of heart disease, which is very  
11 common.  
12 Q Yes.  
13 A And you get rid of severe psychiatric mental  
14 illness, as well?  
15 Q Well, you can't diagnose severe psychiatric --  
16 A By history.  
17 Q -- on an autopsy, can you?  
18 A By past history, yes.  
19 Q Yes. And my question is the autopsy results, the  
20 autopsy --  
21 A You're -- you're down to a very small --  
22 Q Yes.  
23 A -- number of people left.  
24 Q Yes. And you would agree in those cases --  
25 A In that very small number of cases left?  
26 Q Yes. Minimal findings.  
27 A That don't have illicit drugs and don't have heart  
28 disease, that don't have a psychiatric illness.  
29 Q Yes.  
30 A That are not screaming and shouting or jumping  
31 through a window?  
32 Q Yes.  
33 A What's left?  
34 Q Well, the cases that we talked about where -- that  
35 you agreed the mechanism of death was unknown.  
36 You did agree that.  
37 A But I'm trying to be helpful here, but --  
38 Q No, I appreciate that.  
39 A There's two -- there's two things you're jumping  
40 back -- there's first of all the demographics --  
41 Q Yes.  
42 A -- of sudden death in restraint.  
43 Q Yes.  
44 A Do you, you know, if we take sudden death in  
45 restraint and we get rid of a young, somebody in  
46 the mid-age of 20, somebody who's not high on  
47 drugs, somebody who doesn't have heart disease,

1           somebody who has not got a psychiatric illness,  
2           then we're down to a very small group of people.  
3           Now if we go and take the other half of the coin  
4           and look at, okay, symptoms, and we get rid of  
5           screaming, jumping through windows, profuse  
6           sweating, and some of the other factors, and say,  
7           well, we've got sort of mild agitation and they  
8           don't -- do you understand where I'm going?  
9           You're getting into a pretty rarefied air there.  
10          Q       Right. And I've confined my question with respect  
11           to autopsy findings alone, that autopsies in these  
12           cases show minimal findings and we remove --  
13          A       They usually -- no, that's not true. Autopsies in  
14           these cases usually show drugs.  
15          Q       Okay. Remove the drugs from the equation.  
16          A       And in the remainder of cases, they often show  
17           heart disease.  
18          Q       Okay.  
19          A       And the past history often shows -- and where  
20           that's not a case, they often show psychiatric  
21           history.  
22          THE COMMISSIONER: Mr. Neave, I don't want to go much  
23           past 4:00.  
24          MR. NEAVE: Then, Mr. Commissioner, I'm pleased to  
25           start at a time convenient to you tomorrow.  
26          THE COMMISSIONER: Now, it's essential we finish Dr.  
27           Chambers tomorrow.  
28          MR. NEAVE: Yes.  
29          THE COMMISSIONER: And are you able to say anything at  
30           all about how long you might be?  
31          MR. NEAVE: It's going slower than I had anticipated.  
32           I would expect an hour and a half to two hours. I  
33           would like to look at the doctor's file.  
34          THE COMMISSIONER: All right. Can any other counsel  
35           make a comment?  
36          MR. HIRA: After Mr. Neave's work, I would spend maybe  
37           ten, 15, maybe 20 minutes or less.  
38          THE COMMISSIONER: I'm going to hope that maybe two  
39           hours. If that's all so, Mr. Vertlieb, what do  
40           you say we start at 9:00 or 10:00 or 9:30?  
41          MR. VERTLIEB: I think to be safe to Mr. Neave, and so  
42           he doesn't feel under time pressure, if we start  
43           at 9:00. Remember, Mr. Commissioner, we have Dr.  
44           Kerr in Boston and we need -- he has to be  
45           finished by four o'clock tomorrow. And if Dr.  
46           Chambers is finished by the noon break, but that's  
47           -- I just mention that, we do have Dr. Kerr and we

1           just have to finish him. It would be great if we  
2           can finish -- we have to finish Dr. Chambers,  
3           because he will be gone. It would be good though  
4           if we can get Dr. Kerr finished, because he's  
5           hanging out there, as it were, and he's prepared  
6           to be available by phone. And he's busy in  
7           Vancouver, so it -- I'm just mentioning this to  
8           you, as I think everyone needs to be ready to deal  
9           with Kerr.

10        THE COMMISSIONER: Well, we'll start at 9:00 and see  
11        how we do.

12        MR. VERTLIEB: Now, just before we break, one very  
13        small point. Mr. Hira, and I don't think he did  
14        it for any improper purpose, of course, read out  
15        the e-mail for Dr. Webster, and I'm just going to  
16        ask that the e-mail not be recorded in the  
17        transcript by the court reporter, and I think it  
18        should be properly done with your consent, and  
19        that's why I raise it. Could that just be  
20        eliminated from the reference, is that fair, Mr.  
21        Commissioner, the e-mail address.

22        MR. HIRA: The e-mail address certainly, I'm only  
23        concerned about the contents at the time, I don't  
24        need the e-mail address.

25        MR. VERTLIEB: Of course. That's fine, of course, just  
26        the address.

27        MR. HIRA: It was only done because the doctor couldn't  
28        remember -- had some difficulty with their e-  
29        mails.

30        THE COMMISSIONER: All right. There seems to be some  
31        consensus there. Madam Recorder, if you would  
32        please not reproduce the address.

33        MR. VERTLIEB: And finally, just because there was  
34        talk, never confirmed with everybody about  
35        availability, but there was talk about possibly  
36        sitting Friday. And I think we've now come to the  
37        realization that sitting Friday won't conclude the  
38        case, so there's no point in sitting Friday.  
39        There's some technical -- there's some problems  
40        with other counsel here for Friday in any event,  
41        so I just want to tell everybody here that we will  
42        not be sitting Friday this week.

43        THE COMMISSIONER: All right. I am toying with  
44        Thursday and Friday of the week after, but that's  
45        very tentative. I say I'm thinking about the  
46        Thursday and Friday of the next week, but that's  
47        very tentative, and I just put that out for

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discussion.  
MR. VERTLIEB: Thank you, Mr. Commissioner.  
THE REGISTRAR: The hearing is now adjourned to 9:00  
a.m. tomorrow morning.

(WITNESS STOOD DOWN)

(PROCEEDINGS ADJOURNED TO MAY 14, 2009 AT  
9:00 A.M.)