

**Commission d'enquête
sur les actions des
responsables canadiens
relativement à Maher Arar**



**Commission of Inquiry into
the Actions of Canadian
Officials in Relation to
Maher Arar**

Audience publique

Public Hearing

Commissaire

L'Honorable juge /
The Honourable Justice
Dennis R. O'Connor

Commissioner

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Centre des conférences du gouvernement
Salle Annexe
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Held at:

Government Conference Centre
Annex Room
2 Rideau Street
Ottawa, Ontario

Tuesday, June 22, 2004

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Tuesday, June 22, 2004

3 at 10:00 a.m. / L'audience débute le mardi

4 22 juin 2004 à 10 h 00

5 THE COMMISSIONER: You may
6 sit down.

7 PREVIOUSLY AFFIRMED: WARD ELCOCK

8 THE COMMISSIONER: You see how it
9 works around here now. I asked for new tables
10 yesterday for the lawyers -- there are about 12
11 lawyers -- and one for me and I am the only one
12 who got one. I hope they didn't take mine from
13 one of the lawyers.

14 --- Laughter / Rires

15 THE COMMISSIONER: In any event, I
16 have spoken to people and we are going to work out
17 a system so that there is more table space and
18 shelf space. I see there are some carts here for
19 the lawyers and that will be fixed as soon as
20 possible.

21 Mr. Cavalluzzo?

22 MR. CAVALLUZZO: Mr. Commissioner,
23 just a few points at the beginning.

24 Yesterday, Mr. Waldman, you had a
25 number of documents. I don't know if you intend

1 to introduce them as exhibits and perhaps we could
2 do that formally with the Registrar.

3 Secondly, I have spoken to the
4 court reporter, who had trouble when people were
5 talking at the same time. So, Mr. Waldman, if you
6 could just permit the witness to answer the
7 question it will be much easier for the court
8 reporter.

9 Okay; thank you.

10 THE COMMISSIONER: Mr. Waldman, on
11 the documents, are all of them going to be
12 referred to in evidence or do you just propose to
13 file the documents and those that aren't referred
14 to would speak for themselves?

15 MR. WALDMAN: I am not going to
16 refer to everything. I would ask that they all be
17 filed, that includes the four volumes and the two
18 loose documents, which is the Department of
19 Justice Report on Torture and also the Human
20 Rights First document.

21 Today I will be referring to the
22 Human Rights First document, Ending Secret
23 Detention.

24 I will be referring to
25 Canadian Security Intelligence Service Policies

1 and Volumes 1 and 2.

2 THE COMMISSIONER: What was the
3 second thing you referred to.

4 MR. WALDMAN: The binder. I think
5 it is Exhibit 4, Canadian Security Intelligence
6 Service Policies.

7 THE COMMISSIONER: I have it.
8 Yes?

9 MR. WALDMAN: And Volumes 1 and 2
10 of our material.

11 THE COMMISSIONER: Okay.

12 MR. WALDMAN: I wanted to advise
13 you that Volume 3, which has the testimony of the
14 RCMP witness Deputy Commissioner Loepky, we will
15 be relying on that for his evidence as well.

16 We probably will be disclosing
17 other documents, but those as well.

18 THE COMMISSIONER: For now, do you
19 suggest we mark all four volumes as the next
20 exhibit?

21 MR. WALDMAN: Right.

22 THE COMMISSIONER: Let me make
23 this qualification, without knowing what is in
24 there and so on. It would be subject to any
25 argument that may come up about the relevance or

1 the use or the admissibility or whatever else is
2 there. I don't know what the problems may or may
3 not be, but for convenience sake let's just mark
4 all of the documents as the next exhibit.

5 Does that make sense?

6 MR. WALDMAN: Yes. I should point
7 out that what we have tried to do is, we have
8 highlighted the parts we are going to rely on.
9 For example, when there is testimony for a
10 Parliamentary Committee we included the whole
11 testimony because we didn't want to mislead
12 anyone. Having said that, we have highlighted the
13 portions we are going to rely on in our
14 examination.

15 THE COMMISSIONER: Okay. That's
16 good. I think that was a good approach to take.

17 That is exhibit? Mr. Clerk, what
18 is the next number? Exhibit 6 then, okay.

19 EXHIBIT NO. 6: Four volumes
20 of documents and two loose
21 documents submitted by
22 Mr. Waldman

23 THE COMMISSIONER: Go ahead,
24 please, Mr. Waldman.

25 MR. WALDMAN: I think we need a

1 separate number for these three documents.

2 THE COMMISSIONER: Ending Secret
3 Detentions; Human Rights First, number 7.

4 EXHIBIT NO. 7: Document
5 entitled "Human Rights First,
6 Ending Secret Detentions"

7 MR. WALDMAN: And the Department
8 of Justice Memorandum on Torture, on the new
9 definition of torture.

10 THE COMMISSIONER: What does that
11 look like again?

12 THE COMMISSIONER: This one.
13 Okay. That will be Exhibit 8.

14 EXHIBIT NO. 8: Department of
15 Justice Memorandum on
16 Torture, on the new
17 definition of torture

18 MR. WALDMAN: For today I am going
19 to be referring to those four documents.

20 THE COMMISSIONER: Okay.
21 Go ahead.

22 EXAMINATION

23 MR. WALDMAN: Mr. Elcock, if I
24 understood you correctly yesterday you told us
25 that intelligence is sort of like a jigsaw puzzle,

1 you get one piece of information and then you put
2 it together with another piece of information and
3 then another until finally you get a broader
4 picture.

5 Is that correct.

6 MR. ELCOCK: That is
7 essentially true.

8 MR. WALDMAN: I suppose, though,
9 that each investigation or each puzzle has to
10 start with the initial piece. So first you get
11 one piece and that gets put in your database. It
12 is left there for awhile and then another piece
13 will come and you will put the pieces together.

14 There has to be a starting point.

15 Is that correct?

16 MR. ELCOCK: There is a starting
17 point in the sense that we obtain information. At
18 some point we may have information which allows us
19 to come to the conclusion that an investigation
20 should begin. As I explained to Mr. Cavalluzzo,
21 we have a targeting committee which reviews those
22 applications to in fact begin an investigation.

23 MR. WALDMAN: But every puzzle has
24 to start with -- when you put a jigsaw puzzle
25 together, there has to be a first piece.

1 Is that correct?

2 MR. ELCOCK: Yes.

3 MR. WALDMAN: You may not see any
4 relevance at beginning?

5 MR. ELCOCK: There may be a number
6 of pieces in the file which together may begin to
7 make the beginning of a picture. So whether there
8 is one piece or three or four that start the
9 puzzle -- we would need more than one piece in
10 most cases to begin an investigation.

11 MR. WALDMAN: But you would start
12 off with the initial piece, then you get another
13 piece, then you start an investigation? Right?

14 MR. ELCOCK: Yes.

15 MR. WALDMAN: Okay. So if I
16 understood you correctly, if you get evidence from
17 torture -- let me just ask another question first.

18 It would seem that in some cases
19 you will get an initial piece and you will put it
20 in your database even though there is nothing
21 related.

22 Is that correct?

23 MR. ELCOCK: No, if it is in our
24 database it has to be in there in the context of
25 some investigation because we are only allowed to

1 maintain information that is strictly necessary.
2 We don't maintain information just for the sake of
3 keeping odd bits of information.

4 MR. WALDMAN: How do you start an
5 investigation? How do you get the -- I'm a bit
6 mystified.

7 MR. ELCOCK: In most cases we
8 would either receive enough information that
9 allows us to conclude that somebody is a threat or
10 we may, as part of another investigation, identify
11 another individual who, in part of the context,
12 allows us to conclude that that individual also
13 should be part of an investigation.

14 MR. WALDMAN: So if you get
15 evidence from --

16 MR. ELCOCK: We don't get
17 evidence, we get intelligence.

18 MR. WALDMAN: I'm sorry. You are
19 right.

20 MR. ELCOCK: We are not an
21 enforcement agency.

22 MR. WALDMAN: I'm sorry.

23 So if you get information from a
24 regime that engages in torture, you have told us
25 yesterday you never are certain that the regime

1 engages in torture.

2 Is that correct?

3 MR. ELCOCK: Rarely, if ever,
4 would we have conclusive proof that an agency has
5 engaged in torture or indeed any specific instance
6 in respect of which we might have received
7 information that it was a result of torture.

8 MR. WALDMAN: Isn't the same true
9 of intelligence that rarely, if ever, do you have
10 conclusive proof of anything? It is just putting
11 pieces of a jigsaw puzzle together.

12 MR. ELCOCK: In many cases we
13 would have what we would see as conclusive, but
14 the reality is it may not be conclusive in the
15 context of evidence. We are not an organization
16 that collects evidence to present to courts and we
17 don't collect to evidentiary standard.

18 MR. WALDMAN: Aren't you applying
19 two different standard just now, sir; one for
20 whether a regime engages in torture and another
21 for whether a person is a suspected terrorist?

22 MR. ELCOCK: No, I'm not sure what
23 your point is.

24 MR. WALDMAN: You just told me
25 that rarely, if ever, do you have conclusive proof

1 that a regime engages in torture. What standard
2 are you applying? Are you applying the same
3 standard to that as you apply to people that you
4 target?

5 MR. ELCOCK: Well, at the
6 beginning of an investigation we don't have to
7 have conclusive proof that somebody is engaged in
8 terrorism to begin an investigation. We only have
9 to reasonably suspect that person is a threat to
10 the security of Canada.

11 MR. WALDMAN: But at some point do
12 you not reach a conclusion?

13 MR. ELCOCK: At some point we may
14 reach a conclusion, and indeed in respect of some
15 countries we may reach a conclusion that they
16 probably do use torture, but at every stage the
17 conclusion will depend upon the amount of
18 information we have and the quality, the validity
19 of that information and whether we believe it is
20 reliable or not.

21 MR. WALDMAN: Are you aware of the
22 decision of the Supreme Court of Canada in Suresh
23 that says it was a violation of the Charter to
24 send a person back to a country where there is a
25 risk of torture?

1 MR. ELCOCK: Yes.

2 MR. WALDMAN: Don't you think by
3 the same token that sending information to regimes
4 that engage in torture, with the risk that it
5 would be used in torture, is also a violation of
6 our Charter?

7 MR. ELCOCK: I think, Mr. Waldman,
8 what I said yesterday was that in sharing
9 information with any service we share information
10 very carefully. One of the issues we balance in
11 sharing with any service are the questions around
12 not only the issue of national security, which is
13 our responsibility -- and when I say "national
14 security" I mean security. That sounds like some
15 arcane and dry statement, but the reality is what
16 we are doing is we are investigating to try to
17 ensure that the Madrid railway bombing doesn't
18 occur in Canada, doesn't occur at the Bloor and
19 Yonge subway station. That is what our goal is.

20 That is an important issue, but we
21 balance that against the rights of the individual,
22 the privacy of the individual, the safety of the
23 individual, if indeed it is a case involving an
24 individual. If indeed we conclude that there is
25 any risk, we wouldn't share that information with

1 a country that we suspected or believed or
2 assessed as probably using torture.

3 MR. WALDMAN: Does that mean you
4 wouldn't share information with Syria then?

5 MR. ELCOCK: I am not making any
6 comment on whether we share information with any
7 specific country, I am saying that in every case
8 we share -- every country we share with we make
9 that same assessment, whether there is a
10 balance -- there is a balance between issues of
11 national security and the issue of the individual,
12 if there is an individual involved.

13 In most cases, if there was a
14 regime that indeed was a regime that we suspected
15 of using torture or, go further, we assessed as
16 probably using torture, then in all probability we
17 wouldn't share information about individuals or
18 groups with that organization. We would share
19 other kinds of relatively more innocuous
20 information such as technical information or how
21 do you train your people better to work as an
22 intelligence service.

23 MR. WALDMAN: Yesterday, I don't
24 want to interrupt. Are you finished?

25 MR. ELCOCK: Yes.

1 MR. WALDMAN: Yesterday you told
2 me that you hadn't formed an opinion about whether
3 Syria engages in torture.

4 Is that correct?

5 MR. ELCOCK: I'm still not
6 expressing an opinion about whether Syria engages
7 in torture or not.

8 MR. WALDMAN: Does that mean that
9 you would share information with Syria?

10 MR. ELCOCK: I didn't say that,
11 Mr. Waldman.

12 MR. WALDMAN: Did you share
13 information with Syria?

14 MR. ELCOCK: I'm not going to
15 comment on countries with whom we may or may not
16 have shared information. I would note, however,
17 that I am aware of no cases -- all of the cases in
18 which we share information with any country are
19 reviewed by SIRC and I would note that SIRC has
20 not found, in any case it has reviewed certainly
21 since 9/11 -- has not made any criticism of the
22 appropriateness or inappropriateness of any
23 information we have shared with any service.

24 MR. WALDMAN: Mr. Cavalluzo, I
25 would ask that -- I'm not sure if this was an

1 objection or not, but I think it is extremely
2 relevant that we ascertain, even if not in public
3 at least in camera, whether we did share
4 information with Syria and whether we do share
5 information on individuals with respect to Syria.

6 MR. CAVALLUZZO: Mr. Waldman, it
7 is clearly an issue that we will get into very,
8 very carefully in camera.

9 MR. WALDMAN: You said you weren't
10 aware of any individual cases. Are you aware of
11 the case of Mr. Nureddin, the school principal who
12 was arrested and tortured in Syria?

13 Are you aware of his case.

14 MR. ELCOCK: I am aware of
15 Mr. Nureddin's case and the newspaper stories.

16 MR. WALDMAN: You are not aware of
17 anything more than the newspaper stories on that
18 case, sir?

19 MR. ELCOCK: I wouldn't be in a
20 position to comment on anything else that I would
21 be aware of.

22 MR. WALDMAN: Did CSIS provide
23 information with respect to Mr. Nureddin?

24 MS McISAAC: Mr. Commissioner,
25 again these are matters that may be addressed, if

1 found to be relevant, during the in camera
2 proceedings. You will obviously have to rule on
3 our claim for national security confidentiality,
4 but what CSIS may or may not have done with
5 respect to other individuals or other
6 investigations is not a matter that we are in a
7 position to discuss publicly.

8 THE COMMISSIONER: I think that
9 point was made before. Thank you, Mr. Waldman.

10 MR. ELCOCK: I would simply add to
11 that that nobody should read into that any
12 conclusive indication of anything. The reality
13 is, the service neither confirms nor denies that
14 it has dealings with any particular service. So
15 the fact that I am unwilling to comment on who we
16 deal with and whether we deal with a particular
17 service is simply a recognition of the fact that
18 we neither confirm nor deny that we have such
19 relationships.

20 MR. WALDMAN: I understand
21 that, sir.

22 Have you ever received any
23 information from any of your liaison operators or
24 operatives working abroad that the agencies or
25 governments you work with have used torture?

1 MR. ELCOCK: Can you say that
2 to me again?

3 MR. WALDMAN: You told us
4 yesterday that you have officers working outside
5 of Canada as either liaison officers or CSIS
6 officers.

7 Is that correct? Did I understand
8 you correctly?

9 MR. ELCOCK: Yes, there are CSIS
10 officers.

11 MR. WALDMAN: And you also have
12 liaison officers sitting in some of the embassies?

13 MR. ELCOCK: They are CSIS
14 officers.

15 MR. WALDMAN: Yes. But I think
16 there are two different types. Some are liaison
17 officers at the embassies and others may be
18 operatives working in other capacities.

19 Is that correct?

20 MR. ELCOCK: No. We have liaison
21 officers stationed abroad. We do operate abroad,
22 but that would be with Canada-based operatives.

23 MR. WALDMAN: That is what I
24 understood.

25 So you have Canada-based

1 operatives who go abroad, plus you have liaison
2 officers?

3 MR. ELCOCK: Yes.

4 MR. WALDMAN: Have either of those
5 people ever advised you that the agencies with
6 whom they are working engage in torture?

7 MR. ELCOCK: Obviously one of the
8 things we would expect to receive from our
9 officers is any information they receive about the
10 record, and in particular the human rights record
11 of any particular service we are dealing with. We
12 deal with services, not countries, specific
13 services.

14 They I know provide from time to
15 time information reporting on whether or not the
16 country has had a good human rights record and
17 whether or not it is believed to use torture and
18 whether or not they have any information with
19 respect to specific cases but, to be perfectly
20 honest, it is rare, if ever I think, that we have
21 precise information. Again we are relying in most
22 cases on reporting we may receive from other
23 services, rumours we may have heard, reports we
24 may have heard from newspapers, Amnesty
25 International, other organizations.

1 MR. WALDMAN: Okay. I thank you
2 for that answer but I still don't think you
3 answered what I asked you.

4 Have you ever received information
5 from your officers, either the liaison or the
6 Canadian-based officers, that they had concerns
7 that the agencies you are working with might or
8 were engaged in torture?

9 MR. ELCOCK: The reports don't
10 come to me, Mr. Waldman, they come into our
11 foreign liaison section and there they are
12 compiled. I know that we receive reports from our
13 liaison officers because one of the things we ask
14 them to do is to obtain information on the human
15 rights record of various services.

16 I am not aware of a specific
17 report, but I know that the reports ultimately
18 give us an assessment -- that they provide
19 information which gives us an assessment of what
20 we think the human rights record of any particular
21 service is.

22 MR. WALDMAN: So you don't read
23 the reports on the human rights records that are
24 sent by your liaisons?

25 MR. ELCOCK: Pardon?

1 MR. WALDMAN: You don't read the
2 reports on human rights that --

3 MR. ELCOCK: I see the reports,
4 Mr. Waldman, but I don't necessarily see each
5 report from every liaison officer with the
6 specifics of each particular case. What I see,
7 generally speaking, is the broad assessment of
8 what our assessment of that service is.

9 MR. WALDMAN: Given that it is
10 your responsibility to enter into these agreements
11 as the director, don't you think it would be
12 important for you to read the reports from your
13 liaison officers about the human rights situation
14 so that you would know whether the agencies you
15 are dealing with engage in torture?

16 MR. ELCOCK: As I said,
17 Mr. Waldman, I read the reports that are prepared
18 as a result of the various communications that may
19 be received from our intelligence officers. If I
20 read every report from every liaison officer, I
21 would spend a large chunk of my time doing that.
22 The reality is, I read the cumulative result of
23 the reporting from liaison officers in respect of
24 any particular country, in particular when any
25 country is being proposed for a section 17

1 arrangement, or indeed if we are reviewing that
2 section 17 arrangement.

3 MR. WALDMAN: So in these
4 cumulative reports that are the accumulation of
5 all the other reports of liaison officers, have
6 you ever seen a report that originated from your
7 liaison officers suggesting that a regime is or
8 might be engaging in torture?

9 MR. ELCOCK: There are
10 organizations that we have relationships with
11 which we suspect may well be using torture.

12 MR. WALDMAN: Thank you.

13 MR. ELCOCK: That of course then
14 governs what kinds of information we can share
15 with them, if any, and how we will deal with them
16 in any dealings we have.

17 MR. WALDMAN: But it doesn't
18 preclude --

19 MR. ELCOCK: All of which, I would
20 remind you, is all subject to review by SIRC and
21 indeed all of the exchanges we have with an agency
22 are reviewed by SIRC, not only the entering into
23 agreement or the reassessment of the agreement.

24 I think SIRC is fairly clear in
25 most of its reports in any of the cases it has

1 reviewed that the sharing that CSIS has done with
2 any organization is appropriate.

3 The reality is, sharing
4 intelligence with anybody is a balancing act. It
5 is a balancing act between national security. As
6 I said, national security is a real thing. It
7 isn't some obscure concept out there, it is the
8 possibility of a bomb in the Bloor and Yonge
9 subway station at rush hour and the kind of
10 carnage that that would result in.

11 It is important for us to be able
12 to secure intelligence. We balance the
13 intelligence we are able to collect from a variety
14 of sources around the world, including one of
15 which is the information we receive from foreign
16 services, against the human rights record of the
17 service that may have provided it, whether or not
18 we should accord that information any validity,
19 whether or not we should accept it, whether or not
20 we can corroborate it. Because it is not simply a
21 question of whether the service is a reliable
22 service or not, it is also can we corroborate that
23 information, as I said to Mr. Cavalluzzo
24 yesterday.

25 MR. WALDMAN: I understand your

1 concern about making sure a bomb doesn't go off at
2 Yonge and Bloor. I agree with you. I often
3 travel that subway. But I also have a concern --
4 don't you also have a concern that your
5 information doesn't get used so that innocent
6 people get sent to be tortured in Syria?

7 MR. ELCOCK: Are we talking about
8 receiving information or giving information?

9 In terms of giving information,
10 Mr. Waldman, as I said -- intelligence agencies
11 are normally on receive. We will receive
12 virtually anything from everywhere because it is
13 important to collect as much as we can in order to
14 be able to put the puzzle together as quickly as
15 we possibly can.

16 The reality is, in terms of what
17 we share, intelligence agencies by definition
18 share much less than they hope to get. In many
19 cases, with many organizations, because of
20 concerns about the nature of that organization we
21 would not share any information with them. We
22 might share technical information about how to
23 make their computer system work better; but we
24 wouldn't provide them any information about an
25 individual or a group.

1 MR. WALDMAN: So a regime that was
2 engaging in torture, you wouldn't give them
3 information.

4 Is that what you are saying to us?

5 MR. ELCOCK: We might give them no
6 information at all, but certainly in any case we
7 would assess very carefully before we gave any
8 information of any kind the nature of the conduct,
9 the national security interests at stake, the
10 risks the stake, in other words for Canada in not
11 sharing information, but also the issues of if
12 ever there were a case where you thought of
13 sharing information about an individual would that
14 have any implications for the individual or their
15 safety.

16 MR. WALDMAN: Let me just
17 understand this then. I am going to move on in a
18 minute but I just want to make sure I understand
19 completely.

20 With the regime that might engage
21 in torture you do a very careful balancing of the
22 risks of the regime abusing the information as
23 opposed to the national security interest.

24 Is that what you just explained
25 to us?

1 MR. ELCOCK: Yes.

2 MR. WALDMAN: So if I understand
3 you correctly, if you thought the national
4 security interest was very high, then you would be
5 prepared to share information with a regime that
6 engages in torture regardless of the possible
7 consequences to the individual.

8 Is that correct?

9 MR. ELCOCK: There is a balancing
10 act and if we had real concerns about the
11 likelihood of a regime using torture then we
12 wouldn't share it. Obviously the test would get
13 higher depending on the level of one's concern.
14 It is a balancing act. Everything about CSIS is a
15 balancing act.

16 Having an intelligence service is
17 balancing act between the rights of the
18 individual, or the possible risk there may be to
19 the rights of the individual in our democratic
20 system as compared to the right of the Canadian
21 population as a whole to protect itself.

22 MR. WALDMAN: I understand you,
23 sir. You are saying with a regime that tortures
24 the tests would be higher?

25 MR. ELCOCK: Much higher.

1 MR. WALDMAN: Much higher. But if
2 I understood you, there will be --

3 MR. ELCOCK: -- in a regime that
4 in fact tortures.

5 MR. WALDMAN: If it was a regime
6 that there was a reasonable suspicion of torture.

7 But if I understood you
8 correctly, you just told us that if there was a
9 very high national security interest you would
10 share information with a regime that you
11 suspect of torture because the balance would be in
12 favour of sharing the information. In a very
13 exceptional case.

14 Is that correct?

15 MR. ELCOCK: It would have to be
16 an absolutely extraordinary case. As an example,
17 conceivably if I had information that tomorrow a
18 bomb was going to go off in the major capital of a
19 country that uses torture, and I had information
20 about the identify of the bomber, or we as a
21 service had information about the identify of the
22 bomber and the likelihood of that operation taking
23 place, should I provide that information to that
24 service or not.

25 MR. WALDMAN: Obversely, if

1 you had information about a bomb plot in Ottawa
2 and you thought you were concerned about it, you
3 might provide information to a service that
4 engages in torture?

5 MR. ELCOCK: There would be no
6 reason for me to provide such information to a
7 service.

8 MR. WALDMAN: But if they had in
9 their area an individual who you suspected might
10 be connected to the bomb plot and you wanted
11 information from that person?

12 MR. ELCOCK: No. In that case I
13 wouldn't provide any -- I wouldn't need to provide
14 information to that service, I would be seeking
15 information from that service at most.

16 MR. WALDMAN: So let me go on to
17 another question. I just want to confirm the
18 evidence that you gave me yesterday and you said
19 it again today.

20 You said you take evidence from
21 any source, regardless of what it is?

22 MR. ELCOCK: We take intelligence
23 information from other sources.

24 MR. WALDMAN: Sorry.
25 Intelligence. I have to remember, intelligence.

1 I'm a lawyer, I talk about evidence. I have to
2 train myself: intelligence.

3 MR. WALDMAN: You would take
4 intelligence from any source regardless?

5 MR. ELCOCK: We take intelligence
6 from any source that we can find it from that will
7 offer it. Obviously in dealing with any
8 particular organization, the reputation of that
9 organization, the reliability of that organization
10 are key factors in whether it has any credibility.

11 MR. WALDMAN: Just to confirm, you
12 would take evidence that you believe came from
13 torture if you found it was reliable because of --

14 MR. ELCOCK: I think I said to
15 Mr. Cavalluzzo that indeed if we suspected
16 information had come from torture -- and, as I
17 said to Mr. Cavalluzzo, it is rarely, if ever,
18 that we would know for sure that it came from
19 torture, we may suspect it, but we will rarely, if
20 ever, know for sure. I frankly don't know of a
21 case where we have known for sure that information
22 came as a result of torture -- we would look at
23 that information.

24 The fact that we suspected it
25 might have come from torture would cause us to

1 look at it in a different way than if we received
2 it from a service we knew never used torture, but
3 if at the end of the day we could corroborate that
4 information and the corroboration of that
5 information was important for an investigation of
6 any particular investigation we were carrying out,
7 and again there with respect to threats to the
8 security of Canada, I suspect most Canadians would
9 want us to have that information and be making
10 that check.

11 MR. WALDMAN: Just to confirm
12 then -- you gave a long answer -- if evidence
13 under torture was corroborated you would use it.
14 Yes or no?

15 MR. ELCOCK: Yes.

16 MR. WALDMAN: Thank you.

17 MS McISAAC: Subject to the fact
18 that he used the word "evidence" again rather than
19 "information".

20 MR. WALDMAN: I'm sorry.
21 Intelligence. I'm sorry.

22 MR. ELCOCK: That is not
23 unimportant, Mr. Waldman, because at the end of
24 the day that isn't for some legal proceedings,
25 that it is so we can forewarn the police to take

1 action to prevent something from happening.

2 MR. WALDMAN: I am going to move
3 on to another area, Mr. Elcock.

4 You were Director of CSIS for
5 10 years.

6 Is that correct?

7 MR. ELCOCK: Yes.

8 MR. WALDMAN: You feel you did a
9 good job as CSIS director?

10 MR. ELCOCK: I will let somebody
11 else make that judgment.

12 MR. WALDMAN: Okay. Part of your
13 responsibility as the director of CSIS is to keep
14 on top of developments in the national security
15 community.

16 Is that correct?

17 MR. ELCOCK: Yes.

18 MR. WALDMAN: And be aware of
19 different issues that arise in the national
20 security world.

21 Is that correct?

22 MR. ELCOCK: Yes.

23 MR. WALDMAN: That is part one of
24 your main responsibility is to look at the bigger
25 picture about how different agencies are moving

1 and what they are doing.

2 Is that correct?

3 MR. ELCOCK: The major focus for
4 us is obviously Canada, but yes, it is important
5 for to have some sense of what is happening in the
6 rest of the world.

7 MR. WALDMAN: Do you feel that
8 during your tenure you kept on top of what was
9 happening in the intelligence community,
10 especially with our allies and you were aware what
11 they were doing?

12 MR. ELCOCK: To the extent that
13 when one says "aware" I'm not sure what you mean.
14 The reality is, there is a level of awareness one
15 can have. We do receive a lot of information. We
16 do make a lot of inquiries of our own? The
17 reality is, our level of awareness will never be
18 perfect in respect of any organization, but we do
19 our best to stay on top of what in particular any
20 countries -- any organizations we have
21 relationships with are doing.

22 MR. WALDMAN: But in terms of
23 general policy decisions and decisions about how
24 they are going to deal with national security
25 issues, especially amongst our major allies, you

1 would be aware of --

2 MR. ELCOCK: I would be aware of
3 some of them.

4 Let me be blunt, Mr. Waldman.
5 This isn't a case in which everybody takes all of
6 their policy documents and sends them around and
7 says "We are doing this". This is a case of
8 reading tea leaves and reading between the lines
9 and trying to collect enough information to make a
10 clear assessment of what in fact is happening.

11 MR. WALDMAN: But if one of our
12 major intelligence partners made public statements
13 about processes that they were using as part of
14 their war on terrorism you would be aware of
15 that, wouldn't you?

16 MR. ELCOCK: Yes, probably.

17 MR. WALDMAN: So you told us
18 yesterday that you can't tell us about CSIS
19 agreements except with three countries.

20 Am I correct that it is public
21 that we have liaison officers and agreements and
22 information-sharing with the U.S., France and
23 Britain.

24 Is that correct?

25 MR. ELCOCK: Yes.

1 MR. WALDMAN: I assume that means
2 that we are very close relationships with those
3 intelligence agencies.

4 Is that correct?

5 MR. ELCOCK: I think I have said
6 publicly that our relationships with both the FBI
7 and the CIA are very close.

8 MR. WALDMAN: Do you have
9 good relationships with our counterparts in
10 Britain as well, your counterparts in Britain?

11 MR. ELCOCK: Yes.

12 MR. WALDMAN: Who would be your
13 counterpart in Britain? I have never understood
14 that. Or is that a state secret in Britain?

15 MR. ELCOCK: It is not a state
16 secret. SIS and BSS would be our major partners.

17 MR. WALDMAN: Do you have contacts
18 with the people in Britain, with your counterparts
19 in Britain?

20 MR. ELCOCK: Periodically.

21 MR. WALDMAN: How often would you
22 have discussions -- would your relations be with
23 head of services at that level?

24 MR. ELCOCK: In most cases my
25 relationships are with heads of services, but I

1 have also had meetings with other officials in a
2 wide variety of services around the world.

3 MR. WALDMAN: How often would you
4 meet with or have a conversation with the head of
5 one of the two agencies in England?

6 MR. ELCOCK: Not particularly
7 often.

8 MR. WALDMAN: Once a year?
9 Twice a year?

10 MR. ELCOCK: I don't know how
11 often it would happen, maybe once or twice a year.

12 MR. WALDMAN: But do you keep
13 abreast of developments in the national security
14 intelligence world in Britain?

15 MR. ELCOCK: Yes.

16 MR. WALDMAN: You also told
17 us you had a relationship with your counterpart
18 in France.

19 Is that correct? I mean with
20 France we have a close relationship?

21 MR. ELCOCK: We have a liaison
22 officer in France and we acknowledge the presence
23 in France.

24 MR. WALDMAN: Do you have good
25 relations with your counterpart in France as well?

1 MR. ELCOCK: Yes.

2 MR. WALDMAN: Do you speak to
3 him -- I don't know if it's a him or her --
4 periodically?

5 MR. ELCOCK: Periodically, yes.

6 MR. WALDMAN: Is it less
7 frequently or more than Britain?

8 MR. ELCOCK: In point of fact, I'm
9 not sure that in terms of communications at the
10 head of service level that it would be much more
11 frequent one way or the other.

12 MR. WALDMAN: Okay. You keep
13 abreast of what is happening with the
14 information --

15 MR. ELCOCK: We don't sort of
16 get together every weekend to discuss the state of
17 the world.

18 MR. WALDMAN: Maybe you should?

19 MR. ELCOCK: Heads of services
20 don't necessarily meet that frequently.

21 MR. WALDMAN: Okay. What about
22 with the United States. We know we have a liaison
23 officer in the United States.

24 Do you have good relations with --

25 MR. ELCOCK: I think I already

1 just said we did.

2 MR. WALDMAN: Right. Do you have
3 occasion to talk to the head of the CIA
4 frequently? Is it more frequently than with
5 Britain and the United States?

6 MR. ELCOCK: I suspect it is
7 a little more frequently, but I'm not sure.
8 Again, it isn't necessary for me to call George
9 Tenet every day or weekend or every month or even
10 every year.

11 MR. WALDMAN: You don't speak to
12 Mr. Tenet once a year?

13 MR. ELCOCK: Periodically.

14 MR. WALDMAN: Periodically, but
15 more than once a year?

16 MR. ELCOCK: Sometimes it might
17 be once a year, sometimes it might not even be in
18 a year.

19 MR. WALDMAN: But you keep abreast
20 of what Mr. Tenet is doing and saying.

21 Is that correct?

22 MR. ELCOCK: Yes.

23 MR. WALDMAN: So if he made a
24 speech on intelligence matters you would be aware
25 of its contents?

1 MR. ELCOCK: Not in every case.
2 Some of them I have read, some of them I haven't.

3 MR. WALDMAN: But isn't it --

4 MR. ELCOCK: At the end of the
5 day, they have their operations and we have our
6 operations. Clearly we work together, but this
7 isn't a -- I don't live in anybody's pockets and
8 they don't live in mine.

9 MR. WALDMAN: But with respect to,
10 for example, what you described as CSIS' principal
11 concern -- Sunni Islamic extremism is the term
12 that you called it -- and al-Qaeda, isn't that an
13 area that you would be sure you wanted to keep
14 abreast of what the Americans were doing?

15 MR. ELCOCK: It is certainly an
16 area in which we work with a large number of
17 services, not only the Americans or British.

18 MR. WALDMAN: And it is your job
19 particularly to keep informed of what the
20 Americans are doing in their fight against
21 al-Qaeda.

22 Is that correct?

23 MR. ELCOCK: As a service we
24 keep abreast of that. I have some interest in it
25 and it is not an unimportant subject so I keep

1 abreast of it, yes.

2 MR. WALDMAN: So are you abreast
3 of the initiatives that the United States is
4 taking in order to fight al-Qaeda?

5 MR. ELCOCK: Probably most
6 of them.

7 MR. WALDMAN: So were you aware
8 that after 9/11 there was a detention centre in
9 Guantanamo Bay?

10 MR. ELCOCK: I think most of the
11 world was aware that there was a detention centre
12 in Guantanamo Bay. It was a fairly publicly
13 set-up detention centre.

14 MR. WALDMAN: Were you aware that
15 after 9/11 suspects detained in Afghanistan and
16 from other places around the world were taken to
17 Guantanamo Bay if they were suspected --

18 MR. ELCOCK: I think indeed I
19 probably watched the same television news footage
20 as you did, Mr. Waldman, of prisoners being flown
21 to Guantanamo Bay from Afghanistan.

22 MR. WALDMAN: And from other
23 countries as well.

24 Is that correct?

25 MR. ELCOCK: Certainly from

1 Afghanistan.

2 MR. WALDMAN: You are not aware --

3 MR. ELCOCK: Off the top of my
4 head I don't recall if any other prisoners have
5 been -- but they may well have been.

6 MR. WALDMAN: So you are aware,
7 then, that the United States has been arresting
8 terrorist suspects in different parts of the world
9 and taking them to Guantanamo for questioning.

10 Is that correct?

11 MR. ELCOCK: Yes, Mr. Waldman.

12 MR. WALDMAN: Are you aware that
13 the United States has been transferring terrorist
14 suspects from other parts of the world and taking
15 them to places other than Guantanamo Bay as well.

16 Is that correct?

17 MR. ELCOCK: Yes.

18 MR. WALDMAN: Just to be clear,
19 you are aware that the United States arrests
20 terrorist suspects from different places in the
21 world and takes them to Guantanamo Bay and other
22 detention centres.

23 That is correct? You just told
24 us that?

25 MR. ELCOCK: That's right.

1 MR. WALDMAN: So yesterday
2 Mr. Cavalluzzo took you to the Washington Post
3 article. Perhaps I would ask you to go to
4 Volume 1?

5 MR. ELCOCK: Page?

6 MR. WALDMAN: Page 189. I'm
7 sorry. It's my mistake. It is Volume 2, page 89,
8 not Volume 1. I'm sorry. Page 89.

9 MR. ELCOCK: I thought it was
10 page 189.

11 MR. WALDMAN: Volume 2, page 89.
12 Sorry.

13 --- Pause

14 Have you found it?

15 MR. ELCOCK: I think so, if you
16 tell me what it is to be sure.

17 MR. WALDMAN: It is Washington
18 Post, March 11, 2002, Monday, Final Edition.

19 MR. ELCOCK: Yes.

20 MR. WALDMAN: Right.

21 Mr. Cavalluzzo mentioned this article in his
22 questioning of you yesterday and asked you if you
23 had read it.

24 MS McISAAC: I'm sorry. I don't
25 recall that.

1 MR. WALDMAN: No.

2 THE COMMISSIONER: I don't recall
3 that either.

4 MR. WALDMAN: Then I'm sorry. I
5 thought he did, but maybe it was my mistake.

6 MR. WALDMAN: I would ask you to
7 look at this article then, sir?

8 MR. ELCOCK: Okay.

9 MR. WALDMAN: I'm going to read
10 you a paragraph from it. It is the third last
11 paragraph.

12 "Since Sept. 11, the U.S.
13 government has secretly
14 transported dozens of people
15 suspected of links to
16 terrorists to countries other
17 than the United States,
18 bypassing extradition
19 procedures and legal
20 formalities, according to
21 Western diplomats and
22 intelligence sources. The
23 suspects have been taken to
24 countries, including Egypt
25 and Jordan, whose

1 intelligence services have
2 close ties to the CIA and
3 where they can be subjected
4 to interrogation tactics --
5 including torture and threats
6 to families -- that are
7 illegal in the United States,
8 the sources said. In some
9 cases, U.S. intelligence
10 agents remain closely
11 involved in the
12 interrogation..."

13 This was published on
14 March 11, 2002.

15 Were you aware that this was going
16 on, sir?

17 MR. ELCOCK: Am I aware that the
18 Americans have, with the cooperation of a number
19 of other countries, picked up people and taken
20 them to Guantanamo, yes.

21 MR. WALDMAN: It says other
22 places, it says Egypt and Jordan and Syria as
23 well --

24 MR. ELCOCK: Does it say "Syria"?

25 MR. WALDMAN: Egypt and Jordan.

1 Sorry.

2 "The suspects have been taken
3 to countries, including Egypt
4 and Jordan..."

5 MR. ELCOCK: Yes.

6 MR. WALDMAN: Were you aware that
7 that was happening?

8 MR. ELCOCK: Yes.

9 MS McISAAC: Mr. Chairman, I hate
10 to interrupt, but I think it is important to note
11 that the particular passage says:

12 "...bypassing extradition
13 procedures and legal
14 formalities." (As read)

15 THE COMMISSIONER: Thank you.

16 MS McISAAC: Which is very
17 important in this case.

18 MR. WALDMAN: I think we can
19 discuss the relevance of that in argument,
20 Mr. Commissioner.

21 I was just trying to establish,
22 and I think I have just confirmed, that Mr. Elcock
23 was aware that the United States was sending
24 individuals to third countries where they were
25 subjected to torture and I will move on. Thank

1 you.

2 Could I just have a second?

3 --- Pause

4 THE COMMISSIONER: Take your time.

5 MR. WALDMAN: I am going to move
6 on to another area.

7 I want to talk a bit about flow of
8 information, information flow between Canada and
9 the United States now.

10 Is that okay? Sharing of
11 information.

12 I think I have read through your
13 statements in various Parliamentary Committees
14 that you have talked about sharing of information
15 between Canada and the United States. Is it fair
16 to say that the sharing of information between the
17 two countries is very fluid and very good,
18 intelligence information I'm talking about?

19 MR. ELCOCK: "Fluid" and "good"
20 are different things. The sharing of information,
21 the relationship we have between Canada and the
22 United States in terms of the information shared
23 is probably one of the closest in the world. And
24 the relationships are, as I said, good. We do
25 share a lot of information with the United States,

1 with the agencies in the United States.

2 Having said that, they don't share
3 everything with us and we don't share everything
4 with them.

5 MR. WALDMAN: Okay. I guess I
6 want you --

7 MR. ELCOCK: In other words, we
8 have to make the same assessments. The balance
9 may be easier to make because you are dealing with
10 different kinds of countries in most cases, but
11 the reality is, even in sharing with the United
12 States we do the same balancing act as we do with
13 any other country.

14 MR. WALDMAN: So you are saying
15 before you provide any piece of information,
16 intelligence information to the United States, you
17 carefully balance whether it should be given to
18 the United States.

19 Is that what you are saying?

20 MR. ELCOCK: That's right.

21 MR. WALDMAN: So just let me
22 understand your testimony, Mr. Elcock.

23 Every time you share a piece of
24 information with the United States, before it is
25 shared someone looks at it and decides --

1 MR. ELCOCK: The same policies
2 apply to sharing between the United States or any
3 other country. The policy is the policy is the
4 policy. The balancing act may be different given
5 the nature of the countries involved, but the
6 reality is the policies are the same; the
7 processes are essentially the same.

8 MR. WALDMAN: So no piece of
9 information is shared with the United States
10 before someone looks at it and says, yes, we can
11 share this piece of information with the
12 Americans?

13 MR. ELCOCK: Yes. Intelligence
14 agencies have a lot of information that is secret,
15 secret for some pretty good reasons in many cases,
16 secret for some different reasons depending on
17 what the information is. We don't share
18 everything with every intelligence organization in
19 the world, and we don't share everything with even
20 our closest friends.

21 MR. WALDMAN: I would have assumed
22 that.

23 MR. ELCOCK: Nor do they.

24 MR. WALDMAN: I am a bit surprised
25 that you are saying that, given the volume of

1 information that we have and the nature of our
2 relationship. I am not doubting you. I am just a
3 bit surprised that every time before you give a
4 piece of information to the CIA someone in CSIS
5 will look at it and say: Well, can we share this
6 information with the United States and do the
7 balancing and say yes?

8 MR. ELCOCK: The reality,
9 Mr. Waldman, is we would have to do that.
10 Everything we share with any organization is
11 subject to review by SIRC. If we get it wrong,
12 whether it is the United States or some other
13 country with which we are sharing information, it
14 becomes a problem. If you don't abide by the
15 policy, you have a problem.

16 MR. WALDMAN: So how quickly can
17 that be done, this review and this balancing and
18 this decision?

19 MR. ELCOCK: It may in fact be
20 done very quickly. The point of the policy is
21 that the balancing must be done. It doesn't take
22 weeks to do it.

23 MR. WALDMAN: Who makes the
24 decision?

25 MR. ELCOCK: As I said to

1 Mr. Cavalluzzo the other day, the director general
2 of the particular branch in charge of the
3 information.

4 MR. WALDMAN: So every time a
5 piece of security intelligence information is
6 shared with the United States, before it is shared
7 the Director General of CSIS -- how many director
8 generals of CSIS do we have?

9 MR. ELCOCK: It depends on the
10 number of -- the Director General of
11 Counter-terrorism and the Director General of
12 Counter-proliferation or the Director General of
13 Counter-intelligence would be the key people you
14 are talking about in terms of operational
15 branches.

16 Those are the ones from which most
17 of the information would be shared.

18 MR. WALDMAN: So one of these
19 three people will look at a piece of information
20 before it is shared with the CIA or FBI or anyone?

21 MR. ELCOCK: Yes, would
22 essentially sign off on it.

23 MR. WALDMAN: Signing off or does
24 he -- if he is going to do the balancing, I would
25 suggest that would mean he would have to look

1 carefully at the information and do the balancing.
2 It is not something --

3 MR. ELCOCK: In many cases it
4 would be routine, given that much of the
5 information is routine. Not with every piece of
6 information is the balancing act going to be a
7 difficult balancing act to do.

8 MR. WALDMAN: How much information
9 do we share with the United States in a given
10 year?

11 MR. ELCOCK: In our terms, a fair
12 bit. But the reality is I suspect the RCMP
13 probably shares much more information with, say,
14 the police than we do.

15 At end of the day intelligence
16 agencies, we share a lot of information but we are
17 not sharing vast quantities of information every
18 day.

19 MR. WALDMAN: I have read the
20 memorandum of understanding between the RCMP and
21 CSIS. I will come back to that in a second.

22 If we had information about
23 suspected members of al-Qaeda, given that this is
24 a matter of international concern, would we share
25 this information with the United States?

1 MR. ELCOCK: It depends. That is
2 not enough information for me to make the judgment
3 one way or the other whether we would share that
4 information.

5 MR. WALDMAN: What further
6 information would you need?

7 MR. ELCOCK: Are the individuals
8 in Canada? Are they going to be in the United
9 States? Is there any consequence to them if we
10 provide that information to the United States and
11 Canadian citizens? Is there a problem as a result
12 of that?

13 MR. WALDMAN: So if we had
14 suspected members of al-Qaeda in Canada, would we
15 share that information with the United States? I
16 am just defining my question a bit.

17 MR. ELCOCK: We might not share
18 all of the information; we might share some. It
19 would depend. We would have to make an assessment
20 in respect of that information whether we could
21 share it or not or whether we should share it or
22 not.

23 At the end of the day our
24 responsibility is to manage the security of
25 Canada. It isn't somebody else's responsibility

1 to manage the security of Canada; it is ours. So
2 we manage it. We don't necessarily push the
3 problem over to somebody else and have them deal
4 with the problem.

5 So we would not necessarily
6 provide information on those issues to any
7 service.

8 MR. WALDMAN: Isn't it also true
9 we are very concerned about the --

10 You have testified -- and I can
11 take you to it -- in Parliamentary Committees
12 about the free flow of intelligence and the open
13 border and the smart border and that we have to
14 work carefully to make sure that we keep the
15 borders open.

16 MR. ELCOCK: I think it is
17 important, that it is clearly important -- and I
18 have said before -- that we manage the security of
19 Canada, because there are potential threats to the
20 United States as a consequence of not managing it
21 appropriately.

22 The reality "faute de mieux" is
23 that we live on the Americans' northern border and
24 if we are not careful and conscious of the risks,
25 we can be a route into the United States.

1 MR. WALDMAN: So given the past
2 history and given the concern --

3 MR. ELCOCK: That doesn't demand,
4 Mr. Waldman, that we provide all information to
5 the Americans. It simply requires that we
6 demonstrate to the Americans that in fact we do
7 the job.

8 MR. WALDMAN: If we have a
9 suspected member of al-Qaeda in Canada, at what
10 point would you feel it necessary to pass the
11 information on to the Americans?

12 MR. ELCOCK: That is hypothetical.
13 Clearly in the circumstance where -- obviously we
14 would do it in a case where we thought that if an
15 individual was intending to take action in the
16 United States and somehow it escaped our vision,
17 and in fact was possibly in the United States, we
18 would provide that information to the United
19 States.

20 Otherwise, anything is a pure
21 hypothetical and we would have to have the precise
22 situation in which we were in and the nature of
23 the information, the situation of the individual a
24 whole lot of factors before we could make that
25 judgment one way or the other.

1 MR. WALDMAN: You told us that it
2 is a balancing. So when you decide whether or not
3 to send information to the United States, do you
4 take into account the fact that the United States
5 sends suspected terrorists to other countries
6 where they might be subjected to torture?

7 Can you recall in your balancing
8 ever taking that into account, sir?

9 MR. ELCOCK: We take into account
10 the consequences to any individual and their
11 safety and whatever might happen to them wherever
12 they go any time we release information to
13 anybody, and we would do the same with the United
14 States.

15 The reality is I am not aware of
16 any case -- I can't think of a case where the
17 Americans have taken somebody they have arrested
18 inside the United States, apart from Mr. Arar's
19 case, and sent them to another country or even to
20 Guantanamo Bay.

21 MR. WALDMAN: If the person is in
22 Canada and were to leave Canada, you would have no
23 knowledge where he went -- forget it. I will move
24 on.

25 If we were --

1 MR. ELCOCK: Pardon?

2 MR. WALDMAN: I am sorry, I am
3 moving on to another line of questioning.

4 You will told us about joint
5 operations and that there are some occasions where
6 CSIS operates outside of Canada with other
7 agencies. Is that correct?

8 MR. ELCOCK: That is correct.

9 MR. WALDMAN: Would that include
10 participating in observing questioning of
11 suspects?

12 MR. ELCOCK: There are occasions
13 when we have, as I said to Mr. Cavalluzzo, spoken
14 to individuals in detention in other countries.

15 MR. WALDMAN: That wasn't my
16 question.

17 I was asking whether you watched
18 or participated as observers when other people
19 were being questioned, or participated in the
20 questioning with other agencies.

21 MR. ELCOCK: I am trying to think.
22 I can think of only one case where that happened.

23 MR. WALDMAN: Did it happen in
24 Mr. Arar's case?

25 MS McISAAC: Mr. Chairman, again

1 we will deal with the specifics once you have had
2 an opportunity to rule on claims for national
3 security confidentiality.

4 MR. WALDMAN: I would like to talk
5 to you a bit about caveats. You told us about the
6 caveats.

7 I don't think it is necessary to
8 refer to them unless you want to, but I want to
9 confirm my understanding.

10 When CSIS gives information to
11 third parties, they put these caveats on. If I
12 understood the caveats correctly, they restrict
13 the use of the release of the information to
14 persons other than the person to whom it was
15 given. Is that correct?

16 MR. ELCOCK: That is right.

17 MR. WALDMAN: That is what the
18 caveats are. So the four caveats --

19 MR. ELCOCK: There are four
20 potential caveats. More than one may be on any
21 particular document. It depends on who it is
22 going to and what the circumstances are.

23 MR. WALDMAN: All of these caveats
24 basically say in one form or another: We give
25 this information to you. You can't give it to

1 anyone else other than to you.

2 That is the import of them?

3 MR. ELCOCK: That is right.

4 MR. WALDMAN: Aside from these
5 caveats, are there any other conditions that you
6 put on information that you share with third
7 parties?

8 MR. ELCOCK: Generally those would
9 be the caveats.

10 MR. WALDMAN: Those are the only
11 ones, the only conditions?

12 MR. ELCOCK: Unless in -- I mean
13 there may be cases, and I can't think of one off
14 the top of my head. But there may well be cases
15 where we would put some other restriction on the
16 use of the information because of a particular
17 circumstance.

18 But generally those are the
19 caveats that would apply to any.

20 MR. WALDMAN: I would ask --

21 MR. ELCOCK: I can't think of
22 another example. You are asking me whether there
23 are any others. I can't think of one off the top
24 of my head, but it is not impossible that we would
25 do that given a specific situation.

1 MR. WALDMAN: Can you recall any
2 other conditions that you imposed --

3 MR. ELCOCK: No, I don't recall
4 any at this point. Those are the caveats we would
5 normally put on.

6 MR. WALDMAN: That would apply to
7 police agencies in Canada and foreign services
8 abroad?

9 MR. ELCOCK: Yes.

10 MR. WALDMAN: So if you gave
11 information to a regime that you suspect engages
12 in torture, you said that --

13 MR. ELCOCK: We might not have
14 given them any information so we might not have to
15 put any caveats on it.

16 MR. WALDMAN: Assuming you gave
17 information to a regime that engages in torture,
18 the only restrictions are that they can't release
19 the information to third parties.

20 Is that correct?

21 MR. ELCOCK: If we were ever to do
22 that, Mr. Waldman, we would put a caveat on it.

23 MR. WALDMAN: What would the
24 caveat be?

25 MR. ELCOCK: It might be any

1 number of those three.

2 MR. WALDMAN: Right. But those
3 would be the only ones. You wouldn't be able to
4 stop the regime from using the information as part
5 of their interrogation of the individual.

6 Is that correct?

7 MR. ELCOCK: If we were ever to
8 provide such information to such a service,
9 obviously if we had information and we were
10 considering providing it to a service, we would be
11 looking at the record of that particular service,
12 its human rights record. We know the business we
13 are in, and one of the things we would be look at
14 is whether indeed it might be used in respect of
15 any individual.

16 We would make that assessment in
17 any decision to share that information, and in
18 fact we probably wouldn't share that information
19 if we had any concerns that that might be the
20 case.

21 MR. WALDMAN: You have already
22 told us about the balancing, and I don't think we
23 need to repeat that. I wanted to know, and I
24 think you have confirmed that there are no
25 conditions placed on information other than the

1 caveats.

2 MR. ELCOCK: And the fact that we
3 wouldn't necessarily give it to somebody we
4 suspected would use it in an interrogation of an
5 individual in detention.

6 If we don't provide it at all,
7 then it can't be used.

8 MR. WALDMAN: You just told us
9 about 15 minutes ago that in every case you do a
10 balancing.

11 MR. ELCOCK: That's right.

12 MR. WALDMAN: And there might be
13 circumstances where you would release the
14 information to a regime that you suspect engages
15 in torture if there were extraordinary
16 circumstances.

17 MR. ELCOCK: In an extraordinary
18 circumstance. It would have to be a pretty
19 extraordinary circumstance.

20 MR. WALDMAN: Right. I would like
21 to talk a bit about the relationship between the
22 RCMP and CSIS, if I could, for a bit.

23 I am trying to understand the
24 difference between intelligence activities and
25 police activities. Perhaps you could just help me

1 a bit in that and where the overlap occurs.

2 MR. ELCOCK: I thought we did
3 rather a lot of that yesterday, but let me go
4 back, Mr. Waldman.

5 The reality is that as an
6 intelligence agency, our job is to try and prevent
7 threats to the security of Canada coming to
8 fruition. In particular, our main priority these
9 days is to ensure that in respect of potential
10 terrorist acts that no terrorist act takes place.

11 That means we are looking at it
12 from the point of view of trying to identify at an
13 early stage what organizations or individuals
14 might produce such an attack, identify them and
15 indeed be able to forewarn police and other
16 agencies that such an attack may be coming from a
17 particular source or a particular individual.

18 In the case of the police,
19 obviously generally speaking their responsibility
20 is to investigate and arrest people who commit
21 criminal acts. The reality is, too, that the
22 police -- as I said yesterday, the mandate of CSIS
23 and the RCMP, in particular in the area of
24 counter-terrorism, is not a sharp divide so that
25 there is a gap between us. It is an overlapping

1 responsibility.

2 The RCMP, the police, have
3 responsibility to prevent crimes if they are aware
4 of a potential conspiracy to undertake a crime.

5 To plant a terrorist bomb is a
6 crime. A conspiracy to plant such a bomb is also
7 a crime. So the police would have a
8 responsibility and ability to investigate in those
9 areas and in some cases do.

10 In many cases, we work together.
11 In some cases the RCMP would have come to it
12 first, and in some cases we will have come to it
13 first and one or the other of us may take primacy
14 depending on the circumstances in a particular
15 case.

16 There is, by definition, an
17 overlapping jurisdiction between us in the area of
18 counter-terrorism.

19 In an area such as
20 counter-intelligence the divide is much sharper
21 because at the end of the day the reality is --
22 for example, if you are looking at a foreign
23 intelligence officer in Canada, there is really no
24 way that a foreign intelligence officer in Canada
25 can be arrested. He or she probably has

1 diplomatic immunity, and therefore it is really
2 not an issue for the police at all. It becomes
3 simply an intelligence issue.

4 In the area of terrorism,
5 ultimately a terrorist is a criminal, and indeed
6 may be a criminal even in his planning and
7 consideration of a terrorist act. So the police
8 have a role.

9 MR. WALDMAN: I think that tallies
10 with what you said yesterday.

11 I am interested in trying to
12 understand -- and you talked to us yesterday about
13 the overlap; at the fringes, the overlap.

14 That is what you were telling us
15 about. That is where the overlap occurs, when you
16 are looking into the future and the RCMP might be
17 looking at a possible crime that might happen.
18 That is where the overlap would occur between the
19 two.

20 Is that correct? Did I understand
21 you correctly?

22 MR. ELCOCK: Yes.

23 MR. WALDMAN: I am trying to
24 understand at what point CSIS would pass
25 information on to the RCMP.

1 I think, if I understood you
2 correctly, if there were an immediate threat you
3 would pass it on even if it were unreliable. Is
4 that correct?

5 MR. ELCOCK: We would pass it on
6 and indicate that we had doubts as to its
7 reliability but that we were providing them with a
8 warning.

9 MR. WALDMAN: So if you received
10 information from a foreign agency that there was
11 bomb plot, you would pass that on to the RCMP even
12 if you found it unreliable. Is that correct?

13 MR. ELCOCK: Yes.

14 MR. WALDMAN: Okay.

15 MR. ELCOCK: With an indication
16 that we considered it unreliable.

17 MR. WALDMAN: Right. Especially
18 if it came from a regime where there was
19 reasonable grounds to believe they used torture;
20 right?

21 MR. ELCOCK: Again, it goes back
22 to the issue of reliability.

23 MR. WALDMAN: If you got
24 information from a regime that uses torture and
25 you passed it on to the RCMP, you would tell them

1 that it was unreliable information; correct?

2 MR. ELCOCK: Are we still talking
3 about a case of there may be a bomb in downtown
4 Ottawa tomorrow?

5 MR. WALDMAN: Yes.

6 MR. ELCOCK: Yes.

7 MR. WALDMAN: When you tell them
8 it is unreliable, do you say this is unreliable
9 information?

10 MR. ELCOCK: We would tell them
11 that we believed it to be unreliable, if we did
12 indeed believe that.

13 MR. WALDMAN: Right. And would
14 you tell them why you believed it was unreliable?

15 MR. ELCOCK: I don't believe so.

16 MR. WALDMAN: You wouldn't. So if
17 you got some information --

18 MR. ELCOCK: In that case we would
19 simply be providing a warning of a potential
20 terrorist attack, nothing more, nothing less.

21 MR. WALDMAN: Let's try to
22 understand what would happen if it wasn't an
23 immediate threat.

24 --- Pause

25 MR. WALDMAN: If it is no

1 immediate threat, and you have targeted the person
2 as a possible member of al-Qaeda, at what point
3 would you pass that information on to the RCMP?

4 MR. ELCOCK: It would depend on
5 the circumstances. If indeed there was
6 information about a criminal offence or indeed we
7 believed that, for example, there was a serious
8 plot to attack an individual or a particular place
9 in Canada, we would provide that information to
10 the RCMP.

11 Our investigations are separate
12 from the RCMP, so we don't necessarily provide
13 information to any police force on all of the
14 investigations we undertake.

15 MR. WALDMAN: You would pass the
16 information on to the RCMP at the point where you
17 believed that there was the possibility of --

18 MR. ELCOCK: Either where there
19 was information with respect to a criminal offence
20 and/or a potential of a real attack taking place
21 or a real threat.

22 MR. WALDMAN: So until there is
23 evidence --

24 MR. ELCOCK: A real specific
25 threat is what I mean. In other words, we

1 believed somebody was preparing to undertake a
2 bombing of a particular place or an individual or
3 whatever in Canada.

4 MR. WALDMAN: If you saw people
5 who you had reached the conclusion were members of
6 al-Qaeda but you didn't believe that they were
7 going to commit a criminal offence, you
8 wouldn't --

9 MR. ELCOCK: We would not
10 necessarily have informed the RCMP at all unless
11 the RCMP perhaps had sought information from us
12 about an individual.

13 MR. WALDMAN: Isn't being a member
14 of a terrorist group a criminal offence in Canada
15 now?

16 MR. ELCOCK: Being a member of a
17 terrorist group and necessarily proving that are
18 not necessarily the same thing.

19 MR. WALDMAN: The question I just
20 asked you was: If you had reached a conclusion
21 that a person was a member of al-Qaeda, would you
22 pass that information on to the RCMP? And you
23 said not necessarily but only if they were
24 committing a criminal offence.

25 But isn't it true that being a

1 member of a terrorist group is now a criminal --

2 MR. ELCOCK: It is more
3 complicated than that, Mr. Waldman. It may not be
4 possible to use that information in a criminal
5 prosecution, in which case you can't have a
6 criminal prosecution. So we might in those cases
7 not pass the information.

8 MR. WALDMAN: Let me be clear if I
9 understand you then on this point.

10 MR. ELCOCK: The decision on
11 whether we pass information to the police force is
12 one which we take very carefully in every case we
13 look at to decide whether or not we can pass that
14 information, whether it is an appropriate time to
15 pass that information or not.

16 In some sense to ask it in terms
17 of a lot of hypotheticals doesn't really get you
18 anywhere, because unless you have the real facts
19 in front of you it is virtually impossible to come
20 to any real conclusion.

21 It is a decision that has to be
22 made on the basis of a real factual situation, not
23 a bunch of hypotheticals. Maybe, would be, should
24 be becomes an issue.

25 MR. WALDMAN: I think probably

1 that is getting into the specifics of things we
2 will have to deal with later on in camera or in
3 public.

4 Mr. Commissioner, I am about
5 halfway through. Would this be an appropriate
6 time to stop for ten minutes?

7 THE COMMISSIONER: Sure. We will
8 a ten-minute break.

9 --- Upon recessing at 11:04 a.m. /
10 Suspension à 11 h 04

11 --- Upon resuming at 11:20 a.m. /
12 Reprise à 11 h 20

13 THE COMMISSIONER: Mr. Waldman.

14 MR. WALDMAN: I would ask you to
15 go to the memorandum of understanding. It is Tab
16 12 of the Canadian Security Intelligence Service
17 (CSIS) Policies.

18 Do you have it in front of you,
19 sir?

20 MR. ELCOCK: Yes.

21 MR. WALDMAN: Is this the document
22 that determines the sharing of information between
23 CSIS and the RCMP?

24 MR. ELCOCK: It is the document
25 under which decisions are made about sharing

1 information, one of them. Sorry. It is the key
2 memorandum between us and the RCMP.

3 MR. WALDMAN: I didn't hear. The
4 key memorandum...

5 MR. ELCOCK: It is the memorandum
6 between us and the RCMP about the nature of our
7 relationship.

8 MR. WALDMAN: And this was, if I
9 understand, concluded in 1989 and revised in April
10 of 1990. Is that correct?

11 MR. ELCOCK: That is right.

12 MR. WALDMAN: Has this document
13 ever been made public before, to your knowledge,
14 or is this the first time?

15 MR. ELCOCK: I think it has been
16 public before. I think it has.

17 MR. WALDMAN: If I could ask you
18 to go to page 3, it talks about:

19 "security-related
20 responsibilities of the RCMP"
21 means:

22 i) the prevention, detection,
23 investigation and laying of
24 charges in relation to any
25 offence referred to ..."

1 In certain statutes, including the
2 Criminal Code. Is that correct?

3 MR. ELCOCK: Yes.

4 MR. WALDMAN: So the RCMP's
5 responsibility is the prevention, detection and
6 investigation in laying charges of Criminal Code
7 offences that are related to national security
8 matters. Is that correct?

9 MR. ELCOCK: Yes.

10 MR. WALDMAN: Paragraph 6 on page
11 4 talks about the exchange of information. Is
12 that correct?

13 MR. ELCOCK: Yes.

14 MR. WALDMAN: It says that:

15 "... CSIS agrees to provide
16 on a timely basis, or upon
17 specific request, information
18 and intelligence in its
19 possession that may assist
20 the RCMP in fulfilling its
21 security-related
22 responsibilities ..."

23 And then it lists the type of
24 information that it gives.

25 It deals with general threat

1 assessments and individual threat assessments and
2 investigative leads. Is that correct?

3 MR. ELCOCK: Yes.

4 MR. WALDMAN: So if CSIS receives
5 intelligence information about a possible criminal
6 act, it is required under this agreement to pass
7 it on to the RCMP. Is that correct?

8 MR. ELCOCK: It depends on our
9 decision whether to pass it on or not. Yes, we
10 might.

11 MR. WALDMAN: Despite this
12 agreement, you can decide not to?

13 MR. ELCOCK: It is our decision on
14 what is a timely basis when we provide information
15 to the RCMP.

16 MR. WALDMAN: So there might be
17 cases where you have information about a potential
18 criminal act and you would decide to withhold it
19 from the RCMP?

20 MR. ELCOCK: In some cases we
21 might. It would depend upon the time at which we
22 passed it to the RCMP.

23 Again, you are talking about
24 hypotheticals, Mr. Waldman. The reality is that
25 if we had information about a murder that was to

1 take place tomorrow, we would pass it immediately.
2 If we have information about a parking ticket, we
3 might not pass it tomorrow. We might not pass it
4 at all.

5 MR. WALDMAN: If you had
6 information about serious criminal offences, you
7 would pass it right away?

8 MR. ELCOCK: If it is a serious
9 criminal offence. Again, I am not sure what your
10 definition of a serious criminal offence is.

11 MR. WALDMAN: An offence
12 punishable by 10 or more years under an Act of
13 Parliament. That is the Immigration Act serious
14 offence.

15 Would you accept that as a serious
16 offence?

17 MR. ELCOCK: It would depend. We
18 would look at the case on whether we passed the
19 information or not.

20 In other words, we make the
21 judgments on a case-by-case basis depending on the
22 facts, depending on the circumstances, the nature
23 of the investigation, the nature of the
24 information we would be providing, and so on.

25 MR. WALDMAN: Just so I understand

1 your evidence, your evidence is that
2 notwithstanding what paragraph 6 says -- it says
3 that CSIS agrees to provide on a timely basis
4 information about criminal offences.

5 Even if it were a serious criminal
6 offence, you might decide not to pass it on for a
7 considerable period of time?

8 MR. ELCOCK: Timely is a movable
9 feast.

10 MR. WALDMAN: Timely is movable.
11 So it is conceivable that timely
12 could be never in a certain circumstance. Is that
13 fair?

14 MR. ELCOCK: In some
15 circumstances, it may.

16 MR. WALDMAN: What is the purpose
17 of having a memorandum of understanding which
18 requires you to pass information on in a timely
19 basis when you are telling us that timely is
20 totally --

21 MR. ELCOCK: A memorandum of
22 understanding between two government agencies is
23 not an agreement in quite the same sense as an
24 agreement between two parties. It is a document
25 which in essence defines generally how we are

1 going to manage our relationships.

2 It is not necessarily a document
3 that has legal consequences upon which one agency
4 will sue another agency. It is simply a set of
5 general agreements about how we are going to
6 behave.

7 MR. WALDMAN: Isn't it true from
8 what you just told me it is pretty meaningless,
9 because timely according to you is whatever CSIS
10 decides.

11 Isn't that correct?

12 MR. ELCOCK: The agreement does
13 not require us to provide immediately or -- there
14 is some limit. There is some -- what is the word
15 I am looking for? There is leeway in terms of
16 when we provide information, and CSIS exercises
17 its decision whether to provide information to
18 police forces in accordance with a whole lot of
19 factors: the nature of the information; the nature
20 of the particular investigation; whether in fact
21 it would interfere with an investigation to pass
22 the information at a particular point of time;
23 whether any of the information is indeed even
24 usable in a court of law and therefore usable in a
25 prosecution.

1 There may be cases where we may
2 have information about something, but in point of
3 fact it would not ever be provided to a court. We
4 may not be able to provide it to a court. It may
5 not be accepted by a court. The prosecution may
6 not be possible.

7 There are so many permutations --
8 there are so many potential possibilities. Again,
9 unless you can look at it in the context of a
10 specific piece of information that we are
11 considering providing to the RCMP, you can't
12 really come to a conclusion.

13 MR. WALDMAN: I want to make sure
14 I understood you. Timely is whatever CSIS
15 decides?

16 MR. ELCOCK: Essentially we
17 determine what timely is, yes.

18 MR. WALDMAN: So timely could be
19 never in a certain case?

20 MR. ELCOCK: In some cases it
21 could be.

22 MR. WALDMAN: How can the RCMP
23 rely on getting information from you if CSIS
24 decides --

25 MR. ELCOCK: The nature of our --

1 MR. WALDMAN: I let you finish,
2 and I was asked by the Commissioner not to
3 interrupt; so, please. Thank you.

4 You are telling me that CSIS
5 decides when information should be released. This
6 memorandum of understanding says timely, but
7 timely is not what I understand timely to mean,
8 which is as quickly as possible in a reasonable
9 time. According to you, timely is whatever CSIS
10 decides.

11 So how can the RCMP ever rely on
12 getting information or knowing when it is going to
13 get information if the discretion as to whether or
14 not to give them information rests entirely with
15 CSIS?

16 MR. ELCOCK: The RCMP understand
17 that indeed there is an element -- that how we
18 will release information to the RCMP is a matter
19 that we will make determination upon in each case.

20 They understand that we will not
21 necessarily provide information immediately. We
22 don't interpret it, and I don't think the RCMP
23 interpret it, as providing all information
24 immediately.

25 MR. WALDMAN: Do you think the

1 RCMP interprets timely as never? Do you think any
2 reasonable person would interpret timely as never?

3 MR. ELCOCK: We had the discussion
4 in a hypothetical situation about never, and I
5 think in the context of never if it was impossible
6 to even have a criminal prosecution it may be
7 never.

8 Again, you are trying to put me in
9 a box by referring to a bunch of hypotheticals.
10 You can't make the determination in isolation of
11 the facts. Each determination to send information
12 to any organization, even to give information to
13 the police, requires us to look at the facts of
14 the particular situation, all of the circumstances
15 of that case, and then make a determination of
16 when is the appropriate time to provide or whether
17 it is appropriate to provide information at all.

18 MR. WALDMAN: My understanding is
19 you said you would only provide information to the
20 RCMP if it was relevant -- information that was
21 admissible in a criminal prosecution?

22 MR. ELCOCK: Generally at the end
23 of the day our obligation is to provide
24 information to the police, if we have information
25 about a criminal offence, so that they can carry

1 out a criminal prosecution.

2 That said, the timing of the
3 passing of that information rests with CSIS.

4 MR. WALDMAN: I don't think you
5 answered my question.

6 My question was: Would you only
7 pass information to the RCMP if it was information
8 that was going to be used in a -- intelligence
9 that was usable in a criminal prosecution?

10 MR. ELCOCK: No. In some cases --
11 it clearly says there that we provide
12 investigative leads. But at the end of the day
13 that too is a determination we make, whether it is
14 appropriate to provide that investigative lead to
15 the RCMP or not.

16 MR. WALDMAN: Do you think
17 Commissioner Zaccaradelli is aware that timely
18 could be never according to this memorandum of
19 understanding?

20 MR. ELCOCK: I would be surprised
21 if he is not.

22 MR. WALDMAN: Maybe we will have
23 to ask him.

24 I am going to move on another area
25 now. I want to talk a bit about targeting.

1 Actually, no, I have one or two
2 more questions on this sharing of information with
3 the RCMP.

4 Assuming you pass information on
5 to the RCMP, intelligence information, do you
6 identify the sources of the information to the
7 RCMP? Are they aware who your sources are?

8 MR. ELCOCK: Who our human sources
9 are?

10 MR. WALDMAN: Your sources, be
11 they human or others.

12 MR. ELCOCK: Not normally.

13 MR. WALDMAN: You pass them the
14 intelligence without reference to the sources?

15 MR. ELCOCK: We would give them
16 enough context for the information but we would
17 not, for example, identify human sources to the
18 RCMP, if we had obtained it from a human source.

19 MR. WALDMAN: You would say we got
20 this information from Mr. X, a source, without
21 telling who the source was?

22 MR. ELCOCK: Yes. In fact, we
23 might have to obscure -- we might have to avoid
24 making it -- in some cases the information may
25 disclose the source, so we may have to be careful

1 about the way in which we pass information. We
2 don't normally disclose our human sources even to
3 the RCMP.

4 MR. WALDMAN: Would the RCMP know
5 that it comes from a human source?

6 MR. ELCOCK: They might depending
7 again on the circumstances. Again, this is
8 something that depends upon the specific
9 information, the specific format, what is actually
10 in the information. The information may reveal
11 that it came from a human source. We may say that
12 it came from a human source.

13 If the information, however, is so
14 specific that the human source would be identified
15 as a consequence of saying it comes from a human
16 source, we may not provide that information in
17 such detail.

18 MR. WALDMAN: I want to
19 understand. When you provide information to the
20 RCMP, you always obscure the sources so that there
21 is no sharing of intelligence information between
22 the two forces with respect to the sources of
23 information?

24 MR. ELCOCK: In some
25 circumstances, we may. In some circumstances, we

1 wouldn't. In the case of human sources we rarely,
2 if ever, would.

3 MR. WALDMAN: If you receive
4 information from foreign sources, do you advise
5 the RCMP of the source of the information?

6 MR. ELCOCK: In that case it may
7 be more clear where the source is, because it may
8 come from only one source. Obviously the fact
9 that it comes from a foreign intelligence source
10 is less sensitive than the issue of coming from a
11 human source.

12 MR. WALDMAN: So if it comes from
13 a foreign --

14 MR. ELCOCK: Again it depends on
15 the specific facts you are talking about and the
16 specific circumstances you are talking about.

17 MR. WALDMAN: Might there be cases
18 where you might not tell the RCMP that information
19 came from a foreign source, if you had reason not
20 to?

21 MR. ELCOCK: It is possible.

22 MR. WALDMAN: So the RCMP could be
23 receiving information from CSIS without having any
24 good basis for evaluating the sources?

25 MR. ELCOCK: We would try to

1 provide them -- if we are going to provide them
2 with information, we would try to provide them
3 with enough context to have a sense of the
4 reliability of the information and/or our
5 assessment of the reliability of the information.
6 But in some cases they may not have as much as
7 they would like.

8 MR. WALDMAN: So it is possible
9 that you could provide information to the RCMP
10 that came from a foreign country, the fruits of
11 torture, and the RCMP would not be aware of that?

12 MR. ELCOCK: They might not.

13 MR. WALDMAN: Thank you.

14 I would like to go on to the
15 concept of targeting.

16 I read your testimony in one of
17 the Commons committees and you talked about there
18 being three levels of targets. Is that correct?

19 MR. ELCOCK: There are three
20 levels within the TARC system. Each is more
21 intrusive than the previous one. The first is the
22 least intrusive, and two and three become more
23 intrusive. Level three is the most intrusive.

24 MR. WALDMAN: I don't think you
25 gave evidence on this point yesterday, so perhaps

1 you could explain.

2 I read your testimony. Could you
3 tell us briefly --

4 Mr. Cavalluzzo --

5 MR. CAVALLUZZO: Mr. Hooper, the
6 next witness, will be extensively dealing with the
7 targeting process.

8 MR. WALDMAN: Is Mr. Hooper part
9 of the Targeting Committee?

10 MR. ELCOCK: Yes. He is the
11 Assistant Deputy of Operations.

12 MR. WALDMAN: I am concerned. I
13 want to make sure he has been doing --

14 MR. ELCOCK: I think you can be
15 safe in assuming that Mr. Hooper knows what he is
16 talking about.

17 MR. WALDMAN: How long has he been
18 on the Targeting Committee. Do you know?

19 MR. ELCOCK: I am sure he has been
20 part of the Targeting Committee in other guises in
21 the past, and he certainly has been on the
22 Targeting Committee for over a year, two years at
23 this point. I can't remember the exact date when
24 he joined the committee, beyond his appointment as
25 ADO.

1 MR. WALDMAN: Who is the person
2 who makes the actual decisions on targeting, or is
3 it made by the committee as a whole?

4 MR. ELCOCK: It is made by the
5 committee.

6 MR. WALDMAN: But you are on the
7 targeting --

8 MR. ELCOCK: I am the Chairman of
9 the committee, yes.

10 MR. WALDMAN: So each time an
11 individual --

12 MR. ELCOCK: Or was the Chairman,
13 I guess more appropriately.

14 MR. WALDMAN: We are still talking
15 in the present sense. I think it is hard for all
16 of us to get used to the fact that -- I mean, you
17 having been there for so many years, it is hard
18 for us to get used to the fact that you are not.

19 If we are talking in the present,
20 we know that it is the very recent past.

21 I was going to ask some questions
22 about targeting, Mr. Cavalluzzo. Would you prefer
23 that we -- I just want to make sure that
24 Mr. Hooper has all of the fulsome information on
25 targeting. Given that Mr. Elcock was on the

1 committee for so many years, I would be loathe to
2 not ask him some questions on this point.

3 Perhaps I could do it briefly or
4 would you rather --

5 MR. CAVALLUZZO: It's up to you
6 but, as I say, Mr. Hooper will be extensively
7 dealing with the targeting process and my
8 understanding from most people is that Mr. Hooper
9 will likely have the information that you seek.
10 But it's up to you.

11 THE COMMISSIONER: One way of
12 handling it perhaps, Mr. Waldman, is if you
13 cross-examine Mr. Hooper and there were any
14 questions that he said "I can't answer that
15 because I don't know about it", then you would
16 have an opportunity to pursue that question
17 afterwards. That is one suggestion.

18 MR. WALDMAN: That's fine. My
19 understanding is that Mr. Elcock may be recalled
20 if necessary later when we get to the specifics --

21 THE COMMISSIONER: That's true.

22 MR. WALDMAN: -- because I haven't
23 been asking very many specifics about the Arar
24 case.

25 Obviously, it is quite conceivable

1 that Mr. Elcock may not testify at all in public
2 on Mr. Arar's specific facts, depending on your
3 ruling, but I have been avoiding for the most part
4 asking any questions because that was my
5 understanding.

6 THE COMMISSIONER: Yes, I
7 understand that.

8 MR. WALDMAN: I guess if you are
9 willing to agree that if it is necessary to recall
10 Mr. Elcock on this point of targeting, if
11 Mr. Hooper can't answer the questions I will just
12 move over.

13 THE COMMISSIONER: That seems to
14 make sense I think.

15 MR. WALDMAN: I want to go back to
16 information-sharing with the U.S. You told us it
17 is done on a case-by-case basis, so each piece of
18 information is shared.

19 Is that correct? I looked at --
20 and balance before the sharing goes on?

21 MR. ELCOCK: Yes.

22 MR. WALDMAN: Has there been any
23 occasions where we have placed restrictions on the
24 United States in terms of their use of our
25 information, our intelligence information, over

1 and above the caveats?

2 MR. ELCOCK: I don't recall one.

3 MR. WALDMAN: If the U.S. were
4 ever to breach a caveat, what would you do?

5 MR. ELCOCK: At the end of the
6 day, I mean there is no court of law that I know
7 of that you could take that issue to, but it would
8 obviously have implications for future sharing on
9 a variety of issues.

10 MR. WALDMAN: Right. But given
11 the nature of our relationship with the United
12 States, what could we really do in practice in
13 terms of sharing information with them if they
14 breached a caveat?

15 MR. ELCOCK: As I said,
16 Mr. Chairman -- Mr. Waldman -- I forget that I am
17 not before a Parliamentary Committee.

18 MR. WALDMAN: I think you are used
19 to that?

20 MR. ELCOCK: We make an assessment
21 in every case we share information, when we share
22 information with any service, about the
23 consequences of sharing that information on a
24 balancing act between a number of different
25 issues. We do the same thing with the United

1 States as we do with any other country.

2 The balance usually in the case
3 obviously of the United States is different than
4 it might be with other countries that one can
5 think of that we might have relationships with,
6 but the reality is we still make that same
7 balance, even in the case of the United States and
8 if indeed the United States were to do something
9 that was contrary to our arrangement and the
10 traditions of our arrangement, then that would
11 obviously influence how we shared in the future.

12 MR. WALDMAN: Why is the balancing
13 different with the United States?

14 MR. ELCOCK: Because we live on
15 the United States northern border and the
16 relationship is a long-standing and important one.

17 MR. WALDMAN: So does that mean we
18 are more inclined --

19 MR. ELCOCK: Relationships between
20 intelligence services, no matter how strange it
21 may seem, are based on trust and that trust is
22 built over years of a relationship. If a
23 relationship is long-standing and people have
24 exercised the kind of care in managing information
25 that we expect, then obviously that goes a long

1 way to making sure that the relationship is one in
2 which you have more reliance than one that is, for
3 example, brand new in which you have not built a
4 record of trust in terms of the sharing of
5 information.

6 MR. WALDMAN: If I understand you
7 correctly, the fact that we have this
8 long-standing relationship and border affects the
9 balancing we do with the sharing of information
10 with the United States.

11 Is that correct?

12 MR. ELCOCK: That's right.
13 Indeed, I cannot think of a case, any case, that
14 SIRC has reviewed, certainly since September the
15 11th, in which SIRC has criticized our sharing of
16 information with any service and that would
17 certainly include the United States.

18 MR. WALDMAN: Okay. So does that
19 mean we are more prepared to overlook the fact
20 that the U.S. violates human rights by sending
21 people to secret interrogation centres to be
22 tortured when we share information with them?

23 MR. ELCOCK: As I said before, Mr.
24 Waldman, we make those assessments in respect of
25 every piece of information we share and we decide

1 whether to share it or not. That said, the United
2 States is our most important partner and we share
3 very extensively with the United States. As I
4 said before, we don't share everything with the
5 United States and nor do they share everything
6 with us.

7 MR. WALDMAN: Do you know if the
8 United States has ever breached any of the caveats
9 that you have put on the information that we have
10 shared with them?

11 MR. ELCOCK: I'm not aware of the
12 Americans having breached such a caveat.

13 MR. WALDMAN: Have the Americans,
14 to your knowledge, given information that you gave
15 to them about an individual to another country?

16 MR. ELCOCK: That is essentially
17 unknowable. I don't know if that is the case. If
18 we became aware of such a case obviously it would
19 have implications for -- it would be a breach of
20 the third-party rule and that would be one of the
21 caveats on any document and it would have
22 consequences for the sharing -- for the
23 relationship.

24 MR. WALDMAN: In other words, if
25 the United States gave information that we gave to

1 them to a third party, that is a breach of the
2 caveat?

3 MR. ELCOCK: If they gave it
4 without seeking our concurrence, yes.

5 MR. WALDMAN: Okay. Let me just
6 be clear.

7 If the United States gave
8 information to, let's say Syria, that they had
9 received from Canada, there are only two possible
10 possibilities, either a breach of a caveat or we
11 consented.

12 Is that correct?

13 MR. ELCOCK: That is a
14 hypothetical.

15 MR. WALDMAN: Yes.

16 MR. ELCOCK: I don't know if they
17 have given any information.

18 MR. WALDMAN: It is a
19 hypothetical, but I'm asking you to answer the
20 question?

21 MR. ELCOCK: If the United States
22 had provided such information -- if we had provide
23 such information to the United States and they had
24 provided it to another country without our consent
25 it would be in violation of the caveat.

1 MR. WALDMAN: So in the case of
2 Mr. Arar, if we gave information to the Americans
3 and they passed it on to the Syrians there are
4 only two possibilities, either they breached our
5 caveat or we consented.

6 Is that correct?

7 MR. ELCOCK: That is a lot of
8 "ifs". I don't know if any of those things ever
9 took place.

10 MR. WALDMAN: Assume they did.
11 Let's assume that we gave information to the U.S.
12 about Mr. Arar.

13 MS McISAAC: Mr. Commissioner, I
14 really have to object to this line of questioning
15 because it makes so many assumptions that it
16 actually runs a real risk of putting false
17 information and false assumptions out in the
18 public domain.

19 Mr. Elcock has said that if
20 information from CSIS was provided to the
21 Americans and the Americans disseminated that
22 information to a third country without Canada's
23 consent, without CSIS' consent, that would
24 constitute a breach of the caveat.

25 So I think we can conclude, as

1 Mr. Waldman has, that dissemination, further
2 dissemination without consent is a breach of the
3 caveat; further dissemination with consent would
4 not be a breach of the caveat.

5 I don't know how much further we
6 need to go on that point.

7 THE COMMISSIONER: Does that
8 position of Ms McIsaac not constitute the answer
9 you are looking for?

10 MR. WALDMAN: Yes.

11 THE COMMISSIONER: It seems to me
12 it does.

13 MR. WALDMAN: Obviously it
14 constitutes the answer that if information were
15 given to the Americans about Mr. Arar --

16 THE COMMISSIONER: No. I think
17 Ms McIsaac said by CSIS.

18 MR. WALDMAN: By CSIS, yes, to the
19 Americans about Mr. Arar, if it were then shared
20 there are only two possibilities, consent or a
21 breach of caveat.

22 THE COMMISSIONER: That is what I
23 understood her to say.

24 MR. WALDMAN: Yes. So she
25 answered the question instead of Mr. Elcock.

1 That's fine.

2 THE COMMISSIONER: In fairness, I
3 think he had answered that too, but it doesn't --

4 MR. WALDMAN: That's fine.

5 Obviously, I would assume that is
6 an area that Mr. Cavalluzzo will explore.

7 THE COMMISSIONER: I think you can
8 rest assured.

9 MR. WALDMAN: Whether the
10 hypothetical is true or not.

11 Now I want to move on to
12 another area.

13 Does CSIS receive sensitivity
14 training, cultural sensitivity training? CSIS
15 officers, do they receive cultural sensitivity
16 training?

17 MR. ELCOCK: In essence, part of
18 our training is to equip people to go out to
19 function as an intelligence officer in collecting
20 information and dealing with a wide variety of
21 people and people from a variety of cultures and,
22 yes, we make an effort to ensure that when they do
23 that they do that appropriately and in accordance
24 with the process and procedures that are
25 acceptable within the service.

1 I'm not sure what sensitivity
2 training is.

3 MR. WALDMAN: Given that the issue
4 of Sunni Islamic extremism, as you have called it,
5 is one that is the foremost in CSIS -- I think you
6 said before the Parliamentary Committee two-thirds
7 of CSIS resources are in counter --

8 MR. ELCOCK: Terrorism.

9 MR. WALDMAN: -- terrorism and the
10 vast majority of that is Sunni --

11 MR. ELCOCK: No. I have said that
12 is the priority. I haven't speculated at all on
13 what proportion of the two-thirds that are
14 dedicated to counter-terrorism are dedicated to
15 investigations in respect of Sunni terrorists.

16 MR. WALDMAN: Could you tell us?

17 MR. ELCOCK: No.

18 MR. WALDMAN: Is that because you
19 don't know or you are not going to?

20 MR. ELCOCK: Because it would be
21 inappropriate for me to tell you.

22 MR. WALDMAN: All right. I will
23 assume that is a question that can be explored.
24 Thank you.

25 Given that Sunni Islamic issues

1 are front and centre with CSIS right now, and they
2 are the major concern at the present time, has
3 there been any effort to give cultural sensitivity
4 training to CSIS officers about the values of this
5 community since 9/11?

6 MR. ELCOCK: Certainly, we make
7 every effort to ensure that our officers
8 understand the nature of the people and the
9 culture, ethnic background that they may be
10 dealing with.

11 MR. WALDMAN: How do you do that?

12 MR. ELCOCK: Pardon me.

13 MR. WALDMAN: How do you do that?

14 MR. ELCOCK: In many cases we have
15 officers who are -- our officers are drawn from a
16 wide variety of Canadian communities, including
17 those communities, so indeed some officers may in
18 fact come from those backgrounds.

19 In other cases, we do have experts
20 periodically come in. We have indeed had a recent
21 visit from -- I have forgotten his name -- the
22 head of the Islamic Congress who came to the
23 service, made a speech and took questions from
24 people in the service.

25 MR. WALDMAN: Is there formal

1 training about cultural sensitivity given to CSIS
2 officers?

3 MR. ELCOCK: As part of the
4 investigative -- if you are working in a
5 particular area obviously it is important that you
6 understand the nature of the culture and the
7 background and the background indeed of the
8 organizations you are looking at.

9 MR. WALDMAN: What kind of
10 training is given to them with respect to this
11 culture -- I'm not asking you to reveal State
12 secrets here, just whether they are given specific
13 training to understand the cultures and peoples
14 they are working with.

15 MR. ELCOCK: They are given
16 training in terms of their role as an
17 investigator, if that is indeed what they are
18 doing. There are additional opportunities and
19 additional experts who come in to provide
20 additional training, and indeed they are generally
21 coupled with more experienced officers who have
22 been in those areas and investigations for some
23 period of time to, if you will, be mentored in
24 terms of that particular area, that particular
25 investigation.

1 MR. WALDMAN: Just to be clear,
2 have there be any specific cultural training
3 programs to educate CSIS officers in the Sunni
4 Islamic community since 9/11?

5 MR. ELCOCK: In terms of any
6 investigation it is important for the people in
7 that investigation to understand the culture that
8 they are involved with and so we make efforts to
9 ensure that people in any particular investigation
10 have some experience, some understanding of the
11 nature of the --

12 Do we hold a large course every
13 year entitled "Sunni Muslims" and take everybody
14 through it for five months? No, we don't have
15 courses like that, but we make every effort to
16 ensure that people receive the kinds of training
17 and experience that they need to have to carry out
18 the investigations in any community they are
19 involved with.

20 The reality is that any of our
21 investigations generally affect a much smaller
22 part of the community than the whole community.
23 As we have said on more than one occasion, we
24 don't investigate communities. We have no
25 interest in investigating communities. We are

1 interested in individuals and in some cases a
2 smaller group of individuals, but at the end of
3 the day we have no interest in investigating any
4 community and don't do so.

5 MR. WALDMAN: You have given a
6 long answer, but I take it the long and short of
7 it is there is no formal cultural sensitivity
8 training programs.

9 Is that correct? It is done on
10 the job on a case-by-case basis?

11 MR. ELCOCK: We do provide
12 additional courses, but the reality is a large
13 chunk of it is learned on the job, yes.

14 MR. WALDMAN: I think you used the
15 term yesterday "Sunni Islamic terrorists" -- is
16 that correct -- as the major threat?

17 MR. ELCOCK: I have used that
18 term, yes.

19 MR. WALDMAN: Doesn't that concern
20 you, that by using the term "Sunni Islamic
21 terrorist" you are branding the entire Sunni
22 Islamic community as terrorists and that is a
23 perception --

24 MR. ELCOCK: No more so than I
25 would be if I were talking about Irish Catholic

1 terrorists, which I do as well. If I were to talk
2 about PIRA I can only talk about Irish Catholic
3 terrorists. If I talk about Sikhs --

4 MR. WALDMAN: Why do you have to
5 talk about Irish Catholic terrorists? Why don't
6 you talk about the IRA? Doesn't it concern you
7 that if you talk about a group like Irish
8 Catholics and you talk about Irish Catholic
9 terrorists that you are leading people to believe
10 that a large portion of the people are adherence
11 to terrorism in the Irish Catholic community?

12 MR. ELCOCK: I don't share your
13 view. The reality is, PIRA is drawn from an Irish
14 Catholic population. It is a tiny fraction of
15 that population but it is nonetheless drawn from
16 an Irish Catholic population, the same is true of
17 Sunni extremists. There are very few, relatively
18 few -- in terms of the population of Sunni
19 Muslims, there are few people who would be
20 classified as Sunni terrorists, but there are
21 undoubtedly some who are terrorists.

22 MR. WALDMAN: Doesn't it concern
23 you by using the term "Sunni Islamic terrorist"
24 that you are branding the whole community as
25 terrorists, especially after 9/11? Don't you

1 think it would be more appropriate to talk about
2 the organizations or extremists --

3 MR. ELCOCK: Unfortunately, that
4 doesn't work very well in the case of Sunni
5 Islamic terrorism because the reality of it is
6 that it is, rather than being purely a national
7 structure as you can sometimes with other
8 organizations, it has tended to be an overarching
9 interlinked phenomena so that, in point of fact,
10 you get groups -- it is, if you will, an
11 international terrorist organization in a way
12 which most other organizations are not.

13 In a sense, with Sunni Islamic
14 terrorism you inevitably are left with that
15 generic description rather than saying somebody is
16 an Algerian FIA member or they are an Egyptian
17 Al-Gama'a al-Islamiyya member. In point of fact,
18 they may long have left those organizations and
19 they are part of an international milieu,
20 terrorist milieu.

21 MR. WALDMAN: I want to move on to
22 another area, sources of information.

23 You have told us that you get
24 information from a variety of sources. Can you
25 tell us the different types of sources, sir? I'm

1 not asking for State secrets but I think the
2 general and generic sources are pretty well known?

3 MR. ELCOCK: Information can come
4 from a wide variety of sources. They may come as
5 a result of our own operations in Canada, they may
6 come as a result of operations abroad, it may come
7 from signals intelligence, it may come from
8 information from other foreign services, it may
9 come from police forces in Canada, it may come
10 indeed from individual citizens who may provide
11 information.

12 MR. WALDMAN: So let's just go
13 through that. Part would come from surveillances
14 of different kinds, it could be the Canadian --
15 what is it, CES? The big super thing that has a
16 capacity to --

17 MR. ELCOCK: You are thinking of
18 CSE --

19 MR. WALDMAN: CSE, yes.

20 MR. ELCOCK: -- Communications
21 Security Establishment.

22 MR. WALDMAN: Yes.

23 MR. ELCOCK: CSE is responsible
24 for -- is a SIGINT organization and some
25 intelligence could come from CSE.

1 MR. WALDMAN: In terms of your
2 operatives in Canada, I have read some of your
3 evidence and my understanding is that they don't
4 actually do covert operations, they work through
5 sources.

6 Is that correct? You have said
7 that in testimony?

8 MR. ELCOCK: We do do covert
9 operations, but generally speaking, to make the
10 distinction, as in comparison to a police
11 organization, we would not normally put an
12 undercover officer, i.e., a CSIS officer, inside a
13 terrorist organization or seek to do that. That
14 is not normally the way we would operate.

15 The police may do it for their own
16 reasons in some of their investigations. We don't
17 generally do that. We would generally seek to
18 recruit somebody in an organization.

19 MR. WALDMAN: So you recruit
20 somebody and you get sources. So that is one
21 source.

22 Surveillance is another source.

23 MR. ELCOCK: Yes.

24 MR. WALDMAN: Foreign intelligence
25 is another source?

1 MR. ELCOCK: "Foreign
2 intelligence". I'm not sure what you mean by
3 "foreign intelligence".

4 MR. WALDMAN: Information from --

5 MR. ELCOCK: Information collected
6 abroad, but that would not be defined for us in
7 our case as foreign intelligence.

8 MR. WALDMAN: You might collect
9 information abroad, but you could get information
10 from foreign intelligence services as well?

11 MR. ELCOCK: We might. We might
12 have information shared with us by other
13 intelligence services, yes.

14 MR. WALDMAN: So those are the
15 main sources then?

16 MR. ELCOCK: Yes.

17 MR. WALDMAN: Okay. And you put
18 it all together to get a big jigsaw puzzle, right,
19 and you come to conclusions?

20 MR. ELCOCK: That's right.

21 MR. WALDMAN: Have you ever made
22 mistakes?

23 MR. ELCOCK: Everybody makes
24 mistakes. That's why we have processes and
25 procedures and checks in the case of CSIS, SIRC

1 and the IG to try to ensure that those mistakes,
2 if they occur, are minimized. But if you have an
3 organization of human beings it is almost
4 inevitable mistakes will be made.

5 In the case of CSIS, we have a lot
6 more checks than most other people do, so we do
7 our best to minimize them.

8 MR. WALDMAN: Are you aware of
9 cases where CSIS made mistakes and erroneously
10 targeted people?

11 MR. ELCOCK: I'm not aware of a
12 case where we erroneously targeted somebody. I am
13 aware of cases where we have concluded, after
14 investigation, that notwithstanding our suspicions
15 the individual is not a threat to the security of
16 Canada and concluded the investigation. That
17 happens fairly frequently.

18 MR. WALDMAN: Okay, well, I think
19 we are just doing a play on words. I understand
20 what you are saying. You are saying there is
21 nothing wrong with the targeting because you had
22 information to target?

23 MR. ELCOCK: If we have sufficient
24 information to target an individual, then the
25 threshold for that is a reasonable suspicion that

1 the individual is a threat to the security of
2 Canada and we would begin an investigation. And
3 it is a very rigorous process we go through, in
4 terms of even beginning an investigation. A
5 target submission is usually 10 or 15, 20 pages,
6 even to begin an investigation.

7 MR. WALDMAN: Okay. So once --

8 MR. ELCOCK: So if we have done
9 that, if we have done that background, we have
10 some basis upon which we have begun an
11 investigation. As I think I have said before, we
12 don't have thousands of people who are under
13 investigation at any particular point in time. I
14 think I said at one point that the number was
15 roughly 50 organizations and 350, and it can vary
16 by 60 or 70 at any point in time -- individuals.
17 It's not a huge number of targets at any
18 particular point in time.

19 MR. WALDMAN: So you have 350
20 targets, more or less, and you target the people.
21 And there are a considerable number of cases
22 where, once you target, you realize you made a --
23 that they weren't involved. Is that correct?

24 MR. ELCOCK: We may conclude that,
25 indeed, notwithstanding the initial suspicions,

1 that our suspicions were either unwarranted or, on
2 further review, there isn't a justification to go
3 any further.

4 MR. WALDMAN: So your initial
5 targeting was wrong?

6 MR. ELCOCK: No, it is not wrong.
7 Because if we have reasonable grounds to suspects
8 when we start, then we may -- then that decision
9 is accurate. Simply, we discontinued it because
10 we have concluded that the individual is not a
11 threat to the security of Canada.

12 MR. WALDMAN: Does the
13 intelligence community make mistakes, in general,
14 do you think?

15 MR. ELCOCK: I would be hard put
16 to think of any community that does not make
17 mistakes, even lawyers, periodically.

18 MR. WALDMAN: Well, you are had a
19 lawyer too, eh?

20 MR. ELCOCK: I haven't practised
21 as a lawyer for some years.

22 MR. WALDMAN: Are you denying that
23 you are a lawyer?

24 --- Laughter / Rires

25 A. There are probably many who

1 would suggest that I'm --

2 THE COMMISSIONER: He is neither
3 confirming nor denying.

4 --- Laughter / Rires

5 MR. WALDMAN: Well, there is
6 sometimes when I deny that I am a lawyer, too.

7 MR. ELCOCK: As long as you tell
8 the lawyer jokes first.

9 --- Laughter / Rires

10 MR. WALDMAN: So haven't we just
11 experienced a major intelligence failure in the
12 weapons of mass destruction? Would you describe
13 that as a major intelligence failure?

14 MR. ELCOCK: I am not sure that I
15 can say at this juncture that it's a major
16 intelligence failure. The reality is intelligence
17 is imperfect science. By definition, you are
18 always at the mercy of the information you are
19 receiving, the perceptions that it's coming
20 through, in some cases, the sources of the
21 information, and so on.

22 So there are all sorts of things
23 that make it a very imperfect science. It would
24 appear that in that particular case that it was a
25 less-than -- less-than-perfect assessment.

1 Having said that, whether or not
2 there was a mistake or whether it was simply a
3 misinterpretation of the data or whether -- it's
4 not clear at this juncture precisely what
5 happened.

6 MR. WALDMAN: Well, do you believe
7 there are weapons of mass destruction in Iraq,
8 now?

9 MR. ELCOCK: Pardon?

10 MR. WALDMAN: Based upon what we
11 have read, do you believe there are weapons of
12 mass --

13 MR. ELCOCK: At this juncture,
14 there would appear not to be weapons of mass
15 destruction in Iraq, but, having said that, they
16 could appear tomorrow. I don't know.

17 MR. WALDMAN: Okay, well...

18 MR. ELCOCK: I don't have people
19 looking for weapons of mass destruction in Iraq,
20 so I can't honestly provide you with much of an
21 assessment on that.

22 MR. WALDMAN: You haven't read the
23 assessments that have come out from other sources?

24 MR. ELCOCK: There are a lot of
25 assessments. I haven't seen any final judgments.

1 And I think, if I recall Mr. Cay's
2 comments, he did, in fact, say that there were
3 still, in some cases, weapons of mass destruction
4 programs, although not the major programs that
5 people had expected.

6 MR. WALDMAN: So if I understand
7 your evidence with respect to the intelligence
8 community and mistakes, you accept that there are
9 circumstances when you will start believing that
10 someone might be involved and at the end conclude
11 they are not?

12 MR. ELCOCK: As a result of an
13 investigation, yes.

14 MR. WALDMAN: Yes.

15 MR. ELCOCK: Again, all of those
16 are subject to review by SIRC and assessment by
17 SIRC. So, at the end of the day, if they had any
18 concerns about any investigation we had undertaken
19 and whether it was inappropriate, they would
20 likely have said so.

21 MR. WALDMAN: Okay. Now, in the
22 course of your targeting someone and you are
23 investigating them, would there be circumstances
24 where you might pass that information on --
25 information about that target on to the United

1 States?

2 MR. ELCOCK: Again, you are back
3 into the issue of whether we share information,
4 what information we might share with another
5 service and when we share it. I can't -- that's a
6 hypothetical.

7 I mean, if we have intelligence
8 and we believe it's necessary to share it with the
9 United States or that we should think about
10 sharing it with the United States, then,
11 obviously, we have to go back into: What is the
12 balancing act as to whether or not we share that
13 information with the United States? What is the
14 right judgment to make?

15 MR. WALDMAN: I want to make sure
16 there is no rule that would preclude you from
17 sharing information with the United States when
18 someone is targeted, but before you have reached a
19 final conclusion?

20 MR. ELCOCK: No.

21 MR. WALDMAN: So you would have to
22 balance that out?

23 MR. ELCOCK: That would simply be
24 intelligence that we would have to make -- if we
25 had enough intelligence that we believed that we

1 could share, then, we would have to enter into
2 those considerations. But, again, you are into
3 hypotheticals.

4 MR. WALDMAN: I'm sort of stuck
5 with hypotheticals, unfortunately, given the
6 nature of the rules that we are playing with.
7 So --

8 MR. ELCOCK: Yes, but the
9 nature -- wait a minute, you are asking questions
10 and hypotheticals. The reality is, at the end,
11 that you haven't got much of an answer because
12 there are so many ifs involved that -- I mean, I'm
13 not sure that you -- we know what the answer is.

14 MR. WALDMAN: No, but this is not
15 a hypothetical, this is a very simple question.
16 Is there anything in the rules about
17 information-sharing with the United States that
18 preclude you from sharing information when a
19 person is targeted, but before you have reached a
20 conclusion? That's a simple question. That's not
21 a hypothetical, that's a --

22 MR. ELCOCK: No. No, there is
23 nothing that would prevent us from sharing it, if
24 we concluded there was intelligence which should
25 be shared.

1 MR. WALDMAN: So let us say you
2 shared information and then afterwards you
3 concluded the person was no longer a threat.
4 Would you tell the Americans, make sure you told
5 them that?

6 MR. ELCOCK: If that had happened,
7 likely we would, yes.

8 MR. WALDMAN: Likely, but not for
9 certain?

10 MR. ELCOCK: Oh, I think we
11 probably would, if we had told the Americans that
12 we thought somebody was a threat.

13 But I would reiterate what I said
14 before. In respect of all of the sharing we do,
15 every case that SIRC has reviewed since September
16 the 11th, and before, frankly, I'm not aware of a
17 case that they have reviewed where they have
18 concluded that the sharing of our information was
19 inappropriate.

20 MR. WALDMAN: Well, are there
21 cases outstanding of complaints that have just
22 recently been filed by --

23 MR. ELCOCK: I am not aware of any
24 cases that are outstanding at this juncture that
25 have not been reviewed by SIRC and a report

1 provided to the minister or to --

2 MR. WALDMAN: Has Mr. Nureddin's
3 case been reviewed by SIRC yet?

4 MR. ELCOCK: I don't know if his
5 case has been reviewed.

6 --- Pause

7 MR. WALDMAN: I would like to move
8 on to -- move back to the question of informants.

9 MR. ELCOCK: Pardon?

10 MR. WALDMAN: Of informants of
11 sources. You told us that, generally speaking,
12 you don't engage in covert operations. Your
13 operatives recruit informants within the --

14 MR. ELCOCK: No, we do engage in
15 covert operations. What we don't do is put
16 undercover officers --

17 MR. WALDMAN: Right, sorry.

18 MR. ELCOCK: -- in organizations.

19 MR. WALDMAN: Thank you for
20 explaining that to me. I appreciate it.

21 Okay. So if you are looking for
22 sources in the community, what criteria do you use
23 when you try and recruit somebody?

24 MR. ELCOCK: You try and recruit
25 somebody who is recruitable.

1 MR. WALDMAN: Recruitable. And
2 are the factors that make a person recruitable?

3 MR. ELCOCK: A number of factors
4 can make someone recruitable. Again, that is an
5 entirely fact-driven circumstance. It will depend
6 on the individual, it will depend on the
7 circumstances and it will depended on the case.
8 That is an -- that is simply a judgment that is
9 made on the basis of a specific fact situation.
10 There is no way that you can write a recipe for
11 recruitment. I have never seen one.

12 MR. WALDMAN: A recipe for
13 recruitment.

14 Isn't it true that CSIS often
15 recruits people who haven't got their immigration
16 status and tries to obtain information from them,
17 people who are in refugee process?

18 MR. ELCOCK: On occasions, but
19 rarely.

20 MR. WALDMAN: On occasions, but
21 rarely.

22 Do you know --

23 MR. ELCOCK: And I would note
24 that -- and it is one of the things that SIRC
25 reviews -- CSIS officers may not offer

1 inducements, i.e. assistance, in the immigration
2 process in order to secure recruitment or
3 cooperation.

4 MR. WALDMAN: Are you familiar
5 with the Sivakumar case?

6 MR. ELCOCK: I think there are a
7 lot of people in the room who are familiar with
8 the Sivakumar case.

9 MR. WALDMAN: It was part of Mr.
10 Stewart Bell's book, was it not? I think he wrote
11 about it.

12 MR. ELCOCK: I don't --

13 MR. WALDMAN: You didn't read
14 Mr. --

15 MR. ELCOCK: I don't recall
16 whether it's in Stewart's book or not.

17 MR. WALDMAN: Okay. I know I can
18 only talk -- I know you can only talk about the
19 public part of the Sivakumar case, but didn't CSIS
20 recruit Mr. Sivakumar while his immigration status
21 was uncertain?

22 MR. ELCOCK: I am not going to
23 comment on that case. I haven't got the documents
24 in front of me. I know there was a finding in
25 that case. Whether I agree with that finding

1 entirely is neither here nor there.

2 MR. WALDMAN: Well, perhaps I
3 could ask you because I happen to have the
4 documents of the Sivakumar case in Volume 1.
5 Perhaps I could ask you to go to Volume 1, please.
6 It start at page 156.

7 --- Pause

8 MR. WALDMAN: Now, I am not asking
9 you to talk about anything over and above what's
10 public in Mr. Sivakumar's case. And although the
11 report was secret, am I correct in saying this was
12 the redacted version of the report that was made
13 public?

14 MR. ELCOCK: I assume it is the
15 redacted version.

16 MR. WALDMAN: I think it is pretty
17 clear given that there are lots of holes in it.

18 MR. ELCOCK: Yes.

19 MR. WALDMAN: Are you familiar
20 with the facts of Mr. Sivakumar's case?

21 MR. ELCOCK: Yes.

22 MR. WALDMAN: He came to Canada,
23 made a claim for refugee status, and during the
24 course of the refugee process he was recruited by
25 CSIS. Is that correct?

1 MR. ELCOCK: At this juncture all
2 I can do is speak to what is in this document. I
3 am not prepared to go any further than what is in
4 this document.

5 In this document SIRC says that it
6 found that he was not so recruited. But I am not
7 prepared to go further than the document.

8 If you want me to essentially read
9 into the record the SIRC report, I am happy to do
10 that but that is not -- I am not sure what that
11 gets you.

12 MR. WALDMAN: But is it not
13 correct that when --

14 MR. ELCOCK: I am not going to
15 comment on whether any of those findings are
16 correct or whether I believe any of those findings
17 or whether I concluded that they are indeed
18 accurate.

19 Those are the findings of SIRC. I
20 can't comment on why SIRC came to those
21 conclusions and whether indeed I think it is
22 accurate. They stand for what they stand for and
23 nothing more.

24 MR. WALDMAN: We will get to that
25 in a minute.

1 Is it not correct that when
2 Mr. Sivakumar sued the Government of Canada and
3 the government filed a statement of defence, the
4 Government of Canada acknowledged that
5 Mr. Sivakumar was in fact working for CSIS,
6 provided information of interest to CSIS?

7 This is on the public record.

8 MS McISAAC: Perhaps we could show
9 the witness the statement of defence and the
10 passage you are referring to.

11 MR. WALDMAN: I don't have the
12 statement of defence here.

13 MR. ELCOCK: I don't recall it off
14 the top of my head, to be perfectly blunt.

15 MR. WALDMAN: I understand you are
16 not going to go any more. I will ask you about
17 the findings that were made and ask you if you
18 agree or disagree.

19 MR. ELCOCK: I think I have
20 already said that the document stands for what it
21 stands for; that they are the findings of SIRC, no
22 more and no less. I am not going to comment on
23 that apart from saying that if the finding of
24 SIRC.

25 MR. WALDMAN: Why can't you tell

1 me whether you disagree or not. You spent a good
2 deal of time yesterday, sir, telling us about how
3 wonderful SIRC was and what a wonderful
4 relationship you had and how important SIRC was.

5 Why are you not going to --

6 MR. ELCOCK: I think I said that
7 SIRC was --

8 MR. WALDMAN: Sir, I would like to
9 finish my question, please. Thank you.

10 You told us yesterday that SIRC
11 was very important to this process. Is that not
12 correct?

13 MR. ELCOCK: That is correct.

14 MR. WALDMAN: And you said you had
15 a lot of respect for SIRC and that they had
16 acquired a great deal of knowledge with respect to
17 the operations of CSIS. Is that correct?

18 MR. ELCOCK: Yes.

19 MR. WALDMAN: And you said that
20 because of SIRC, CSIS was a stronger institution.
21 Is that correct?

22 MR. ELCOCK: That is correct.

23 MR. WALDMAN: So SIRC finds that
24 Mr. Sivakumar was promised that if he cooperated
25 with the service, they would not interfere with

1 his -- that they would make sure he was not
2 deported from Canada.

3 Is that not correct? That is what
4 SIRC found?

5 MR. ELCOCK: That was the finding
6 of SIRC.

7 MR. WALDMAN: Do you agree with
8 that finding?

9 MR. ELCOCK: That was the finding
10 of SIRC.

11 MR. WALDMAN: Why won't you tell
12 me whether you agree with it or not?

13 MR. ELCOCK: Whether I agree with
14 it is neither here nor there.

15 MR. WALDMAN: I think it is very
16 relevant, sir.

17 MR. ELCOCK: I don't think it is.

18 MS McISAAC: Mr. Commissioner --

19 MR. WALDMAN: Excuse me.

20 Mr. Commissioner, this is not a question of
21 national security, whether Mr. Elcock agrees or
22 disagrees with the finding of SIRC. It goes to
23 the whole question of the relationship between
24 CSIS and SIRC.

25 I think it is highly relevant that

1 Mr. Elcock tells us whether he agrees or disagrees
2 with this specific finding of SIRC.

3 THE COMMISSIONER: Ms McIsaac?

4 MS McISAAC: What I was going to
5 say is the problem here is the SIRC report was
6 redacted on the basis of certain information which
7 was found by SIRC itself to be subject to national
8 security confidentiality. The report speaks for
9 itself.

10 Whether or not CSIS agrees with
11 the findings of the SIRC, I think in this case is
12 not relevant. The Commission can make whatever
13 determinations it wishes to make as to both the
14 relevance and the weight of the SIRC report, and
15 that seems to me to be as far as we need to go
16 with that particular report.

17 THE COMMISSIONER: Do you want to
18 add something, Mr. Waldman?

19 MR. WALDMAN: I don't think I have
20 anything more useful to say. It seems to me
21 highly relevant to know what Mr. Elcock thinks
22 about a report that was critical of CSIS.

23 With respect to what my friend
24 just said about the findings, the findings are
25 quite clear and in the unredacted version there is

1 no controversy as to what was found.

2 THE COMMISSIONER: It strikes me
3 that one of the reasons -- I don't know if
4 Mr. Elcock agrees or does not agree. But likely
5 his agreement or disagreement is based upon facts
6 as he knows them, and what he is saying is those
7 have been redacted from the report. So, for
8 starters, I would think there would be a concern
9 potentially about it.

10 Second, Mr. Waldman, I am not sure
11 I agree with you that I am really that interested
12 in Mr. Elcock's position, whether he agrees or
13 disagrees.

14 You do have a finding of SIRC who
15 conducted a hearing and I can tell you, whatever
16 relevance it is to this case, I would be most
17 disinclined to go behind a finding of a body like
18 SIRC after they conducted a hearing and conduct
19 another one.

20 So if what you are seeking to have
21 before this inquiry is evidence of the finding of
22 SIRC, it would seem to me in the face of it you
23 have that. I would need pretty strong evidence of
24 something to disregard what SIRC has already
25 found.

1 So, a long way of ruling that I
2 think you can move on to your next question.

3 MR. WALDMAN: Okay. I would like
4 to take you to the SIRC finding in the Goven case,
5 the next document.

6 MR. ELCOCK: What page is that?

7 MR. WALDMAN: It starts at page
8 186.

9 The Goven Report differs. I am
10 sure you are aware of this report as well?

11 MR. ELCOCK: Yes.

12 MR. WALDMAN: This is by Bob Rae
13 when he was a member of SIRC. Is that correct?

14 MR. ELCOCK: Yes, that is right.

15 MR. WALDMAN: Is it not correct
16 that Mr. Rae was extremely critical of CSIS' view
17 of membership?

18 MR. ELCOCK: The report is
19 critical, yes.

20 MR. WALDMAN: The report is
21 written by Mr. Rae?

22 MR. ELCOCK: Yes.

23 MR. WALDMAN: So the report is
24 critical.

25 Do you agree with Mr. Rae's

1 conclusions about CSIS' views on membership?

2 MR. ELCOCK: Mr. Waldman, I don't
3 mean to interrupt you, but earlier you took me
4 through a line of questioning about the importance
5 of SIRC. The importance of SIRC, it has all of
6 those importances to us. The reality is it is
7 inappropriate for me to comment and express my
8 agreement or disagreement, and I have not done so,
9 with respect to any SIRC decision.

10 SIRC is the body that reviews the
11 service. We accept the findings that it puts out.
12 If we have a disagreement with a recommendation
13 they have made, we make our differences with SIRC
14 clear to the Minister. That is the only avenue of
15 disagreement resolution, if you will, we have with
16 SIRC.

17 I have never commented publicly on
18 SIRC decisions or criticized them one way or
19 another, if I believe they have gone in the wrong
20 direction, or alternatively commented to say I
21 agree that that is the right decision.

22 The SIRC's decisions stand for
23 what they stand for. They have made their
24 decision. We move on from there.

25 I have never expressed my

1 agreement or disagreement with a SIRC decision.

2 MR. WALDMAN: But you are no
3 longer, I think we have --

4 MR. ELCOCK: I am here as the
5 former Director of CSIS. I don't think I am here
6 in my personal capacity, Ward Elcock, to express
7 my general views on the state of the world.

8 MR. WALDMAN: In the SIRC report
9 on Goven, Mr. Rae found -- I just want to read you
10 one section, because I want to know what you did
11 in response to that.

12 I was planning to do a lot more,
13 but given what you ruled, Mr. Commissioner, I just
14 have to find the right portion of the Goven
15 report.

16 THE COMMISSIONER: Is it page 216
17 you are looking for?

18 MR. WALDMAN: Well, it starts on
19 page 212.

20 On page 212 he says:

21 "The difficulty with this
22 line of approach ..."

23 Around membership.

24 "... is that it casts a very
25 wide net, and that a great

1 many people who are
2 politically active Kurdish
3 nationalists, who are
4 peaceful, law abiding and
5 non-violent, will be labelled
6 as 'terrorists'. In my view,
7 this is exactly what has
8 happened in the case of Mr.
9 Goven. He has been unfairly
10 labelled. He is not a member
11 of a terrorist organization."

12 Mr. Rae concluded as a member of
13 SIRC that you cast too wide a net when you label
14 people as members of terrorist organizations.

15 Which steps did CSIS take after
16 this report in order to correct it?

17 MR. ELCOCK: I think in point of
18 fact what Mr. Rae found was that the PKK was not a
19 terrorist organization.

20 MR. WALDMAN: I don't think that
21 is what he found.

22 MR. ELCOCK: I think that is what
23 he said in essence.

24 That said, I can't comment on what
25 actions -- at this point, to be perfectly honest,

1 I don't recall what actions were taken as a result
2 of that decision and the recommendations that were
3 made. So I would have to check in any case.

4 It may well be that some of those
5 actions are classified. I don't know. But I
6 simply don't recall.

7 THE COMMISSIONER: There are
8 recommendations at the end of the report, I
9 believe.

10 MR. ELCOCK: Yes, but I don't
11 recall precisely what happened as a result of
12 those recommendations.

13 MR. WALDMAN: That is quite
14 interesting because you said you listened very
15 carefully where SIRC said --

16 MR. ELCOCK: No. What I said,
17 Mr. Waldman, is that I don't recall. This
18 happened some time ago. I don't recall off the
19 top of my head what happened as a result of the
20 recommendations by SIRC.

21 MR. WALDMAN: So SIRC made
22 recommendations in the Goven report, very
23 extensive recommendations; recommendations about
24 the security screening, about the complication of
25 interviews, about membership, about conclusions

1 about membership, about CSIS casting too wide a
2 net.

3 And you don't recall what was
4 taken after that?

5 MR. ELCOCK: I do recall that we
6 went to the Minister with some recommendations. I
7 don't recall the details of that at this juncture,
8 and I didn't make an effort to be informed about
9 it because I didn't know that I was going to be
10 asked about it, Mr. Waldman.

11 MR. WALDMAN: It is in the
12 material.

13 MR. ELCOCK: The recommendations,
14 yes, but the action taken is not there.

15 MR. WALDMAN: Perhaps it might be
16 useful for Mr. Cavalluzzo to explore what action
17 was taken. I would assume it falls into the area
18 of secret, at least initially, and I think it
19 would be important to know what action was taken
20 in response to the specific findings in both of
21 these cases.

22 THE COMMISSIONER: Why don't we
23 leave it this way. Mr. Cavalluzzo will consider
24 it.

25 I must say I am struggling a bit

1 necessarily to the relevance of it.

2 MR. WALDMAN: If I could assist
3 you with respect to the issue of relevance in this
4 case, it seems to me, especially in the Goven case
5 where Mr. Rae basically said that CSIS casts far
6 too broad a net in terms of defining members, it
7 is highly relevant to your deliberations here of
8 what actions were taken after Goven.

9 THE COMMISSIONER: I think on that
10 basis we can follow up and see what specific
11 actions were taken.

12 MS. McISAAC: Mr. Commissioner,
13 may I make a point here.

14 It must be remembered that the
15 Goven case deals with an issue that has bedeviled
16 the government and the immigration authorities for
17 some time, and that is the status of an individual
18 seeking Canadian citizenship and the issue of to
19 what extent mere membership in an organization,
20 what level of activity within that membership is
21 appropriate or necessary in order to deny that
22 individual the standing they are seeking under an
23 immigration case.

24 As I recall and as I read the SIRC
25 report in this context, it has very much to do

1 with the particular circumstance. In particular,
2 the recommendations include recommendations
3 dealing with reconsideration or amendments to the
4 Immigration Act and the Citizenship Act to deal
5 with this very question of: At what point does
6 membership in an organization disqualify an
7 individual from citizenship or landed immigrant
8 status, as the case may be?

9 It is a very particular
10 circumstance, which in my submission has very
11 little relevance to the issues which you are
12 investigating today.

13 THE COMMISSIONER: I think the
14 recommendation with respect to casting too broad a
15 net is something that should be pursued.

16 Mr. Cavalluzzo will follow up and
17 inquire into that.

18 MR. WALDMAN: There is just one
19 last point in the Goven report that I want to take
20 you to because it is relevant. It deals with
21 human sources.

22 It is the bottom of page 212. I
23 will read it to you.

24 It says:

25 "Nor is a simple assertion by

1 a human source that someone
2 else is a member of the PKK a
3 'fact'. It is an expression
4 of opinion from within a
5 beeaguered community where
6 rumour and gossip inevitably
7 feed on each other. Someone
8 could well have a personal
9 grudge, and knowing how
10 damaging such an opinion
11 could be when given to CSIS
12 (usually for money). It is
13 difficult to see how much
14 stock can be placed on that
15 kind of 'information'."

16 That leads me to my last area of
17 questioning.

18 I have one last area which is on
19 this whole question of informants and then I am
20 done.

21 Do you want to break now?

22 THE COMMISSIONER: No. If we can,
23 I would like to continue. We are running behind.
24 How much longer do you think you
25 will be?

1 MR. WALDMAN: Not very long. I
2 suppose I could try and finish quickly.

3 THE COMMISSIONER: If you are
4 able, I would prefer to carry on with just a
5 single break in the morning sessions.

6 MR. WALDMAN: I am fine. I was
7 just conscious of the time.

8 THE COMMISSIONER: Mr. Elcock, do
9 need to break?

10 MR. ELCOCK: No. I am fine.

11 THE COMMISSIONER: We may sit to
12 one today.

13 MR. WALDMAN: I don't think I will
14 be much longer. I just have to deal with this
15 issue of sources.

16 I started off with foreign
17 sources, but I really haven't dealt with the whole
18 issue of in-Canada sources.

19 I want to deal briefly with that.

20 THE COMMISSIONER: Go ahead.

21 MR. WALDMAN: I just read to you
22 something from the Goven report. I am not asking
23 you to comment on the report per se but the idea
24 in the report.

25 Would you not agree with me that

1 when you rely on human sources of information that
2 you have told us you accrued in the community, the
3 information often is not reliable?

4 MR. ELCOCK: The information needs
5 to be checked very carefully, and we exploit a
6 large number of ways in order to try and ensure
7 that we have found ways to corroborate or confirm
8 that information; that the information we have
9 been given is accurate.

10 MR. WALDMAN: You have told us
11 that on occasion you recruit people whose
12 immigration status is in question and they are
13 very vulnerable.

14 How do you assess the reliability
15 of information used in the context of an extremely
16 vulnerable person who relies on your officers for
17 assistance?

18 MR. ELCOCK: We have a number of
19 ways, as I said, of checking whether information
20 is reliable. We do use polygraph, as I think is
21 probably known. There are a number of other ways
22 in which we can check information.

23 Frankly, I would be unable to
24 comment in public because it would reveal
25 operational methods if I were to do so.

1 MR. WALDMAN: Are informants
2 sometimes paid?

3 MR. ELCOCK: Pardon?

4 MR. WALDMAN: Are they sometimes
5 paid?

6 MR. ELCOCK: Yes.

7 MR. WALDMAN: Do informants
8 generally come from within the community that is
9 being considered?

10 MR. ELCOCK: Sometimes, not
11 always.

12 MR. WALDMAN: How are they
13 recruited?

14 MR. ELCOCK: It depends on the
15 individual case. What allows one to recruit
16 somebody will be different in any case. In some
17 cases it may be that people come forward out of a
18 sense of, surprisingly enough, patriotic duty to
19 provide information. In other cases it is other
20 reasons.

21 It depends on the specific case.
22 As I said, there is no recipe for recruitment.

23 MR. WALDMAN: If information came
24 from someone out of patriotic duty, would you find
25 it more reliable than information from a paid

1 informant?

2 MR. ELCOCK: In any case we have
3 to assess any piece of information we are given.
4 If you gave me information tomorrow, I would have
5 to find some way to corroborate that information.

6 The reality is we take no
7 information at face value. Every piece of
8 information we get, we have to find a way to
9 corroborate it, to check it. Only when we have
10 done that can we assign an assessment of
11 reliability to that information.

12 MR. WALDMAN: How would you know
13 if the corroborating information is reliable?

14 MR. ELCOCK: If, for example, the
15 information came from an intercept, we would have
16 perhaps great assurance that it was reliable.
17 There are different ways of confirming
18 information.

19 As I said, we have a number of
20 techniques for doing that. Frankly, it would be
21 in appropriate for me to go into that in public.

22 MR. WALDMAN: I am just going to
23 confer with my colleagues.

24 --- Pause

25 MR. WALDMAN: I think I am

1 finished. I think I would rather approach these
2 with Mr. Hooper.

3 THE COMMISSIONER: Thank you,
4 Mr. Waldman.

5 Ms McIsaac, how long do you expect
6 to be?

7 MS McISAAC: I don't think very
8 long, probably no more than half an hour, probably
9 less.

10 THE COMMISSIONER: Would you be
11 content if we proceed now?

12 MS McISAAC: I would prefer, in
13 fact I think it would be better, if we took a
14 break. I am sure I could ensure that I was
15 shorter.

16 THE COMMISSIONER: That we break
17 for lunch and then come back.

18 MS McISAAC: Yes.

19 THE COMMISSIONER: All right. We
20 will break until 2 o'clock.

21 --- Upon recessing at 12:29 p.m. /

22 Suspension à 12 h 29

23 --- Upon resuming at 2:00 p.m. /

24 Reprise à 14 h 00

25 THE COMMISSIONER: Good afternoon.

1 Ms McIsaac, I understand that
2 there are no questions.

3 MS McISAAC: That is correct, sir.

4 THE COMMISSIONER: Mr. Cavalluzzo,
5 any re-examination?

6 MR. CAVALLUZZO: I have no
7 re-examination.

8 THE COMMISSIONER: Okay. Then, we
9 will go ahead with the next witness, who is Mr.
10 Hooper.

11 --- Pause

12 WILLIAM JOHN HOOPER: SWORN

13 MR. DAVID: Mr. Commissioner.

14 THE COMMISSIONER: Mr. David.

15 MR. DAVID: A few preliminary
16 matters before we begin the testimony of Mr.
17 Hooper.

18 First of all, your information and
19 the information of everybody in the room, I will
20 be referring to essentially four binders or four
21 documents, two of which you are already familiar
22 with, that is the legislation binder, as well as
23 the policy binder, which contains the operational
24 directives.

25 In addition, two new binders are

1 going to be filed before the Commission at this
2 time. One is entitled, "CSIS Background
3 Material".

4 THE COMMISSIONER: Okay. Should
5 we mark that the next exhibit?

6 MR. DAVID: I think so.

7 THE COMMISSIONER: That will be
8 Exhibit No. 9.

9 EXHIBIT NO. P-9: Document
10 entitled, "CSIS Background
11 Material."

12 UNIDENTIFIED SPEAKER: What is
13 that, please?

14 THE COMMISSIONER: That's this big
15 book.

16 MR. DAVID: It is the CSIS
17 background material, and it's entitled as such.

18 There are 15 tabs to this volume,
19 and they contain extracts from the websites of
20 three organizations, the first being CSIS, the
21 second being SIRC and the third being the Office
22 of the Inspector General.

23 THE COMMISSIONER: Okay. And the
24 next new volume is?

25 MR. DAVID: And the fourth volume

1 is a volume entitled, "Studies Prepared by CSIS".

2 So this will be Exhibit No. 10. Is that correct?

3 THE COMMISSIONER: Yes.

4 MR. DAVID: Okay. And this binder
5 contains studies that were prepared by CSIS that
6 are relevant to this Commission's works.

7 EXHIBIT NO. P-10: Document
8 entitled, "Studies Prepared
9 by CSIS"

10 THE COMMISSIONER: Okay.

11 MR. DAVID: I wish to thank our
12 assistants, Adela Mall and Veena Verma and
13 Danielle Barreau in the production of those
14 documents. They did so under extreme time
15 constraints and I wish to thank them in that
16 regard.

17 THE COMMISSIONER: That's good and
18 you just -- you made them very happy. Big smiles,
19 there.

20 EXAMINATION

21 MR. DAVID: My colleague and
22 friend, Mr. Cavalluzzo, has described off the
23 record Mr. Elcock's testimony as, "Flying 30,000
24 feet in the air". We are now descending with Mr.
25 Hooper and we are going to be getting down to the

1 nuts and bolts of how CSIS operates.

2 The purpose of his testimony, Mr.
3 Commissioner, is to provide understanding, it's to
4 provide education and it's to provide insight into
5 the workings of an important arm of the Canadian
6 government, one that, by its very nature, is not a
7 very public organization.

8 The overview of his testimony will
9 cover essentially six bold topic areas, the first
10 being an overview of CSIS, itself, in term of four
11 different components, the first being the mandate,
12 the second being the powers, the controls and,
13 finally, the review process of CSIS.

14 The second broad topic will be
15 domestic liaison, that is domestic liaison
16 arrangements and agreements, with various arms of
17 either the Canadian or provincial governments, and
18 a particular focus will be had on disclosure with
19 the RCMP.

20 The third broad topic will be
21 liaisons with foreign entities.

22 Fourthly, we will then cover
23 disclosure in support of enforcement actions.

24 We will then cover the CSIS
25 targeting powers referred to by Mr. Elcock this

1 morning.

2 Finally, Mr. Hooper will give us
3 an overview of the contemporary terrorism
4 situation, both in the world and in Canada.

5 So on that, I would like to
6 introduce to you and to the public, Mr. Hooper.

7 Mr. Hooper is the Assistant
8 Director of Operations of CSIS. He has been
9 involved in the security intelligence field for
10 some 30 years of his career.

11 Mr. Hooper, maybe you are the best
12 place to give us a brief description of your CV,
13 of your biographical information.

14 MR. HOOPER: As you have
15 mentioned, Mr. David, I am currently the Assistant
16 Director of Operations of the Canadian Security
17 Intelligence Service.

18 What that mean is I have
19 executive responsibility for the service's
20 collection and analysis programs as they relate to
21 intelligence, terrorism and proliferation.

22 I am also responsible for
23 executive management of the service's Human Source
24 Program.

25 In more detail, what that means is

1 I have the responsibility of ensuring a direct
2 concordance between ministerial direction, as it
3 relates to the national requirements for security
4 intelligence and the collection and analysis
5 programs of the service, ensuring that the
6 operations that we conduct are in direct
7 compliance with the law, ministerial directives
8 and operational policy, and that we conduct those
9 operations efficiently and effectively, with due
10 regard to national security.

11 If I may, you mentioned that I
12 have been involved in law enforcement and security
13 intelligence for some 30 years. It may be of some
14 use to the Commission to know that I joined the
15 RCMP in 1974 and served as a detachment general
16 duty officer until 1981.

17 MR. DAVID: So you are one of the
18 20 per cent Mr. Elcock described as still
19 remaining from the RCMP.

20 MR. HOOPER: A dying breed,
21 literally and figuratively.

22 In 1981, I transferred to the RCMP
23 security service in Vancouver and became a member
24 of the Canadian Service Intelligence Service when
25 the CSIS Act was promulgated on July the 16th,

1 1984.

2 In 1985, I was transferred to our
3 national headquarters, and among the
4 responsibilities that I had at that time involved
5 the service's Emergency Preparedness Program and
6 liaison with the newly constituted review bodies,
7 the Security Intelligence Review Committee and the
8 Office of the Inspector General.

9 From 1988 until 2000, my career
10 was devoted exclusively to counter-terrorism
11 operations. I served, variously, as the head of
12 the service's Threat Assessment Program; the head
13 of International Terrorism in the Province of
14 British Columbia; the deputy chief of
15 Counter-Terrorism in British Columbia; the chief
16 of Middle East and North African Terrorism and
17 headquarters; the Deputy Director General of
18 Operations, Counter-Terrorism Branch; and the
19 Acting Director General of the Counter-Terrorism
20 Branch until 2000, when I was transferred to
21 Toronto and assumed duties as the Director General
22 of our regional office there.

23 In June of 2002, that's correct, I
24 was transferred to headquarters, where I assumed
25 my current duties.

1 MR. DAVID: And I understand that
2 you are actually Acting Deputy Director of
3 Operations, at the present time.

4 MR. HOOPER: Yeah, that was
5 occasioned by Director Elcock leaving the service
6 and some administrative changes we had to make
7 around his departure.

8 MR. DAVID: Mr. Commissioner, if I
9 could refer you to the background materials that
10 have been filed now as Exhibit 9, you will see
11 that at Tab 2 we have provided an organizational
12 chart of CSIS, and the responsibilities which Mr.
13 Hooper has described are properly documented on
14 page 2 of Tab 2, which, in effect, describes the
15 role of the Assistant Director of Operations.

16 It is divided into, actually, four
17 broad topics, being counter-terrorism,
18 counter-intelligence, counter-proliferation and
19 human sources.

20 On that, Mr. Hooper, I would like
21 you now to -- there are, as has been described,
22 four basic elements to a security intelligence
23 system. These four basic elements have been
24 described as being the mandate of the
25 organization, the powers, the controls and the

1 review mechanisms.

2 I would like you to describe for
3 us the application of those four broad elements to
4 CSIS, starting with mandate. I think that is the
5 most basic element.

6 MR. HOOPER: I should say at the
7 outset that there may be some not redundancy but
8 duplication in my testimony from Mr. Elcock's, but
9 I think that is necessary. And as you indicated
10 at the outset, I am flying at a slightly lower
11 altitude, maybe more than a slightly lower
12 altitude, but I think it is important to
13 contextualize my subsequent testimony and to bring
14 some fabric to what I have to say relative to the
15 targeting process and external review.

16 But, as you have said, I think
17 there are four basic elements to our security
18 intelligence architecture, as you have described:
19 mandate, powers, controls and review.

20 Starting with mandate, the
21 McDonald Commission of Inquiry observed that the
22 mandate of the RCMP Security Service was diffuse
23 and ambiguous and not founded in law.

24 The Commission, among its
25 recommendations, recommended that a civilian

1 security intelligence service be created with a
2 legislative mandate which would include threats to
3 the security of Canada.

4 We have talked about section 12.
5 In fact that is what transpired and a feature of
6 our legislation is what we call the primary
7 mandate or our section 12 mandate, which is the
8 authority to collect, analyze, retain information
9 related to the threats of the security of Canada
10 and to advise the government.

11 MR. DAVID: If I could maybe
12 interrupt you at this point.

13 Section 12 is obviously a keystone
14 provision of the CSIS Act. If we could refer to
15 it in the actual legislation and perhaps highlight
16 the main features of section 12.

17 First of all, in terms of the
18 duties and functions of CSIS, we see at section 12
19 that CSIS is involved in four basic activities.
20 They can be described as collection, analysis,
21 retention of information, as well as reporting of
22 information.

23 If you could give us an overview
24 of those activities in terms of CSIS?

25 MR. HOOPER: I think they kind of

1 speak for themselves, but in terms of the
2 important features of section 12 I think perhaps
3 the most important feature is the "strictly
4 necessary" provision, which limits the collection
5 of information relative to security threats to
6 that which is strictly necessary.

7 It also speaks to threshold.
8 Again, our threshold being reasonable grounds to
9 suspect, which in main part distinguishes us from
10 law enforcement agencies who operate under a
11 reasonable grounds to believe a threat exists or a
12 crime has occurred or is about to occur.

13 In terms of our mandate, I think
14 the principal distinguishing features would be
15 three as it relates to section 12, again the
16 threshold, the strictly necessary provision and,
17 thirdly, the fact that we provide advice to
18 government, which again is a feature
19 distinguishing us from law enforcement agencies
20 for the most part.

21 MR. DAVID: Section 12 you have
22 mentioned refers to the legal criteria of
23 reasonable grounds to suspect.

24 Can you contextualize that in
25 terms of how a police force would undertake its

1 work and how it affects the way CSIS undertakes
2 its obligations under the law.

3 MR. HOOPER: I am not a lawyer,
4 but I think the common law tradition is there has
5 to be a reasonable apprehension that a crime has
6 occurred or is about to occur before a law
7 enforcement agency can take action.

8 The primary responsibility of a
9 security intelligence service is to provide
10 forewarning in relation to threats to the security
11 of Canada. In order to provide that element of
12 forewarning, it is necessary that we engage in
13 investigations at a lower collection threshold.
14 We can't wait until there is imminent, say, threat
15 of a terrorist act before we start collecting
16 around it. I think that was contemplated by the
17 legislators when they drafted the CSIS
18 legislation.

19 For the RCMP's part, or any other
20 law enforcement body for that matter -- and if I
21 may frame my answer around the national security
22 domain and give the example of the RCMP, they have
23 responsibility to investigate threats to the
24 security of Canada or threats that derive --
25 criminal offenses that derive from a threat o the

1 security of Canada or criminal offenses related to
2 internationally protected persons.

3 Their threshold, again, is
4 reasonable grounds to believe, which brings them
5 into the picture at a somewhat later point in an
6 investigation's critical path than the service's
7 would.

8 As Mr. Elcock said yesterday,
9 there is no sharp, white defining line between
10 what the police do and what we do, but the time of
11 engagement is somewhat different between ourselves
12 and law enforcement and there is a degree of
13 overlap where security intelligence investigations
14 and law enforcement investigations may run in
15 parallel.

16 The art of what we do with the
17 police is to try to define the length of that area
18 of overlap, and that differs from case to case.

19 MR. DAVID: Thank you.

20 The second mandate of CSIS under
21 the law is to provide security assessments. This
22 is provided for in section 13. Could you briefly
23 mention the activities of CSIS in this regard? In
24 what context is that?

25 MR. HOOPER: Sections 13, 14 and

1 15 are what we refer to as our screening mandate
2 which allows us to provide advice to ministers
3 relative to public service employment. If an
4 individual wants employment at the Government of
5 Canada and a security clearance is required as a
6 consequence of that employment, we have a mandate
7 to provide security assessment advice to
8 ministers.

9 Section 14 provides us with a
10 mandate to provide advice to the ministers
11 responsible for immigration and citizenship
12 programs.

13 Section 15 effectively allows us
14 to undertake investigations to perform or to
15 execute those two mandates.

16 MR. DAVID: The final area that
17 CSIS is involved in in terms of the general
18 mandate is foreign intelligence.

19 Could you briefly describe foreign
20 intelligence and perhaps distinguish between what
21 foreign intelligence is and security intelligence.
22 Because section 12 I think refers to security
23 intelligence, whereas section 16 in fact refers to
24 foreign intelligence.

25 MR. HOOPER: This could be a long

1 and esoteric discussion, but I will try to reduce
2 it down to its constituent parts.

3 We sometimes refer to section 12
4 as our threat mandate. We refer to section 16
5 information or foreign intelligence as non-threat
6 related information to the extent that it relates
7 to the capabilities and intentions of foreign
8 persons or entities or governments. We collect
9 foreign intelligence in Canada -- there is a
10 statutory limitation to where we can collect
11 foreign intelligence -- and we collect it on the
12 request of either the Minister of Foreign Affairs
13 or the Minister of National Defence in support of
14 Canadian foreign policy or international affairs
15 initiatives, and the defence of Canada in the case
16 of National Defence.

17 MR. DAVID: You have mentioned
18 that section 12 refers to the notion of threats to
19 the security of Canada. This is a definition that
20 is provided in section 2 of the Act.

21 Could you briefly go through the
22 four sub definitions of what constitutes a threat
23 to the security of Canada under the CSIS Act?

24 MR. HOOPER: Without reading the
25 specific threat categories, they generally are

1 section 2(a) would be espionage or sabotage;
2 section 2(b) would be foreign interference(sic)
3 activities that are clandestine or covert,
4 threatening to any person or detrimental to the
5 interests of Canada.

6 Section (c) is commonly what we
7 refer to as our terrorism mandate. I might add
8 that that was the only feature or the only article
9 of the CSIS Act that was amended as a consequence
10 of the promulgation of anti-terrorism legislation.

11 As was heard in yesterday's
12 testimony, three words were added to the part (c)
13 of the threats to the security of Canada
14 definition, whereas before it used to read:
15 activities directed toward or in support of
16 serious political violence to achieve a political
17 objective, to that were added the words "religious
18 or ideological".

19 Section 2(d) is generically
20 referred to as our subversion mandate.

21 I ought to say in that regard
22 there was a ministerial directive that was issued
23 to the service in 1988 requiring that all 2(d)
24 investigations be subject to ministerial approval.
25 In point of fact, I don't believe we have had a

1 2(d) investigation, certainly in the last decade,
2 but probably since 1990 or thereabouts.

3 So it is a feature of our mandate
4 that we don't engage.

5 MR. DAVID: The second component
6 of a security intelligence system is powers, what
7 are described as powers.

8 Can you give us an overview of
9 that component?

10 MR. HOOPER: Under the CSIS Act,
11 the director has control and management of the
12 service's day-to-day responsibilities, but he is
13 accountable to the Minister, currently the
14 Minister for Public Safety and Emergency
15 Preparedness.

16 One of the powers or limitations
17 of powers is the Minister can and does issue
18 ministerial directives to the service.

19 MR. DAVID: We have examples of
20 such directives under the policies binder in
21 Tabs 1 and 2, Mr. Commissioner. They have been
22 provided and are public documents.

23 MR. HOOPER: The director chairs,
24 as you heard in testimony this morning, the Target
25 Authorization and Review Committee, which is the

1 body which approves CSIS targeting. He also
2 chairs the Warrant Review Committee, which is a
3 committee that contemplates affidavits in support
4 of the use of our most intrusive powers, powers
5 which must be convoked by the Federal Court of
6 Canada.

7 I will get into a broader
8 discussion of our powers of investigation on how
9 we operationalize those under our targeted policy,
10 but essentially we do have three levels of
11 investigation, Levels 1, 2 and 3; 1 being the
12 lowest, 3 being the highest in terms of the level
13 of intrusion that we are authorized to use and
14 each level subsuming the powers that are contained
15 in the level lower to it.

16 MR. DAVID: This is something we
17 will be reviewing in a few minutes in some detail.

18 Certainly the third element of the
19 security intelligence system, controls, we are
20 essentially speaking of arrangement that may exist
21 with either domestic or foreign entities.

22 Could you give us an overview of
23 the controls that exist in terms of CSIS?

24 MR. HOOPER: Section 17 of our Act
25 empowers the service to enter into relationships

1 with domestic or foreign agencies, but these are
2 done in consultation with and approval of the
3 Minister responsible.

4 MR. DAVID: Is the Minister
5 obliged to approve both foreign and domestic
6 arrangements?

7 MR. HOOPER: Yes. In the case of
8 foreign arrangements, he is also obliged to seek
9 the advice of the Minister of Foreign Affairs in
10 rendering a decision as to whether or not an
11 arrangement should be approved.

12 In terms of the use of intrusive
13 powers by the service -- and here I speak
14 specifically of powers under judicial warrant --
15 these are convoked by the Federal Court. So there
16 is an element of judicial control that is built
17 into our powers as well.

18 MR. DAVID: In terms of
19 disclosure, are there controls in place under
20 your law? I understand that section 19 is the
21 keystone provision that directs CSIS in what
22 circumstances CSIS can disclose information that
23 they have gathered from investigative techniques
24 or other means.

25 Could you briefly describe

1 section 19 and its operation and how it affects
2 the actual activities of your agents?

3 MR. HOOPER: Section 19 is
4 effectively both a power and a control, to the
5 extent that it allows the service to disclose
6 information that it obtained in the performance of
7 its duties and functions, but it also limits the
8 kinds of disclosures that it can make. I think
9 these are articulated in 19(2)(a) through (d) of
10 the CSIS Act.

11 MR. DAVID: Would you agree with
12 me that the general rule that applies to
13 disclosure is that in fact CSIS is not to disclose
14 information?

15 MR. HOOPER: That is the
16 fundamental principle, is we are prohibited from
17 disclosing except under certain -- I guess
18 circumstances.

19 MR. DAVID: It is section 19 that
20 in fact refers to these exceptions.

21 MR. HOOPER: That's correct.

22 MR. DAVID: Can you describe these
23 exceptions? In what circumstances are they
24 triggered?

25 MR. HOOPER: We can disclose to a

1 law enforcement agency having jurisdiction where
2 the service comes into possession of information
3 which may assist the investigation or prosecution
4 of a criminal offence.

5 We may disclose information to the
6 department or the Minister of National Defence, or
7 a designated person within the ministry,
8 information which may relate to the defence of
9 Canada.

10 Similarly, with Foreign Affairs
11 Canada, where we have information that relates to
12 the conduct of Canada's international affairs.

13 We may disclose to a Minister
14 of the Crown where the disclosure is in the
15 public interest.

16 MR. DAVID: In addition to the
17 provisions of section 19, I understand that there
18 are policies that are in place, operational
19 directives. In fact, I can refer you to Tabs 7
20 to 11 of the Policies Manual which was filed as
21 Exhibit No. 4.

22 Could you give us an appreciation
23 of how these directives come into play when it
24 comes to issues of disclosure? Again, it is
25 Exhibit No. 4 and it is Tabs 7 to 11.

1 Perhaps if we refer to Tab 7
2 first, the general operational guideline in
3 disclosure.

4 MR. HOOPER: That is kind of the
5 overarching policy which describes in general
6 terms the service's responsibilities as regards
7 the disclosure of information generally. It
8 articulates the legal requirements of the service
9 policy, talks act the protection of source and
10 employee identity to the extent that the service
11 must take care in disclosing information which
12 could lead to the identification of a human source
13 or a CSIS officer operating covertly.

14 It talks act functional
15 responsibilities at different levels of
16 management within the service for managing the
17 disclosure process.

18 MR. DAVID: If we move on to
19 Tab 8, we are now dealing with disclosure of
20 security information or intelligence.

21 MR. HOOPER: Again, this talks
22 about -- if you look at the scope of the policy
23 and if I may read.

24 "This policy outlines the
25 different circumstances under

1 which information or
2 intelligence may be disclosed
3 an prescribes the policy and
4 procedures to be followed
5 when doing so."

6 It talks about the kinds of the
7 classes of individuals to whom we may make
8 disclosure. It talks about disclosures to the
9 federal and provincial governments and agencies
10 thereof. It talks about disclosure to foreign
11 agencies pursuant to arrangements that we have
12 with those foreign agencies, and the processes of
13 evaluation that the service must go through when
14 making a decision as to disclosure.

15 MR. DAVID: I understand that in
16 all cases it is always a case-by-case approach
17 that is adopted --

18 MR. HOOPER: It has to be.

19 MR. DAVID: -- in decisions
20 dealing with disclosure.

21 MR. HOOPER: That's correct.

22 MR. DAVID: Is that correct?

23 MR. HOOPER: That's correct.

24 Another key feature of this piece
25 of policy relates to the disclosure of information

1 to law enforcement bodies and the possibility of
2 service intelligence being used in evidentiary
3 proceedings.

4 It mentions the RCMP a lot in
5 terms of mechanisms for coordinating interaction
6 between the service and the RCMP in terms of
7 making disclosures to one another pursuant to the
8 MOU. It talks about the care that we must take in
9 permitting service-generated information to be
10 used in judicial proceedings.

11 I think that is --

12 MR. DAVID: Dealing with law
13 enforcement disclosure, Mr. Hooper, is it fair to
14 say that CSIS is confronted sometimes in terms of
15 the decision to disclose or not to law enforcement
16 agencies, the dilemma being between possibly
17 burning a source, if I can express myself in such
18 a way, and jeopardizing an investigation that is
19 going on by your service versus ensuring a
20 conviction or the possibility of a conviction in
21 terms of a criminal trial? How do you deal with
22 that dilemma if such a dilemma does exist?

23 MR. HOOPER: It is a huge dilemma.
24 It is a dilemma for us and the RCMP alike and all
25 police services.

1 I think it is a fact, and I think
2 my RCMP colleagues would agree with this, that
3 they would rather not receive information in
4 support of a prosecution if receiving that
5 information would lead to the invocation of Canada
6 Evidence Act privilege. I think that is pretty
7 much true of prosecutors as well.

8 So when we are dealing with the
9 RCMP in terms of disclosure in support of a
10 criminal investigation or criminal litigation,
11 that is always a feature of the discussion: To
12 what extent are you prepared to let your
13 information go before an open court without
14 invoking privilege?

15 The Stinchcombe decision had huge
16 implications for how we and the RCMP integrate our
17 investigative activities and how we share
18 information, from us to the RCMP in particular.
19 The Stinchcombe decision created -- I shouldn't
20 use the word "onerous", but I can't find another
21 word -- onerous disclosure imperatives on the
22 Crown to the defence in the course of criminal
23 litigation.

24 What we have found in some
25 instances is we run the risk of a kind of infinite

1 regress. If we give the RCMP a piece of
2 information as an investigative lead, in point of
3 fact it may lead to the exposure of the original
4 source of that information. That serves neither
5 our interest or the RCMP's.

6 So there are a number of
7 considerations that must be taken in the decision
8 to whether or not we disclose.

9 From our part, and from the RCMP's
10 part, they have a number of considerations as to
11 whether they are going to accept that information
12 or not.

13 MR. DAVID: I understand one of
14 the more prominent considerations is obviously the
15 gravity of the offence that is at play.

16 MR. HOOPER: Absolutely. I think
17 Director Elcock might have said it this morning.
18 It is not likely that we would run the risk of
19 identifying a human source in the context of a
20 credit card fraud prosecution, for example. But
21 we would make extraordinary accommodations for
22 disclosure if the prosecution involved loss of
23 life, significant loss of life or personal
24 violence.

25 MR. DAVID: Coming back to the

1 policy document, let's now review briefly Tab 9,
2 which deals with disclosure of security
3 information or intelligence to the RCMP.

4 Can you describe the contents of
5 that policy document.

6 MR. HOOPER: Effectively this
7 piece of policy enshrines in our body of
8 operational policy the mechanisms that are
9 contained in the CSIS-RCMP MOU that provide for
10 the sharing of information between ourselves
11 and --

12 MR. DAVID: At this point I think
13 it would be useful if you could tell us the impact
14 of operational policies in the workings of CSIS
15 agents and in the working of your service in
16 general.

17 MR. HOOPER: The impact is very
18 important. As I said, there is basically three
19 classes of information or three classes of
20 direction that circumscribe what we do in an
21 operational context, and that is law, ministerial
22 directive and operational policy.

23 This body of direction or
24 circumscription is supplemented by individual
25 memorandums of understanding and other devices.

1 The one thing that every CSIS
2 officer has access to is the service's body of
3 policy. It is the most common reference tool that
4 investigators have in seeking guidance on how to
5 conduct investigations.

6 By incorporating law, ministerial
7 direction into one place that investigators can go
8 to get advice and go to understand the guidelines
9 that override our investigations, I think it
10 allows for us to enshrine best standards and
11 common standards in a national context.

12 So I think it is very important to
13 the effective and efficient functioning of our
14 service.

15 MR. DAVID: Coming back to our
16 tabs, we have at Tab 10 an operational directive
17 concerning disclosure to law enforcement agencies
18 other than the RCMP.

19 Could you provide us with some
20 overview of that directive?

21 MR. HOOPER: Again, because there
22 is an authority invested in regional director
23 generals to disclose service information to local
24 law enforcement -- we are talking about law
25 enforcement agencies other than the RCMP -- we

1 believe that it was worthwhile to enshrine in
2 policy the same sorts of considerations when
3 dealing with police force at the municipal or
4 provincial level.

5 Effectively this is what it does.
6 It talks about basically the same sorts of
7 guidelines that are contained in other policy
8 documents in terms of the considerations that an
9 investigator must have at play when he is
10 considering whether to disclose or not disclose.

11 It mentions three that I think are
12 particularly important that we have to take care
13 that our disclosures don't identify the sources of
14 information, the techniques of collection or any
15 ongoing service investigations.

16 Basically those guidelines are in
17 there to protect the integrity of service assets
18 and methods of operation.

19 MR. DAVID: Finally, we have at
20 Tab 11 -- this was covered yesterday in quite some
21 extent with Mr. Elcock's testimony -- the
22 existence of caveats when it comes to disclosure.
23 I don't think it is necessary for us to review
24 that. That was done in quite some detail
25 yesterday.

1 Just to end on the disclosure
2 topic in terms of controls, it is my understanding
3 that headquarters must be directly involved in the
4 decision to disclose to any foreign entity of
5 whatever nature. Is that correct?

6 MR. HOOPER: I would add some
7 precision to that. Headquarters is the only
8 service entity that can disclose to a foreign
9 entity. In other words, you can't disclose to a
10 foreign entity with which we have a section 17
11 arrangement out of a regional office or a district
12 office. They all go through headquarters.

13 MR. DAVID: Which is a distinction
14 to be made in terms of arrangements with domestic
15 organizations.

16 MR. HOOPER: That is correct.
17 That is a distinction.

18 MR. DAVID: Where there may be
19 authorization at the regional level.

20 MR. HOOPER: That's correct.

21 MR. DAVID: The final component of
22 the intelligence system is review. Essentially I
23 understand that we are speaking about two
24 independent bodies in the case of CSIS, one being
25 SIRC and the second being the Office of the

1 Inspector General.

2 Mr. Commissioner, if I may refer
3 you once again to the background materials, there
4 are several tabs or several documents that have
5 been produced in front of you that are relevant in
6 terms of understanding the operations of SIRC and
7 IG.

8 I would refer you to the
9 background materials, which is Exhibit 9. In that
10 regard, there are Tabs 8, 10, 11, 12 and 13 that
11 are relevant for SIRC.

12 With regard to the Inspector
13 General, there are Tabs 8, 14 and 15 that are
14 relevant in terms of providing us with background
15 contextual information in the operations of both
16 SIRC and IG.

17 Mr. Hooper, could you bring us
18 through, I would say in quite some detail, the
19 operations, how SIRC is involved in CSIS life and
20 how the Inspector General's office is also
21 involved in the organization.

22 MR. HOOPER: Let me start first by
23 saying that the CSIS Act created three bodies. It
24 created the Canadian Security Intelligence
25 Service. It created the Office of the Inspector

1 General and the Security Intelligence Review
2 Committee.

3 So they come under the same
4 umbrella of our legislation.

5 SIRC provides assurances to
6 Parliament that the service is compliant in its
7 operational activities with law, operational
8 policy, but it also has a mandate to comment on
9 the effectiveness of the service in executing its
10 mandate.

11 It has a power to undertake
12 special reviews at the direction of the Minister
13 or on behalf of the Minister as it sees fit.

14 MR. DAVID: With regard to these
15 powers, I understand that SIRC has just recently
16 completed and filed with the Minister's office a
17 report concerning the Arar case. Is that correct?

18 MR. HOOPER: That is correct. It
19 also has powers. It is empowered to conduct
20 inquiries, which is to say that it can investigate
21 complaints made against the service. It can
22 investigate complaints relative to advice that we
23 provide to Ministers within our security screening
24 program.

25 So it basically has a review

1 mandate and it has an investigative mandate to the
2 extent that it can conduct inquiries and hear
3 evidence.

4 MR. DAVID: Who is SIRC?

5 MR. HOOPER: SIRC is comprised of
6 Privy Councillors who are appointed by Governor in
7 Council and who represent the main parties in
8 Parliament.

9 MR. DAVID: So there is an all
10 party consultation that takes place when an
11 appointment is to be made?

12 MR. HOOPER: Yes.

13 MR. DAVID: Is there a permanent
14 office of SIRC that exists and do they have
15 permanent staff?

16 MR. HOOPER: There is a permanent
17 office located in Ottawa and they do have a
18 permanent staff associated with that office, in
19 addition to the members of the committee itself.

20 MR. DAVID: Could you now go on
21 and describe the Inspector General's office?

22 MR. HOOPER: The Office of the
23 Inspector General is accountable to the Deputy
24 PSEP Minister and effectively is internal to the
25 Ministry and functions as the Minister's eyes and

1 ears on the service.

2 It has a mandate to review
3 generally the performance of the service in
4 executing its duties and functions and it also has
5 a certification responsibility.

6 On an annual basis, the Office of
7 the Inspector General certifies the Director's
8 Annual Report that is filed pursuant to section 33
9 of the Act and provides advice to the Minister in
10 respect of the service's compliance with law,
11 operational policy, ministerial directives.

12 A copy of that certificate is also
13 filed with the Security Intelligence Review
14 Committee for its use.

15 MR. DAVID: In terms of
16 similarities that exist between the organizations,
17 what comments would you have to make in that
18 regard?

19 MR. HOOPER: I think in terms of
20 similarities, they are both external to the
21 service. They both have a mandate to monitor
22 compliance by the service with law, operational
23 policy and ministerial directives.

24 MR. DAVID: And the differences?

25 MR. HOOPER: Principally the fact

1 that the Inspector General is accountable to the
2 Minister. SIRC is accountable to Parliament.

3 MR. DAVID: Directly to
4 Parliament.

5 MR. HOOPER: Directly to
6 Parliament. SIRC also has an investigative
7 mandate that the Inspector General does not have.
8 SIRC can moreover task the Inspector General to
9 undertake reviews on its behalf.

10 So there is kind of a tasking
11 relationship that can exist between SIRC and the
12 IG.

13 MR. DAVID: Mr. Elcock has
14 described SIRC as being a crucial body to CSIS and
15 in fact in being quite unique in the world
16 environment of intelligence organizations.

17 Could you give us your
18 appreciation, your experience with the
19 contribution that these two bodies make to the
20 operations of CSIS?

21 MR. HOOPER: It is kind of
22 interesting to answer that question in the context
23 of where we were when SIRC and the Inspector
24 General were first constituted. I can tell you
25 that back in 1985 external review was not

1 something that the service was used. It was not
2 something we wanted. It wasn't something we
3 welcomed, and it certainly was not something we
4 were resourced to deal with.

5 I think it is fair to say that in
6 the early days of the service there was tremendous
7 resistance to having external review of our
8 activities. I think that is probably human nature
9 more than anything else.

10 I used to say it grudgingly. I
11 don't say it grudgingly any more because it is a
12 fact. External review has made us better. We
13 have instituted procedures to facilitate external
14 review that had been terribly useful to the
15 service's own management. They have made over the
16 course of the years a number of very solid
17 recommendations as regards to operational policy
18 and gaps that might have existed in policy.

19 So, in sum, I think they perform
20 an invaluable function.

21 MR. DAVID: I would like to now
22 move on to the second principal topic of today's
23 testimony, and that is dealing with domestic
24 liaison, as well as domestic disclosure,
25 disclosure to the RCMP.

1 In that regard, domestic liaison I
2 understand covers the general topics of
3 acquisition and disclosure of information,
4 Mr. Hooper.

5 Again by way of background
6 material, I refer the Commissioner to Tab 3 of the
7 policies manual, as well as Tab 7 of the
8 background materials, the background materials
9 being Exhibit 9 and the policies being Exhibit 4.

10 Mr. Hooper, maybe you want to take
11 a minute and find the reference. I am not
12 directly going to refer to those documents.

13 Domestic liaison, what does it
14 mean in your organization, and what is the
15 environment in which it occurs?

16 MR. HOOPER: I think the routine
17 discharge of our duties and responsibilities under
18 the Act requires that we cooperate with
19 departments and agencies of the Government of
20 Canada, with provinces and with law enforcement
21 agencies.

22 I think if we are to be effective
23 in carrying out our mandate, we need to have a
24 wide array of arrangements with domestic agencies.

25 The service enters into these

1 arrangements in order to establish a medium by
2 which we can legally acquire threat-related
3 information and by which we can pass that same
4 kind of information to principally federal
5 entities but also provincial and municipal
6 entities that have a requirement for it.

7 Domestic exchanges are
8 facilitated, as we have spoken about, through
9 section 17 arrangements. We have talked a lot
10 about, I think, how these arrangements are derived
11 and the authorities that go behind them.

12 MR. DAVID: In addition to the
13 arrangements that exist under section 17 -- and
14 you have mentioned the word MOU in your testimony
15 so far -- there are also under section 17
16 memorandums of understanding that exist between
17 CSIS and certain other organizations in Canada.

18 MR. HOOPER: That is correct. We
19 have them at the federal level and with all the
20 provinces in Canada with the exception of Quebec.

21 MR. DAVID: In fact, we can refer
22 in the policies binder, Exhibit 4, to Tabs 12, 13,
23 14 and 15: Tab 12 being the MOU that exists with
24 the RCMP that has been already extensively
25 referred to.

1 If I could refer you to Tab 12,
2 Mr. Hooper, I would like to refer you to page 3 of
3 that MOU. There is in the interpretation section
4 of the memorandum that exists with the RCMP, that
5 is in force since 1990, a distinction that is made
6 between security-related responsibilities of CSIS
7 and security-related responsibilities of the RCMP.

8 Could you bring us through that
9 distinction that does exist in this memorandum.

10 MR. HOOPER: When we talk about
11 the security-related responsibilities of CSIS
12 pursuant to the MOU, basically we are talking
13 about, first of all, the duties of CSIS being the
14 collection, analysis, retention and dissemination
15 of information and intelligence respecting threats
16 to the security of Canada.

17 MR. DAVID: Section 12.

18 MR. HOOPER: That is directly in
19 accordance with section 12.

20 The second part refers to our
21 requirement to advise government with respect to
22 threats and then it adds an element that the
23 provision of information, intelligence and advice
24 to the RCMP with respect to offences or the
25 apprehension of the commission of offences arising

1 out of the threats to the security of Canada.

2 Part 4 of that says the provision
3 of security assessments and advice pursuant to
4 sections 13 and 14 of the CSIS Act, which in plain
5 terms refers to our providing the RCMP with
6 security assessments relative to public service
7 employment.

8 MR. DAVID: With regard to the
9 RCMP now, which is section 4(d) of the MOU, what
10 are the security-related responsibilities of the
11 RCMP?

12 MR. HOOPER: The first article of
13 the responsibilities of the RCMP basically refers
14 to the mandate of the RCMP under the Security
15 Offences Act:

16 "the prevention, detection,
17 investigation and laying of
18 charges in relation to any
19 offence ..."

20 That is a product of a threat to
21 the security of Canada.

22 "... or the apprehension of
23 the commission of such an
24 offence included in the
25 Criminal Code, Official

1 Secrets Act, Import and
2 Export Permits Act or any
3 other federal (legislation)
4 having a national security
5 dimension."

6 It also adds an article relative
7 to the protective security mandate of the RCMP.
8 In practical terms what this means is that the
9 service provides the RCMP with threat advice,
10 threat assessments that allow it to more
11 effectively execute its protective security
12 mandate.

13 "the provision of advice to
14 departments and agencies of
15 the Government respecting
16 protective security
17 measures..."

18 Again this is a further extension
19 of the RCMP's protective security mandate.
20 Basically it refers to our capacity to provide the
21 RCMP with threat and risk assessments.

22 Finally:

23 "the consolidation of threat
24 assessments from CSIS and
25 other sources to provide

1 MR. DAVID: Yes.

2 MR. HOOPER: You are talking
3 broadly --

4 THE COMMISSIONER: Or the RCMP.
5 Is it to the Government of Canada?

6 MR. DAVID: To the Government of
7 Canada. I am referring to obviously in the case
8 of the government, threats to security.

9 Are there situations where the law
10 obliges you to inform the government of situations
11 that constitute a threat to the security of Canada
12 or can you exercise discretion in that regard?

13 MR. HOOPER: I think the law
14 obliges us to provide advice to the Government of
15 Canada in respect to threats.

16 Where there is a degree or an
17 element of latitude, it comes down to the detail
18 and quality of the information that we provide in
19 terms of our requirement to protect in some
20 instances, in most instances, the sources of that
21 information or any third party considerations that
22 may apply.

23 MR. DAVID: Disclosure seems to
24 evoke the idea that it is in writing. Does
25 disclosure in fact, is it always written

1 disclosure or can there be oral disclosure in the
2 way CSIS approaches a situation?

3 MR. HOOPER: If we are talking
4 domestic disclosures, the service can make oral
5 disclosures to an entity with which it has a
6 section 17 MOU or arrangement.

7 MR. DAVID: Which would mean, as
8 an example, that CSIS could decide to orally
9 disclose a piece of information to the RCMP?

10 MR. HOOPER: We could decide to do
11 that. In point of fact, we try very hard to make
12 most of all of our disclosures to the RCMP written
13 disclosures because it is a more effective
14 administrative means for dealing with that.

15 Typically, where there are verbal
16 disclosures, there is -- not typically, there is a
17 policy admonition that says if you make a verbal
18 disclosure, it subsequently has to be committed in
19 an operational report, that is then put into our
20 operational database.

21 MR. DAVID: Now, the idea of
22 disclosing in writing also facilitates the
23 existence and the accompanying of a caveat. Is it
24 possible to have such a protection, a caveat
25 protection, with an oral disclosure?

1 MR. HOOPER: Well, one of the
2 items that our investigators are admonished to
3 provide, in making a verbal disclosure, is an
4 admonition to the effect that the information
5 contained in that verbal disclosure cannot be
6 further disseminated.

7 So in some respects there is a
8 caveat applied even to verbal disclosures, but,
9 again, the far more effective means of ensuring
10 control of our information is to do that in
11 writing, where you can apply the written caveats.

12 MR. DAVID: Moving now to the
13 third topic, Mr. Commissioner, we are dealing now
14 with liaison with foreign entities. We understand
15 that they have to be approved by the minister. We
16 understand that the arrangements exist under
17 section 17 with foreign entities.

18 We understood from Mr. Elcock's
19 testimony yesterday there are some 247 approximate
20 arrangements that are now in force with foreign
21 entities. Mr. Elcock well explained that, in
22 certain cases, there may be more than one
23 arrangement with a given country.

24 The policies that apply, in terms
25 of arriving to an arrangement with a foreign

1 entity, I refer you to Tabs 4, 5 and 6 of the
2 policies binder, which is, again, Exhibit No. 4.

3 Could you bring us through those
4 directives, in terms of the establishment of these
5 arrangements?

6 MR. HOOPER: Tab 4 is our
7 operational policy 402, dealing with arrangements
8 with foreign governments and institutions of
9 foreign governments. What that policy does is it
10 articulates the responsibilities of the minister,
11 the director.

12 It provides for emergency
13 circumstances, where the director may authorize
14 certain contacts with an entity of a foreign
15 government, absent ministerial authority, if
16 exigent circumstances dictate, and it basically
17 walks through the responsibilities of the Director
18 General, Foreign Liaison, and the head of Foreign
19 Arrangements.

20 It also talks about some of the
21 guidelines that accompany.

22 MR. DAVID: And if I could refer
23 you in that regard to subsection 3.3. It says:

24 "Arrangements with countries
25 or international

1 organizations that do not
2 share Canada's respect for
3 democratic or human rights
4 will only be considered where
5 there is a definite
6 requirement to protect the
7 security of Canada."

8 This is a guideline that exists
9 and has existed for some time?

10 MR. HOOPER: Yes.

11 MR. DAVID: Tab 5, Mr. Hooper, if
12 you could describe, in terms of, again, we are
13 dealing with liaison, with foreign entities, and
14 the existence of an operational guideline.

15 MR. HOOPER: Yeah, this is a
16 supplement to 402. This is, basically, an
17 appendix the previous policy that speaks to the
18 requirements we must meet in going forward to our
19 minister, when making a request --

20 MR. DAVID: If I could draw, in
21 that regard, your attention to section 2.2, which
22 reads as follows:

23 "Assess the internal
24 political situation of the
25 country and highlight the

1 presence of democratic
2 institutions noting the role,
3 history and place in society.
4 The assessment will address
5 the human rights record of
6 the country including any
7 possible abuses by the
8 security or intelligence
9 organizations."

10 Of that country, obviously.

11 This is a policy that has existed
12 for some time. Could you --

13 MR. HOOPER: Yes, and that policy
14 requirement is an element of every memorandum
15 going forward to our minister, making a request
16 for a foreign arrangement.

17 MR. DAVID: Okay. And finally, I
18 refer you to Tab 6, which deals with procedures
19 and foreign arrangements, if you could bring us
20 through that.

21 MR. HOOPER: 402-2, basically, is
22 an articulation of the scopes that accompany
23 foreign arrangements and how we expand or limit
24 the quality of a relationship that we have with a
25 foreign entity.

1 MR. DAVID: Now, these
2 arrangements, are they reviewed, are they
3 reconsidered, are they regularly analyzed? How
4 does that occur?

5 MR. HOOPER: They are analyzed
6 every year and there is an imperative for all of
7 our security liaison officers to submit an annual
8 report on the quality of liaison that they have
9 with entities under their ambit of
10 responsibilities.

11 We would also review the status of
12 an arrangement that we had with a foreign entity,
13 if there was some dramatic change in the political
14 climate of that country.

15 MR. DAVID: I now move to the
16 fourth general topic of your testimony today, and
17 that is dealing with the disclosure in support of
18 enforcement actions.

19 I refer the Commissioner to the
20 Tabs 7 to 11 of the policy binder, in that regard,
21 which is, once again, Exhibit No. 4.

22 Disclosure is assessed, as you
23 said already, and as Mr. Elcock explained, on a
24 case-by-case basis. There are different factors
25 and considerations that were referred to -- that

1 are considered in a disclosure decision and I
2 understand there are four basic factors that are
3 considered.

4 Could you bring us through each of
5 those four factors?

6 MR. HOOPER: Just for
7 clarification, Mr. David, we are talking about Tab
8 7 of the policy binder?

9 MR. DAVID: Yes, Tabs 7 to 11,
10 actually.

11 MR. HOOPER: Okay. The policy
12 principles that accompany what we refer to as
13 OPS-601, Appendix 1, speak of the legal
14 requirements and service policy. Again, this
15 brings the policy back to sections 19(2), (a)
16 through (d), of the CSIS Act.

17 It talks about the requirement to
18 protect the identities of sources and employees of
19 the service when making disclosure. It talks
20 about, I guess, the other side of disclosure, the
21 one side being the benefits in making a disclosure
22 and the other side being the down side of making a
23 disclosure and the context that disclosure is
24 made. Specifically, it must be made in the
25 context of the service's mandate and deal with a

1 threat to the security of Canada.

2 It also contains an element of
3 discretion, wherein the officers are admonished to
4 only disclose that information which is absolutely
5 necessary to disclose for the service to meet its
6 operational requirements.

7 The policy then talks about the
8 functional responsibilities of different levels of
9 management and different administrative entities
10 of the service.

11 MR. DAVID: Tab 8, "Disclosure of
12 Security Information"?

13 MR. HOOPER: Again, this talks
14 about the channels that we have for disclosure to
15 Canadian government officials and entities. It
16 talks about disclosure to holders of public
17 office. It talks about disclosure of information
18 to provincial governments and agencies thereof.
19 It goes on to talk about disclosure of information
20 to foreign agencies and, again, this is something
21 we have heard considerably evidence in relation
22 to.

23 MR. DAVID: Yes, we have covered
24 that in the preliminary opening remarks.

25 But in terms of the case-by-case

1 assessment, when CSIS -- when your organization is
2 making the actual call, there are, I understand,
3 four general factors: the first being potential
4 jeopardy to CSIS operations, sources and
5 employees; the second being the degree and
6 seriousness of the threat to the security of
7 Canada; the third being the importance of the
8 sought-after CSIS intelligence; and finally, the
9 political realities.

10 Could you bring us through the
11 consideration of four factors, in terms of a
12 case-by-case approach?

13 MR. HOOPER: Those are, I guess,
14 the four basic considerations that we follow when
15 making disclosure, principally to law enforcement
16 bodies, if I may.

17 First of all, the first
18 consideration that you mentioned addresses the
19 jeopardy to service human sources and methods of
20 operation. And this is a very real consideration.
21 We will not, as a rule, disclose the identity of
22 our human sources or methods of operation and
23 would only do so if it were in the context, as I
24 have mentioned before, say, a serious criminal
25 offence.

1 The second category, I think it
2 spoke to the potential jeopardy to service
3 operations.

4 MR. DAVID: To the degree of
5 serious to the threat to the security of Canada.

6 MR. HOOPER: Yeah, again, there is
7 a level of latitude in what information we
8 disclose and how much of the information we
9 disclose.

10 Clearly, we would not put into
11 jeopardy our sources or methods of operation if
12 the seriousness or the eminence of the threat did
13 not justify that form of disclosure.

14 MR. DAVID: And the importance of
15 the sought-after CSIS intelligence.

16 MR. HOOPER: Again, if I take that
17 or if I circumscribe my answer around a law
18 enforcement case in point, I think it's probably
19 true that no prosecutor can have enough
20 information.

21 We have to go through a conscious
22 evaluation of whether or not the information that
23 is sought or that we intend to disclose is crucial
24 information, critical information, to the success
25 of a litigation or whether it's just simply icing

1 on the cake.

2 MR. DAVID: Finally, the political
3 realities of a given disclosure request.

4 MR. HOOPER: I think that when the
5 legislators drafted the CSIS Act and they
6 contemplated section 12 by rolling in a mandate to
7 advise government, they expected or anticipated
8 that there would be a political element to
9 everything that we do.

10 For example, if there were a
11 catastrophic act of terrorism and we wanted to
12 disclose information to a law enforcement body
13 investigating that act, we would probably go much,
14 much farther than would be contemplated by law or
15 service policy and would probably expose the
16 identity of human sources and methods.

17 I think that is a political
18 reality more than anything else.

19 MR. DAVID: We are now going to
20 move on to the fifth topic, which is the CSIS
21 targeting powers, which we have undertaken to
22 review in some detail.

23 There are no policy materials
24 available to the public at this point, at this
25 stage, Mr. Commissioner. So, essentially, we are

1 going to rely on the expose of Mr. Hooper in this
2 regard.

3 THE COMMISSIONER: Do I understand
4 you to say there are no policies or there is
5 just --

6 MR. DAVID: There are policies,
7 but they are subject to national security
8 confidentiality at this stage of the proceedings
9 before the Commission.

10 THE COMMISSIONER: Will those,
11 then, be introduced to me in the in-camera
12 hearings?

13 MR. DAVID: They will be
14 introduced in the in-camera hearings, yes.

15 THE COMMISSIONER: And ultimately
16 there will be a ruling on that?

17 MR. HOOPER: Absolutely,
18 absolutely.

19 So Mr. Hooper's exposé --

20 MS McISAAC: Excuse me, I thought
21 the targeting -- I'm confused now. I am sure that
22 there are policies that would assist in
23 understanding the targeting process that are not
24 claimed national security confidentiality.

25 MR. DAVID: I think that we have

1 reviewed the documents and in their present state
2 assessed that there was not a sufficient amount of
3 information that could be made public.

4 So for the time being, we --

5 THE COMMISSIONER: Oh, I see what
6 you are say is policy documents have been produced
7 but redacted --

8 MR. DAVID: Exactly, exactly.

9 THE COMMISSIONER: -- and the
10 unredacted portion by the government wasn't
11 sufficient to make them intelligible to the
12 reader?

13 MR. DAVID: At this point in the
14 proceedings.

15 THE COMMISSIONER: Yes.

16 MR. DAVID: So it was our
17 assessment that it was better to deal with them at
18 a later point.

19 MR. WALDMAN: But if we do have
20 documents, even in redacted form, that are
21 available, would it not be plausible at least to
22 have them available to us? Maybe we will find a
23 gem in there that you won't that might help us in
24 our cross-examination.

25 MR. DAVID: I think that request

1 can be acknowledged.

2 THE COMMISSIONER: Absolutely. I
3 think the concern just was --

4 MR. DAVID: I understand the
5 concern.

6 MR. COMMISSIONER: I recall the
7 discussion as being difficult to follow.

8 MR. WALDMAN: Well, these have
9 been redacted, but at least we can see them. But
10 having spent a lot of time reading redacted
11 documents, I have often be able to find a gem in
12 the rough.

13 THE COMMISSIONER: Okay. Well,
14 certainly. Okay, well, then, will do that.

15 MR. WALDMAN: Thank you.

16 THE COMMISSIONER: Ms McIsaac, you
17 were referring, when you said there were policy
18 documents, to the redacted ones that we are
19 discussing?

20 MS McISAAC: Yes, I thought some
21 of them -- and, in fact, there are a couple that
22 are unredacted, but proceed.

23 THE COMMISSIONER: Okay. Well,
24 what will happen, Mr. Waldman, is we will make
25 available to you the policy documents that haven't

1 been redacted or the redacted ones with the
2 unredacted portion available to you.

3 MR. WALDMAN: Well, might I have
4 the opportunity to look at them before I do my
5 cross-examination?

6 THE COMMISSIONER: Oh, absolutely,
7 yes. And if there is time required, other than
8 today or tomorrow morning, you will be given that
9 chance.

10 MR. WALDMAN: If I get them this
11 afternoon, I am sure I can be ready by tomorrow
12 morning.

13 THE COMMISSIONER: Sure. No, that
14 will be fine.

15 MR. DAVID: Mr. Hooper, if you
16 could bring us through the TARC process in some
17 detail. First of all, the impact of a ministerial
18 direction, in terms of the target approval
19 process, how does that fit in?

20 MR. HOOPER: Ministerial direction
21 basically speaks to, I think, five or six items.
22 I will count them up --

23 MR. DAVID: Maybe I could refer
24 you, actually --

25 MR. HOOPER: -- as I enumerate

1 them.

2 MR. DAVID: -- to Tab 1 of the
3 policies binder, in that regard, which refers to
4 the six principles.

5 MR. HOOPER: I do know these.

6 The first principle, of course, is
7 that the rule of law in the conduct of
8 investigations must be observed. Then, there is
9 provisions that speak to what I call
10 "proportionality and incrementality". The
11 investigative means must be proportional to the
12 gravity and imminence of the threat.

13 I think that guideline comes
14 back -- this guideline and the subsequent ones --
15 come back to the strictly necessary provision. In
16 fact, our targeting policy is an attempt by the
17 service to codify the strictly necessary
18 provision. So the investigative means must
19 concordant with the gravity or the seriousness and
20 imminence of the threat.

21 We need to use intrusive -- or the
22 need to use intrusive techniques must be weighed
23 against the possible damage to civil liberties or
24 to fundamental societal institutions. I think
25 that speaks for itself. The more intrusive the

1 technique that you want to use, the higher the
2 authority has to be.

3 The fifth item there comes back to
4 what I call "incrementality". Unless you are
5 confronted with extraordinary circumstances, you
6 walk through the level of investigation, starting
7 with the least intrusive methods. And only when
8 they are unsuccessful, do you move to more
9 intrusive powers.

10 So those are the basic principles.

11 MR. DAVID: Now, there are
12 operational policies that cover this important
13 area of the work that you do. What are the
14 requirements that an agent has to meet in making a
15 TARC request?

16 MR. HOOPER: First of all, I think
17 it is important to know that it is probably
18 axiomatic that the people that on the street
19 working a target environment are the ones who are
20 best situated to have knowledge as to who the
21 targets are or ought to be. But in our system
22 that does not permit an intelligence officer to
23 unilaterally embark on an investigation.

24 You cannot investigate without an
25 authority to conduct an investigation. And the

1 authority derives from a written submission that
2 is made either to a senior manager in the service
3 or to the target authority and review committee.

4 MR. DAVID: Could you give us some
5 detail concerning the submissions that have to be
6 put in a written request?

7 MR. HOOPER: Again, to reiterate,
8 the section 12 in our threshold for collection, I
9 think it is important to bear in mind that our
10 threshold is reasonable grounds to suspect that an
11 activity may be threatening to the security of
12 Canada.

13 MR. DAVID: So these grounds have
14 to be documented.

15 MR. HOOPER: These grounds have to
16 be documented, and we have to describe the
17 specific activity that we consider to be
18 threatening. It has to specify the specific
19 threat definition. Is it a 2A, 2B or 2C threat?
20 Is it espionage or is it terrorism?

21 It has to identify the collection
22 program, again, CI or counter-intelligence,
23 counter-proliferation or counter-terrorism, which
24 program will have control of the management of the
25 investigation, and it also has to describe the

1 purpose of the investigation.

2 I talked before about the national
3 requirements for security intelligence that come
4 to the service by way of ministerial direction.
5 From those requirements, operational branches
6 develop annual plans. The collection that the
7 investigation is designed to satisfy must be
8 concordant with one of the items that the service
9 is seeking out of its collection program. In
10 other words, there has to be a direct linkage
11 between the investigation and the national
12 requirement for security intelligence.

13 MR. DAVID: Does the field officer
14 or the agent have to specify the level of
15 intrusiveness he is looking for from the review
16 committee?

17 MR. HOOPER: You have to specify
18 the level and in some ways, I guess, the
19 deliberations of the committee are guided by the
20 level sought. But the committee isn't bound by
21 the level sought. In other words, a high level of
22 investigation involving the use of intrusive
23 techniques might be sought. That doesn't mean
24 that that is the level that the committee will
25 approve.

1 MR. DAVID: I understand that
2 there are different investigative techniques that
3 can result from a TARC approval. Could you talk
4 briefly about those techniques, the different
5 techniques that exist, that are available?

6 MR. HOOPER: Again we previously
7 mentioned that the lower the level, the less
8 intrusive the techniques that accompany that
9 level.

10 At the lowest level of
11 investigation, you would be able to do things like
12 check police records, consult the services
13 indices, consult foreign services with which you
14 have a liaison arrangement.

15 MR. DAVID: So, essentially
16 verifying databases.

17 MR. HOOPER: Verifying databases
18 is effectively the lowest level of investigative
19 activity.

20 Moving to the next level would
21 enable you to do such things as conduct
22 surveillance for the purposes of identifying
23 somebody, would allow you to consult established
24 human sources operating in a particular threat
25 domain, would allow you to conduct interviews.

1 So again, these techniques at the
2 second level of investigation are still fairly
3 benign.

4 MR. DAVID: If a CSIS agent were
5 seeking an approval, would they have to seek
6 permission from the committee in terms of being
7 allowed or able to consult the databases of other
8 entities, such as the RCMP?

9 MR. HOOPER: I'm sorry, could you
10 reiterate that?

11 MR. DAVID: I am saying that in
12 the approval request, must an agent specify that
13 they are seeking to consult another agency's
14 database, such as the RCMP's?

15 MR. HOOPER: It is not a necessary
16 ingredient. It is presumed by the committee in
17 approving a level of investigation that the
18 techniques that accompany that level of
19 investigation are the ones that will be used. In
20 some instances the investigators, if they are
21 seeking a higher level of authority where there
22 are intrusive techniques, may specify we want to
23 use this particular technique but not this one,
24 especially when you get to the highest level of
25 intrusion.

1 The highest level of authority
2 contemplates the acquisition of judicial warrants
3 to intercept communications.

4 MR. DAVID: This is under section
5 21 of the CSIS Act?

6 MR. HOOPER: That is under section
7 21 of the CSIS Act. You may apply for, say, a
8 level 3 investigation without necessarily wanting
9 to engage that particular feature of a level 3
10 authority.

11 MR. DAVID: So you could have a
12 level 3 with a section 21 warrant or without a
13 warrant authorized by the Federal Court.

14 MR. HOOPER: That is correct.
15 Although the actual warrant acquisition entails a
16 separate process from the targeting approval and
17 review process.

18 MR. DAVID: Before getting to the
19 warrant section, what are the techniques available
20 to CSIS when you do have a warrant?

21 MR. HOOPER: That basically allows
22 you to conduct covert searches and to intercept
23 communications.

24 MR. DAVID: Who can be the object
25 of a TARC request? Is it only individuals? Are

1 organizations sometimes targeted by a request?

2 MR. HOOPER: There is basically I
3 think three classes that can be targeted. You can
4 classify organizations or target organizations.
5 You can have authorized investigations directed at
6 special events or critical incidents or issues.

7 But for the most part and in the
8 majority of instances our targeting is
9 personified. We investigate the threatening
10 activities of people.

11 MR. DAVID: The TARC committee is
12 comprised of how many people and what positions?

13 MR. HOOPER: I never really
14 counted them. There are a whole bunch of them,
15 but basically the director of the service chairs
16 the committee. At the committee will be the
17 Deputy Director of Operations, the Assistant
18 Director of Operations, the Directors General of
19 the three collection branches, that is the
20 Counter-intelligence, Counter-proliferation,
21 Counter-terrorism branches, a representative of
22 the Department of Justice and a representative of
23 the Deputy Minister.

24 MR. DAVID: Moving on now to the
25 warrant section, you refer to the fact that the

1 warrant application was a separate process from
2 the TARC committee. Could you explain how an
3 agent goes about getting authorization from the
4 organization to apply for a section 21 warrant?

5 MR. HOOPER: First of all, in
6 order to even contemplate the application of a
7 section 21 warrant, there has to be in place a
8 level 3 authority. That is a level of targeting
9 authority that is at the highest level of
10 intrusion approved by the TARC group.

11 The first phase in the warrant
12 acquisition is the development of a case brief by
13 the investigative desk which then goes to our
14 legal services and an affidavit is drafted based
15 on that case brief.

16 There is a very, very extensive
17 facting process that goes into our warrant
18 affidavits, which means that every statement of
19 fact or belief has to be facted against
20 intelligence contained in the service's
21 information holdings.

22 There is a process whereby
23 independent counsel outside the service reviews
24 the affidavit and its facting. It goes to the
25 warrant review committee and if it is proved at

1 that level, it goes to the minister for the
2 minister's personal sign-off before going to the
3 Federal Court for approval.

4 MR. DAVID: What controls are in
5 place, Mr. Hooper, in terms of preventing or
6 ensuring that an agent doesn't embark on actual
7 TARC techniques, intrusive techniques, without
8 seeking the approval process?

9 MR. HOOPER: It is actually kind
10 of an esoteric thing, but our information
11 management systems will not accept information
12 that doesn't link that information to a mandate
13 section and a particular intelligence requirement
14 and a TARC certification identifier.

15 In other words, if I wanted to
16 investigate Marc David --

17 MR. DAVID: I hope not.

18 MR. HOOPER: -- and absent TARC
19 authority and intelligence requirement, a mandate
20 section, you can't even get that information into
21 our database. So I suppose apart from good
22 management and supervision, there is no real way
23 of preventing an investigation from taking place
24 without a TARC authority, but there is nothing
25 that could happen with that information at the end

1 of the day.

2 MR. DAVID: How is it that third
3 parties would be protected in the way an agent
4 would do its work, do his work or her work if they
5 do get TARC approval?

6 For instance, you described
7 surveillance as being one of the techniques that
8 could be employed with a TARC authority. And the
9 person that is the actual target meets third
10 parties. How are third parties protected in this
11 process from the intrusive techniques?

12 A wire tap is another example I
13 could give you.

14 MR. HOOPER: In terms of wire tap,
15 the Federal Court authorizes whose communication
16 may be intercepted and whose may not be. And
17 there is, actually, a Criminal Code overlay that
18 is put on that, and then we identify what we call
19 Vanweenan subjects and warrants; these are
20 incidental communications.

21 In the case of physical
22 surveillance that you have identified, a subject
23 of investigation by the service may come into
24 contact with any number of people. In cases where
25 that contact, by the nature of its quality or

1 duration or other variables, might be something
2 more than incidental, and we know the identity of
3 that person, there is a high likelihood that the
4 name of that person would be included in an
5 intelligence report but it would be captured under
6 the rubric of the investigation of the target, not
7 of the incidental contact.

8 MR. DAVID: So there is the
9 possibility that third parties become the focus of
10 interest on the part of a CSIS investigation?

11 MR. HOOPER: I would categorize it
12 as something less than interest. They could be
13 captured in an investigative report as an
14 incidental contact, for example, and then there
15 are no conclusions or inferences that you can draw
16 really from incidental contact

17 MR. DAVID: The external review
18 bodies, are they involved in the TARC process?
19 Are they informed of the existence of TARC
20 authorizations?

21 MR. HOOPER: Absolutely. They
22 have certainly the power to review every report
23 submitted in relation to a TARC-authorized
24 investigation and similarly with the material that
25 we collect under power of warrant. They also have

1 the authority and they do, on an annual basis,
2 review the rigour and integrity of our affidavits.

3 MR. DAVID: We will now move on, I
4 think at this time to the last topic of
5 discussion, and that is the threat environment.

6 THE COMMISSIONER: This might be a
7 convenient time to take the afternoon break, then.

8 MR. DAVID: I think so.

9 THE COMMISSIONER: We will rise
10 for 15 minutes.

11 --- Upon recessing at 3:23 p.m. /

12 Suspension à 15 h 23

13 --- Upon resuming at 3:45 p.m. /

14 Reprise à 15 h 45

15 THE COMMISSIONER: Mr. David.

16 MR. DAVID: The risk in taking a
17 pause, Mr. Commissioner, is that it allowed me to
18 think of two other questions I would like to ask
19 Mr. Hooper on the TARC process.

20 THE COMMISSIONER: Go ahead.

21 MR. DAVID: With your permission
22 and with your indulgence, I will ask those two
23 questions.

24 The first being, Mr. Hooper -- and
25 I asked you the same thing with regard to the

1 existence of external review bodies SIRC and IG --
2 with regard to operational efficiencies, whether
3 resistance exists on the part of the people in the
4 field.

5 How is TARC perceived by the
6 service? Is it a hinderance? Is it a cumbersome
7 process, or does it in fact perhaps help you?

8 MR. HOOPER: I wouldn't call it a
9 hinderance. To the contrary. I would say that it
10 is an essential feature of how we do business.

11 We are dealing for the most part
12 with phenomena, whether they are related to
13 proliferation issues or espionage or terrorism,
14 that are highly internationalized.

15 I think dealing with those threats
16 begs a coherent response and certainly a
17 coordinated national response for dealing with
18 those threats. Our service is a highly
19 centralized organization because it has to be, and
20 TARC is simply an element of that centralization.

21 It think it is an essential
22 component of everything that we do.

23 In terms of how it is viewed by
24 the rank and file of the service, I can tell you
25 that it has been around so long and it is

1 absolutely inculcated into our people that I don't
2 even think they think about it. I think they just
3 consider it a regular part of their day-to-day
4 operations.

5 MR. DAVID: We have the benefit of
6 your past experience with the RCMP, being one of
7 the 20 per cent that still remain. From your
8 exposé on the biographical information, I
9 understand that you were actually involved with
10 the precursor of CSIS with the RCMP, that is with
11 the intelligence service of the RCMP, for a number
12 of years.

13 Was there anything that was
14 analogous at that time in those years in terms of
15 intelligence investigation that existed with the
16 RCMP that compares to TARC?

17 MR. HOOPER: There was. I forget
18 exactly what year the policy was developed, but
19 let's say 1979 or 1980, thereabouts. The RCMP
20 security service created something called the
21 Operational Priorities Review Committee, OPRC,
22 which was in many a ways a precursor to TARC. It
23 was a committee similarly constructed and
24 represented with similar functions.

25 I don't recall specifically --

1 some of the older guys might -- whether it was the
2 Deputy Director General Operations of the Security
3 Service or the Director General of the Security
4 Service that actually chaired it, but it was
5 chaired at a very senior level and it was
6 represented by senior managers in the collection
7 branches of the security service at the time.

8 Interestingly, the OPRC had four
9 levels of investigation compared to TARC's three.

10 MR. DAVID: In terms of the
11 intrusiveness.

12 MR. HOOPER: That's right.

13 MR. DAVID: What happened to that
14 procedure what CSIS was created and intelligence
15 moved to the CSIS organization, to your knowledge?

16 MR. HOOPER: Basically the policy
17 and the practice migrated to CSIS from the RCMP
18 security service and developed into what is TARC
19 today.

20 MR. DAVID: As mentioned before,
21 Mr. Commissioner, the final topic to be covered by
22 Mr. Hooper is a description or an assessment by
23 CSIS of the contemporary threat environment that
24 exists both in the world and in particular with
25 regard to Canada's place in the world.

1 Mr. Hooper, I would invite you to
2 give us this overview.

3 MR. HOOPER: I certainly don't
4 think I would be telling anybody here what they
5 don't already know, and that's that the global
6 security environment is probably at a more
7 unstable level right now than it has been in
8 recent memory.

9 I think that the phenomena of
10 al-Qaeda has put all western security resources,
11 including those of my service, under considerable
12 pressure. The escalation of tensions has
13 heightened the effort required to meet national
14 security requirements.

15 The media often cites September
16 the 11th as the benchmark of the new security
17 reality. For me and for my service I think there
18 were a couple of precursor incidents that really
19 spelled the turning of the tide and the creation
20 of the new threat environment, one that we are
21 still struggling with.

22 The first one of these I would put
23 at February 26, 1993 with the first attack on the
24 World Trade Center in New York. If that attack
25 had gone as planned, it would have resulted in

1 probably an identical number of casualties as the
2 attacks of 9/11 did.

3 What that incident demonstrated to
4 all western intelligence services, and certainly
5 to the perpetrators of the act, was that Islamic
6 terrorists had the intention and capability to
7 conduct an act of extreme violence targeting U.S.
8 interests in the United States.

9 That was a significant
10 development.

11 The second one I would peg at
12 December 14, 1999, when Ahmad Rassam was arrested
13 crossing from Victoria to Port Angeles, Washington
14 with explosive materials and bomb-making
15 accoutrement. And in later evidence it was
16 determined that he was going to fabricate a bomb
17 and deploy it at Los Angeles International
18 Airport.

19 What that incident did for my
20 service, and I think for Canada, was it
21 demonstrated the capacity of Islamic terrorists
22 operating under the al-Qaeda umbrella to use
23 Canada as a staging ground for attacks in the
24 United States directed at U.S. interests.

25 Those were two very important

1 considerations I think.

2 To the extent that there is one
3 threat out there today, one terrorist threat that
4 begs an absolutely seamless response on the part
5 of all entities engaged in law enforcement and
6 security intelligence, that one threat would be
7 al-Qaeda. It is PanIslamic and it is
8 multinational and it differs from traditional
9 terrorist organizations to the extent that it
10 seeks to change the Muslim world, in our opinion,
11 and it isn't I guess directed or motivated by
12 purely nationalistic objectives.

13 Any country that doesn't accept
14 the al-Qaeda ideology is considered an enemy. I
15 think with that template it should come as no
16 surprise to anybody that al-Qaeda represents the
17 number one security threat that my service is
18 currently dealing with.

19 Safeguarding Canadians and
20 Canadian interests abroad from attacks occurring
21 in Canada or directed from Canada is a feature of
22 our mandate and our responsibilities, but I would
23 put down a marker to the effect that
24 notwithstanding our relatively peaceful history,
25 Canada has not been immune to acts of serious

1 violence originating from or occurring in Canada.

2 I think the 1980s and 1990s both
3 evidenced acts of profound politically motivated
4 violence, whether you talk about the
5 assassinations in 1982 and 1984 of Turkish
6 diplomats in Ottawa. Certainly the events of June
7 1985 with the downing of Air India that resulted
8 in 329 deaths had its genesis in Sikh terrorists
9 that were based in Canada.

10 I think it escapes the collective
11 memory of the world and of Canadians that prior to
12 the events of 9/11, the downing of that Air India
13 flight in June of 1985 was the most lethal act of
14 terrorism, if you measure it in terms of the
15 number of deaths, in contemporary history. Again,
16 that is a attack that had its genesis in Canada.

17 So terrorism does directly
18 threaten our national interests and certainly our
19 public safety. Today it is a threat that is more
20 complex, extreme, sophisticated and transnational
21 in its character than it is has ever been before.

22 Globally, there is an ongoing
23 willingness by groups, individuals and States to
24 use violence in support of political ideological
25 or religious agendas, and terrorists'

1 capabilities, modus operandi and the technologies
2 that they use in communicating, in planning, and
3 in conducting actual operations, continues to
4 evolve and as a service we have to keep pace with
5 that evolution.

6 What this does is it creates an
7 increasing demand on governments and security
8 forces to ensure vigilance, thorough threat
9 analysis and creative cooperative responses. That
10 is why the integration between, in a Canadian
11 context, my service and law enforcement, and in
12 particular the RCMP, is so important. That is why
13 we spent so much time talking about it in
14 testimony over the last couple of days.

15 Of particular significance is that
16 in November of 2002 Osama bin Laden identified
17 Canada as one of the U.S. allies marked for
18 revenge given western intervention in Afghanistan.

19 To this point in time, Canadians
20 have been killed or injured in terrorists attacks
21 by virtue of their being in the wrong place at the
22 wrong time. But since al-Qaeda has directly
23 threatened Canada, as Mr. Elcock has said, it is
24 likely a question of not if, but when Canadians
25 and Canadian interests are directly targeted by

1 al-Qaeda.

2 I think in terms of understanding
3 how we configure our response to terrorism, it is
4 very important to note that terrorists today no
5 longer have to get together. They don't have to
6 meet face-à-face in order to conspire and to plan
7 acts of violence. There are new technologies,
8 encrypted communications, the use of satellite
9 phones, the Internet, international wire
10 transfers. All of these devices are difficult to
11 detect, difficult to penetrate, and allow the
12 terrorists to communicate and to organize and to
13 plan attacks without actually getting together.

14 They have evolved new ways of
15 using conventional attack methods. They use
16 simultaneous highly explosive devices that are
17 portable and much, much easier to conceal than we
18 have seen in the past.

19 To that repertoire of attack they
20 have added some new methods that are of particular
21 concern to my service. These might include the
22 use of portable missiles, chemical biological,
23 radiological and nuclear devices and cyber attacks
24 to cite a few examples.

25 I think if you take a look at

1 al-Qaeda's history of terrorist attacks, they have
2 demonstrated a clear preference for selecting
3 those venues that will result in huge numbers of
4 casualties and catastrophic property damage and,
5 in the case of the 2001 attacks, no small measure
6 of economic damage as well.

7 For Canada, we have a number of
8 vulnerabilities. You can think of them. We pass
9 by them every day. Commercial venues, sporting
10 venues, subway systems, mass transportation
11 carriers, airports, all of these present
12 vulnerabilities that can be exploited.

13 I think in Mr. Elcock's
14 testimony this morning he talked about an attack
15 taking place at the Bloor and Yonge subway station
16 in Toronto. In my dialogue with police officials
17 in southwestern Ontario I always talked about a
18 bomb going off at Union Station at five o'clock on
19 a Friday afternoon. It is a not a difficult kind
20 to execute. You consider the numbers of people
21 that would be affected by an attack in that place
22 and at that time and the disruption it would cause
23 to what is effectively the economic epicentre of
24 our country.

25 Again, speaking of economic

1 targets, the petrochemical industries that we are
2 have in Canada, Trans-North Pipeline, petroleum
3 storage facilities, all of these provide
4 attractive venues for exploitation by terrorist
5 organizations.

6 So what does the current threat
7 landscape look like?

8 Currently, in the estimation of my
9 service, American interests remain at the top of
10 al-Qaeda's list for terrorist exploitation.

11 Similarly, British interests,
12 principally by virtue of their participation in
13 Iraq, occupy a Tier 1 target level.

14 Australia, which is viewed as the
15 western power in Southeast Asia, where a number of
16 al-Qaeda adherents reside and operate, is also
17 viewed as a priority target.

18 Canada, by virtue of its
19 aggressive legal actions against al-Qaeda
20 operatives and its commitment of forces to
21 Afghanistan has also been directly cited by Osama
22 bin Laden on behalf of al-Qaeda as a target for
23 terrorists attacks.

24 If you consider all of the nations
25 listed there, Canada is the only nation that to

1 this point has not been attacked by al-Qaeda. One
2 of the things that those of us who have worked in
3 the organization for some time say is that
4 al-Qaeda is an organization that keeps its
5 promises. It does not make idle threats. When it
6 threatens, it tends to execute.

7 If we draw a parallel between
8 Canada and Australia -- because I think
9 notwithstanding the geopolitical differences and
10 the regions that we occupy in the world, I think
11 Canada, like Australia, has been typically viewed
12 as the peaceful nation and a benign nation.
13 Australia never figured into al-Qaeda targeting,
14 yet, the Bali bombing singled out Australian
15 citizens for attack.

16 In his message of November 2002,
17 where Canadian interests were directly threatened,
18 Osama bin Laden stated, and I quote.

19 "We had warned Australia
20 about its participation in
21 Afghanistan. It ignored the
22 warning until it woke up to
23 the sound of explosions in
24 Bali." (As read)

25 Since Bali, al-Qaeda has actually

1 stepped up the frequency and range of its attacks.
2 This has occurred notwithstanding the fact that to
3 the extent that al-Qaeda ever had a centralized
4 command and control structure, that command and
5 control structure has been largely disassembled.
6 In point of fact, that has made al-Qaeda an even
7 more difficult target to penetrate because you see
8 what we call franchise operations being executed
9 all over the world.

10 The recent Madrid bombings, which
11 may have indeed changed the results of the
12 elections in Spain, may inspire al-Qaeda to
13 conduct operations that are directed at political
14 processes. This is particularly worrisome for us,
15 given that we are in the throes of a federal
16 election right now and American presidential
17 elections are scheduled for November of this year.

18 The reality is that, like other
19 countries who play a role in combatting al-Qaeda
20 terrorist initiatives, Canada is now an al-Qaeda
21 target. That is a reality.

22 By conclusion, I would state that
23 while there is no specific threat to Canadian
24 interests at this time, al-Qaeda has a current and
25 demonstrated capacity to mount a wide range of

1 terrorist operations, including mass casualty
2 attacks with improvised explosive devices, airline
3 hijackings, kidnappings, assassinations and armed
4 assault operations.

5 Al-Qaeda elements have been
6 dispersed around the globe and they are here in
7 Canada. They remain difficult to identify, and
8 their structures are really difficult to
9 penetrate.

10 They practice outstanding
11 operational security. For the most part, al-Qaeda
12 operatives tend to be well educated, often in the
13 hard sciences. They are computer literate and
14 they are well travelled. Their range is
15 international and compromising al-Qaeda operatives
16 requires an unprecedented level, as I have said,
17 of cooperation between police, law enforcement,
18 immigration officials and the like, not just
19 domestically but internationally as well.

20 Again, in my service's assessment
21 the threat environment that we currently confront
22 has never been more sinister. This has direct
23 implications for how we satisfy our mandate as it
24 relates to public safety and security.

25 I often say that where once threat

1 and risk management was informed by the assessed
2 level of the threat, now we operate on the basis
3 of the worst-case scenario. When you are talking
4 about al-Qaeda, the worst-case scenario is always
5 catastrophic. Those are the realities that we
6 confront.

7 MR. DAVID: Former Director
8 Elcock, over the course of his testimony in the
9 last two days, well described how the service
10 re-prioritizes energies and commitment of
11 resources according to the changing environment.

12 I understand now from his
13 testimony that approximately two-thirds of CSIS
14 resources are dedicated to counter-terrorism
15 activities.

16 In that regard, Mr. Hooper, I
17 understand that your service has a research
18 department, and in order to inform your members
19 and to inform agencies and police forces involved
20 in the security environment, in fact publishes
21 periodically different studies.

22 We have produced,
23 Mr. Commissioner, as Exhibit 10, five of the
24 studies that we esteem as being the most relevant
25 to the works of this Commission.

1 THE COMMISSIONER: They are not
2 in this box?

3 MR. DAVID: They are a separate
4 binder that was filed as Exhibit 10.

5 THE COMMISSIONER: Right. I
6 have it.

7 MR. DAVID: Do you have your copy,
8 Mr. Hooper?

9 MR. HOOPER: Yes.

10 MR. DAVID: Mr. Hooper, maybe if
11 you could describe how your service goes about
12 creating these studies and what is the use they
13 serve?

14 MR. HOOPER: Again, I spoke of the
15 coordination that is required between all elements
16 of the Canadian security intelligence community,
17 and the private sector for that matter, that has a
18 responsibility to safeguard assets from the
19 terrorist threat.

20 We have an obligation, as we see
21 it as a service, to inform those officers working
22 with the law enforcement agencies, customs and
23 immigration officials, people who manage Canada's
24 critical infrastructure, to have some appreciation
25 for that threat environment.

1 As a feature of the
2 responsibilities of our Analysis and Production
3 Branch, we produce a vast array of assessments and
4 reports touching on a wide variety of issues that
5 relate to the threat environment that we like to
6 get out in the hands of these people.

7 These documents, again, are
8 produced by our Analysis and Production Branch.
9 For the most part you can find them on our
10 Website. For the most part they are unclassified
11 or, at most, we put a caption on them that they
12 are intended for official use only for those
13 documents that are designed to be passed to
14 municipal law enforcement agencies or provincial
15 police forces.

16 MR. DAVID: Having had the benefit
17 of reading these documents, I would like to
18 attract your attention to certain excerpts.

19 First of all, there are five
20 studies that have been produced, Mr. Commissioner.

21 The first is a profile of Syria.
22 It was produced by CSIS in July of 2003.

23 The second tab contains a brief
24 comment on the Canadian Arab Community dated
25 October 2002.

1 Tab 3 refers to a study on
2 bin Laden's statement issued in November 2002,
3 which Mr. Hooper has explained is a direct comment
4 on Canadian security.

5 Tab 4 refers to al-Qaeda and
6 produced in September of the year 2002.

7 Finally, again another study
8 profiling al-Qaeda and it is dated September 2001.

9 I would like to attract your
10 attention, Mr. Hooper, to Tab 1 concerning Syria.
11 Unfortunately, page numbers do not necessarily
12 appear because of the fact that we received them
13 for purposes of dissemination in an electronic
14 form. I in fact will refer you to the bottom of
15 page 2, that is the first page being "Background"
16 and so the second page is the following page.

17 The last paragraph of that page
18 reads as follows:

19 "Syria and its intelligence
20 services are frequently
21 accused by the international
22 community of conducting or
23 supporting acts of terrorism.
24 Thus, in 1986, after Syria
25 was accused of planting a

1 bomb on an aircraft in
2 London, the country was hit
3 with sanctions by several
4 countries. It was not until
5 and after its participation
6 alongside Allied Forces in
7 the Gulf War that Syria's
8 reputation was partially
9 restored. However, the
10 international community
11 continues to suspect Syria of
12 human rights violations,
13 possession or development of
14 weapons of mass destruction
15 and an involvement in
16 terrorism."

17 This study also refers to
18 Syria's human rights activities. I refer you now
19 to page 12 of the document. In fact at this time
20 you do actually see the number 12 on the top of
21 the page.

22 In that regard, the study is
23 quoted as follows:

24 "The Syrian government has
25 often been reproached for

1 human rights violations.
2 However, there has been some
3 improvement in recent years.
4 Numerous political prisoners
5 have been released and, in
6 1994, all members of the
7 Jewish community were issued
8 exit visas to travel abroad.
9 However, human rights
10 organizations estimate that
11 between seven hundred and
12 eight hundred political
13 prisoners and prisoners of
14 conscience are still
15 imprisoned in Syria."

16 These studies, and perhaps it is
17 not to your knowledge, what is the reference basis
18 for these profiles?

19 MR. HOOPER: Are you talking in
20 terms of the fact what the sources of information
21 that go into the documents?

22 MR. DAVID: Yes. Are they based
23 on essentially open information?

24 MR. HOOPER: Open information, new
25 information.

1 MR. DAVID: So they are not the
2 product of CSIS intelligence per se?

3 MR. HOOPER: They could be the
4 product of declassified intelligence, but I
5 recognize the wording of some of these as coming
6 from documents like or at least the conclusions
7 from documents like those prepared by amnesty
8 international, for example.

9 MR. DAVID: Right.

10 I refer you now to Tab 2, which is
11 a study that is entitled, "The Canadian Arab
12 Community".

13 In the summary, which is the
14 actual first page, we read as follows:

15 "A high degree of frustration
16 exists within the Arab
17 community in Canada."

18 I move on to the second paragraph,
19 and in the context of an incident that occurred at
20 Concordia university it says the following:

21 "Although the Concordia
22 incident became violent, in
23 that protestors tossed chairs
24 and newspaper boxes and broke
25 windows before being driven

1 back by Montreal police, it
2 is important to note that
3 this inclination to violence
4 appears to be
5 unrepresentative of the Arab
6 community in Canada.
7 However, any official
8 approaches must be cautious
9 in order not to provoke this
10 sensitive community."

11 It goes on to say:

12 "In the event that the Arab
13 community is provoked, the
14 CAF..."

15 Which is the Canadian Arab

16 Federation:

17 "...may mobilize the
18 community's anger against the
19 government, leading to
20 demonstrations and possibly
21 escalating to isolated acts
22 of civil disobedience. At
23 this time, it is recommended
24 that any official dealings
25 with the Arab community be

1 done carefully and policies
2 and comments which may be
3 interpreted as biased and/or
4 inflammatory be avoided."

5 Again, in the same study, and I
6 now refer to the actual heart of the document,
7 again not numbered but it would be the first page,
8 there are four sub-titles. The third sub-title is
9 entitled, "Previous Protests by the Arab
10 Community", which reads as follows:

11 "According to 1996 census
12 figures, the Arab community
13 in Canada comprises
14 approximately 250,000 people.
15 While homeland issues in the
16 Middle East, such as the war
17 against Iraq (1990-1991), UN
18 sanctions against Iraq, and
19 the Palestinian-Israeli
20 conflict, resonate strongly
21 within the community, most
22 Arabs in Canada remain
23 peaceful and voice their
24 opinions accordingly.
25 Service information indicates

1 that in spite of several
2 protests by the Arab
3 community throughout Canada
4 in the past decade, most have
5 been non violent. The
6 Service believes that the
7 Arab community is wary about
8 its image and does not wish
9 to be perceived by the
10 Canadian public as violent.
11 Particularly since 9/11,
12 Arab-Canadians are especially
13 sensitive and do not want
14 their reputations to be
15 further tarnished."

16 Finally, I refer you to the
17 following page. Unfortunately again, not numbered
18 but we will call it page 2, paragraph 5, and the
19 second sentence reads as follows:

20 "Already, Service information
21 indicates that several
22 members of the Arab community
23 feel they are being unfairly
24 targeted by governments
25 officials (CSIS/RCMP) and

1 that the CAF has organized
2 information sessions in order
3 to discourage members from
4 speaking with such officials.
5 From the Service's point of
6 view, it is essential that
7 lines of communication with
8 the Arab community remain
9 open. Therefore, official
10 dealings with the community
11 must be done with due
12 diligence."

13 Those are essentially the extracts
14 I wish to highlight to the Commissioner and form
15 part of the public record.

16 On that note, I have no further
17 questions.

18 Thank you, Mr. Hooper.

19 THE COMMISSIONER: Thank you,
20 Mr. David.

21 Mr. Waldman.

22 MR. WALDMAN: Mr. Commissioner, I
23 could explore one or two areas. I just received
24 these documents. I haven't read them.

25 THE COMMISSIONER: Right. I

1 understand that.

2 MR. WALDMAN: I haven't received
3 the targeting documents. So I don't want to go
4 into that area.

5 But I might have ten or 15 minutes
6 worth of questioning now or we could just leave it
7 until --

8 THE COMMISSIONER: What is your
9 estimate in total would you think?

10 MR. WALDMAN: Much less than with
11 Mr. Elcock. Given the way the witness has been
12 answering questions, I expect it will be a much
13 easier process.

14 THE COMMISSIONER: Right. Okay.

15 MR. WALDMAN: I would say maximum
16 two hours but I don't even think that. I haven't
17 read these documents yet so I --

18 THE COMMISSIONER: I understand.

19 MR. WALDMAN: I could do one area
20 today if you want.

21 THE COMMISSIONER: Sure. If that
22 suits you, go ahead.

23 MR. WALDMAN: I just wanted to
24 explore one area, which is the accountability area
25 with Mr. Hooper.

1 Is it true that as a result of the
2 nature of the terrorist threat that the RCMP is
3 now getting much more involved in what you
4 wouldn't consider to be the intelligence area as
5 opposed to before 9/11?

6 MR. HOOPER: That is a difficult
7 question. I don't know -- my own personal opinion
8 is that the RCMP has been more directly engaged in
9 enforcement activities around issues that
10 traditionally come back to a security intelligence
11 domain. I think that is probably a function of
12 the passage of Bill C-36, I think, which
13 identified a number of terrorist offences and
14 created a number of new powers for law
15 enforcement. I think it was a natural response of
16 law enforcement to get more engaged.

17 I can also tell you that there was
18 a rather large body of information that was shared
19 with or has been shared with the RCMP and other
20 police forces with regard to al-Qaeda and the
21 threat environment.

22 I think shortly after 9/11, the
23 RCMP established what are known as integrated
24 national security enforcement teams in Montreal,
25 Ottawa, Toronto, and Vancouver that are

1 effectively joint task forces involving police
2 forces from a number of jurisdictions, customs
3 officials, immigration officials. We have CSIS
4 officers seconded to these insets.

5 I think that from my experience
6 the focus of the insets, while they haven't
7 resulted in any charges under C-36, their
8 activities have been largely enforcement oriented.

9 So I don't know that I would agree
10 that they are more involved in the collection of
11 intelligence, but I do accept that there is
12 probably greater potential now for the critical
13 path of enforcement activities branching off into
14 areas that others might consider to be
15 intelligence collection.

16 MR. WALDMAN: I asked this
17 question of Mr. Elcock, but I don't know if I got
18 a clear answer from him. So I am going to ask it
19 to you again.

20 I am alluding to what you just
21 said. Isn't it true that the passage of C-36 and
22 the definition of terrorism as an offence now
23 requires the RCMP to investigate persons who they
24 think might be members because they are now
25 committing an offence by being members of those

1 organizations?

2 MR. HOOPER: C-36 has that effect.

3 MR. WALDMAN: Right. So, now,
4 they have to gather intelligence and information
5 to determine whether or not a person is a member
6 of a terrorist group because there is the
7 potential of them being charged with being a
8 member of the group.

9 MR. HOOPER: Yeah, I think the
10 traditional reliance that the RCMP has on our
11 service for identifying those investigative leads
12 that come back to their national security
13 enforcement mandates still exist; in other words,
14 the mechanisms for cooperation and the exchange of
15 information between us and the RCMP that existed
16 before are still there.

17 And in my experience, my
18 experience bears out the fact that the RCMP still
19 relies on the service for the provision of
20 investigative leads around terrorist or terrorist
21 offenses.

22 MR. WALDMAN: Now, the fact that
23 you have a liaison officer, a CSIS officer,
24 working in these INSETS -- INSETS?

25 MR. HOOPER: INSET.

1 MR. WALDMAN: I-N-S-E-T?

2 MR. HOOPER: That is right,
3 Integrated National Security Enforcement Team.

4 MR. WALDMAN: Does this CSIS
5 officer, when he works for the INSET, have access
6 to the CSIS database?

7 MR. HOOPER: No, he's there as a
8 secondee, which means, for all intents and
9 purposes, when he goes to the INSET he is an RCMP
10 employee.

11 He is not there as a liaison
12 officer. He or she is there because of the
13 particular expertise that they bring to the
14 national security domain, nothing more, nothing
15 less. But there is no expectation and, in fact,
16 our secondees to INSETs are informed that they are
17 not there as liaison officers. They respond to
18 direction from the RCMP, so...

19 MR. WALDMAN: You didn't mean to,
20 but you didn't answer my question directly.

21 Do they have access to the CSIS
22 database when they are working on the INSETs, if
23 they are the CSIS officer there?

24 MR. HOOPER: Well, they don't have
25 access to the CSIS database there, they have

1 access to the CSIS database.

2 MR. WALDMAN: Yeah. Okay, so they
3 do?

4 MR. HOOPER: Yes.

5 MR. WALDMAN: In other words, the
6 CSIS officer working on the INSET could go back to
7 the CSIS office and access the database while he
8 has been seconded?

9 MR. HOOPER: He could -- he or she
10 could.

11 MR. WALDMAN: Right.

12 MR. HOOPER: And we would know
13 about it.

14 MR. WALDMAN: I assumed you would.
15 I hope you would, or else we are in trouble.

16 MR. HOOPER: Right.

17 MR. WALDMAN: But he could then
18 take that information back to the INSET?

19 MR. HOOPER: He or she could, and
20 we would know about it.

21 MR. WALDMAN: Right. Would it
22 have to be approved before he took the information
23 back? I mean, because we have been told that CSIS
24 information can't leave CSIS -- can't be disclosed
25 without every disclosure being approved. In this

1 case --

2 MR. HOOPER: That's correct.

3 MR. WALDMAN: -- would it have to
4 be approved?

5 MR. HOOPER: Yes. No, our -- I
6 mean, our secondees to the INSETs, again, are told
7 that they are there as secondees, not as liaison
8 officer.

9 We can track every search and
10 every document printed in our national security
11 databases. We audit that all the time. If a
12 secondee to an INSET were to access BRS or our
13 database and extract documents from that, we have
14 a way of knowing that and we would put an end to
15 it.

16 That's not why you are there.
17 They cannot print documents, walk out of the
18 building with those documents and deliver them up
19 to the INSET.

20 MR. WALDMAN: I understood that.
21 I wasn't even suggesting that. I was just
22 wondering more about the information.

23 So if we have a CSIS officer on an
24 INSET, he could come back to the CSIS office,
25 access the database, get the information and come

1 back to the INSET and say, "Well, I saw this on
2 the database, this piece of information that might
3 be helpful for an investigation"?

4 MR. HOOPER: Sure, that is
5 possible, absolutely.

6 MR. WALDMAN: If he just took the
7 information without producing a document, would he
8 have to get permission to disclose it?

9 MR. HOOPER: Yes, he would.

10 MR. WALDMAN: Even if those
11 circumstances?

12 MR. HOOPER: Yes. It would
13 probably be the last time he would disclose
14 information.

15 MR. WALDMAN: Oh, he's not
16 supposed to --

17 MR. HOOPER: No, no. We have a
18 way of disclosing information to the RCMP INSET
19 that has got nothing to do with our secondee. The
20 secondee is there because of an expertise, not
21 because of his access to a database.

22 MR. WALDMAN: So in other words,
23 if he were to do this, this would be not something
24 he's supposed to do?

25 MR. HOOPER: This would definitely

1 be something that he or she would not be supposed
2 to do.

3 MR. WALDMAN: All right. Well,
4 this is intriguing. He could go back and get the
5 information for himself to assist in the
6 investigation and not reveal it to anyone else.

7 MR. HOOPER: He is not supposed to
8 do that.

9 MR. WALDMAN: He's not even
10 supposed to do that.

11 MR. HOOPER: He doesn't work for
12 us. He works for the RCMP.

13 MR. WALDMAN: Okay. Well, I'm
14 sorry.

15 So once he's on INSET, he is not
16 supposed to access the database at all?

17 MR. HOOPER: If the RCMP needed
18 data from our database, there is a mechanism for
19 them to request it, and the mechanism is not
20 through our secondee to the INSET, it's through
21 the regular liaison channels, in Ottawa, for
22 example, that A division would have with our
23 Ottawa region.

24 MR. WALDMAN: Okay.

25 MR. HOOPER: They are not to task

1 you are our secondee to go back to the office and
2 collect information. That's just not the way it
3 works.

4 MR. WALDMAN: Does each INSET have
5 a CSIS officer seconded to it?

6 MR. HOOPER: I think Toronto is a
7 little bit anomalous because the structure of the
8 INSET in Toronto is such that you have an officer
9 in charge of the Combined Forces Special
10 Enforcement Unit, which subsumes INSET. We have
11 an officer assigned to CFSEU. I don't know if we
12 also have an officer assigned to the INSET. I am
13 not clear on that. But in Vancouver there
14 are --Vancouver, Montreal and Ottawa.

15 The Toronto circumstance is a
16 little bit anomalous because of the structure that
17 O Division RCMP has imposed on the INSET. But we
18 do have a guy within that CFSEU umbrella, which
19 subsumes INSET.

20 MR. WALDMAN: Sorry, you are using
21 a world that --

22 MR. HOOPER: I'm sorry.

23 MR. WALDMAN: I mean, CF --

24 MR. HOOPER: CFSEU is the Combined
25 Forces Special Enforcement Unit, which is based

1 out of Toronto.

2 MR. WALDMAN: And what is this?

3 MR. HOOPER: It is like a joint
4 task force, originally struck to investigate
5 organized crime. It is under -- and perhaps you
6 know him, Chief Superintendent Ben Soauve. He has
7 been in the newspaper from time to time. He is
8 the commander of the CFSEU, which also has under
9 its umbrella the Integrated National Security
10 Enforcement Team. Our original secondee with O
11 Division, the division responsible within the RCMP
12 for southwestern Ontario, was the CFSEU, but I
13 think he can bounce back and forth.

14 I'm kind of on dangerous ground
15 here, Mr. Waldman, because, quite frankly, this is
16 my belief. That's the way it was when I left
17 Toronto, but I am not sure what it is like now.
18 But there is a guy there.

19 MR. WALDMAN: Okay, there is a
20 CSIS operative in Toronto.

21 MR. HOOPER: Yes, that is seconded
22 to the RCMP.

23 MR. WALDMAN: That's available to
24 INSET if they need him?

25 MR. HOOPER: That is right.

1 MR. WALDMAN: Okay. We only have
2 a few more minutes and I need to read this
3 material to be able, but I wanted to -- you have
4 talked extensively about SIRC and about the
5 accountability process within SIRC. And you have
6 said that it's very important and it is a major
7 contribution.

8 Given your past experience with
9 the RCMP, maybe you could tell us whether you
10 think, in light of the changes in Bill C-36 and in
11 light of the move of the RCMP to terrorism
12 offenses, which requires them to engage in
13 intelligence, and in light of the lack of any
14 accountability mechanism in Bill C-36, whether
15 this is a matter of concern to you, personally?

16 MR. HOOPER: To me, personally?

17 MR. WALDMAN: Yes. I don't think
18 you have a position on behalf of the service, but
19 perhaps you could assist us. You have 30 years of
20 experience and you were deeply involved in the
21 SIRC process for a long period of time. You know
22 how it works and you said it with us very
23 effective. Does it raise concerns to you that
24 there is no equivalent process now for
25 intelligence operations in the RCMP?

1 MR. HOOPER: Concern. "Concern"
2 is a big word. I think the RCMP would be better
3 if they had an external review process that
4 applied to their activities within the national
5 security domain. They will hate me for saying
6 that.

7 MR. WALDMAN: Thank you. I think
8 we will stop there for today.

9 Thank you.

10 THE COMMISSIONER: Okay. I was
11 thinking about an earlier start tomorrow, given
12 our schedule, but I realize you just got some
13 documents.

14 Does nine thirty make sense? Is
15 that okay with you?

16 MR. WALDMAN: How about we do a
17 compromise? Nine forty-five.

18 THE COMMISSIONER: Nine
19 forty-five, it is. We will rise till then.

20 THE REGISTRAR: All rise.
21 --- Whereupon the hearing adjourned at 4:30 p.m.,
22 to resume on Wednesday, June 23, 2004
23 at 9:45 p.m. / L'audience est ajournée à
24 16 h 30, pour reprendre le mercredi 23 juin
25 2004 à 9 h 30

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Lynda Johansson

Lynda Johansson,

C.S.R., R.P.R.

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