

**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

Tenue à:

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Ancien hôtel de ville
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Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Tuesday, May 17, 2005

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1 Ottawa, Ontario

2 --- Upon commencing on Tuesday, May 17, 2005

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

4 17 mai 2005 à 10 h 00

5 THE REGISTRAR: Please be seated.

6 Veuillez-vous asseoir.

7 THE COMMISSIONER: Good morning

8 Mr. Livermore. How are you?

9 MR. LIVERMORE: Good.

10 MR. CAVALLUZZO: Mr. Commissioner,
11 prior to having Mr. Livermore sworn, I'd just like
12 to advise counsel as to the upcoming witnesses, to
13 be clear.

14 The rest of this week is firm, and
15 that is tomorrow we will be having Ms Lloyd in the
16 morning and Ms McDonough in the afternoon. On
17 Thursday we have Nancy Collins from DFAIT. Next
18 week, on May 24th, 25th, and 26th, we have
19 Mr. Gar Pardy, the former head of consular affairs
20 in DFAIT. And then the next week, May 30th is the
21 Monday, we have Bill Graham, Minister Graham.
22 Tuesday, the 31st, we have John Manley, the former
23 cabinet minister.

24 Wednesday, on June 1st, we have
25 Ms Catterall and Senator De Bané. Thursday, June

1 2nd is open at the moment, and on Friday, June
2 3rd, we have Mr. Wayne Easter, the former
3 Solicitor General. That will give counsel of
4 where we're headed for the next two and a half
5 weeks.

6 THE COMMISSIONER: Okay.
7 Mr. Livermore was sworn at the in camera hearings.
8 Should we do it again in public?

9 MR. CAVALLUZZO: I don't think
10 it's necessary.

11 You're still under oath then,
12 Mr. Livermore.

13 MR. LIVERMORE: I understand.

14 THE COMMISSIONER: Just for the
15 record, if you would, just state your full name?

16 MR. LIVERMORE: John Daniel
17 Livermore.

18 PREVIOUSLY SWORN: JOHN DANIEL LIVERMORE

19 MR. CAVALLUZZO: In respect of
20 Mr. Livermore's evidence, I have broken it down
21 into four different areas. The first area, we
22 will deal with Mr. Livermore's employment and
23 professional background. Secondly, we will be
24 looking at the organizational framework of the
25 Security and Intelligence Bureau, which he

1 presently heads. Thirdly, we will be seeking or
2 asking questions of Mr. Livermore, which will
3 provide us with an overview of Foreign Affairs and
4 its mandate, and more particularly, the Security
5 and Intelligence Bureau. And then the final area,
6 the area that we will be spending the most time
7 upon, will be dealing with documents and events
8 that we have been referring to as the Arar time
9 line.

10 EXAMINATION

11 MR. CAVALLUZZO: Initially, we
12 will deal with Mr. Livermore's professional and
13 employment background, and we do have a curriculum
14 vitae which we would seek to introduce as an
15 exhibit in these proceedings.

16 THE COMMISSIONER: P-65.

17 EXHIBIT NO. P-65 :
18 Curriculum Vitae of John
19 Daniel Livermore

20 MR. CAVALLUZZO: Mr. Livermore,
21 you're presently the Direct General, Bureau of
22 Security and Intelligence?

23 MR. LIVERMORE: That is correct,
24 yes.

25 MR. CAVALLUZZO: And you've held

1 that position since August of 2002?

2 MR. LIVERMORE: Yes, that is
3 correct.

4 MR. CAVALLUZZO: In terms of your
5 education, I understand that you've received a
6 bachelor of arts from Brock University?

7 MR. LIVERMORE: Yes.

8 MR. CAVALLUZZO: A master of arts
9 from Carleton?

10 MR. LIVERMORE: Yes.

11 MR. CAVALLUZZO: And a Ph.D. from
12 Queens?

13 MR. LIVERMORE: That's right.

14 MR. CAVALLUZZO: And your Ph.D.
15 was in what area of study?

16 MR. LIVERMORE: In 19th century
17 Canadian history.

18 MR. CAVALLUZZO: I don't think
19 I'll be asking any questions of that, so let's
20 move on.

21 --- Laughter / Rires

22 Now, I'd like to deal with your
23 public service. You joined the Foreign Service in
24 1975?

25 MR. LIVERMORE: Yes.

1 MR. CAVALLUZZO: And you do have
2 an extensive background. I just want to really
3 focus upon some of your most recent appointments,
4 starting in 1988. Between 1988 and 1990, you were
5 the Director, Human Rights and Social Affairs
6 Division in the International Organisation Bureau?

7 MR. LIVERMORE: That is correct,
8 yes.

9 MR. CAVALLUZZO: Can you give me
10 some idea of what your duties and responsibilities
11 were in respect of that particular position?

12 MR. LIVERMORE: I had been doing
13 human rights work since the 1970s and doing human
14 rights at the United Nations in the late 1970s,
15 and the work had expanded to such an extent that
16 in the 1980s, it was decided to create a division
17 responsible for human rights. Basically the
18 division was divided into two or three sections.

19 One was what you might call the
20 multilateral aspects of human rights, namely
21 covering the United Nations' Commission on Human
22 Rights, covering some of the other bodies in the
23 U.N. system dealing with human rights and dealing
24 with all of the aspects of that type of work.

25 The other aspect was what we call

1 bilateral human rights work, that is, dealing with
2 some of the geographic divisions within External
3 Affairs, as it was then called, advising them on
4 human rights issues, developing reporting
5 structures in the area of human rights, et cetera.

6 MR. CAVALLUZZO: And when we come
7 to your overview evidence, one of the things you
8 will say is that in respect of our foreign policy,
9 that Canada is concerned with promoting Canadian
10 values, obviously, democratic values, which would
11 include human rights values; is that correct?

12 MR. LIVERMORE: Yes, that is
13 correct.

14 MR. CAVALLUZZO: And is this a
15 division which would be guiding the department in
16 respect of promoting Canadian values, particularly
17 democratic rights?

18 MR. LIVERMORE: This would be one
19 of them. The division, in practical terms, is
20 fairly complicated in the sense that the
21 Geographic Division or the Geographic Bureau is
22 the focal point for all of Canadian policy towards
23 a certain country.

24 MR. CAVALLUZZO: Right.

25 MR. LIVERMORE: But in the human

1 rights area, it would be informed by what the
2 Human Rights Division would have to say.

3 MR. CAVALLUZZO: Right.

4 MR. LIVERMORE: And if it came to
5 a program, that is, we wanted to develop a program
6 of assistance in that area, there is another
7 division in the department with some funding that
8 might be brought into play as well.

9 MR. CAVALLUZZO: Now, just let me
10 give you a hypothetical example, and that is to
11 say, if I was a consular officer and I was to find
12 that one of my clients, as they're called, was
13 detained in Syria, for example, and I wanted to
14 learn about the human rights record of Syria,
15 would I call upon this particular division for
16 advice and guidance?

17 MR. LIVERMORE: You might. It
18 depends on -- the consular officers are divided
19 into Canadian-based officers who have security
20 clearances, and locally engaged officers who do
21 not have security clearances. The Canadian-based
22 officers would have access to a classified
23 database if they wanted to consult that classified
24 database. Some of them choose to do so; some of
25 them don't, because they're consular specialists,

1 so they know pretty well what to expect with
2 respect to a particular situation.

3 MR. CAVALLUZZO: In your context
4 statement itself, there is reference to a
5 classified annual human rights report in respect
6 of different countries.

7 MR. LIVERMORE: Yes.

8 MR. CAVALLUZZO: And would I have
9 access to that if I was a consular officer, having
10 questions about the country in which my client is
11 detained?

12 MR. LIVERMORE: If you were a
13 Canadian-based consular officer with a security
14 clearance, you might have access to that database.
15 Whether you would find it useful would be another
16 question.

17 MR. CAVALLUZZO: Right. And do
18 you know, for example, we have heard evidence in
19 the last three days from Maureen Girvan. Would
20 she have a security clearance?

21 MR. LIVERMORE: I believe that she
22 does, yes.

23 MR. CAVALLUZZO: Okay. I'd like
24 to move on now. Between 1991 and 1993, you were
25 the Director of Policy Planning?

1 MR. LIVERMORE: Yes.

2 MR. CAVALLUZZO: Between 1994 and
3 1996, you became the first Director of the
4 Regional Security and Peacekeeping Division in the
5 International Security Affairs Bureau?

6 MR. LIVERMORE: That's right.

7 MR. CAVALLUZZO: Between 1996 and
8 1999, you had front line diplomatic experience as
9 Canada's Ambassador to Guatemala and El Salvador?

10 MR. LIVERMORE: I did. But I had
11 front line experience prior to that time as well.

12 MR. CAVALLUZZO: This is your
13 first time as being ambassador?

14 MR. LIVERMORE: First time as
15 ambassador, yes.

16 MR. CAVALLUZZO: And between 1992
17 and 2002 you were the Ambassador for Mine Action
18 in Ottawa, I assume we're talking about land
19 mines; is that correct?

20 MR. LIVERMORE: That is correct,
21 yes.

22 MR. CAVALLUZZO: That is the
23 position you held prior to assuming your present
24 position of Director General in the Bureau of
25 Security and Intelligence?

1 MR. LIVERMORE: That is correct,
2 yes.

3 MR. CAVALLUZZO: Finally your
4 curriculum vitae indicates that you've published
5 extensively in a number of Canadian journals and
6 indeed have published a book in 1994 on Ethnic
7 Conflict in the New Europe?

8 MR. LIVERMORE: That is correct,
9 yes.

10 MR. CAVALLUZZO: Now, I'd like to
11 move on, Mr. Livermore, to the second area of
12 questioning and look at the corporate structures
13 which we find in DFAIT, which will help us
14 understand better the evidence that you're going
15 to give and Mr. Pardy will give in respect of the
16 events surrounding Mr. Arar.

17 I am first going to look at the
18 organizational chart for DFAIT itself, which can
19 be found in Exhibit P-11, that is the Book of
20 Documents for Mr. Konrad Sigurdson who gave us
21 contextual evidence this past June.

22 And this is just really a view
23 from 30,000 feet above, and we see that the area
24 in which you're involved is at the bottom, Global
25 and Security Policy?

1 MR. LIVERMORE: That is correct,
2 yes.

3 MR. CAVALLUZZO: We have MJW, that
4 is Mr. Jim Wright, who is the Assistant Deputy
5 Minister and Political Director?

6 MR. LIVERMORE: That is correct.

7 MR. CAVALLUZZO: And then his
8 direct reporting relationship would be right
9 through Mr. Fried, the Associate Deputy Minister,
10 and Mr. Harder, the Deputy Minister of Foreign
11 Affairs, or otherwise referred to as USS or the
12 Undersecretary of State?

13 MR. LIVERMORE: Yes.

14 MR. CAVALLUZZO: And then directly
15 to Minister Graham?

16 MR. LIVERMORE: Yes.

17 MR. CAVALLUZZO: I'd like to move
18 on then to the corporate chart for Global and
19 Security Policy, and we can see in respect of this
20 chart that Mr. Wright has a number of bureaus
21 which report directly to him, and we see that your
22 bureau can be found on the right-hand side of the
23 chart; is that correct?

24 MR. LIVERMORE: That is correct.

25 MR. CAVALLUZZO: And you are the

1 head of the bureau, as we have suggested, and the
2 division which we will be focusing upon today is
3 the Foreign Intelligence Division, which is headed
4 by Scott Heatherington at the material point in
5 time and that division is referred to as ISI?

6 MR. LIVERMORE: That is correct,
7 yes.

8 MR. CAVALLUZZO: And you, as
9 Director General, are referred to as ISD?

10 MR. LIVERMORE: Yes, that is
11 correct.

12 MR. CAVALLUZZO: Now, I'd like to
13 move on to Exhibit P-24, which is a corporate
14 description of Security and Intelligence Bureau
15 and ask you to look at that, and we see that --
16 we're going to -- just give us a second so the
17 Commissioner keeps up with us.

18 THE COMMISSIONER: Thank you.

19 MR. CAVALLUZZO: Okay. And we're
20 going to come back to this in terms of your
21 contextual description of S & I, and that is that
22 there are three divisions on the left-hand side,
23 and that is Security Operations and Personal
24 Safety Division, the Corporate Security Division,
25 and Information and Technical Security Division,

1 and we will not be spending any time other than a
2 brief description that you will give us
3 subsequently.

4 But on the right-hand side is the
5 important point, because we're going to be seeing
6 the name B. Grover, the administrative assistant,
7 that's Belinda Grover?

8 MR. LIVERMORE: That's correct.

9 MR. CAVALLUZZO: We will see her
10 name periodically. And then, of course, we have
11 Mr. Scott Heatherington who is the Director of the
12 Foreign Intelligence Division?

13 MR. LIVERMORE: That is correct.

14 MR. CAVALLUZZO: In the other
15 chart, there are a number of other charts relating
16 to S & I, but the only other chart that I would
17 ask you to refer to now is the corporate chart for
18 the Foreign Intelligence Division, or ISI.

19 THE COMMISSIONER: Which tab is
20 that?

21 MR. CAVALLUZZO: This is part of
22 the same tab.

23 THE COMMISSIONER: Same sequence.

24 MR. CAVALLUZZO: It should be the
25 last page of the tab.

1 THE COMMISSIONER: Okay. Yes.

2 MR. CAVALLUZZO: Okay? And I want
3 to identify some names here. Although, as you can
4 see, this chart was approved on October 18th of
5 2004, I want to bring your mind back to 2002. But
6 let's just look at it.

7 Initially the Director of the
8 division once again is Mr. Heatherington? And we
9 see on the right-hand side below Mr. Heatherington
10 that we have an RCMP liaison officer?

11 MR. LIVERMORE: Yes.

12 MR. CAVALLUZZO: And we'll see
13 that at the material point in time, there was an
14 RCMP LO, and also in terms of special projects, it
15 says CSIS FTE. Now, I understand at the material
16 point in time, in 2002 and 2003, that there was a
17 CSIS liaison officer?

18 MR. LIVERMORE: That is correct.

19 MR. CAVALLUZZO: Okay. So that at
20 the material time, we have both a CSIS liaison
21 officer and an RCMP liaison officer?

22 MR. LIVERMORE: That's correct.

23 MR. CAVALLUZZO: Okay. Now, if we
24 move down the chart, in terms of the people that
25 we will be focusing upon, we see that Deputy

1 Director, Intelligence Policy on the left-hand
2 side? And we see that Jim Gould was a Deputy
3 Director at the material time?

4 MR. LIVERMORE: That is correct.

5 MR. CAVALLUZZO: And then we see a
6 number of references to positions called Policy
7 Advisor, and we see the name on the right-hand
8 side, third box down, Don Saunders, whose name
9 will come up.

10 And the other name that we will be
11 reviewing with you today in terms of ISI was
12 somebody by the name of Jonathan Solomon. Where
13 would Jonathan Solomon have been found in 2002?
14 He's no longer there.

15 MR. LIVERMORE: He was another
16 Policy Advisor in ISI. He would have been found
17 probably in the same column that Don Saunders
18 would have been found.

19 MR. CAVALLUZZO: Right. And in
20 terms of the other boxes there, the interview
21 officers and client relations officers, we'll come
22 back to that in terms of your description in your
23 contextual statement.

24 I would like to come now to,
25 really, your overview evidence concerning Foreign

1 Affairs as well as S & I, and at this time file as
2 an exhibit, Mr. Commissioner, Mr. Livermore's
3 redacted overview statement as the next exhibit.

4 THE COMMISSIONER: Exhibit P-66.

5 EXHIBIT P-66: Overview
6 Statement of John Daniel
7 Livermore (redacted)

8 MR. CAVALLUZZO: Now,
9 Mr. Livermore, initially I would like to deal with
10 the mandate of Foreign Affairs Canada, and in your
11 statement you tell us that there is a global
12 network of something like 174 posts abroad and you
13 give examples, for example, in respect of consular
14 affairs, that there are like 700 cases that are
15 dealt with annually.

16 If you could just give us a brief
17 history in the last 50 years or so of the mandate
18 of Foreign Affairs, I am going to ask you some
19 very specific questions about that mandate.

20 MR. LIVERMORE: Of Foreign
21 Affairs?

22 MR. CAVALLUZZO: That is correct.

23 Initially, in terms of its mandate
24 obviously, we find it in section 10 of the
25 legislation. I will be asking you specific

1 questions about section 10 of the legislation, but
2 what I want to ask you about is this particular
3 reference in your statement at page 2.

4 You say:

5 "The essential point of
6 Canada's foreign policy is
7 that we are charged with
8 advancing and protecting the
9 interest and values of Canada
10 and Canadians."

11 What do you mean by that when you
12 refer to that in your context statement?

13 MR. LIVERMORE: Mr. Commissioner,
14 may I have a copy of the Foreign Affairs Act? Is
15 there one available?

16 MR. CAVALLUZZO: Yes. This is
17 Konrad Sigurdson's Book of Documents.

18 Do you have that?

19 THE COMMISSIONER: P-11? I might
20 have that here. It is tab 7, I think.

21 MR. CAVALLUZZO: It's tab 7,
22 section 10.

23 MR. LIVERMORE: If I could just be
24 brief, because the legislative mandate of Foreign
25 Affairs Canada or External Affairs, as it used to

1 be called, is fairly brief, but the essence of it
2 I tried to boil down in a couple of sentences in
3 the overview statement.

4 Namely, it's the management of
5 Canadian foreign relations, and it's working with
6 other departments and agencies of the federal
7 government that have foreign interests. It's
8 working with the provinces, working with
9 municipalities, and it's also working with other
10 governments and international organizations. So
11 it's essentially a policy coordination function.

12 MR. CAVALLUZZO: Okay. And in
13 terms of this reference once again in your
14 statement of advancing and protecting the
15 interests of Canadians, that's rather obvious.

16 But in terms of advancing and
17 protecting the values of Canada, I don't see any
18 reference to that in the Foreign Affairs
19 legislation. I am wondering, is that just a
20 natural implication in terms of the basic
21 democratic country in which we live?

22 MR. LIVERMORE: I don't think so
23 much it's entrenched in legislation, although
24 maybe I would have to thumb through it and see if
25 I find something. But it comes about as a result

1 of successive foreign policy reviews that have
2 been undertaken since probably the 1970s. Almost
3 every decade, there has been a significant foreign
4 policy review. Just a few weeks ago, there was
5 another foreign policy statement presented by the
6 government.

7 So the idea of advancing things
8 like the promotion of democratic government,
9 promotion of the rule of law abroad, promoting
10 human rights, these are things that enter usually
11 via the policy statements rather than the
12 legislative framework.

13 MR. CAVALLUZZO: I would like to
14 ask you specific questions relating to the role of
15 the Minister -- that can be found in section 10 --
16 and try to focus upon what I believe would be the
17 duties and powers of the Minister which would be
18 relevant to the case in which we are dealing with;
19 that is the case of Mr. Arar.

20 If you have section 10 in front of
21 you, I would suggest that the following powers,
22 where it says the Minister shall, first of all:

23 "(a) conduct all diplomatic
24 and consular relations on
25 behalf of Canada;"

1 Secondly, in paragraph (b):
2 "(b) conduct all official
3 communications between the
4 Government of Canada and the
5 government of any other
6 country and between the
7 Government of Canada and any
8 international organization;"

9 Stopping there where it says the
10 Minister shall conduct official communications
11 between the Government of Canada and the
12 government of another country, that does not
13 preclude, presumably, the communications between
14 another Canadian agency and a foreign agency.

15 Is that correct?

16 MR. LIVERMORE: That is correct,
17 yes.

18 MR. CAVALLUZZO: It goes on in
19 paragraph (g) and states that the Minister shall:
20 "(g) coordinate the direction
21 given by the Government of
22 Canada to the heads of
23 Canada's diplomatic and
24 consular missions;"

25 And that's what we are obviously

1 talking about, consul generals, ambassadors, and
2 so on and so forth.

3 MR. LIVERMORE: That's correct.

4 MR. CAVALLUZZO: So they are to
5 receive direction from the Minister?

6 MR. LIVERMORE: That's correct.

7 MR. CAVALLUZZO: Paragraph (h),
8 the Minister shall:

9 "(h) have the management of
10 Canada's diplomatic and
11 consular missions;"

12 And that in this case, for
13 example, would be the consulate in New York City
14 as well as the situation in Damascus?

15 MR. LIVERMORE: That is correct.

16 MR. CAVALLUZZO: Next paragraph,
17 (i), the Minister shall:

18 "(i) administer the foreign
19 service of Canada;"

20 That's rather obvious.

21 And paragraph (j), shall:

22 "(j) foster the development
23 of international law and its
24 application in Canada's
25 external relations;"

1 One could perhaps imply there are
2 certain promotion of human rights, as we find, and
3 international law, which is the responsibility of
4 the Minister.

5 And finally in paragraph (k) we
6 have a basket clause, which is to:

7 "(k) carry out such other
8 duties and functions as are
9 in law assigned to him."

10 I would like to move on now to the
11 organization of Foreign Affairs. In paragraph 3
12 of your contextual statement, you tell us that at
13 the material time the Minister was the Honourable
14 Bill Graham?

15 MR. LIVERMORE: That's correct.

16 MR. CAVALLUZZO: And the Deputy
17 Minister was who?

18 MR. LIVERMORE: Mr. Gaetan
19 Lavertu.

20 MR. CAVALLUZZO: He was the Deputy
21 Minister in 2002-2003?

22 MR. LIVERMORE: That is correct,
23 yes.

24 MR. CAVALLUZZO: And Mr. Peter
25 Harder became the Deputy Minister when in 2003, do

1 you recall?

2 MR. LIVERMORE: I believe it was
3 in June of 2003.

4 MR. CAVALLUZZO: And then you
5 describe branches and divisions. Why don't you
6 tell us, first of all, what branches are in the
7 Foreign Affairs Department?

8 MR. LIVERMORE: If you go back to
9 Exhibit P-11, tab 2 --

10 MR. CAVALLUZZO: Right.

11 MR. LIVERMORE: -- these boxes at
12 the bottom are called branches. And in those days
13 the branch in which I worked was called the Global
14 and Security Policy branch, headed by Jim Wright.
15 So that's the largest organizational unit of the
16 department.

17 MR. CAVALLUZZO: And each branch,
18 you tell us, is headed by an Assistant Deputy
19 Minister?

20 MR. LIVERMORE: That's correct,
21 yes.

22 MR. CAVALLUZZO: And what is the
23 organizational unit below the branch?

24 MR. LIVERMORE: Below the branch,
25 the next organizational unit down is what we call

1 the bureau.

2 MR. CAVALLUZZO: And each bureau
3 is headed by something called a Director General?

4 MR. LIVERMORE: Yes.

5 MR. CAVALLUZZO: Okay. In terms
6 of branches, I can see that some seem to be based
7 on geographic lines and some seem to be based on
8 functional lines. Is that correct?

9 MR. LIVERMORE: That is correct,
10 yes.

11 MR. CAVALLUZZO: And in terms of
12 Mr. Arar's situation, if we go back to the
13 corporate chart, presumably the relevant branches,
14 if ISI is involved, would be Global and Security
15 Policy?

16 MR. LIVERMORE: That would be one,
17 yes.

18 MR. CAVALLUZZO: And where would
19 consular affairs fall in respect of the branch?

20 MR. LIVERMORE: At the time, in
21 2002, it was under Corporate Services, Passport,
22 and Consular Affairs, what is called MKM.

23 MR. CAVALLUZZO: And that can be
24 found on the right side of the chart?

25 MR. LIVERMORE: Yes.

1 MR. CAVALLUZZO: And presumably
2 the geographic branch, which may have some
3 relevance to Mr. Arar's case, would be the Africa
4 and Middle East branch?

5 MR. LIVERMORE: That is correct,
6 yes.

7 MR. CAVALLUZZO: At the time the
8 Assistant Deputy Minister was John McNee?

9 MR. LIVERMORE: That is correct.

10 MR. CAVALLUZZO: And the Assistant
11 Deputy Minister in consular affairs would be, at
12 that time, Katherine McCallion?

13 MR. LIVERMORE: That is correct.

14 MR. CAVALLUZZO: Okay. We are at
15 the level of bureau, the S&I bureau, the Security
16 and Intelligence Bureau, and underneath -- I
17 shouldn't say "underneath", but below the bureau
18 we have what are called divisions?

19 MR. LIVERMORE: That's correct.

20 MR. CAVALLUZZO: And the divisions
21 are headed by whom?

22 MR. LIVERMORE: By a Director.

23 MR. CAVALLUZZO: Okay. Just to
24 make my life difficult, FAC has a lot of acronyms
25 used in their e-mails, and in order to understand

1 who is sending the e-mail and who is receiving the
2 e-mail, I wonder if you might help us in respect
3 of all of the acronyms that are used in Foreign
4 Affairs.

5 I understand, for example, you
6 start with USS, which doesn't stand for the United
7 States Steamship Lines but stands for Under
8 Secretary of State, and I wonder if you might take
9 us from there.

10 MR. LIVERMORE: All right. The
11 USS was retained from the old title of Deputy
12 Minister of Foreign Affairs. The office used to
13 be called Under Secretary of State for External
14 Affairs, but for continuity, USS was retained. So
15 that's the Deputy Minister.

16 There's another Deputy Minister of
17 International Trade and that at the time was Len
18 Edwards. It was called DMT. And there is an
19 Associate Deputy Minister. At the time I believe
20 it was Paul Thibeault, who was called DMA.

21 When you work down, the next level
22 down is the Assistant Deputy Minister level, if
23 you like, and at the time, if I am not mistaken, a
24 decision was made to have a three-letter acronym.
25 The first letter was "M", which I am told --

1 MR. CAVALLUZZO: That makes a lot
2 of sense.

3 MR. LIVERMORE: I am told it means
4 "Management".

5 MR. CAVALLUZZO: Right. In any
6 event, it is "M"?

7 MR. LIVERMORE: It is "M". Then
8 followed by the two initials of the person's name,
9 providing there is no conflict. You don't want to
10 have two people with the same initials, in which
11 case the initial would be different.

12 That explains Jim Wright is MJW;
13 Katherine McCallion is MKM.

14 And then down from that, in
15 theory -- although again I hate to make your life
16 complicated, but there are some exceptions -- each
17 branch was supposed to have all of its bureaus
18 begin with a letter which would identify it as
19 part of the bureau.

20 In the case of Jim Wright's
21 bureau, every bureau was supposed to be headed
22 with the letter "I" for "International Security
23 Affairs", which is once what it was called. The
24 second letter -- hence there are others that
25 follow a different format of having a different

1 first letter.

2 The second letter identifies the
3 bureau by an initial. For instance, in the case
4 of the multilateral bureau, it's an "M". In the
5 case of the bureau that I head, it's an "S".

6 And the third letter is a "D",
7 which stands either for the bureau or for the
8 Director General. In my case, it's ISD.

9 Anything at the divisional level
10 usually is a four-letter acronym, and it begins
11 with "I", which is the branch. Second letter,
12 which is the bureau, which in my case is an "S" --
13 excuse me, a three-letter. And then a letter
14 after that, which tries to explain what the
15 division is, if there's any logic to it.

16 MR. CAVALLUZZO: Okay. There
17 seems to be a lot of logic to it, but let's move
18 on.

19 In terms of the e-mails we are
20 going to see, when we see ISD, that is going to
21 refer to Dan Livermore?

22 MR. LIVERMORE: Yes.

23 MR. CAVALLUZZO: When we see
24 references to Jonathan Solomon, Dan Saunders, or
25 Dan Gould --

1 MR. LIVERMORE: Jim Gould.

2 MR. CAVALLUZZO: Jim Gould, excuse
3 me. That will be ISI?

4 MR. LIVERMORE: ISI, yes.

5 MR. CAVALLUZZO: Now, I would like
6 to move on to the communication system which we
7 find in Foreign Affairs, and we see initially
8 there's something called SIGNET "D".

9 Could you tell us what that is?

10 MR. LIVERMORE: SIGNET "D" is
11 essentially an unclassified communications system
12 which Foreign Affairs has worldwide, which is
13 hooked up to other government departments, but
14 essentially at the unclassified or protected A
15 level.

16 MR. CAVALLUZZO: We have seen a
17 lot of what we have been referring to as CAMANT
18 notes. Is that what you are talking about, the
19 unclassified system?

20 MR. LIVERMORE: Well, SIGNET "D"
21 has a lot of functionality. It's a simple e-mail
22 system. You can e-mail any two people in the
23 system. It has access to the internet. It has a
24 bunch of financial programs.

25 CAMANT is a program on that

1 system, but CAMANT is not accessible by everyone
2 on that system. It's a limited-access system.

3 MR. CAVALLUZZO: There is a secret
4 communication system as well that we will see.
5 Could you tell us what that is and could you
6 describe it for us?

7 MR. LIVERMORE: There is a secret
8 level communication system which is called C4, and
9 usually on a document there will be something, C4
10 at the top, which gives the reader an indication
11 that it's being transmitted via the system. It's
12 a fairly old system in technological terms. It
13 doesn't have the functionality that the
14 unclassified system has, or the reach for that
15 matter.

16 MR. CAVALLUZZO: Okay. I would
17 like to move on to look at employee complement at
18 missions abroad.

19 For example, if we take the
20 ambassador in Damascus since we will be looking at
21 that situation, I understand that, first of all,
22 we have employees who are engaged at that embassy
23 who are not necessarily part of Foreign Affairs.
24 Is that correct?

25 In other words, they are from

1 other departments of government?

2 MR. LIVERMORE: Oh, in that sense,
3 what we have are -- among the Canadian-based staff
4 we have generally a mixture of people, and I
5 think --

6 MR. CAVALLUZZO: By
7 "Canadian-based staff", what do you mean by that?

8 MR. LIVERMORE: I mean officers
9 who are employed by government departments here in
10 Ottawa and who go abroad as Canadians to serve in
11 a Canadian function in another mission.

12 MR. CAVALLUZZO: Okay.

13 MR. LIVERMORE: I think in the
14 case of Damascus, if I am not mistaken, it's a
15 large immigration post, which means that virtually
16 all of the people working in the immigration
17 section of the Canadians will probably be employed
18 by Immigration Canada.

19 MR. CAVALLUZZO: And even though
20 they are employed by Immigration Canada, they
21 would be responsible to Mr. Pillarella, who was
22 the ambassador at the time?

23 MR. LIVERMORE: The head of
24 mission is formally head of the Canadian
25 government programs in that country, yes.

1 MR. CAVALLUZZO: I assume, as
2 well, in Damascus and other embassies we have
3 locally hired individuals?

4 MR. LIVERMORE: We have a lot of
5 locally hired individuals. What we call LES or
6 locally engaged staff are the majority of our
7 employees abroad.

8 MR. CAVALLUZZO: When
9 Mr. Pillarella comes to testify we will get very
10 specific in terms of what the complement is in
11 Damascus.

12 I would like to move on to the
13 duties and responsibilities of a head of mission.
14 Now, a head of mission that is referred to in
15 DFAIT language is not necessarily just an
16 ambassador. It could be somebody else?

17 MR. LIVERMORE: The usual title is
18 ambassador, but it could be a high commissioner or
19 a consul general.

20 MR. CAVALLUZZO: At the material
21 time, as we said, it was Ambassador Franco
22 Pillarella in Syria?

23 MR. LIVERMORE: That is right.

24 MR. CAVALLUZZO: I understand from
25 your statement that the ambassador, or any

1 ambassador indeed, is not appointed by the
2 Minister of Foreign Affairs?

3 MR. LIVERMORE: No, the heads of
4 mission are appointed by the Prime Minister and
5 the Cabinet.

6 MR. CAVALLUZZO: And that is done
7 by Order in Council?

8 MR. LIVERMORE: Yes, it is.

9 MR. CAVALLUZZO: And generally
10 speaking what is the responsibility of the
11 ambassador?

12 If you want, if you have the
13 legislation in front of you, you can look at tab
14 7, in particular section 13.

15 MR. LIVERMORE: Yes. Basically
16 the essence of it is there in subsection 2, which
17 is called "Management and Direction". The basic
18 role of the head of mission is to manage
19 coherently all of the interests of Canada in that
20 country.

21 MR. CAVALLUZZO: And in respect of
22 that role, is Mr. Pillarella, or any other
23 ambassador, promoting only the interests of
24 Foreign Affairs Canada?

25 MR. LIVERMORE: No. The role of

1 head of mission is to promote all of the programs
2 of Canada in a particular country.

3 MR. CAVALLUZZO: For example, if
4 we have an Immigration Canada person, or if we
5 have liaison officers from different agencies, and
6 so on and so forth, Mr. Pillarella as being the
7 representative of Canada in Syria would be
8 responsible for the guidance and supervision of
9 these people?

10 MR. LIVERMORE: He would be
11 responsible for the overall management and
12 direction of that body. It varies enormously, as
13 you can appreciate, from post to post, exactly the
14 complement of staff that we might have at a
15 mission, exactly what our interests might be. But
16 in any event, the head of mission is accountable.

17 MR. CAVALLUZZO: We are going to
18 hear in the evidence that there was a consular
19 official in Damascus by the name of Mr. Leo Martel
20 who will be testifying in public.

21 As a consular official, Mr. Martel
22 presumably would be responsible to Mr. Pillarella?

23 MR. LIVERMORE: Yes. Leo Martel
24 at the time had two main responsibilities. He was
25 the head of the management or the administration

1 section of the embassy and head of the consular
2 part of the administration at the embassy, and he
3 would be accountable directly to Mr. Pillarella
4 for that.

5 MR. CAVALLUZZO: At the same time,
6 presumably, he would also be responsible to head
7 office in Ottawa?

8 MR. LIVERMORE: That's basically
9 the way the system works. Not every dealing at an
10 embassy goes through the Head of Mission. Each
11 section of the embassy, and that pertains to
12 government departments like Immigration or Defence
13 or anything else, have their own links to their
14 own department and day-to-day activities are
15 generally carried out in coordination with
16 relevant Ottawa departments.

17 MR. CAVALLUZZO: Now, in terms --
18 if you could just be clear for us -- in terms of
19 the divisions or bureaus in Ottawa to whom Mr.
20 Martel would be responsible, presumably Consular
21 Affairs would be one?

22 MR. LIVERMORE: Yes.

23 MR. CAVALLUZZO: The functional
24 bureau. And at the same time the geographic
25 bureau, what we referred to before as Africa and

1 the Middle East, so they may play a role in terms
2 of guiding Mr. Martel; is that correct?

3 MR. LIVERMORE: Yes.

4 MR. CAVALLUZZO: Now, you also
5 refer in your statement to non-resident staff in
6 paragraph 9. Could you explain that to us? What
7 is "non-resident staff"?

8 MR. LIVERMORE: Foreign Affairs
9 has diplomatic relations with a lot of countries,
10 but some departments and agencies of the Canadian
11 government don't have the staff abroad to cover
12 every mission that we have with a dedicated staff
13 member. So what they do instead is station an
14 individual at a mission and then have that person
15 cover other missions out of that one central hub.
16 It's called a hub in a hub-and-spoke pattern.

17 MR. CAVALLUZZO: In your statement
18 you refer to liaison officers representing CSIS,
19 the RCMP, and Canadian Armed Forces. What you
20 seem to be saying is these liaison officers from
21 these agencies may be located in another city,
22 however periodically they may be in Damascus?

23 MR. LIVERMORE: Yes.

24 MR. CAVALLUZZO: And that as a
25 result of that, they would be guided under the

1 management of Mr. Pillarella, who is the
2 Ambassador?

3 MR. LIVERMORE: Yes.

4 MR. CAVALLUZZO: And just in terms
5 of -- you talk about the Head of Mission, and I am
6 quoting now in the last sentence. You say:

7 "They are expected in respect
8 of their activities, when
9 visiting another post, to
10 report to the Head of Mission
11 and be guided by his
12 instructions while carrying
13 out home agencies'
14 responsibilities."

15 Just a hypothetical question.
16 What does that mean, "be guided by"? In other
17 words, is it possible that there may be a dispute
18 between the liaison officer, wherever he or she
19 may come from, and the Head of Mission? In that
20 case, who would resolve the dispute as to what
21 should be done in Damascus or in any other
22 international city in which we have an embassy?

23 MR. LIVERMORE: Well, I can't
24 speak for Damascus, of course, and I am hesitant
25 to get into speculation, but the general situation

1 that you find yourself in, for example, as I found
2 myself in from Guatemala, I had multiple
3 accreditations of individuals, mainly resident in
4 Mexico City, who then came in to cover the Central
5 American countries. It was my general practice to
6 see them, when they arrive, and to try to give
7 them an overview of what was happening in the
8 country.

9 The instructions might be
10 something that one might consider fairly trivial.
11 For instance, in Guatemala, there are a lot of
12 concerns about safety, personal safety. So I
13 would instruct people, "Here's where you go;
14 here's where you don't go." That I would consider
15 to be, with all due respect to the other agencies,
16 an instruction.

17 MR. CAVALLUZZO: Or "Don't drink
18 the water"?

19 MR. LIVERMORE: That's another
20 one, yes.

21 MR. CAVALLUZZO: Okay.

22 MR. LIVERMORE: As for dispute, I
23 am sure that there are the possibilities for
24 dispute, but these are -- these could be headed
25 back to Ottawa for settlement on the assumption

1 that if they ever got to be serious.

2 MR. CAVALLUZZO: Okay. But
3 presumably, in theory, in any event, under the
4 legislation, the Head of Mission is the
5 representative of Canada in that country and
6 presumably he or she ultimately, in theory, has
7 the last say --

8 MR. LIVERMORE: Yes.

9 MR. CAVALLUZZO: -- is that
10 correct? Okay.

11 Now, in paragraph 10 you talk
12 about the supervision and guidance given by the
13 Head of Mission. Maybe, if you could just
14 describe that for us? Obviously you are talking
15 about the consultation that is done with head
16 office in terms of carrying out that mandate?

17 MR. LIVERMORE: Of course, once
18 again, the specific objectives of Canada vary
19 enormously from one country to the next, and there
20 usually is either an annual exercise, or something
21 similar to that, where guidance is given as to
22 what our interests are in that country, what
23 programs we are promoting, et cetera. That
24 guidance comes to the Head of Mission via the
25 geographic branch, bureau, division, in Foreign

1 Affairs.

2 It's not simply that branch's
3 view. That branch has presumably gone out,
4 consulted widely in Ottawa to gather information
5 on the wide gamut of interests that we might
6 have -- wide gamut of programs that we might
7 have -- so they are factoring all of this, in
8 theory, into the equation, and then advising the
9 Head of Mission on what that Head of Mission
10 should be doing by way of objectives.

11 MR. CAVALLUZZO: Now, in terms of
12 the Head of Mission, of course, that's the person
13 on the front lines, and I would think that the
14 government has to rely upon the Head of Mission in
15 order to determine who the key people are within
16 the foreign country in terms of decision-making.

17 MR. LIVERMORE: It is basically
18 left to the Head of Mission to manage the
19 day-to-day tactical considerations on the ground.
20 Ottawa, if you could, if you want to put it this
21 way, sets the strategy or the strategic
22 directions. Heads of Mission are asked to work
23 out the tactics on the ground and they are held
24 accountable for the results that they achieve.

25 MR. CAVALLUZZO: And not only

1 knowing the key decision-makers in the country but
2 also, as you put in your statement, the Head of
3 Mission is really the interpreter of the
4 conditions in that country so that Ottawa is
5 properly apprised of what the political and
6 economic conditions are?

7 MR. LIVERMORE: Yes.

8 MR. CAVALLUZZO: Okay. Now,
9 moving on to what you have referred to as the
10 management principles in Foreign Affairs. You
11 talk about horizontal and vertical coordination.
12 I wonder if you might explain to us initially what
13 horizontal coordination is?

14 MR. LIVERMORE: Well, basically,
15 you saw in the organizational chart, a number of
16 branches which exist, and there's a reporting
17 responsibility to each of them.

18 Horizontal coordination is the
19 idea that divisions, or even individuals, should
20 consult widely across a number of branches to try
21 to work out consensus on courses of action in
22 advance of pushing issues up the line, as we
23 sometimes say.

24 MR. CAVALLUZZO: Okay. And
25 vertical coordination; what do you mean by that?

1 MR. LIVERMORE: Basically, by
2 "vertical coordination," we mean that each person
3 in the organization, whether it's the desk officer
4 on a particular file or everyone up to the Deputy
5 Minister or the Minister, knows what is going on,
6 what our policy is.

7 MR. CAVALLUZZO: Okay. Now,
8 obviously in our government we have a number of
9 different departments, agencies, crown
10 corporations, and so on. However, when we are
11 dealing with a foreign nation, you state that one
12 of the key principles is that there is coherence
13 within Foreign Affairs and a "whole of government"
14 approach.

15 What do you mean by that, in terms
16 of a "whole of government" approach to Foreign
17 Affairs?

18 MR. LIVERMORE: By "whole of
19 government", I mean that when we decide to take
20 action with respect to particular issues, in
21 theory, that we have consulted widely within
22 government, we have found out what views are, what
23 the pros and cons are, we have assessed
24 everything, and that basically to the extent that
25 we can we have assured that there is coherence

1 government-wide.

2 It also means that when there are
3 assets of some agency which could be brought into
4 play to help foreign policy on the other hand,
5 that those assets are weighed as well.

6 MR. CAVALLUZZO: We do have a
7 number of, as I said, agencies in the Canadian
8 government, all with separate and distinct
9 mandates. What do you do when as a result of
10 pursuing their separate mandates, different
11 agencies of government may have different views as
12 to what should happen in a foreign country?

13 What happens there where there is
14 no consensus?

15 MR. LIVERMORE: Basically there
16 are, without doubt, different interests, different
17 mandates at play. What happens in practical terms
18 is that in Ottawa these are worked out, to the
19 extent possible, at the divisional level. In
20 other words, individuals get together, and they
21 say here is what I think and here is what I think,
22 and together you end up with a coherent position.

23 If a coherent position is not
24 possible at that level, basically the issue is
25 pushed up to more senior people to make decisions.

1 I can recall, from when I first
2 joined the department in the 1970s, for example,
3 that trade with South Africa was a particularly
4 thorny issue that could never be resolved between
5 what was then the Department of Trade and Commerce
6 and what was then the Department of External
7 Affairs. Officials simply couldn't reach
8 agreement on an approach. It was always being
9 pushed up to Deputy Ministers and sometimes there
10 was an answer at the Deputy Minister level and
11 sometimes it went to cabinet.

12 That is basically what the
13 structure is for.

14 MR. CAVALLUZZO: So is it fair to
15 say the issue is pushed up and pushed up until
16 consensus is reached at whatever level, and then
17 Canada speaks with one voice?

18 MR. LIVERMORE: Well, I wouldn't
19 say until consensus is reached. I would phrase it
20 slightly differently: until a decision is made.
21 It may be that an issue that goes to cabinet, for
22 example, it may be that a Minister isn't
23 particularly happy with a cabinet decision and
24 isn't happy with the consensus. But I think the
25 Prime Minister says well, we have made a decision

1 and that's the end of the matter.

2 So it's basically pushing things
3 up until you end up with a coherent decision.

4 MR. CAVALLUZZO: In the next area
5 of your statement you talk about human rights, and
6 we have dealt with that to a certain extent. But
7 there is one thing that I want to ask you about.
8 This is now at paragraph 13 of your statement.

9 You say that:

10 "Human rights is a large and
11 complex issue of foreign
12 policy. It is a key
13 component of the third pillar
14 of Canadian foreign policy
15 which speaks to the promotion
16 of Canadian values and
17 culture."

18 I guess I should ask you: What
19 are the first two pillars? No doubt we have
20 covered them, but what are they?

21 MR. LIVERMORE: I think they are
22 the promotion of economic interests and the
23 promotion of security interests.

24 MR. CAVALLUZZO: Okay.

25 MR. LIVERMORE: I believe. This

1 goes back to a document of the mid-1980s; yes, I
2 think mid-1980s -- mid-1990s, excuse me.

3 MR. CAVALLUZZO: There is
4 reference in the next area that I want to ask you
5 about, and that is that you say -- and I am
6 picking up in the third or fourth sentence where
7 you say:

8 "This means that in all our
9 bilateral relationships, the
10 human rights record of a
11 country such as Syria is one
12 of the factors that Canada
13 takes into consideration in
14 determining the nature of the
15 overall relationship."

16 And then you go on:

17 "With respect to most
18 countries, Syria included,
19 there are annual human rights
20 reports which evaluate the
21 state of human rights and
22 which may note the variety of
23 actions where Canada pursued
24 human rights objectives."

25 Just stopping there, is this the

1 classified human rights report that you made
2 reference to earlier in your testimony?

3 MR. LIVERMORE: Yes, these are
4 classified reports.

5 MR. CAVALLUZZO: And I want to
6 know, these are reports that are presumably
7 prepared by the people on the front lines. For
8 example, in respect of Syria, the people in the
9 embassy in Damascus would be preparing these
10 reports?

11 MR. LIVERMORE: They would be
12 prepared by the mission, yes, under the authority
13 of head of mission, which means they might be
14 drawn from a variety of sections within the
15 embassy. But they are sent in from each mission.

16 MR. CAVALLUZZO: And in terms of
17 who has access to these reports, obviously you
18 have told us before that one would need a security
19 clearance to access the reports.

20 Does everybody in Foreign Affairs
21 who has a security clearance have access to these
22 annual reports?

23 MR. LIVERMORE: The way the system
24 works is that every Canada-based officer abroad --
25 I believe this is the case -- has at least a

1 secret clearance. Every person in the Pearson
2 Building, working in a geographic or functional
3 division, has at least a secret clearance.

4 They will receive a report one of
5 two ways. They will either be in receipt of a
6 report, because on the message line you will see
7 to so-and-so, or there will be a couple of ways of
8 expressing it. But they will either get it
9 directly -- and some of these reports are sent in
10 with quite an extensive addressee list -- or they
11 might get it by going to files because individuals
12 have access to files. This is normally the way
13 you get them.

14 MR. CAVALLUZZO: Now, are these
15 annual human rights reports also shared with other
16 agencies of government such as, say, the RCMP,
17 CSIS, DND?

18 MR. LIVERMORE: You are getting
19 into an area where my information is a bit dated.
20 We do share some of these reports, but I can't be
21 precise. I am not in the human rights area any
22 longer.

23 There is nothing particularly --
24 let me put it this way: there is nothing
25 particular about them that would preclude sharing

1 and there are ways that they can be shared. And I
2 believe when I spoke in the in-camera session, I
3 indicated there are other ways of sharing.

4 MR. CAVALLUZZO: You shouldn't
5 tell us what you told us in the in-camera session.

6 MR. LIVERMORE: Okay.

7 MR. CAVALLUZZO: That's a no-no.

8 The next area, you talk about
9 consular functions, and we really dealt with that
10 with Mr. Sigurdson.

11 So I would like to move now to
12 paragraph 16 and thereafter because you are
13 starting to get into a very particular description
14 of the Security and Intelligence Bureau.

15 Perhaps initially you could give
16 us a brief description, if we go back to the
17 corporate chart, as to what those three divisions
18 on the left-hand side of the ledger do, since you
19 are responsible for them as well as foreign
20 intelligence.

21 MR. LIVERMORE: Okay.

22 MR. CAVALLUZZO: That is the
23 security side of your responsibilities.

24 MR. LIVERMORE: Okay. This is tab

25 6?

1 MR. CAVALLUZZO: I am looking at
2 P-24 and I am looking at what Security Operations
3 and Personal Safety Division does, Corporate
4 Security Division, and so on.

5 MR. LIVERMORE: All right.

6 MR. CAVALLUZZO: Just give us a
7 very brief description of each of those, since we
8 are not going to be focusing on them.

9 MR. LIVERMORE: I should point out
10 this is slightly different than obtained in 2002,
11 because we took out of the top two divisions on
12 the right-hand side two functions and merged them
13 together into an Information and Technical
14 Security Division. So if I could start there?

15 MR. CAVALLUZZO: Yes.

16 MR. LIVERMORE: Information and
17 Technical Security Division deals with, on the one
18 hand, half of the division, computer security. In
19 other words, do we have a secure communications
20 system?

21 The other half deals with
22 technical security, which is basically
23 detecting -- how should I put it? -- things that
24 shouldn't be in embassies. That's one function.

25 MR. CAVALLUZZO: "Things that

1 shouldn't be in embassies"? Do you mean like
2 foreign spies? What do you mean by that?

3 MR. LIVERMORE: I am thinking
4 about electronic devices that shouldn't be in
5 embassies. That's their job.

6 The Corporate Security Division
7 generally deals with security policy. It's
8 involved with Treasury Board, for example, in
9 setting government-wide security policy. But the
10 main function in the Corporate Security Division
11 is personnel security. They keep all of the
12 personnel security records.

13 The Security Operations Division
14 is a fairly large division that deals with the
15 security of our physical structures abroad,
16 embassies abroad. They have responsibility, for
17 example, in the deployment of armoured vehicles,
18 the decisions on whether embassies abroad need
19 laminated glass on the windows, the local guards,
20 et cetera, et cetera.

21 MR. CAVALLUZZO: Okay. Now, when
22 we come to the Foreign Intelligence Division, if
23 we could come to the last tab in the corporate
24 chart, P-24, maybe you could deal with
25 intelligence coordination briefly, since we are

1 once again going to be focusing on the other side
2 of the ledger.

3 Intelligence coordination, what
4 does that particular part of the division do?

5 You have a lot of intergram
6 program assistance, interview officers. What is
7 that all about?

8 MR. LIVERMORE: Okay, I see where
9 we are.

10 We have had for a period of about
11 50 years in the department something we call the
12 interview program, where we interview Canadians
13 who have done interesting things internationally
14 and who might have something to tell us.

15 MR. CAVALLUZZO: You haven't
16 called on me.

17 --- Laughter / Rires

18 MR. LIVERMORE: We will next time.

19 MR. CAVALLUZZO: Okay.

20 MR. LIVERMORE: And they produce,
21 basically, classified reports.

22 MR. CAVALLUZZO: Finally, the
23 client relations officers, the other side, that is
24 client relations with Mr. Morland as the head.
25 What did that part of the division do?

1 MR. LIVERMORE: If I could --

2 MR. CAVALLUZZO: Please do.

3 MR. LIVERMORE: -- consult the
4 redacted statement for a second?

5 MR. CAVALLUZZO: Yes.

6 --- Pause

7 Because I think I may have removed
8 my description of that function --

9 MR. CAVALLUZZO: Right.

10 THE WITNESS: -- from the redacted
11 version, if I can put it that way?

12 MR. CAVALLUZZO: Was it removed
13 for national security reasons?

14 MR. LIVERMORE: It is, yes.

15 MR. CAVALLUZZO: Then let us move
16 on.

17 In terms of -- now, I want to come
18 to the intelligence side, as you refer to it in
19 your paragraph 18, and we've talked about the
20 individuals involved, and so on, like Mr. Gould
21 and Mr. Solomon. Could you just describe -- you
22 say:

23 "ISI has several different
24 roles." (As read)

25 In paragraph 18. Could you tell

1 us what some of those roles are that you can tell
2 us in public?

3 MR. LIVERMORE: The basic job of
4 that -- well, one role is to coordinate -- I won't
5 go into this too much -- but to meet frequently
6 with the Privy Council Office and coordinate what
7 is Intelligence Policy government-wide.

8 MR. CAVALLUZZO: Right.

9 There's another role, though,
10 which is departmental, and that is as a client
11 service function, to work with various geographic
12 branches in the department, to seek to understand
13 what's going on in other countries.

14 MR. CAVALLUZZO: Okay. And in
15 paragraph 19, you talk about big "I" intelligence
16 and little "i" intelligence and what exactly your
17 people are involved in. Perhaps you could
18 describe that for us?

19 MR. LIVERMORE: Well, the word
20 "intelligence" is subject to a lot of confusion
21 and misunderstanding, in part because when the
22 word "intelligence" is used, people immediately
23 spring to the conclusion that we're talking about
24 covertly obtained information.

25 And I try to draw a distinction

1 between what I would call big "I" intelligence,
2 where you capitalize the word "Intelligence" to
3 draw attention that indeed the information comes
4 from covert means. It either comes from -- it
5 comes from wiretaps, it comes from agents, it
6 comes from some other source of an
7 intelligence-production cycle.

8 The mandate of Foreign Affairs,
9 though, is generally with the other meaning, the
10 small "i" intelligence, the uncapitalized word,
11 which we mean as information.

12 In other words, we gather
13 information from a variety of sources. In a
14 speech I did a few months ago, I said basically
15 that if you deal with -- if you look at
16 intelligence assessments that are produced by
17 intelligence agencies, about 90 percent of the
18 material in those assessments comes from
19 unclassified materials, basically Googling the
20 Internet.

21 So it's information, but it's
22 assembled in such a way that it produces
23 intelligence assessments.

24 So we're not in the business of
25 the covert "I"; we're in the business of the small

1 "i" intelligence.

2 MR. CAVALLUZZO: Right.

3 Now, in paragraph 21 -- and we've
4 dealt with this earlier -- in ISI, there are two
5 liaison officers; one from the RCMP and another
6 from CSIS?

7 MR. LIVERMORE: Yes, that's
8 correct.

9 MR. CAVALLUZZO: And just
10 geographically, if you could just set the piece to
11 us, where are these LO, or liaison officers,
12 located? Are they right in the ISI geographic
13 section of Foreign Affairs?

14 MR. LIVERMORE: In my section of,
15 or in my geographic space in the Foreign Affairs
16 building, outside of my office, if you turn right,
17 going out my door --

18 MR. CAVALLUZZO: Right.

19 MR. LIVERMORE: -- there is my
20 assistant, Belinda Grover. The first office you
21 come to is the CSIS office, or the office occupied
22 by the CSIS liaison officer.

23 The office on the other side,
24 going down the corridor by one, is the RCMP
25 liaison officer.

1 If you go in the other direction,
2 what you encounter is the office that Jim Gould
3 once lived in, and then one office down from him
4 is Scott Heatherington.

5 MR. CAVALLUZZO: Right. And
6 Jonathan Solomon, at the material time, where
7 would he have been?

8 MR. LIVERMORE: He was in the same
9 general section --

10 MR. CAVALLUZZO: Right.

11 THE WITNESS: -- on the other
12 side of Mr. Heatherington.

13 MR. CAVALLUZZO: Okay. And is it
14 fair to say that the relationship between the Los
15 and the ISI people, as time went on, grew closer,
16 inevitably and then presumably in any workplace.

17 MR. LIVERMORE: I think it was a
18 natural work relationship.

19 MR. CAVALLUZZO: Right.

20 And in paragraph 21 you say that:

21 "These officers, these Los,
22 provide classic liaison
23 functions." (As read)

24 What is that? What do you mean by
25 that? So that we understand that?

1 MR. LIVERMORE: The basic function
2 is a two-way flow of information and at times
3 requirements from various organizations.

4 In both cases, it's not
5 necessarily the case that what they might be
6 seeking of the department is to be found in my
7 bureau. They might want to consult the geographic
8 bureau about a particular problem. They might
9 want to consult someone else about a particular
10 problem.

11 In turn, we turn to them when we
12 need to consult about an issue where we might find
13 the answer in the RCMP or in CSIS.

14 MR. CAVALLUZZO: Now, in terms of
15 access to information that these Los would have,
16 are there any rules concerning the access they
17 would have to the files you have in ISI?

18 MR. LIVERMORE: Generally
19 speaking, they don't have access to our files.
20 They can be given access to individual pieces of
21 work. That's the understanding that they have.

22 They do have access to our SIGNET
23 "D" computer system, though, and they have access
24 to other systems that we have as well.

25 MR. CAVALLUZZO: Do they have

1 access to the C4 system?

2 MR. LIVERMORE: No, they don't.

3 MR. CAVALLUZZO: And in terms of
4 the understanding they may have access to
5 particular documents, you say.

6 What is the understanding? Can
7 they just go and get it, or do they have to seek
8 permission from somebody within ISI to get that
9 kind of document?

10 MR. LIVERMORE: It depends on the
11 document in question. Very often the officer
12 might be seeking to understand a particular issue,
13 for example, with respect to a geographic area.

14 The LO might go outside the bureau
15 and go and consult that bureau directly. If that
16 bureau has useful information, whether it's
17 unclassified or classified, they're authorized to
18 hand it over.

19 They might find that information
20 with us. The reality is that all of these
21 departments are complicated places.

22 It's useful to have somebody who
23 actually knows where to find the right people at
24 the right time. So this is what the job of the LO
25 is.

1 MR. CAVALLUZZO: And as you say,
2 sometimes DFAIT needs information, or seeks
3 information from CSIS or the RCMP, and there's a
4 bilateral relationship as far as that's concerned?

5 MR. LIVERMORE: There is, yes.

6 MR. CAVALLUZZO: Okay. Now, in
7 paragraph 22, you deal with the interview section,
8 which we have already reviewed.

9 At paragraph 23, you talk about an
10 assessment staff that we can certainly leave to
11 counsel to read.

12 Finally, I just want to deal with
13 what you refer to in your final paragraphs in
14 terms of the intelligence functions, and that is
15 that you're a client-service bureau.

16 What do you mean by that in terms
17 of client service? Are we talking about a service
18 to all divisions and parts of Foreign Affairs; is
19 that what we're talking about there?

20 MR. LIVERMORE: Well, in
21 principle, we provide support assistance to the
22 entire Department, which at this time included
23 International Trade as well. So both on the
24 foreign policy side and in the International Trade
25 side.

1 And in tangible terms, this means,
2 for example, that an individual or a division
3 might come to us and say that they're having
4 difficulty tracking a particular peace process, in
5 discovering what is the state of play. We would
6 then try to consult and obtain information which
7 would help them understand that.

8 MR. CAVALLUZZO: Just finally, in
9 regard to your overview, do you also provide
10 service to other departments of the Government of
11 Canada or only to Foreign Affairs Canada?

12 MR. LIVERMORE: We -- generally
13 speaking, only to Foreign Affairs. We have on a
14 rare occasion been asked to provide some support
15 to CIDA, but not very often.

16 MR. CAVALLUZZO: Okay. That
17 concludes your helpful description for us of
18 Foreign Affairs and S & I.

19 Now, I'd like to move to the
20 particular fact situation of Mr. Arar, and if we
21 could start, Mr. Livermore, with Volume 1 of the
22 documents?

23 --- Pause

24 At the outset of this part of his
25 evidence, Mr. Commissioner and counsel, just let

1 me describe what I am going to intend to do, and
2 that is I will have Mr. Livermore refer to
3 documents that he either received or he sent; but
4 at the same time, there are going to be certain
5 documents that I'm going to briefly take him
6 through in order to give context to his evidence,
7 because we will be having other witnesses coming
8 subsequently who will be testifying in detail in
9 respect of those documents. And at that point in
10 time, I will advise you that that is what we are
11 doing.

12 I wonder if we could start then,
13 Mr. Livermore, with October 10, and in particular,
14 at tab 61 of the book.

15 Just to give context to this,
16 we're now at October 10. We have heard evidence
17 that Mr. Arar was detained in New York City on
18 September 26 of 2002, was held there for a period
19 of time during which he had one consular visit on
20 October 3.

21 Then on October 8, Mr. Arar was
22 removed from the United States, and at this point
23 in time, on October 10, the Canadian government
24 doesn't really know where Mr. Arar is, speculates
25 that he could be in either of two countries, and

1 it would appear on October 10 that you come into
2 the play with this particular e-mail.

3 And I'm wondering, first of all,
4 before we get to the substance of the e-mail, if
5 we can just translate certain things. Obviously
6 Belinda Grover is the administrative assistant in
7 ISD.

8 We see constant reference to this
9 "EXTOTT". I wonder if you might help. What does
10 that mean? "EXTOTT-ISI"?

11 MR. LIVERMORE: That is old
12 External Affairs Canada. The old "EXTOTT"
13 address. So that simply -- "EXTOTT" means simply
14 it's going to Foreign Affairs Canada and it's
15 followed by the acronym of the division to which
16 it's addressed.

17 MR. CAVALLUZZO: Okay. And we see
18 a number of people in ISI who are copied on this.
19 We see that in effect this is your message to
20 Damascus, in particular to Mr. Martel, where you
21 are saying that, in the second-last paragraph:

22 "Martel has also been asked
23 to locate Arar and determine
24 as quickly as possible his
25 condition and situation.

1 Grateful you make requests
2 using your own resources to
3 determine the location,
4 status and condition of
5 Arar."

6 The first question that I would
7 have is, why are you getting involved in the Arar
8 case, if it is a consular case?

9 MR. LIVERMORE: Well, as I
10 indicated earlier, our job is to come into the
11 picture when another bureau has sought our advice
12 or requires our assistance, or if, in some
13 circumstance, we can be helpful.

14 It would be nice to say that
15 Foreign Affairs had such a large staff that either
16 consular or we could do what we liked and we
17 didn't have to work with others, but the reality
18 is that we used to help consular with some of
19 their files and the geographic division used to
20 pitch in as well.

21 It's just a way that we have to do
22 business. So we had entered the scene.

23 I can't be certain of the exact
24 date, but we entered the picture essentially when
25 Mr. Arar could not be found, and we consulted the

1 consular bureau because both of us had a common
2 objective, it was finding out where he was.

3 The fact that I sent this message
4 isn't that consequential in the sense that my
5 recollection is, there was almost an identical one
6 going out of consular to a different post.

7 MR. CAVALLUZZO: Right. And we'll
8 come to that.

9 MR. LIVERMORE: Okay.

10 In any event, what is done on
11 this, as you see from the header, it's copied to
12 the consular bureau and to the people involved in
13 that, and in return, when they send out a message,
14 they copy us.

15 MR. CAVALLUZZO: Okay. Now, when
16 you see that it's possible that he has been sent
17 to Syria, in light of your background in human
18 rights and so on, are any red flags raised in your
19 mind at this time?

20 MR. LIVERMORE: I think that the
21 only -- I've served in Chile, I've served in
22 Guatemala, I've done consular work around the
23 world. I would not say that the red flag went up.

24 I would, however, say that in this
25 business perhaps an amber flag went up, and that

1 is that one always has to be a bit on the prudent
2 side.

3 MR. CAVALLUZZO: And why the amber
4 flag? Why would any flag go up, just because
5 you're dealing with Syria?

6 MR. LIVERMORE: Let me be
7 specific. I'm not -- it wasn't particularly Syria
8 that I would have been necessarily concerned
9 about. If you had indicated to me that he was
10 sent to about 175 countries, an amber flag would
11 have gone up just as a precautionary element prior
12 to knowing anything else about the case. That's
13 simply the way we work.

14 MR. CAVALLUZZO: Okay. Now, if
15 you move now to tab 175.

16 THE COMMISSIONER: Just before
17 leaving that -- sorry, Mr. Cavalluzzo -- the last
18 sentence in the second-last paragraph, it says:

19 "ISI has been informed that
20 he has been flown to Syria."

21 Is that something that can be
22 asked, about what that relates to, or is that...

23 MR. CAVALLUZZO: Do you see that?

24 THE COMMISSIONER: If you have any
25 objection to it because of what the information

1 is, I'd like to hear it, but...

2 MR. LIVERMORE: I can't be
3 certain. At that stage my understanding of that
4 was that, where ISI got the information was if I'm
5 not mistaken, from the RCMP liaison office in
6 Washington. I think that's where that -- but I'd
7 have to refresh my memory with the chronology.

8 MR. CAVALLUZZO: We'll have to
9 clarify that, Mr. Commissioner. That is --

10 MS McISAAC: I believe Mr. Pardy
11 can clarify that. That was the general
12 information Mr. Pardy, I believe, at that time had
13 as well.

14 MR. COMMISSIONER: Okay.

15 MR. CAVALLUZZO: We will deal with
16 Mr. Pardy with that.

17 THE COMMISSIONER: Thank you.

18 MR. CAVALLUZZO: Tab 175 is really
19 a series of e-mails starting from Mr. Pardy, in
20 fact, on October 16; do you see that at tab 175?

21 THE COMMISSIONER: Is that
22 volume 2?

23 MR. LIVERMORE: Yes.

24 MR. CAVALLUZZO: Yes, it is.

25 And you are copied on these

1 e-mails?

2 MR. LIVERMORE: Yes.

3 MR. CAVALLUZZO: I just want to
4 give context to this. If you go to the third page
5 in, you will see -- this is at -- do you have
6 that?

7 MR. LIVERMORE: Oh, the third
8 page? Yes.

9 MR. CAVALLUZZO: Yes, the third
10 page in. Yes, that's it.

11 MR. LIVERMORE: Yes.

12 MR. CAVALLUZZO: Just to give some
13 context. This e-mail indicates, first of all,
14 that Mr. Arar's situation is becoming a subject of
15 media attention; is that correct?

16 MR. LIVERMORE: Yes.

17 MR. CAVALLUZZO: Media lines and
18 so on.

19 And at the bottom of page 3, we
20 see that there's a report in the globe and mail
21 from Sean Fine. It says:

22 "...phoned BCM to obtain
23 update. He indicated that he
24 had interviewed Ambassador
25 Celucci earlier today, and

1 that the Ambassador had made
2 the following comment (rough
3 summary):

4 "I think that the US INS
5 authorities acted properly in
6 deporting Mr. Arar to Syria.
7 You should talk to your own
8 local (sic) people..."

9 Or that should be:

10 "...to your local people who
11 should know the reasons."

12 Do you recall that, at that point
13 in time, very early on, that Mr. Cellucci, the
14 Ambassador to the United States, was in effect
15 taking the position to Canadian reporters, "Well,
16 ask your own people as to why Mr. Arar was removed
17 from the United States." Do you recall that?

18 MR. LIVERMORE: I do recall that,
19 yes.

20 MR. CAVALLUZZO: And as a result
21 of that, do you -- maybe if we just move now to
22 tab -- going back one volume, because your e-mails
23 for some reason are dated and sometimes uploaded
24 weeks after, which makes our life difficult. But
25 in any event, it is challenging.

1 If you go back to tab 84, in terms
2 of time that is October 16th. Do you have that?

3 MR. LIVERMORE: Yes.

4 MR. CAVALLUZZO: We see much of
5 that is redacted, but do you see in the bottom
6 paragraph there, it states -- or first of all, you
7 see in the distribution on the left-hand side that
8 you received a copy of this particular memorandum
9 from Mr. Pardy through to MINA.

10 MR. LIVERMORE: Yes.

11 MR. CAVALLUZZO: And I understand
12 that MINA is the Minister, Mr. Graham?

13 MR. LIVERMORE: It's the
14 Minister's office.

15 MR. CAVALLUZZO: And we see that
16 reference is made in the bottom paragraph to
17 Mr. Cellucci's statements that we have just
18 reviewed. And then at paragraph 2 on the second
19 page, we see that it says:

20 "The RCMP indicated they will
21 provide DFAIT with a response
22 by close of business Thursday
23 16 October. At that time, we
24 will provide a memorandum
25 with suggestions as to what

1 should be done to deal
2 further with this matter. In
3 the meantime, we are in
4 direct contact with Mr.
5 Arar's wife (who is still in
6 Tunisia) and his brother here
7 in Canada."

8 At this point in time, as the ISD
9 were you involved in any meetings with the RCMP
10 concerning these statements that Cellucci had
11 made?

12 MR. LIVERMORE: At this stage --
13 may I consult Mr. Garvie's report on the
14 chronology, the redacted report?

15 MR. CAVALLUZZO: Certainly. I
16 don't know if we have it here. I think we do.

17 MR. LIVERMORE: We were in touch
18 with the RCMP, but I want to be sure of the time
19 lines for that consultation.

20 MR. CAVALLUZZO: This is Exhibit
21 P-19.

22 --- Pause

23 MR. LIVERMORE: What I am looking
24 for here is the first occasion on which we had a
25 meeting with the RCMP on this issue. I note that

1 there is a meeting on the 16th of October, which
2 we hosted, attended by the RCMP.

3 At that time we had asked --
4 during the meeting, a request was made by Mr. Gar
5 Pardy, who was then Director General of the
6 Consular Affairs Bureau, for further information.

7 So this is where we, as a
8 department, are going back to the RCMP and asking
9 for some clarification of Ambassador Cellucci's
10 comments.

11 MR. CAVALLUZZO: Which page were
12 you referring to in the redacted Garvie report?

13 MR. LIVERMORE: Page 28.

14 MR. CAVALLUZZO: At the top there,
15 October the 16th?

16 MR. LIVERMORE: Yes.

17 MR. CAVALLUZZO: And did you
18 attend that meeting along with Mr. Pardy?

19 MR. LIVERMORE: I believe I did.

20 MR. CAVALLUZZO: So that what
21 happens is that on October the 15th, we have
22 Cellucci saying to the Canadian reporters, "Well,
23 if you want to know what happened, ask your own
24 people."

25 MR. LIVERMORE: That's right.

1 MR. CAVALLUZZO: And DFAIT holds a
2 meeting on October 16th with the RCMP, attended by
3 you and Mr. Pardy?

4 MR. LIVERMORE: That's right.

5 MR. CAVALLUZZO: And then the RCMP
6 promises to get something back to you by the close
7 of business on October 18th?

8 MR. LIVERMORE: That's, I think,
9 the sequence, yes.

10 MR. CAVALLUZZO: And then in terms
11 of time, if you go to, at tab 96 now, we are still
12 looking for Mr. Arar and at tab 96 we have a
13 CAMANT note, dated October the 17th, where Mr.
14 Pillarella, the ambassador in Damascus, or Syria,
15 is telling Mr. Pardy and others, including
16 yourself, that he has a meeting scheduled for next
17 Sunday to discuss the subject matter and there is
18 the response.

19 MR. LIVERMORE: Yes.

20 MR. CAVALLUZZO: So things seem to
21 be in progress.

22 MR. LIVERMORE: Yes.

23 MR. CAVALLUZZO: In terms of time,
24 could we move on now to tab 123.

25 --- Pause

1 MR. CAVALLUZZO: The first
2 document -- and once again we see that the
3 document is sent to JPD, who we understand is Gar
4 Pardy, and ISD, who is you.

5 MR. LIVERMORE: That's right.

6 MR. CAVALLUZZO: This is from
7 Damascus, C4, and that's from Mr. Pillarella.

8 Is that correct?

9 MR. LIVERMORE: Well, it's from
10 the Damascus C4 account. I think in that mission
11 there is only one account, but it is signed
12 "Pillarella".

13 MR. CAVALLUZZO: It is signed by
14 Mr. Pillarella.

15 MR. LIVERMORE: He sent it, yes.

16 MR. CAVALLUZZO: This is dated
17 October 22nd, and there are some redactions here.

18 I think my friend, the counsel for
19 the Attorney General, will agree we can disclose
20 the name that is redacted here because it's
21 unredacted several other places elsewhere?

22 MS McISAAC: We would actually
23 prefer that that not be disclosed. Not that we
24 are trying to "hide" the name, but the more it's
25 bandied about in public, the more the effect would

1 be with respect to the ability of people currently
2 dealing with matters in Syria to continue their
3 interlocutories with Syrian officials.

4 So I would prefer if we avoided
5 using the name, if at all possible.

6 MR. CAVALLUZZO: The problem I
7 have with that is this gentleman has retired.

8 MS McISAAC: He may have retired
9 but the person who is now acting in his capacity
10 would presumably have concerns, or we believe
11 would have concerns, I am advised would have
12 concerns, about the use of -- the fact that there
13 were these discussions would affect the ability of
14 Canadian officials now dealing with Syrian
15 officials to have the same level of trust and
16 candour in their discussions.

17 THE COMMISSIONER: I am not sure
18 if I understand. You are suggesting it is covered
19 by a claim for national security confidentiality
20 or is it not?

21 MS McISAAC: I have to concede,
22 sir, that the name has been released in some of
23 the access to information request releases.

24 THE COMMISSIONER: So somebody
25 made a decision in those requests.

1 MS McISAAC: Somebody made a
2 decision in those requests.

3 As I have said on many occasions,
4 sir, this is a difficult area. It is not a
5 science; it is an art. And I am requesting
6 respectfully that if we can avoid actually using
7 the name, that would be preferable.

8 THE COMMISSIONER: Well, as I
9 understand, my mandate is to express an opinion
10 and to preclude disclosure of information over
11 which there is a claim for NSC. I think I hear
12 you saying there isn't here but there are other
13 factors that should lead me not to disclose the
14 name.

15 MS McISAAC: That would be
16 correct, sir. I cannot say to you that this name
17 has never been disclosed because I know, in fact,
18 it has.

19 THE COMMISSIONER: Right.

20 MS McISAAC: But I am asking you,
21 in the interests of continued facilitation of
22 activities that Canada may have on behalf of
23 Canadians with the Syrian government, if it is not
24 necessary -- and I don't believe it is -- if we
25 could simply avoid using the name any more than

1 necessary.

2 MR. CAVALLUZZO: If I can just
3 respond briefly, Mr. Commissioner, your mandate in
4 the Order in Council is to maximize public
5 disclosure so long as national security concerns
6 are protected. It would appear that national
7 security concerns are protected, and I would think
8 that the public is entitled to know this
9 gentleman's name at this point in time.

10 THE COMMISSIONER: That would seem
11 to me to be as a matter of sort of interpretation
12 of my mandate, the position. So that if any party
13 here wants to bring out the name, I don't have --
14 I think in furtherance of maximizing disclosure,
15 if it's not subject to an NSC claim, then it
16 should be disclosed.

17 That said, I hear what you are
18 saying, Ms. McIsaac. If the name is referred
19 to -- I don't know that it needs to be "bandied
20 about". I don't know if there is any advantage to
21 that.

22 MR. CAVALLUZZO: I promise I will
23 just use it once.

24 THE COMMISSIONER: Okay.

25 MS McISAAC: Why not use the

1 title, sir?

2 THE COMMISSIONER: Ms Edwardh I
3 expect is going to want to know what the name is.
4 I am not in a position, if I am correct, to make
5 an order precluding disclosure of the name.

6 MS EDWARDH: Thank you,
7 Mr. Commissioner.

8 You are indeed correct, because
9 for me both the title and the name are blacked out
10 in this particular document.

11 So on those, although I have a
12 sense of who this person is from other documents
13 where persons are named, in my respectful
14 submission, the fact that it may be the same
15 person is indeed relevant and there may be some
16 significance to that contact and the information
17 that is received.

18 So I, for one, would very strongly
19 request that it be made public.

20 THE COMMISSIONER: Why don't we
21 deal with it this way, Mr. Cavalluzzo. If you
22 want to, if the name is mentioned, it can then be
23 determined if it is the same person that's
24 mentioned in other documents.

25 I don't know that we need to bandy

1 the name about, but certainly I am content, if you
2 feel it's necessary, that the name be led through
3 the witness.

4 MR. CAVALLUZZO: I think it is
5 necessary because his name comes up several times
6 subsequently, and I think that --

7 THE COMMISSIONER: We will handle
8 it in that fashion.

9 MR. CAVALLUZZO: Okay.
10 This meeting that Mr. Pillarella
11 is having in Damascus, do you know who he is
12 having it with?

13 MR. LIVERMORE: Yes, I do.

14 MR. CAVALLUZZO: And who is that?

15 MR. LIVERMORE: It is -- may I
16 ask?

17 Mr. Commissioner, should I proceed
18 with indicating the name and title?

19 THE COMMISSIONER: Yes, you can.

20 MR. LIVERMORE: He is having the
21 meeting with General Khalil, the head of Syrian
22 Military Intelligence.

23 MR. CAVALLUZZO: How do you spell
24 that? K-H-A ...

25 MR. LIVERMORE: I think it's

1 spelled -- because it is blacked out on my copy --
2 K-H-A-L-I-L, I think.

3 MR. CAVALLUZZO: And you say that
4 he is the head of Syrian Military Intelligence in
5 Syria at that point in time?

6 MR. LIVERMORE: Yes.

7 MR. CAVALLUZZO: And just from
8 your background, the Syrian Military Intelligence
9 is one of the important security agencies in
10 Syria?

11 MR. LIVERMORE: I am not an expert
12 in Syria. I really couldn't address that.

13 MR. CAVALLUZZO: Okay. In any
14 event, in terms of the matter of the meeting,
15 Mr. Pillarella is relating, in the second
16 paragraph:

17 "... that Mr. Arar appeared
18 at the Jordan/Syrian border
19 yesterday ..."

20 Which would have been October
21 21st.

22 "... without warning,
23 escorted by Jordanian
24 officials who handed him
25 over."

1 And it goes on in the third
2 paragraph to state:

3 "According to ... Arar has
4 apparently already admitted
5 that he has connections with
6 terrorist organizations ...
7 and they would continue to
8 interrogate him."

9 As far as that's concerned, did
10 that not strike you as pretty odd that the Syrian
11 Military Intelligence seemed to have gotten
12 information very quickly, like overnight?

13 Did that strike you as odd in
14 terms of the experience that you had in terms of
15 dealing with these kinds of cases?

16 MR. LIVERMORE: I can't say that I
17 had a view one way or the other.

18 MR. CAVALLUZZO: Okay. It goes on
19 in the fourth paragraph, and it states -- this is
20 the same person:

21 "... he was ready to
22 cooperate with us in every
23 way possible and, on a very
24 exceptional basis ... He
25 repeated several times that

1 this was a very exceptional
2 measure and was doing it
3 because he did not wish to
4 mar Canada/Syria relations on
5 the account of an alleged
6 terrorist."

7 In terms of the relations between
8 Canada and Syria at this point in time, I
9 understand that Syria was very interested in
10 having a close relationship with Canada,
11 particularly in terms of trade and investment.

12 Is that correct?

13 MR. LIVERMORE: I can't say that
14 it was in terms of trade and investment, no.
15 Somebody from the geographic division would have
16 to address that more precisely.

17 I do know that Syria was
18 interested in a close relationship with Canada
19 because of the overall Middle East peace process
20 which was then going on, and we played a fairly
21 prominent role in one of the working groups of the
22 peace process.

23 MR. CAVALLUZZO: And at that point
24 in time there were threats of an Iraqi war, were
25 there not at that point in time? And Syria

1 presumably was obviously interested in maintaining
2 a close relationship with Canada, in particular,
3 in light of what the winds were coming from south
4 of the border in respect of a war with Iraq?

5 MR. LIVERMORE: Well, again, I
6 think you would have to consult an expert. Our
7 position on that particular conflict was slightly
8 different than the American position, so what the
9 Syrians might be saying to the Americans was
10 different from what they would necessarily be
11 saying to us.

12 MR. CAVALLUZZO: Okay. And
13 finally, before we break, the last sentence that
14 Mr. Pillarella writes on the second page of this
15 note, he states:

16 "Finally ... has promised to
17 pass on to me any information
18 they may gather on Arar's
19 implication in terrorist
20 activities."

21 Is that a normal responsibility of
22 an ambassador when we are dealing with a country
23 that may not have as good a human rights record as
24 Canada: that the ambassador will receive
25 information from the Syrians in respect of their

1 interrogation of a Canadian citizen?

2 MR. LIVERMORE: Well, Ambassador
3 Pillarella, as I indicated earlier this morning,
4 he is the head of all Canadian programs. He is
5 not acting solely as a Foreign Affairs individual.

6 At this stage, I would describe
7 this message as one that invited more questions
8 than it answered in the sense that it was the
9 preliminary message, and certainly I would have to
10 put this in the context of what was going on in
11 2002.

12 It was not a very tranquil
13 situation in Canada vis-à-vis the security
14 situation. We were, in fact -- I guess it would
15 be about a week before, we had the Bali bombing.
16 We had gone through about a year of threats. We
17 were dealing with threats to Canadian missions
18 abroad.

19 I would think as a former head of
20 mission myself, I would think it would be natural
21 for a head of mission to wish to pass on to all
22 Canadian authorities any information they had on
23 terrorist activities.

24 MR. CAVALLUZZO: Right. And so
25 that what you are saying is that as the

1 representative of Canada, it was quite legitimate
2 of Mr. Pillarella to get any information relating
3 to Mr. Arar, that it was quite legitimate for him
4 to pass on that information to other agencies such
5 as the RCMP and CSIS?

6 MR. LIVERMORE: Yes, I would think
7 so.

8 MR. CAVALLUZZO: Thank you.

9 Mr. Commissioner, it is now time
10 to break. I am still going to continue on with
11 this tab, but it may be an appropriate time.

12 THE COMMISSIONER: All right. We
13 will take 15 minutes.

14 THE REGISTRAR: Please stand.
15 Veuillez-vous lever.

16 --- Upon recessing at 11:37 a.m. /

17 Suspension à 11 h 37

18 --- Upon resuming at 11:56 a.m. /

19 Reprise à 11 h 56

20 THE REGISTRAR: Please be seated.
21 Veuillez-vous asseoir.

22 MR. CAVALLUZZO: Mr. Livermore,
23 when we rose for the break, we were at tab 123. I
24 just want to take you through a few more pages of
25 that tab.

1 If you go to the fourth page, we
2 see the e-mail to Amman, of course in Jordan, with
3 similar requests attempting to locate Mr. Arar and
4 to discover his condition.

5 And as you stated, this message
6 was coming from Helen Harris, who is in the
7 consular affairs branch and not with ISI?

8 MR. LIVERMORE: Yes, that's
9 correct.

10 MR. CAVALLUZZO: And then the next
11 page -- this is for counsel's attention -- we have
12 the answer from the RCMP, which is a memorandum
13 dated October 18th from Mr. Pilgrim. These are
14 the answers to the questions which were posed at
15 the meeting that you attended with Mr. Pardy on
16 October 16th?

17 MR. LIVERMORE: Yes, I think so,
18 yes.

19 MR. CAVALLUZZO: Okay. And we
20 will be taking Mr. Pardy through that document
21 when he testifies on Tuesday.

22 If we could then move along in
23 terms of time, we see that Mr. Arar received his
24 first consular visit on October 23rd, if you go to
25 tab 130 in the next book of documents or volume.

1 --- Pause

2 MR. CAVALLUZZO: We are going to
3 have Mr. Martel testify to this as well as
4 Mr. Pardy. If you could just help us in terms of
5 context for this first visit, which was on October
6 23rd, is this considered to be a consular report,
7 this particular e-mail?

8 MR. LIVERMORE: It is not a report
9 that has been on the CAMANT system. It's on the
10 C4 system.

11 MR. CAVALLUZZO: Right. But would
12 it be considered to be a consular report?

13 MR. LIVERMORE: I am not sure that
14 we make that type of distinction. If it's a
15 CAMANT note, it goes through the CAMANT system.
16 This is a different side. It is entitled
17 "Consular Visit" so it's about consular issues.

18 But I don't think we have a fixed
19 policy doctrine that would say consular report.

20 MR. CAVALLUZZO: And this kind of
21 report -- I don't know whether you are aware of it
22 or not.

23 Since there is information in this
24 report that Mr. Arar is giving Mr. Martel, the
25 consular official, would this kind of report

1 normally be shared with other agencies of
2 government?

3 MR. LIVERMORE: You are asking
4 about the generic question. I can tell you that
5 we would have been free to share this kind of
6 report with respect to Mr. Arar, yes.

7 MR. CAVALLUZZO: Okay. Is there
8 any particular reason why you would be free to
9 share it about Mr. Arar?

10 MR. LIVERMORE: We had been
11 consulting with the RCMP for I don't know how long
12 it would have been at that point, over a week.
13 They had been asked to come to Foreign Affairs to
14 meet with Mr. Pardy and others. We had been
15 sharing whatever information we knew.

16 The basic question that we were
17 grappling with was where was he, and of course how
18 did he get there? So we, as a matter of course,
19 would have shared these -- we would have shared at
20 least the information. I'm not sure about the
21 actual text of the message, because as you can
22 see, the message header doesn't include the RCMP.

23 MR. CAVALLUZZO: That's correct.

24 MR. LIVERMORE: There's one --
25 possibly, Mr. Commissioner, I could just clarify

1 one thing.

2 And that is that our C4 system,
3 being old technology, doesn't have very good
4 connectivity to other agencies outside of Foreign
5 Affairs. So at times, what you would think would
6 be a normal electronic transfer cannot be done.

7 MR. CAVALLUZZO: Let me understand
8 what might happen in terms of your particular
9 area. You have described the geographics of your
10 area with the RCMP LO, the CSIS LO, and presumably
11 this document here would have come into your area.
12 In fact, it went to ISI, C4 ISI. And this
13 document here very easily presumably could have
14 been shared with the two LOs or at least the
15 information therein could have been shared with
16 the two LOs?

17 MR. LIVERMORE: Yes.

18 MR. CAVALLUZZO: In terms of its
19 substance, as I said, we are going to be dealing
20 with this with the consular official,
21 Mr. Pillarella, as well as Mr. Pardy.

22 But it does indicate in paragraph
23 4 that the subject, that is Mr. Arar:

24 "... appeared to be healthy,
25 but this is difficult to

1 assess. He looked resigned
2 and submissive. Numerous eye
3 signals seemed to indicate he
4 was not free to speak out.
5 At least this is the
6 impression we had."

7 The other point I would ask you
8 about, in paragraph 5, five lines down, it says:
9 "When prompted further for
10 answers, the Syrians told him
11 in Arabic he was not to
12 answer those questions. He
13 said he only stayed in Jordan
14 for a couple of hours before
15 being taken to the Syrian
16 border."

17 Now, this information obviously
18 from Mr. Arar was quite different than what you
19 had been told by the Syrians, who said that he
20 just appeared at the border on October 21st,
21 whereas Mr. Arar said he was only in Jordan for a
22 couple of hours.

23 Did that lead you to do anything
24 or reach any conclusions?

25 MR. LIVERMORE: Not particularly.

1 We were still in the mode of trying to find out
2 exactly what the true story was, as I can recall,
3 as I read that, of not being able to arrive at a
4 conclusion one way or the other, because we didn't
5 know whether he was free to tell us what had
6 happened or whether he was telling us something
7 simply for the purpose of keeping the Syrians
8 aware of it.

9 MR. CAVALLUZZO: Okay. In terms
10 of what he could say and what he couldn't say, if
11 you go to the very last line on page 1 in
12 paragraph 7, after the redaction, you go on to the
13 next page:

14 "He also repeated in English
15 after his hosts, speaking
16 Arabic, prompted him to do
17 so: "... I am proud of my
18 country of origin and I am
19 also proud of Canada, my
20 country of adoption. I have
21 been respected by my Syrian
22 brothers and I am happy to
23 have come back to Syria."

24 It goes on:

25 "The authorities have not

1 exercised any pressure on me.
2 You can see I feel well.
3 Anything I ask for I
4 receive."

5 Did that sound a little
6 disingenuous to you, particularly that he is happy
7 to be back in Syria?

8 MR. LIVERMORE: I think what I
9 would have to say is that we read these reports
10 with a degree of -- how should I say? --
11 scepticism in the sense that -- and I'm not
12 speaking here necessarily about the case of Syria,
13 because I'm not an expert in Syria. But I have
14 handled consular cases where much the same thing
15 has gone on, and one has to read what they say and
16 make some evaluation of it when later facts come
17 in.

18 MR. CAVALLUZZO: All right. In
19 terms of the context we see, if you go to tab 147,
20 that he does receive a second consular visit from
21 Mr. Martel on October 29.

22 MR. LIVERMORE: Yes.

23 MR. CAVALLUZZO: And you will see
24 there are references to that name,
25 Mr. Commissioner, in paragraph 4, where it is not

1 redacted.

2 But in any event, the important
3 point, I guess from your perspective,
4 Mr. Livermore, would be in terms of his condition,
5 where in paragraph 5, it says:

6 "Two changes were noticed in
7 Maher's presentation. He did
8 not seem to be disoriented
9 anymore and he seemed to be
10 able to speak freely and
11 without fear."

12 And it goes on:

13 "Officials have agreed that
14 reading material such as
15 Canadian magazines could be
16 given to him. Mission will
17 provide."

18 The second consular visit, I see
19 it's still going to you. So ISD is still involved
20 in Mr. Arar's situation?

21 MR. LIVERMORE: Yes.

22 MR. CAVALLUZZO: Okay. If you
23 move now to November 4th at 164, and if you go to
24 the third page, it's a note from Mr. Pillarella
25 concerning another meeting he had with that

1 individual?

2 MR. LIVERMORE: Yes.

3 MR. CAVALLUZZO: Which was on
4 November the 3rd, and it's an hour-long meeting to
5 review the Arar case.

6 MR. LIVERMORE: Right.

7 MR. CAVALLUZZO: Once again he
8 talks about the cooperation he is getting from the
9 Syrians. Then in paragraph 3 it says:

10 "When I asked ... whether I
11 could get a resume of
12 information obtained so far
13 from Arar that I could take
14 to Canada with me, he agreed
15 to do so. He promised I
16 would receive it before my
17 departure, unfortunately only
18 in Arabic."

19 And we see this particular note,
20 which recounts that meeting between the head of
21 Syrian intelligence and Mr. Pillarella, is sent by
22 Mr. Heatherington, who is the Director of Foreign
23 Intelligence, to the "A" Division unit and to RCMP
24 headquarters, or CID National Security
25 Investigations.

1 Would this be normal for this kind
2 of information to be passed on to the RCMP
3 relating to Mr. Arar?

4 MR. LIVERMORE: In the
5 circumstances of the case, I would imagine it
6 would be, yes.

7 The only thing that surprises me a
8 bit is the format, since facsimile is a bit of an
9 archaic way of conveying information. But as far
10 as the conveyance, yes.

11 MR. CAVALLUZZO: I assume it was a
12 secure fax?

13 MR. LIVERMORE: I assume it was.

14 MR. CAVALLUZZO: It better have
15 been.

16 MR. LIVERMORE: It should have
17 been.

18 MR. CAVALLUZZO: Right.

19 We are still in early November at
20 tab 165. We see that this is a note from
21 Mr. Saunders, who was in your group in Foreign
22 Intelligence.

23 MR. LIVERMORE: Yes.

24 MR. CAVALLUZZO: And it says:

25 "On November 3, 2002, the

1 Canadian Ambassador to Syria
2 received a document ..."

3 And that was the document referred
4 to in that meeting written in Arabic.

5 We see that ISI sent the document
6 to CSIS for translation, and we also see that the
7 translated document was returned to ISI and the
8 information was shared with Mr. Pardy, the RCMP,
9 and CSIS.

10 MR. LIVERMORE: Mm-hmm.

11 MR. CAVALLUZZO: And that would be
12 the normal course that that kind of information
13 that Pillarella received from Syrian Military
14 Intelligence would be given to the RCMP and CSIS?

15 MR. LIVERMORE: Well, again, I
16 can't say that there was anything normal
17 particularly about this case. But if you say to
18 me "is this what happened in this case?", yes,
19 this is what happened.

20 What we did here -- and I
21 recollect this. We have in the Canadian
22 government our own translation service. But
23 because of the sensitivity of the information, or
24 what we thought might be the information, we sent
25 it to CSIS because that was the fastest way to get

1 a translation done.

2 MR. CAVALLUZZO: If I am a
3 Canadian citizen detained abroad, would it be fair
4 for me to assume that the information that I give
5 consular officials -- and obviously the last
6 document we are talking about is a meeting between
7 the head of Syrian Military Intelligence and
8 Pillarella, so that I as a Canadian wouldn't have
9 given any information.

10 But if I am meeting with a
11 consular official, is it fair as a Canadian to
12 believe that the information I give you will not
13 be shared with other Canadian agencies, such as
14 the RCMP and CSIS?

15 MR. LIVERMORE: I think if you
16 are -- well, I don't know how many hundreds of
17 thousands of cases we have, consular cases we
18 have. Mr. Pardy would be in a better position
19 than I --

20 MR. CAVALLUZZO: 700,000?

21 MR. LIVERMORE: I think it's that
22 high, yes.

23 The kinds of cases which engaged
24 us from a national security or criminal
25 perspective were something in the order of between

1 20 and 40 out of 700,000. So it was nothing --
2 this case was extraordinary in several respects,
3 and that explains the distribution.

4 The ordinary CAMANT notes on
5 CAMANT transactions, that is consular transactions
6 that take place worldwide, don't go to my bureau
7 except under fairly extraordinary circumstances,
8 and I have never had access to the CAMANT
9 database.

10 MR. CAVALLUZZO: Okay. I guess
11 what I would consider -- for example, we have a
12 Charter of Rights, and if I am a Canadian detained
13 abroad and if I give information to a government
14 official or agent and then I subsequently find out
15 that that information is being transferred to a
16 police agency or a security intelligence agency, I
17 would be a little concerned about that.

18 MR. LIVERMORE: I think that what
19 we do is governed by the Privacy Act, and in that
20 sense, I think we are in conformity with the law.

21 This was also a situation where we
22 actually -- my recollection of events is that in
23 the days immediately following Mr. Arar's
24 disappearance, if I could put it that way, or we
25 didn't know where he was, we called upon agencies

1 of the Canadian government to help us solve a
2 particular riddle: Where was he? What was he
3 doing there?

4 And I think that is perfectly
5 consistent with the Privacy Act to do that.

6 MR. CAVALLUZZO: Okay. Now, the
7 third consular visit, if you move now to tab 192,
8 was on November 12th, and this is just to keep it
9 in context.

10 You will see that in paragraph 5
11 there, it states:

12 "Martel tried to obtain some
13 information on the
14 progression of the
15 investigation but Syrians
16 remained silent. They said
17 the HOM had been provided
18 with a full report."

19 And that is what we have referred
20 to as the document that was translated.

21 "They gave no indication that
22 Maher Arar would be released
23 any time soon."

24 In terms of Mr. Martel seeking
25 information on the progress of the investigation,

1 it would seem to me that would be totally
2 appropriate, because once again if the game plan
3 is to get Mr. Arar out of Syria you would want to
4 know as much information as possible as to the
5 scope and extent of their investigation.

6 Is that correct?

7 MR. LIVERMORE: Yes, I would think
8 so.

9 MR. CAVALLUZZO: If we stay in
10 November and if you move to tab 201, this is a
11 secret memo dated November 14th, 2002. It was an
12 information memorandum for the Minister. It was
13 drafted by Jonathan Solomon and was to be signed
14 by yourself and Mr. Lavertu, the Deputy Minister.

15 The only question I would have in
16 respect of this, as much of it is redacted, it
17 states in paragraph 3:

18 "The Ambassador, Franco
19 Pillarella, has succeeded in
20 discussing this case with the
21 head of the Syrian military
22 intelligence organization."

23 Then in paragraph 5 it says:

24 "We are receiving conflicting
25 reports as to the interest of

1 the Syrian government in
2 holding Maher Arar in Syria."

3 I am wondering if you could help
4 us. Can you recall as to the conflicting reports
5 you were getting as to the Syrians' position?

6 MR. LIVERMORE: My recollection is
7 a little foggy because I don't know whether this
8 was a final memo. It appears to be a draft.
9 Normally in a final the ISI will have a number
10 attached to it, and the signature block would have
11 been different in a final memo.

12 So I am not confident about
13 whether -- there have been memos that have been
14 drafted, and particularly by junior officers, and
15 Jonathan Solomon at the time was a junior officer,
16 where we change the memo to make it more precise
17 or correct. So I can't recall correctly.

18 My recollection, though -- and
19 this was a theme that sort of went through this
20 period -- was that there were basically two
21 conflicting interests, and we could not come to
22 grips with what the motivation was.

23 One was: Was the Syrian
24 government interested in holding Mr. Arar because
25 he, his family, somebody, was connected to the

1 Syrian Muslim Brotherhood? That is one issue.

2 The second issue was: Were they
3 interested in holding him because he was a member
4 of al-Qaeda?

5 The latter could have been
6 prompted by an American interest in helping the
7 Syrian government or encouraging the Syrian
8 government to hold him. So we were thinking --
9 and these are two -- they could conceivably be one
10 motive combined, but we were thinking they were
11 probably two.

12 MR. CAVALLUZZO: If you move now
13 to November 19th, once again Jonathan Solomon is
14 sending an e-mail to Mr. Pillarella, Head of
15 Mission in Damascus. This is tab 218.

16 MS McISAAC: Sir, before we move
17 on, I could advise that we believe the final
18 version of the memorandum Mr. Cavalluzzo is just
19 looking at is to be found at tab 257.

20 THE COMMISSIONER: Thank you.

21 MR. CAVALLUZZO: If we go to
22 257 -- do you have that in front of you,
23 Mr. Livermore?

24 MR. LIVERMORE: Yes, I do.

25 MR. CAVALLUZZO: The reference is

1 redacted in the foregoing paragraph, but it says:

2 "The Syrians appear to view
3 these connections ..."

4 Whatever they might be.

5 "... as sufficient grounds to
6 detain Arar, although ...
7 activities. It is clear that
8 the Syrian standard of what
9 constitutes a detainable
10 terrorist is lower than
11 ours."

12 And then it refers to the date of
13 his release.

14 That doesn't have your name on it,
15 as the other one did, but it seems that
16 Mr. Wright's name is now appearing rather than
17 yours.

18 MR. LIVERMORE: And that is the
19 more normal format.

20 MR. CAVALLUZZO: Okay. Then if we
21 move to tab 218, we see this memo or e-mail, C4
22 e-mail, from Mr. Solomon in your group to
23 Mr. Pillarella, and it says:

24 "You are aware that the issue
25 of the transfer and

1 imprisonment of Mr. Arar is
2 prominent in the Canadian
3 media and in Parliament, and
4 was discussed as well between
5 MINA and Secretary of State
6 Powell during the latter's
7 visit to Ottawa last week."

8 Do you recall the public position
9 that was taken by the Secretary of State in the
10 middle of November of 2002 in respect of
11 Mr. Arar's predicament, being in Syria?

12 MR. LIVERMORE: Might I refresh my
13 memory with the chronology on the precise words?

14 MR. CAVALLUZZO: Certainly. Which
15 chronology do you want to refer to?

16 MR. LIVERMORE: The DFAIT
17 chronology.

18 MR. CAVALLUZZO: You could refer
19 to, for example, tab 709 is the one that was done
20 in November of 2003.

21 MS McISAAC: Page 10, I think, is
22 where the witness wants to go.

23 --- Pause

24 MR. CAVALLUZZO: Are you sure it's
25 not page 11?

1 MR. LIVERMORE: Excuse me?

2 MR. CAVALLUZZO: I think it's page
3 11 of that chronology, 14/11/02. Is that what
4 you're looking for?

5 MR. LIVERMORE: Page 10 of 709,
6 where it says -- this is 14 November, which I
7 imagine that this e-mail is referring to.

8 MR. CAVALLUZZO: Right.

9 MR. LIVERMORE:
10 "...US authorities consider
11 their behaviour to be
12 justified on the basis of
13 information they had and that
14 it was consistent with their
15 obligations under
16 international law."

17 MR. CAVALLUZZO: Do you recall any
18 other public position that was taken by Mr. Powell
19 at that point in time?

20 We saw what Mr. Cellucci's public
21 position was in October, and I'm wondering if
22 Mr. Powell's position was somewhat similar in the
23 sense that you may recall Cellucci was saying,
24 "Well, why don't you ask your own people as to
25 what happened to him?"

1 MR. LIVERMORE: Yes.

2 I would have to refresh my notes
3 on this. Basically what was perplexing us were
4 still the Cellucci comments, if I may put it that
5 way.

6 MR. CAVALLUZZO: Okay. Well,
7 we'll deal with the Powell statements with
8 Mr. Pardy.

9 MR. LIVERMORE: Yes.

10 MR. CAVALLUZZO: Okay. If we
11 could move on to tab -- if we could just stay with
12 218, Mr. Solomon's memo. Just before we leave, in
13 the middle of the redaction, you will see it
14 states:

15 "He also requested an
16 assessment of Arar's possible
17 involvement in terrorist
18 activities. Any further
19 information beyond your
20 report of November 3 would be
21 extremely useful in this
22 respect."

23 MR. LIVERMORE: That's right.

24 MR. CAVALLUZZO: Is that normal
25 business? Any more information you can get on

1 Arar's involvement in terrorist activity, we'd
2 like to see it?

3 MR. LIVERMORE: Absolutely.

4 MR. CAVALLUZZO: Okay. And once
5 again, if Pillarella gets it, he's the
6 representative of the Canadian government. He
7 could share that with the RCMP and CSIS?

8 MR. LIVERMORE: Yes.

9 MR. CAVALLUZZO: Okay. Tab 223.
10 This is an e-mail from you to Jim Wright who is
11 your Assistant Deputy Minister. It's sent to
12 Prague, presumably because he was travelling to
13 Prague at that point in time?

14 MR. LIVERMORE: That's right.

15 MR. CAVALLUZZO: Okay. You say in
16 the first paragraph:

17 "Jim:

18 I've discussed various
19 issues relating to Syria over
20 the past day and more with
21 CSIS, RCMP, and Larry
22 Dickenson..."

23 Now Larry Dickenson is in the PCO?

24 MR. LIVERMORE: He's the
25 assistant -- at the time was assistant secretary

1 to the cabinet for security and intelligence in
2 the PCO.

3 MR. CAVALLUZZO: Okay.

4 "... (in a week which every
5 agency seems to be conducting
6 its own day-long or two-day
7 retreat!). On the initial
8 issues you posed to me prior
9 to departure, there seems to
10 be absolute certainty amongst
11 the various agencies to the
12 effect that neither RCMP nor
13 anyone else spoke to the USA
14 in any way which might have
15 suggested that any Canadian
16 detained in the USA could be
17 deported to Syria, rather
18 than to Canada. That having
19 been said, it is impossible
20 to preclude the outside
21 chance that someone in the
22 food chain in NY or elsewhere
23 might have shrugged, winked,
24 or through silence acquiesced
25 in a USA question or

1 decision. This is, of
2 course, denied at the most
3 senior levels of the RCMP,
4 but the plain fact remains
5 that someone might either lie
6 to their own senior
7 management or try to cover up
8 what was a misstep. In any
9 event, on what we said to the
10 USA re detained Canadians, we
11 are on the same wave length."

12 Now, this statement, if I can put
13 it that way, concerning a wink, a nod, or a shrug
14 to the Americans, was this just pure speculation
15 on your part, or was there any grounds upon which
16 you could have made that statement to Mr. Wright,
17 that somebody in Canada may have given the okay,
18 wink-wink, nod-nod to the Americans to remove or
19 deport Mr. Arar?

20 MR. LIVERMORE: It was 100 percent
21 speculation.

22 MR. CAVALLUZZO: Based on...

23 MR. LIVERMORE: Based on 30 years
24 of cynicism, possibly.

25 I think I answered the question

1 that Jim Wright put to me in two ways. One was
2 that I had asked everybody in town, and they were
3 absolutely confident of their positions. And what
4 they told me was 100 percent consistent, one to
5 another; in other words, everything pointed in the
6 same direction.

7 However, I say what is obvious and
8 what could have gone through anyone's mind,
9 namely, is there still some chance that what you
10 were told was not true? But I had absolutely no
11 ground for believing that that was the case.

12 MR. CAVALLUZZO: It's somewhat
13 similar to a statement that was made by the
14 Solicitor General and reported on July 30 of 2003,
15 that is, "rogue elements" in the RCMP, which you
16 may have read --

17 MR. LIVERMORE: Yes.

18 MR. CAVALLUZZO: -- very similar
19 to that. Okay.

20 Now, the other important point of
21 this memorandum is in paragraph 2. It states:

22 "At a meeting at CPO on a
23 different subject on
24 Wednesday, Paul Thibault..."

25 Now you told us before that Paul

1 Thibault was the ADM?

2 MR. LIVERMORE: He was the
3 Associate Deputy Minister immediately under Gaetan
4 Lavertu.

5 MR. CAVALLUZZO:

6 "...Paul Thibault talked to
7 Larry Dickenson about the
8 issue and offered the view
9 that we (Canada) should not
10 bother trying to talk to the
11 USA about this issue, even to
12 correct their version of the
13 events. In Paul's view, it
14 was water under the bridge.
15 Larry related this to me in a
16 matter-of-fact way, neither
17 agreeing with Paul nor
18 disagreeing. I think PCO
19 view is that "timing is
20 everything"."

21 Now, that statement there
22 certainly suggests that we should lay off the
23 Americans, it's water under the bridge, and let's
24 move on.

25 Other people would suggest that a

1 great deal of political pressure should have been
2 put on the Americans at this point in time because
3 of what they had done.

4 Do you know what policy was
5 pursued by DFAIT in respect of the Americans at
6 this point in time relating to Mr. Arar?

7 MR. LIVERMORE: Well, there
8 were -- as I recall the events, though, it was
9 slightly different in the sense that what I think
10 was -- Paul Thibault was not saying we should
11 forget about it, it's water under the bridge in
12 that sense. What he was saying was, we should
13 forget about it for now because we simply don't
14 know the facts.

15 They can be taken up again at a
16 time that's convenient, but it's no sense going
17 back to them with the same questions because we're
18 going to get the same answers.

19 When I relate what Larry Dickenson
20 said, the PCO view that timing is everything,
21 well, you go back when the timing is right, not
22 when the timing is not right.

23 MR. CAVALLUZZO: And to be fair to
24 Minister Graham, the evidence is and will be that
25 on or about October 14, he did file a protest with

1 the Americans saying, this is not the way you
2 treat Canadian citizens, and we will be hearing
3 evidence on that.

4 MR. LIVERMORE: Yes.

5 MR. CAVALLUZZO: Okay then. If we
6 move then to tab 229, we come to Mr. Arar's fourth
7 consular visit on or about November 26 of 2002.
8 Once again, you're copied on this document.

9 I guess the important point here
10 from your perspective would be the condition of
11 Mr. Arar, and that is:

12 "Maher appeared to be..."

13 This is paragraph 7:

14 "Maher appeared to be in good
15 physical and mental health.
16 Officials made him stand up
17 to show he was well being
18 taken care of. No change
19 could be seen in his state of
20 health from that of the last
21 visit. Upon being questioned
22 upon his health compared to
23 the day he was first visited
24 he indicated he had been
25 afraid at the beginning as

1 the investigation was more
2 intensive. He seemed more
3 relaxed and he said his only
4 moment of joy was when he
5 received our visit. He
6 continued to say he was being
7 treated well and when
8 prompted by the officials he
9 said "my brothers are
10 treating me very well". He
11 indicated he was feeling as
12 well as anyone would feel
13 when being imprisoned."

14 Now, it's obvious that none of
15 these consular visits are in isolation, in other
16 words, only with Mr. Martel. It is obvious that
17 these visits, as it says, are in front of his
18 Syrian brothers, and periodically you'll see in
19 these reports that he is prompted by his Syrian
20 brothers to say certain things, particularly about
21 how well he is being treated.

22 Since you're from the school of
23 scepticism, I'm sure that when you read these
24 consular reports, you read them somewhat
25 sceptically in light of the situation in which

1 Mr. Arar found himself?

2 MR. LIVERMORE: I indeed read them
3 sceptically, but, to be fair too, part of the
4 scepticism is that we simply didn't know a lot of
5 things that we thought we would discover at a
6 later date. And I say that without knowing much
7 about the Syrian situation but having seen other
8 people in circumstances similar to this, I can
9 have an appreciation for what they're going
10 through and I can also appreciate what officials
11 might be suggesting that they do as part of the
12 consular visit. So scepticism, yes.

13 MR. CAVALLUZZO: Okay. Now, in
14 December as well, there was another visit, the
15 fifth consular visit. It's at tab 248 now.

16 For some reason, you weren't
17 copied on this CAMANT note, and I don't know if
18 that's just a mistake, but it's the only consular
19 visit you were not copied on. So I don't know if
20 there's any reason for that or whether it's just
21 an oversight.

22 MR. LIVERMORE: I can't recall
23 seeing it, but I must also say that at some time
24 there is no point in me -- in seeing the consular
25 visit.

1 If somebody has a consular visit
2 and the basic theme of the consular visit is the
3 same situation that we encountered the last time
4 is obtained this time, that's fine with me.

5 MR. CAVALLUZZO: Okay. But what
6 I'd like to ask you about, though, is the second
7 and third page of tab 248.

8 This is a letter which is dated
9 December 10 of 2002, and it is from Richard
10 Proulx, who is the Assistant Commissioner of
11 Criminal Intelligence Directorate of the RCMP, and
12 it's a letter in which he is complaining about the
13 efforts of Mr. -- he believes Mr. Pardy, who had
14 suggested to Mr. Edelson, who was acting as
15 counsel to Mr. Arar at that point in time, to get
16 a letter from the RCMP with four points in it.

17 First, dealing with that the RCMP
18 made no request to have Arar deported to Jordan or
19 Syria. Secondly, that Mr. Arar does not have a
20 criminal record. Thirdly, that Mr. Arar is not
21 wanted in Canada for any offence, nor is there a
22 warrant for his arrest. And finally, that
23 Mr. Arar is not a suspect with respect to any
24 terrorist-related crime.

25 And Mr. Proulx is writing to you

1 and suggesting that Mr. Pardy is acting beyond the
2 bounds of his mandate by requesting Mr. Edelson to
3 request this from the RCMP.

4 Do you recall receiving this
5 letter?

6 MR. LIVERMORE: Yes, I do.

7 MR. CAVALLUZZO: Okay. Did you
8 agree with it?

9 MR. LIVERMORE: Well, I recall,
10 when I saw it, I recall talking to Mr. Pardy about
11 it, and Mr. Pardy had said that the letter
12 represented a slight misunderstanding of what Mr.
13 Pardy had suggested, and I recall going back to --
14 I believe it was Richard Proulx, but I can't be
15 100 percent certain, but I phoned him up, I
16 believe, and I said that I thought that the entire
17 letter was based upon a misunderstanding, and I
18 thought the best way was simply to forget about it
19 and move on.

20 MR. CAVALLUZZO: Now, did you feel
21 that, as a result of this communication, that the
22 RCMP was not being as cooperative as they might
23 have been in terms of trying to get Mr. Arar's
24 release from Syria?

25 MR. LIVERMORE: No, I didn't feel

1 that at all. What I sensed was that Mr. Pardy
2 believed that with certain documentation it might
3 be useful to Mr. Arar's case.

4 I think what the RCMP expressed to
5 me was, they felt that they were being put into a
6 bit of a corner by having the material asked for
7 in the way that Mr. Edelson asked for it which
8 was, as I say, a slight misrepresentation of
9 Mr. Pardy's position.

10 So what you have here is a classic
11 case of a misunderstanding, and I thought -- I
12 thought it important basically that we not worry
13 about this particular thing, we not try to make it
14 into a big deal, that we simply move on ahead.

15 MR. CAVALLUZZO: Okay. And we
16 will be dealing extensively with Mr. Pardy on the
17 cooperation which he received from the RCMP in
18 respect of Mr. Arar's release.

19 Tab 253 is dated two days later,
20 on December 12. You were copied on this. This is
21 from Mr. Pillarella?

22 MR. LIVERMORE: Yes.

23 MR. CAVALLUZZO: And this is
24 another document, Mr. Commissioner, where that
25 gentleman's name is found in paragraphs 5 and 2.

1 But in any event, this document is
2 really talking about Mr. Pillarella's perspective
3 in terms of what's going on in Damascus and that
4 the Syrians believe that Mr. Arar is considered to
5 be a case of internal security, linked to the
6 Muslim Brotherhood, not to al-Qaeda.

7 "...Syrians will act with
8 extreme prudence having in
9 mind their national interests
10 as the foremost priority."

11 And so on and so forth.

12 I guess there's initial discussion
13 at this point in time, which we will come to, and
14 that is that there is going to be or could be a
15 phone call between our Minister of Foreign Affairs
16 and the Syrian Foreign Minister?

17 MR. LIVERMORE: Yes.

18 MR. CAVALLUZZO: We'll come to
19 that.

20 MR. LIVERMORE: Okay.

21 MR. CAVALLUZZO: We do come to
22 that at the next tab. If you go now to 291.

23 And this is another e-mail from
24 Mr. Pillarella to many people, including yourself,
25 and we see that he is setting up the phone call

1 between Minister Graham and Foreign Minister
2 Shara'a of Syria?

3 MR. LIVERMORE: That's right.

4 MR. CAVALLUZZO: Then if you go
5 back to tab 288, back to 288, we see the points
6 that Minister Graham will be making with the
7 Syrian Foreign Minister. These are called talking
8 points?

9 MR. LIVERMORE: Yes.

10 MR. CAVALLUZZO: Okay. There's a
11 question that I would have, and that can be found
12 at page 2.

13 MR. LIVERMORE: Mm-hmm.

14 MR. CAVALLUZZO: The last bullet
15 point above the redaction, it says:

16 "I understand from recent
17 reports that the Syrian
18 authorities may have the
19 impression that Canada has no
20 wish to see Mr. Arar return
21 to Canada. I would like to
22 make it very clear that the
23 Canadian government would
24 like Mr. Arar to be returned
25 to Canada."

1 That point that Mr. Graham is
2 going to make with the Syrian Foreign Minister, do
3 you have any idea what he's talking about there,
4 about this impression that the Syrian authorities
5 may have that Canada doesn't want Mr. Arar's
6 return?

7 MR. LIVERMORE: My recollection is
8 that there had been information which had come to
9 the attention of the consular bureau or to Foreign
10 Affairs in general to the effect that the Syrians
11 were under an impression that we did not want
12 Mr. Arar back, and this bullet was drafted to
13 counteract that impression.

14 MR. CAVALLUZZO: And as to what
15 happened in terms of that phone call -- if you go
16 to 288 -- this is an e-mail from Harold Hickman.
17 Who is Harold Hickman? He is the GM for -- he is
18 the Middle East desk?

19 MR. LIVERMORE: He, I believe, was
20 at the Middle East desk at that time.

21 MR. CAVALLUZZO: And it says:

22 "Minister Graham..."

23 Once again you're copied on this
24 e-mail:

25 "Minister Graham called

1 Syrian Foreign Minister
2 Shara'a on January 16 to
3 discuss regional issues and
4 the Maher Arar case."

5 If you go to the third paragraph
6 down:

7 "Mr. Graham noted that there
8 had been a suggestion that
9 Canada did not want Arar
10 returned. He emphasized that
11 he wanted to make it clear
12 that the preferred option of
13 the Canadian government was
14 that Arar be returned to
15 Canada."

16 We're going to have Minister
17 Graham testify, but I'm wondering if you can help
18 us at this point in time as to the preferred
19 option of the Canadian government.

20 I would have thought that perhaps
21 that would be the only option that the Canadian
22 government would want. Do you know what he was
23 talking about there?

24 MR. LIVERMORE: I can't be sure.
25 I wasn't privy to the conversation. But the

1 normal -- in the normal course of consular work --
2 I won't speak on behalf of the consular bureau --
3 but it's that a country is carrying out an
4 investigation, and in most circumstances, the
5 country has the right to press charges vis-à-vis
6 an individual if they see fit according to their
7 legal course.

8 And I think Mr. Graham was trying
9 to walk this fine line of saying, in one
10 paragraph, that we can appreciate the legal
11 situation and the domestic legal remedies have to
12 play themselves out, but our preferred option is
13 that he be returned to Canada.

14 MR. CAVALLUZZO: And of course
15 Mr. Arar is a dual citizen, and the Syrians view
16 him to be a Syrian and as a result of that are
17 conducting their own investigation.

18 MR. LIVERMORE: Yes.

19 MR. CAVALLUZZO: Okay. Tab 313
20 now, if you go to the next book -- I believe it's
21 the next book. It is the same book, okay.

22 We have Mr. Arar's seventh
23 consular visit that you are copied on. The visit
24 is dated February 18th; the e-mail February 19th
25 of 2003.

1 MR. LIVERMORE: Mm-hmm.

2 MR. CAVALLUZZO: There was
3 actually a consular visit before that time, on
4 January 7th, 2003, which we -- counsel, it's at
5 tab 275, just to be clear on that.

6 Do you see that?

7 MR. LIVERMORE: Yes.

8 MR. CAVALLUZZO: There is really
9 nothing in there that I would ask you about.

10 But the seventh visit is the next
11 month, February the 18th. And what is happening
12 here, in the second paragraph:

13 "Arar said he was (and
14 appeared to be) in good
15 health, and we have not
16 noticed any changes since the
17 last visit."

18 Then if you go to paragraph 4, you
19 will see, for example, in subparagraph (c), that
20 the investigation is ongoing?

21 MR. LIVERMORE: Excuse me, could
22 you remind me again what tab it's at?

23 MR. CAVALLUZZO: It is tab 313.

24 MR. LIVERMORE: Okay, thank you.

25 MR. CAVALLUZZO: So at paragraph

1 (c) at the bottom:

2 "Investigation is ongoing and
3 there is no indication as to
4 when it will be completed.
5 Arar continues to be
6 interrogated and is
7 apparently still providing
8 valuable information to the
9 authorities."

10 This, once again, was a visit
11 between Mr. Martel and Mr. Arar as well as the
12 Syrian officials.

13 Nothing extraordinary about that
14 report, similar to the last, in terms of your
15 review of the situation?

16 MR. LIVERMORE: Nothing
17 particularly extraordinary.

18 MR. CAVALLUZZO: Okay. Then if
19 you would go to March, at tab 392, this is dated
20 March 3rd.

21 This document is in the PCO book
22 of documents. It is P-48.

23 I wonder if the clerk might give
24 you a copy. Gilles, we have a copy here, which
25 might be easier.

1 This is PCO tab 15 of Exhibit
2 P-48, but we have copies for counsel if they don't
3 have their book of documents here.

4 This is a highly redacted
5 document, but it is dated March 3rd, once again
6 from Anthony Ritchie to Lawrence Dickenson. I
7 understand that Anthony Ritchie is in the PCO as
8 well as Mr. Dickenson?

9 MR. LIVERMORE: Yes. I think Tony
10 Ritchie worked for Larry Dickenson in the PCO.

11 MR. CAVALLUZZO: Okay. The
12 subject matter is called "DFAIT Deck Consular
13 Services Related to Terrorist Cases", and we are
14 going to be extensively questioning Mr. Pardy
15 about that matter next Tuesday.

16 But in any event, it says:

17 "Larry attended a meeting at
18 DFAIT on Friday to discuss
19 the above. The RCMP were
20 present. Dan Livermore
21 chaired the meeting."

22 Then it goes:

23 "In the case of Arar, Marlene
24 Catterall ..."

25 Of course is his Member of

1 Parliament.

2 "... will also be visiting
3 from a humanitarian
4 perspective."

5 At the bottom it says:

6 "While the ... shall never
7 meet, the meeting was
8 productive and everyone got
9 what they wanted."

10 Now, in terms of this meeting,
11 which you chaired, do you recall attending?

12 MR. LIVERMORE: I did. I do
13 recall, yes.

14 MR. CAVALLUZZO: All right. And
15 was it just a meeting between DFAIT and the RCMP?

16 MR. LIVERMORE: My recollection
17 was that we were discussing a deck that Gar Pardy
18 was drafting, and my recollection is that there
19 would have been RCMP, CSIS, and PCO at the
20 meeting, in addition to Foreign Affairs.

21 MR. CAVALLUZZO: Okay. And I
22 can't ask you about the redacted parts, but I just
23 wanted to ensure that when we come to Mr. Pardy
24 about the deck, that this was discussed at this
25 meeting with the people you have related?

1 MR. LIVERMORE: Yes.

2 MR. CAVALLUZZO: The next consular
3 visit can be found at tab 392. This is the eighth
4 consular visit, but this was the meeting at which
5 two parliamentarians attended Damascus to see
6 Mr. Arar, accompanied by Mr. Pillarella?

7 MR. LIVERMORE: Yes.

8 MR. CAVALLUZZO: And originally
9 they sat and discussed the matter with Foreign
10 Affairs officials, with the Syrian government, and
11 then Mr. Arar was brought in to the meeting?

12 MR. LIVERMORE: Yes.

13 MR. CAVALLUZZO: Was there
14 anything unusual about this consular report that
15 struck your interest or concerned you in respect
16 of the situation of Mr. Arar?

17 MR. LIVERMORE: Not particularly,
18 no.

19 MR. CAVALLUZZO: And once again we
20 will be dealing extensively with that meeting with
21 other witnesses.

22 If you would go to tab 451, we are
23 now at June 24, 2003.

24 If you could just help us, as I
25 said before, this is dated June 24th. It concerns

1 Mr. Arar, subject matter "What to do?"

2 And then it says at the top, under
3 the header:

4 "This memorandum was composed
5 by Zmemo, WCM Memorandum"

6 And then it says "jfgould", a
7 phone number, and then MJW, that's Jim Wright, and
8 Katherine McCallion, and through Jim Gould and Gar
9 Pardy.

10 MR. LIVERMORE: Through me and Gar
11 Pardy.

12 MR. CAVALLUZZO: Excuse me.
13 Mr. Livermore, okay.

14 The first paragraph says -- first
15 of all, this document itself, this memorandum, was
16 to be signed by Wright and McCallion, and I see at
17 the bottom on the second page it says
18 Mr. Heatherington, who is the Director of Foreign
19 Intelligence.

20 So would this have been drafted by
21 Mr. Heatherington?

22 MR. LIVERMORE: This was drafted,
23 as I recall, by Jim Gould.

24 MR. CAVALLUZZO: Okay. And it
25 goes on in the first paragraph and states:

1 "It is very clear that there
2 has not yet been, on an
3 institutional level, a
4 meeting of minds between the
5 Department of Foreign Affairs
6 on the one hand and CSIS and
7 the RCMP on the other with
8 regard to the case of Maher
9 Arar. Recent exchanges have
10 been almost testy and there
11 is a fear that the working
12 relationship between DFAIT
13 and CSIS, in particular,
14 might be poisoned if
15 agreement is not reached on a
16 government-wide approach to
17 this case."

18 And it goes on at the bottom of
19 the page. After the redactions, it says:

20 "... officials do not seem to
21 understand that, guilty or
22 innocent, Maher Arar has the
23 right to consular assistance
24 from the Department and that
25 in the circumstances in which

1 he presently finds himself,
2 the best outcome might be his
3 return to Canada. Even
4 though there is a risk that
5 Arar might later be found to
6 have been involved in
7 extremist activities of one
8 sort or another, his right to
9 consular assistance must be
10 honoured."

11 And then it goes on:

12 "It is important that the
13 Minister and his staff be
14 made aware of the evidence
15 that can be marshalled
16 against Arar and a way must
17 be found for the Department
18 to respond to the allegations
19 that there is no evidence
20 suggesting that Arar has a
21 connection to the activities
22 of Muslim extremists."

23 Then finally:

24 "The Minister should receive
25 a briefing from his

1 colleague, the Solicitor
2 General, about the evidence
3 facing Mr. Arar. In that
4 same meeting, the Minister
5 should spell out Mr. Arar's
6 consular rights. The two
7 Ministers should also agree
8 on a plan of action to deal
9 with Mr. Arar and wording to
10 be used with the public and
11 the media."

12 This appears to be one of those
13 cases where there seems to be difficulty in
14 achieving consensus between the different agencies
15 of government in respect of their dealings with
16 Syria over Mr. Arar.

17 You would agree with that?

18 MR. LIVERMORE: That is not my
19 take on the situation, no.

20 MR. CAVALLUZZO: What is your
21 take, then, on the situation?

22 MR. LIVERMORE: I myself -- first
23 of all, this memo is a draft and didn't go
24 anywhere. And one of the reasons that it didn't
25 go anywhere, apart from the fact that I had not

1 seen it before we began our inquiry into this
2 issue, is because I don't think it is a fair
3 representation of what was going on.

4 It is true that there was a
5 divergence of view, but it was a divergence of
6 view on how to approach what was a difficult case,
7 and I, for one, never thought that a consensus was
8 going to be impossible to achieve.

9 MR. CAVALLUZZO: Right.

10 MR. LIVERMORE: And certainly I
11 didn't think that a consensus was going to be so
12 difficult that we had to ask two Ministers to meet
13 to achieve it.

14 MR. CAVALLUZZO: Do you know if
15 the two Ministers ever did meet, as was suggested
16 in this draft memorandum by Mr. Gould?

17 MR. LIVERMORE: I do not know.
18 This memo did not go forward. The two Ministers
19 may have spoken without being prompted by such a
20 message, but I am not aware that it ever happened.

21 MR. CAVALLUZZO: Right. But to
22 the reader, what it appears to be saying -- and
23 the memo may not have gone anywhere, but the fact
24 is that your Deputy Director in Foreign
25 Intelligence is saying that there seems to be a

1 lack of consensus here; that CSIS and RCMP don't
2 understand the right of consular assistance to a
3 Canadian citizen.

4 And what he seems to be saying is
5 whether Arar is a bad guy or not, the fact is he
6 is a Canadian citizen and as a result of that is
7 entitled to consular assistance. And our friends
8 down the street are having trouble understanding
9 that.

10 Would you agree with that?

11 MR. LIVERMORE: That is precisely
12 why I don't agree with the text of the memo. I
13 have never encountered a situation in which they
14 refuse to accept that reality.

15 MR. CAVALLUZZO: Mm-hmm.

16 MR. LIVERMORE: We may have
17 difficulty in putting pen to paper and expressing
18 that, but the principle was never denied.

19 MR. CAVALLUZZO: And what
20 principle is that: that Mr. Arar was entitled to
21 consular assistance?

22 MR. LIVERMORE: Yes.

23 MR. CAVALLUZZO: And I guess the
24 debate becomes in terms of what is entailed in
25 that consular assistance.

1 MR. LIVERMORE: Yes, that's part
2 of the debate, yes.

3 MR. CAVALLUZZO: And one would
4 think that DFAIT being the lead, at least
5 according to the Department of Foreign Affairs
6 Act, it is DFAIT's responsibility and the
7 Minister's responsibility in respect of official
8 communications with the Syrian government. And it
9 would seem to me that it should have been DFAIT
10 taking the lead on Mr. Arar's case.

11 Would you agree with that?

12 MR. LIVERMORE: And indeed in fact
13 it was DFAIT taking the lead. It was not me. It
14 was Gar Pardy, who did quite an extraordinary job
15 of taking the lead.

16 MR. CAVALLUZZO: But as we will
17 see with his evidence on Tuesday and Wednesday,
18 Mr. Pardy went to extraordinary lengths to get a
19 letter signed by the Solicitor General and the
20 Minister of Foreign Affairs to be sent to Syria on
21 behalf of Mr. Arar and those efforts failed.

22 Isn't that correct?

23 MR. LIVERMORE: Could you rephrase
24 the question?

25 There were debates about who

1 should send the letter.

2 MR. CAVALLUZZO: Right.

3 MR. LIVERMORE: And in the end it
4 was decided that the Prime Minister should send
5 the letter.

6 MR. CAVALLUZZO: Do you know why
7 it was the Prime Minister that stepped in to send
8 the letter?

9 MR. LIVERMORE: I do not know.

10 MR. CAVALLUZZO: Well, we will
11 hear from Mr. Pardy on that.

12 But would you not agree that once
13 again we have a Canadian citizen who has been sent
14 to Syria in very questionable circumstances from
15 the United States. You would agree with that.

16 Syria does not have a splendid
17 human rights record. In fact, you have access not
18 only to your internal reports but you have access
19 to the annual review done by the Department of
20 State; right?

21 MR. LIVERMORE: Yes, I do.

22 MR. CAVALLUZZO: You have access
23 to annual reports done by Amnesty International?

24 MR. LIVERMORE: We do.

25 MR. CAVALLUZZO: And other human

1 rights groups, such as Human Rights Watch?

2 MR. LIVERMORE: Yes.

3 MR. CAVALLUZZO: And I think if we
4 talk about consensus, there seems to be a
5 consensus in these reports, right from the
6 Department of State through the human rights
7 groups, that Syria does not have a very good human
8 rights record and, in fact, is prone and there is
9 a credible risk that political detainees in Syria
10 could be subjected to torture.

11 You would agree with that?

12 MR. LIVERMORE: If the question
13 is, do I agree that those reports contain this
14 information, my answer is yes.

15 MR. CAVALLUZZO: Okay. Those
16 reports do contain that information.

17 Are you saying that you disagree
18 with those reports?

19 MR. LIVERMORE: First of all, on
20 grounds of national security confidentiality, I
21 don't comment on the human rights records of other
22 countries. Moreover, I am not an expert on the
23 case of Syria.

24 I have expressed the view before
25 that when we approach a consular case,

1 irrespective of the country, we do so with a
2 degree of scepticism appropriate to the
3 circumstances. I could phrase it I think like
4 this.

5 But I think there is another
6 difficulty, which is more fundamental, and that is
7 that we might on the one hand be aware of a
8 particular circumstance -- and I don't think I am
9 free to go into naming countries or naming names
10 the way the State Department chooses to do so. It
11 may be a particular situation that we are fully
12 aware of.

13 On the other hand, one may not be
14 able to extrapolate for the precise situation of
15 any given Canadian. We have circumstances in our
16 department where a Canadian could go to a country
17 with one of the worst human rights records in the
18 world and receive fairly good treatment. One
19 could go to a country with the best human rights
20 record in the world and receive pretty bad
21 treatment.

22 So I don't think that the general
23 necessarily applies to the particular, and that's
24 one of the reasons why we are a bit sceptical.

25 MR. CAVALLUZZO: But surely you

1 would agree that in terms of the general
2 experience -- and fortunately we do have the
3 Department of State annual review. It's not
4 protected by national security confidentiality in
5 Canada. We can refer to it. Which no doubt you
6 would refer to and other members of DFAIT would
7 refer to.

8 But certainly the statements in
9 that report are very clear that political
10 detainees in Syria are subject to credible risks
11 of torture? You can't deny that.

12 MR. LIVERMORE: I won't deny
13 what's in the State Department report because
14 that's what's in it.

15 MR. CAVALLUZZO: Right.

16 MR. LIVERMORE: Whether that is
17 our take on the same situation, that I can't
18 comment on.

19 MR. CAVALLUZZO: I can't ask you
20 what is in your own report. I have seen it, but I
21 can't ask you about it.

22 Once again I ask you, in terms of
23 trying to get this Canadian citizen, who has been
24 there now for what, eight months, right -- from
25 October through to June -- we are now in June?

1 MR. LIVERMORE: Pretty close.

2 MR. CAVALLUZZO: Pretty close.

3 And I am putting it to you that I would have
4 thought that it should have been imperative for
5 Canadian agencies to do everything they possibly
6 could to get the return of this man to Canada.

7 MR. LIVERMORE: I think that we
8 have to go back and look at the tenor of the
9 reports that we have been getting from Damascus.

10 Right from the first report that
11 we received from Ambassador Pillarella, and the
12 subsequent consular reports that we received from
13 Leo Martel, there is not, as I recall, one hint of
14 torture entering the equation.

15 There is some degree of doubt
16 about his precise situation, which I would expect
17 that an experienced and capable consular officer,
18 like Leo Martel, would pick up on and be very
19 watchful for.

20 But as for torture, no, absolutely
21 nothing.

22 And I think the first allegations
23 were made subsequent to the period that we are
24 engaged talking about now.

25 We are alive to what the

1 possibilities are in the particular circumstances.

2 MR. CAVALLUZZO: Well, let me put
3 it to you -- and once again I'm just dealing with
4 the public record here. We have a situation where
5 the Syrians say, "Listen, this guy was delivered
6 to us on the Jordanian border on October the
7 21st." However, we have Mr. Arar telling
8 Mr. Martel, "I spent a couple of hours, a few
9 hours" -- whatever it was -- "in Jordan."

10 That would have left a period of
11 eight or nine days between October 8th or 9th and
12 October 21st. Right?

13 And the public record would appear
14 to be, if you accessed the Department of State,
15 you access the Amnesty International report of
16 2002, that there was a predilection in Syria to
17 hold prisoners incommunicado for a period of time
18 until they obtained whatever information they
19 wanted and then they would disclose his or her
20 whereabouts.

21 Were you aware of that public
22 record?

23 MR. LIVERMORE: I'm aware of a
24 variety of allegations that have been made about
25 the countries in the region, yes.

1 MR. CAVALLUZZO: Did it come to
2 mind that in the case of Mr. Arar that may have
3 happened? In other words, the Syrians weren't
4 telling us the truth when they said they got him
5 on October 21st. In fact, they got him on October
6 the 9th and they have had him for that period of
7 time. And as soon as they come to the Canadians,
8 they say, "Oh, guess what? In the short period of
9 time we've had him, he has admitted certain
10 things."

11 Did that not come to mind in terms
12 of --

13 MR. LIVERMORE: I think a lot of
14 things came to mind. The basic thing that came to
15 mind was that there was profound scepticism about
16 the chronology which persists to this day. We
17 simply don't know.

18 I think we now know when he left
19 the United States. We now know when he received
20 consular access for the first time. I have
21 absolutely no evidence in front of me to be able
22 to account for the intervening period. None.

23 MR. CAVALLUZZO: Okay. In terms
24 of the time line, we do see that sometime in July,
25 the month after, that Prime Minister Chretien does

1 send an envoy, Senator De Bane, with a letter to
2 President Assad of Syria.

3 The next thing that happens in the
4 events -- and I just want to make sure that you
5 are aware of it -- is that there is a consular
6 visit on or about August 14th, which is the last
7 consular visit.

8 Could you refer to tab 507.

9 --- Pause

10 MR. CAVALLUZZO: The first two
11 pages are really a report back from Mr. Pillarella
12 to the head of Syrian Military Intelligence, and
13 in the third paragraph, the head of Syrian
14 Military Intelligence says that Arar is going to
15 be put on trial within the week.

16 Do you see that?

17 MR. LIVERMORE: Yes.

18 MR. CAVALLUZZO: Then if you go
19 three pages in, you see the consular visit, which
20 turns out to be the last consular visit with
21 Mr. Arar, on August 14th.

22 MR. LIVERMORE: Mm-hmm.

23 MR. CAVALLUZZO: And it is drafted
24 by Mr. Martel.

25 This is after, and I have to ask

1 you whether you recall that prior to this consular
2 visit there were allegations made by the Syrian
3 Human Rights Committee in July of 2003 that
4 Mr. Arar had been tortured in Syrian detention.

5 Do you recall that?

6 MR. LIVERMORE: I recall roughly
7 that period, yes.

8 MR. CAVALLUZZO: And in respect of
9 this particular visit, in terms of Mr. Martel's
10 perspective or observations in paragraph 3, he
11 states -- this is Mr. Arar:

12 "He was able to express
13 himself freely at times and
14 he indicated that prison
15 conditions had been more
16 difficult in the past than
17 now. He mentioned he did not
18 wish to have adverse media
19 publicity as he felt this
20 would only harm his case."

21 And then it's quoted:

22 "'The Press will know the
23 truth when I return home.'
24 He confirmed that he had not
25 been beaten nor tortured. He

1 also said he had not been
2 paralysed. When asked to
3 explain he could not find
4 another word for it. He also
5 said his long detention had
6 destroyed him mentally. He
7 indicated that as far as he
8 knew he was not receiving a
9 worse treatment than that
10 given to other prisoners."

11 As I say, we are going to have
12 Mr. Martel and Mr. Pardy extensively testify to
13 this consular visit. But just from your
14 perspective and your knowledge of international
15 law, in particular the Convention Against Torture,
16 you would agree with me that quite apart from
17 physical beatings -- and we will deal with that --
18 there is such a thing as psychological torture,
19 mental torture; that that is found within the
20 definition of torture in international law?

21 MR. LIVERMORE: I would agree with
22 you, yes.

23 MR. CAVALLUZZO: And as far as the
24 other aspects of this report are concerned, as I
25 say, we will have Mr. Martel testify.

1 Mr. Commissioner, I am being
2 advised that we should take time out for lunch.

3 THE COMMISSIONER: Right.

4 MR. CAVALLUZZO: I am going to be
5 about five minutes. Unfortunately, we have to
6 break now, but just to apprise other counsel,
7 about five minutes after lunch.

8 THE COMMISSIONER: If we start at
9 two, what do you think?

10 MR. CAVALLUZZO: Two would be
11 fine.

12 THE COMMISSIONER: All right. Two
13 o'clock.

14 THE REGISTRAR: Please stand.
15 Veillez-vous lever.

16 --- Upon recessing at 1:05 p.m./

17 Suspension à 13 h 05

18 --- Upon resuming at 2:00 p.m. /

19 Reprise à 14 h 00

20 THE REGISTRAR: Please be seated.
21 Veillez-vous asseoir.

22 THE COMMISSIONER: Mr. Cavalluzzo.

23 MR. CAVALLUZZO: Thank you.

24 Mr. Livermore, just two more
25 documents that I would like to review with you.

1 The first is tab 609, which is an
2 e-mail from yourself dated October 8th, 2003.

3 --- Pause

4 MR. CAVALLUZZO: To put this
5 particular e-mail in context, we know that
6 Mr. Arar returned from Syria to Canada on October
7 5th, or thereabouts, and in your e-mail, which is
8 sent to Lillian Thomsen, BCM -- who is Lillian
9 Thomsen?

10 MR. LIVERMORE: Lillian Thomsen is
11 the Head of the Press Office in Foreign Affairs.

12 MR. CAVALLUZZO: Okay. It states:

13 "Lillian:

14 I assume your people are
15 gathering the full
16 transcripts of materials on
17 the Arar case. Could we have
18 all of these materials sent
19 to Carol Markham in ISI?"

20 Now, Is Carol Markham an
21 administrative person?

22 MR. LIVERMORE: No, she isn't.
23 She is one of the policy analysts, somebody along
24 the lines of Don Saunders.

25 MR. CAVALLUZZO: Okay. It goes on

1 also:

2 "Jim Wright would like us to
3 go over the transcripts of
4 past articles on Arar,
5 especially the Powell visit
6 of November, 2002 (I think it
7 was), to compare what was in
8 the public domain in that
9 period with what is emerging
10 now. If your people could
11 hook up urgently with Carol,
12 it would be appreciated."

13 In terms of the Powell visit in
14 November of 2002, we went through that with you.
15 You looked at the chronology. It was the
16 statement on November 14, 2002.

17 Could you tell us what was going
18 on at this point in time? What were you trying to
19 deal with in terms of getting these press reviews?

20 Were there changes in the American
21 position? What was going on?

22 MR. LIVERMORE: What we were
23 trying to get a handle on was what was out there
24 in the public domain that had been said, as
25 opposed to things that we had seen, say, from

1 classified materials and others that we might have
2 known but was not necessarily in the public
3 domain.

4 In other words, after a period of
5 time passes there tends to be some drift from one
6 area to another, and we wanted to be on firm
7 ground, especially vis-à-vis what the Americans
8 were saying.

9 MR. CAVALLUZZO: Right. And at
10 this point in time you are presumably preparing a
11 number of chronologies, which we see subsequently
12 in November, and this would be part and parcel of
13 that?

14 MR. LIVERMORE: Yes, I believe so.

15 MR. CAVALLUZZO: Okay. The e-mail
16 on the top of the page says:

17 "Dan, Will do."

18 This is from Lillian.

19 "There will be a new
20 transcript from CBC Radio's
21 'The Current' this morning
22 interviewing Gar Pardy on
23 'the obstacles the Government
24 put in his way in speedily
25 resolving the Arar case',

1 plus undoubtedly more to
2 come."

3 Then it goes on:

4 "Miriam: Could you send all
5 the Arar transcripts to
6 Carol, especially those were
7 MINA spoke and the
8 Powell/MINA bilaterals ...
9 November 2002. Many thanks
10 in advance as always."

11 As far as Mr. Pardy's interview,
12 we will be taking him through that when he
13 testifies next week.

14 The final document, Mr. Livermore,
15 can be found behind tab 715.

16 MR. LIVERMORE: Excuse me, 715?

17 MR. CAVALLUZZO: Seven-one-five,
18 that's correct.

19 --- Pause

20 MR. CAVALLUZZO: This is dated
21 November 20th of 2003. And what it states -- and
22 there is a personal information number, references
23 with numbers and so on, and it's referred to as
24 "Secret".

25 It says:

1 "We have examined the file on
2 Maher Arar held in ISI. We
3 list here the entries in that
4 file which originate with
5 other DFAIT Divisions.
6 OGD's..."

7 What does that mean?

8 MR. LIVERMORE: Other government
9 departments.

10 MR. CAVALLUZZO: "... or Canadian
11 missions abroad. The
12 documents on the file which
13 originate in ISI or ISD are
14 attached, and our reasons for
15 recommending exemption for
16 ISI/ISD documents are listed
17 below."

18 Then on the next page, after the
19 redactions, we see in paragraph 5:

20 "The following correspondence
21 from JPO/JPE/JPD ..."

22 That is Collins, Pardy and Myra
23 Pastyr-Lupul?

24 MR. LIVERMORE: Those are the
25 divisions in which they work, plus Gar Pardy as

1 Director General.

2 MR. CAVALLUZZO: Okay.

3 "...is on the file and would
4 require their permission
5 prior to release."

6 Then we have a series of letters,
7 memos, e-mails, and so on and so forth.

8 This would appear to be what is in
9 the ISI and ISD file respecting Mr. Arar, this
10 compilation.

11 Would this be electronic or would
12 it be also in hard copy?

13 MR. LIVERMORE: These are probably
14 paper copies, hard copies.

15 MR. CAVALLUZZO: Okay. And the
16 question that I would have would be whether the
17 LOs, in particular the RCMP LO and the CSIS LO who
18 worked in this area, would have access to this
19 file?

20 MR. LIVERMORE: They don't have
21 access to the paper copies that we have in our own
22 files.

23 MR. CAVALLUZZO: Could they ask
24 for permission to have access and get copies of
25 any of these documents?

1 MR. LIVERMORE: They could ask for
2 access and, as you have seen before, some of them
3 have had access to a good many of them already.

4 MR. CAVALLUZZO: Thank you,
5 Mr. Livermore. I have no further questions.

6 THE COMMISSIONER: Thank you,
7 Mr. Cavalluzzo.

8 Ms Edwardh, then Ms. McIsaac, and
9 back to Mr. Cavalluzzo. Is that the order for
10 this?

11 MS EDWARDH: It is.

12 THE COMMISSIONER: Thank you.

13 EXAMINATION

14 MS EDWARDH: Good afternoon,
15 Mr. Livermore. My name is Marlys Edwardh. I
16 represent Maher Arar.

17 Let me stick with tab 715. And
18 the one follow-up question, of course, is that had
19 the LOs asked for any of that information, given
20 the prior pattern of sharing, they would have
21 received it?

22 MR. LIVERMORE: With respect to
23 715?

24 MS EDWARDH: Yes, that's correct.
25 That was the question.

1 And I take it your answer is yes?

2 MR. LIVERMORE: No, I don't think
3 you can take it yet.

4 MS EDWARDH: I am sorry. I
5 thought I heard you say yes.

6 MR. LIVERMORE: Excuse me. Let me
7 just review the nature of the document, if I
8 could.

9 The reason I hesitate is that the
10 LOs would have been entitled to receive documents
11 that originate with us, where we have the
12 responsibility to say yes or no to them. If, for
13 example, in paragraph 5 on the second page, it is
14 a correspondence in the consular bureau's file, it
15 is up to the consular bureau to make that
16 decision; similarly with respect to other
17 division's permission.

18 We had though, even prior to that,
19 and we have indicated already, we had distributed
20 materials and we had some correspondence both from
21 missions and the consular bureau which went to the
22 RCMP and others.

23 MS EDWARDH: That was my point,
24 sir --

25 MR. LIVERMORE: But I can't say

1 with respect to everything. That's my point.

2 MS EDWARDH: Let's go slower then.

3 You answered a question earlier
4 with respect to one posed by Mr. Cavalluzzo, and
5 it seemed clear that, given the context, as you
6 described it, there was a general sharing of
7 information between ISI and ISD and the liaison
8 officers, and that was done even before you
9 figured out that Mr. Arar was in Syria?

10 MR. LIVERMORE: Yes.

11 MS EDWARDH: It started then. And
12 I take it there was no point where you decided
13 that it was then inappropriate to provide
14 information to the RCMP or CSIS, and that you
15 adopted a different method of sharing information?

16 MR. LIVERMORE: I am not aware
17 that we ever changed our position on sharing.

18 MS EDWARDH: That was my point.

19 MR. LIVERMORE: I am, however,
20 cognizant that not all of the consular materials,
21 for example, went to me, nor did I have
22 necessarily a need to see them. And those
23 particular materials may or may not have been
24 passed to others, depending upon what the consular
25 bureau itself saw fit to do with it.

1 So I can't answer with respect to
2 the totality of the documents that are listed
3 here.

4 MS EDWARDH: But your general
5 impression, sir, is this information was shared
6 because of the circumstances.

7 MR. LIVERMORE: Yes.

8 MS EDWARDH: I take it when you
9 read The Current, which was Gar Pardy's interview
10 talking about obstacles in government to the
11 return of Mr. Arar, you disagreed with his
12 characterizations?

13 MR. LIVERMORE: I must confess
14 that I didn't read that transcript.

15 MS EDWARDH: All right. I found
16 it remarkable that someone who had been involved
17 in human rights in places like Chile would take
18 the position that you would not generally be in a
19 position to give advice about another country's
20 human rights record as it might impact on your
21 conduct in respect of a particular case.

22 So we can agree, sir, that there
23 is no dispute that people were tortured and died
24 when Pinochet took over in Chile, can we not?

25 MR. LIVERMORE: I believe that is

1 not in dispute.

2 MS EDWARDH: Right. And we can
3 believe that detainees are tortured and died in
4 Iran. Can we accept that?

5 MR. LIVERMORE: I think that's not
6 in dispute.

7 MS EDWARDH: Right. And we can
8 believe that the U.S. government states that
9 political detainees are tortured and die in Syria?

10 MR. LIVERMORE: I would have to
11 consult the State Department reports. I can't
12 recall exactly what they said.

13 MS EDWARDH: I am going to trust
14 to Mr. Cavalluzzo's characterization that
15 political detainees are tortured, and political
16 detainees are subject to arbitrary detention in
17 the State of Syria.

18 I can dig it out here, if you want
19 to take a look at it.

20 MR. LIVERMORE: Thank you. I have
21 it, thanks.

22 MS EDWARDH: The first
23 paragraph -- and I am sorry, I don't have the
24 reference handy. I didn't think this would be a
25 matter of dispute.

1 There is a recognition that the
2 courts, particularly the security courts, are not
3 presided over by an independent judiciary and are
4 indeed subject to political influence.

5 Do you see that?

6 MR. LIVERMORE: Which paragraph is
7 that?

8 MS EDWARDH: First paragraph.
9 This is the 2002 report. Three lines from the
10 bottom.

11 MR. LIVERMORE: I have the 2003
12 and 2004 reports in front of me.

13 MS EDWARDH: Well, we are not
14 going to do very well, Mr. Livermore.

15 It is Exhibit 27?

16 MR. LIVERMORE: Yes, okay; sorry.

17 MS EDWARDH: So let me draw your
18 attention to the last three lines of paragraph 1.

19 "The constitution provides
20 for an independent judiciary
21 but security courts are
22 subject to political
23 influence. The regular
24 courts generally display
25 independence, although

1 political connections and
2 bribery may influence
3 verdicts."

4 Do you see that?

5 MR. LIVERMORE: I see that, yes.

6 MS EDWARDH: So at least with
7 respect to the security courts, they seem to be
8 lacking in the quality of independence and
9 impartiality? Is that fair?

10 That is what it says here.

11 MR. LIVERMORE: All I can attest
12 to is that is what it says.

13 MS EDWARDH: That is what it says.

14 "The powerful role of
15 security services in
16 government, which extends
17 strictly beyond security
18 matters, stems in part from
19 the state of emergency that
20 has been in place almost
21 continuously since 1963."

22 And further, just jump down to the
23 end of the third line.

24 "Syrian Military Intelligence
25 and Air Force Intelligence

1 are military agencies."

2 And I want to go to the last three
3 lines of that paragraph:

4 "The branches of the security
5 service operate independently
6 of each other and outside the
7 legal system."

8 Do you see that?

9 MR. LIVERMORE: I see that, yes.

10 MS EDWARDH: Let me just stop for
11 one moment.

12 Over the months Mr. Arar was in
13 Syria, you began by saying that when you first
14 learned of this situation, you were not an expert
15 on the issues in respect of human rights and human
16 rights abuses in Syria.

17 Is that fair?

18 MR. LIVERMORE: That would be a
19 fair comment, yes.

20 MS EDWARDH: And you will
21 certainly agree with me that once he disappeared
22 and over the days and months that passed, you
23 certainly had ample opportunity to become quite
24 expert in those issues?

25 MR. LIVERMORE: Quite expert I

1 would not say, no. I became familiar with some of
2 them, but an expert, no.

3 MS EDWARDH: Well, you certainly
4 had ample opportunity to gather information about
5 the human rights situation from numerous and
6 varied sources, some of which were in your
7 department?

8 MR. LIVERMORE: Oh, the human
9 rights sources exist, yes.

10 MS EDWARDH: And you had ample
11 opportunity to look at them.

12 MR. LIVERMORE: Yes.

13 MS EDWARDH: Thank you. Down to
14 the last paragraph on that page:

15 "The government's human
16 rights record remained poor,
17 and it continued to commit
18 serious abuses. Citizens did
19 not have the right to charge
20 their government. The
21 government used its vast
22 powers to prevent any
23 organized political
24 opposition and there have
25 been very few anti-government

1 manifestations. Continuing
2 serious abuses included the
3 use of torture in detention."

4 Do you see that?

5 MR. LIVERMORE: Yes.

6 MS EDWARDH: "Poor prison
7 conditions, arbitrary arrest
8 and detention, prolonged
9 detention without trial,
10 fundamentally unfair trials
11 in the security courts, an
12 inefficient judiciary that
13 suffered from corruption and
14 at times political influence
15 and the infringement on
16 privacy rights."

17 That is not difficult to grasp;
18 fair enough?

19 MR. LIVERMORE: I can read that,
20 as can other people, yes.

21 MS EDWARDH: Mr. Livermore, do you
22 or do you not accept that, given your experience
23 and your knowledge, as a valid statement as to the
24 Syrian government?

25 MR. LIVERMORE: Do I accept this

1 as a valid statement?

2 MS EDWARDH: A valid description
3 of the state of human rights?

4 MR. LIVERMORE: As an official, I
5 do not comment one way or another on this
6 particular document. It's not my document to
7 comment on.

8 MS EDWARDH: If you were giving
9 advice to someone asking you about the state of
10 human rights in Syria, would you agree or not
11 agree with the descriptions that purported to give
12 that advice?

13 MR. LIVERMORE: I don't
14 characterize it one way or the other.

15 MS EDWARDH: So we are at a point
16 then, I take it, that you are saying, sir, that
17 because of national security confidentiality, you
18 will not give evidence in this public forum about
19 what you know or believe to be the state of human
20 rights in Syria in 2002?

21 MR. LIVERMORE: I believe I am
22 constrained by national security from giving
23 evidence, just as we do not publish unclassified
24 materials, as does the United States.

25 MS EDWARDH: Are you claiming

1 national security confidentiality over that
2 answer? I asked you a question.

3 MR. LIVERMORE: It depends. What
4 is the question?

5 MS EDWARDH: Well, with respect,
6 if you were asked to give advice to someone in the
7 Department of Foreign Affairs who was going to
8 provide consular services to a detainee in Syria
9 and they asked you, "What is the human rights
10 record of Syria in respect of such detainees?",
11 would you have given advice that accords with or
12 similar to what is said in the State Department
13 report?

14 MR. LIVERMORE: I would have given
15 them advice in a number of ways. One of the ways
16 we give them advice is to pass to them our own
17 classified materials, of which I'm not at liberty
18 to discuss today.

19 Another way we give them advice --
20 I'm not sure that's exactly the way, because it's
21 not my bureau that offers the advice -- is to
22 refer them to documents that have been drafted by
23 others, which includes Amnesty International or
24 Human Rights Watch or even the State Department.

25 MS EDWARDH: You see, the reason

1 this is really important, and I'm sorry -- maybe I
2 should -- you won't go any farther on that? You
3 won't tell us today, in a public forum, what your
4 true advice would be about the state of human
5 rights? You can't do that, you're saying?

6 MR. LIVERMORE: Well, with
7 respect, it's not me that advises people about
8 human rights. It's the geographic division within
9 the Department of Foreign Affairs that gathers the
10 relevant information. It's very often the mission
11 concerned that prepares human rights reports.
12 It's not me per se.

13 But with respect to your question,
14 yes, I will not characterize the classified
15 materials that come before me.

16 MS EDWARDH: See, the problem with
17 this, sir, is, you might, in your individual
18 capacity, not be in a position to give an ordinary
19 person, working in the Consular Affairs Bureau,
20 advice, because they wouldn't ask you.

21 But what you do, sir, is you
22 handle intelligence. You move it back and forth
23 across the boundaries and nations, is that
24 correct? You and your department.

25 MR. LIVERMORE: We do handle

1 intelligence, yes.

2 MS EDWARDH: And that's
3 intelligence -- and that's big "I" intelligence.

4 MR. LIVERMORE: Some of it is big
5 "I".

6 MS EDWARDH: Right.

7 MR. LIVERMORE: Some of it is
8 little "i".

9 MS EDWARDH: And some of it comes
10 from places that are not Canadian, correct?

11 MR. LIVERMORE: That is true.

12 MS EDWARDH: So let's take
13 Mr. Arar, who has now languished for days, some of
14 them entirely incognito, and then weeks and then
15 months in a Syrian Military Intelligence prison,
16 and you are the first recipient, other than the
17 ambassador, to have in your hands the products of
18 his interrogation, right? You have the products
19 of his interrogation?

20 MR. LIVERMORE: I don't believe
21 I'm the first individual, but I'm among the first.

22 MS EDWARDH: Yes. Ambassador
23 Pillarella brings back the paper and you are one
24 of the very first to get it.

25 MR. LIVERMORE: Mm-hmm.

1 MS EDWARDH: Now, who was it, who
2 was it that gave advice about how to assess the
3 facts alleged in that document?

4 Who gave advice to the Government
5 of Canada, to the RCMP, to CSIS, about whether it
6 was worth the paper it was printed on?

7 MR. LIVERMORE: I don't believe
8 that the advice was tendered in that way. The
9 document, such as it was, was passed to others to
10 make their own assessment of the document and its
11 own credibility.

12 MS EDWARDH: Well, with respect,
13 sir, I'm a criminal defence lawyer. I work with
14 Mounties. To me, most of them are good officers.
15 They do their best.

16 Now, they no more know what goes
17 on in the Palestine branch of a prison run by
18 Syrian Military Intelligence than the other
19 ordinary Canadians out there.

20 Who's going to tell them, if it's
21 not the Department of Foreign Affairs, "Listen,
22 before you put two cents of anything on this piece
23 of paper, you better understand what we know about
24 the conditions of confinement of political
25 detainees."?

1 Who told them, who gave them
2 information in respect of this document?

3 MR. LIVERMORE: I think you're
4 underestimating the RCMP. I think they know full
5 well how people are detained abroad and what the
6 value of the information that they may pass is
7 worth.

8 MS EDWARDH: Well, let's suppose
9 that the officers who got this information didn't
10 know, when they got it, that at a minimum Mr. Arar
11 was detained in circumstances no one could account
12 for and then detained in a grave-like space, in
13 the darkness, for weeks and weeks and weeks, in
14 conditions which no Canadian court or police force
15 would even contemplate knowing about? How do you
16 expect them to know that?

17 MR. LIVERMORE: I think you're
18 calling for a conclusion on my part as to what the
19 RCMP knows and what they don't know.

20 MS EDWARDH: All right. So let's
21 assume that -- let's take it back one step.

22 I take it what you're telling us,
23 as far as you are concerned, when you pass on the
24 big "I" intelligence or this kind of intelligence,
25 at least in respect of this case and this man

1 who's before this inquiry, you have no knowledge
2 or recollection of anyone briefing relevant
3 entities, like the RCMP, about what you knew about
4 Syria. I'm not going to ask you what you knew,
5 but just there was no briefing?

6 MR. LIVERMORE: I do not recall a
7 specific briefing.

8 MS EDWARDH: Now, maybe you know
9 enough from your history of human rights to answer
10 this question: You will agree with me, would you
11 not, given your involvement with -- let's take
12 Chile, that when people are subject to extremely
13 hard conditions of confinement, they may be
14 brutalizing, they may just be extremely long and
15 harsh, or that they hear other people killed or
16 whatever, that the utterances that come out of
17 that kind of interrogation are worthless, or may
18 be worthless?

19 MR. LIVERMORE: I had a number of
20 consular experiences in Chile which were of
21 different orders. I could go into some of the
22 consular cases I had, if you like. I'm not sure
23 what the point of the question is, though.

24 MS EDWARDH: Well, let me just
25 give you an example. If you were dealing with a

1 Chilean consular case and they said to you: Well,
2 I went out in an airplane, and after they threw
3 the bodies of the third person out of the
4 aircraft, I was taken back to the detention
5 facilities, and they asked me the following five
6 questions and I answered yes". Now, you'll agree
7 with me, would you not, that depending upon what
8 happened to a person, what they say may have
9 absolutely no reliability to it?

10 MR. LIVERMORE: Yes.

11 With respect to that, I can give
12 you concrete examples that I have indeed dealt
13 with consular cases in Chile where -- and this was
14 of course Chile in the old regime of General
15 Pinochet --

16 MS EDWARDH: Yes.

17 MR. LIVERMORE: -- which were
18 exceptionally brutal and where the individual in
19 question is purported to have said something which
20 he later recanted, and one could readily
21 appreciate that he had said something in those
22 conditions which he would later have either
23 regretted or recanted. I can certainly accept
24 that.

25 --- Phone ringing / Sonnerie de téléphone

1 MS EDWARDH: Is that you? I'm
2 sorry, Mr. Commissioner.

3 --- Laughter / Rires

4 That's my point, Mr. Livermore,
5 that if you put a human being in a certain set of
6 conditions that almost anyone would say whatever
7 is required in those conditions -- and that's part
8 of your experience.

9 MR. LIVERMORE: I don't have any
10 particular difficulty with that as a point. In
11 fact, I think if you look recently at some of the
12 materials that have been coming out on the
13 American experience in Iraq and Afghanistan, it's
14 quite damning, and there is abundant testimony
15 there that torture, ill treatment, don't work as
16 interrogation techniques.

17 MS EDWARDH: Yes, they get you bad
18 evidence.

19 MR. LIVERMORE: And that's a
20 long-standing -- it's a long-standing observation
21 that many people have had.

22 MS EDWARDH: And so you'll agree
23 with me -- and I think you're right. There's no
24 doubt it's a long-standing observation that many
25 people have.

1 And so you'll agree with me that
2 it is very important, when assessing intelligence
3 that comes from places where torture has been
4 identified as a possibility, that you have to know
5 something about the conditions of someone's
6 confinement before you can place one ounce of
7 weight on a document that was produced through
8 that process?

9 MR. LIVERMORE: I think that the
10 point that you're making about scepticism is a
11 valid one, and I could illustrate that with my own
12 experiences in Chile -- Chile and elsewhere.

13 But what I would emphasize as well
14 is that one has to look at the particular as
15 opposed to the general.

16 MS EDWARDH: Of course. And in
17 one of the things you said to Mr. Cavalluzzo
18 through this entire period, you didn't know where
19 Mr. Arar was from October 8 until 21.

20 The Government of Canada, with all
21 of its assets, both intelligence and otherwise,
22 couldn't find him.

23 And then, when he was in Syria,
24 after that was confirmed on October 21, as best I
25 can tell, no one, no one was able to access the

1 actual prison area where Mr. Arar was kept to do a
2 hands-on look at what it was?

3 MR. LIVERMORE: I'm not aware of
4 that. You would have to confirm that through
5 Mr. Pardy and others.

6 MS EDWARDH: Right. But certainly
7 you have no information about it?

8 MR. LIVERMORE: I have no
9 information on that --

10 MS EDWARDH: And furthermore,
11 despite the absence of that information, it seems
12 very clear to me that no one at the Department of
13 Foreign Affairs, our alleged experts in
14 understanding what is going on in other nations,
15 gave a briefing to A-OCANADA?

16 MR. LIVERMORE: I'm not aware that
17 any briefing was done by us.

18 MS EDWARDH: Thank you.

19 Now, Mr. Livermore, I was shocked
20 to see consular access abused, as you've described
21 this morning.

22 MR. LIVERMORE: I don't believe I
23 characterized it that way.

24 MS EDWARDH: No. Let's go through
25 some issues.

1 When someone is detained and the
2 Government of Canada is given consular access and
3 those people who provide consular assistance go
4 see a detainee, one of the first things a detainee
5 is told is that, "Your communications with me are
6 confidential, and indeed, if you do not permit me
7 to provide information about you to your family or
8 others, I can provide none".

9 And I'm going to suggest to you,
10 sir, it may be the best-kept secret that the
11 Department of Foreign Affairs is really a sieve
12 and that the confidences -- and you can laugh --
13 but the confidences that a detainee reposes in a
14 consular official are understood by the detainee
15 to be a matter of confidentiality. It's a trust.

16 MR. LIVERMORE: Are you inviting a
17 comment?

18 MS EDWARDH: I'm going to ask --
19 finish it with one more phrase.

20 And in Mr. Arar's case, his
21 consular visits were not, by any stretch of the
22 imagination, kept confidential within the consular
23 division, were they?

24 MR. LIVERMORE: Well, the starting
25 point for that question I believe is erroneous.

1 Like any other part of the
2 Government of Canada, the consular bureau and, in
3 fact, my bureau, operate according to the Privacy
4 Act.

5 There is a vast number of consular
6 cases every year. I have absolutely no
7 evidence -- I have absolutely no information on
8 any of them.

9 A small number of them engage
10 either criminal activity or national security
11 activity, where my understanding of the Privacy
12 Act is that there is facilitation for cooperation
13 among departments.

14 The first occasions when
15 cooperation was engaged with the RCMP, in fact it
16 was engaged for the express purpose of assisting
17 Mr. Arar, namely, finding out where he was and
18 what had happened to him.

19 And this is why I refreshed my
20 memory a bit on the chronology, because there were
21 a series of meetings between the point where he
22 was essentially shipped out of the United States
23 early in October and when he materialized in
24 Syria. And on those occasions we actively shared
25 information with the RCMP for that express

1 purpose, and we continued to share information
2 with the RCMP for what I would characterize as the
3 normal national security and criminal reasons.

4 MS EDWARDH: Okay. So I can live
5 with and understand your reference to assisting
6 consular affairs in locating what was essentially
7 a missing person, and you refer to that in your
8 general statement or description of your
9 functions, which is that there are some "parallel
10 processes" that you can utilize to find someone on
11 some occasions, right? I understand that.

12 But are you telling me that when a
13 detainee is told -- and we can go back to the
14 documents filed with Mr. Sigurdson, if we have
15 to -- but when a detainee is told that the
16 communication with a consular official is
17 confidential, that is a lie? That is not the
18 case, is it?

19 MR. LIVERMORE: Every
20 communication with the Government of Canada is
21 governed by the Privacy Act, and that's what
22 governs the consular bureau.

23 MS EDWARDH: Well, you've been --
24 you've given consular assistance, have you not?

25 MR. LIVERMORE: Yes.

1 MS EDWARDH: And isn't it the case
2 that when you give it, you tell persons that their
3 communication with you is a matter of confidence?
4 You tell them that?

5 MR. LIVERMORE: I do not tell them
6 that, no. I have not done that.

7 MS EDWARDH: I'm going to find the
8 document, if I can.

9 MS McISAAC: Are you looking for a
10 guide for Canadians imprisoned abroad?

11 MS EDWARDH: Sure, that will do.

12 --- Laughter / Rires

13 THE COMMISSIONER: I think that is
14 the one.

15 MS EDWARDH: P-11.

16 MS McISAAC: P-11.

17 MS EDWARDH: Tab 14.

18 THE COMMISSIONER: Tab 14?

19 MS EDWARDH: I'm also turning my
20 mind back to the document Ms Girvan produced,
21 which requires a detainee to name the individuals
22 with whom consular contact can be had.

23 THE COMMISSIONER: I think the
24 part you may be looking for -- we've seen it
25 before -- if it helps, is on the back of the

1 second page, under "Protection, Advice and
2 Assistance", and it's the third paragraph. That's
3 the one I had highlighted.

4 MS EDWARDH: All right. So this
5 is on the Government of Canada's website too. Let
6 me help you.

7 MR. LIVERMORE: Tab what?

8 THE COMMISSIONER: Tab 14.

9 MR. LIVERMORE: Tab 14. Okay.

10 MS EDWARDH: And it's the third
11 paragraph under "Protection, Advice and
12 Assistance".

13 MR. LIVERMORE: Mm-hmm.

14 MS EDWARDH: We'll look at the
15 document that Ms Girvan -- all right.

16 So if I'm a Canadian travelling
17 abroad, or I'm arrested and detained and I've got
18 a family member in Canada, and they want to know
19 what the Government of Canada can do for me as I
20 am languishing in a foreign prison, one of the
21 things they would be told:

22 "If you are detained or
23 arrested in a foreign country
24 and you choose to talk to
25 Canadian consular officials,

1 any information you give them
2 will remain completely
3 confidential and is protected
4 under Canada's Privacy Act.
5 It will not be passed on to
6 anyone, other than consular
7 officials concerned with your
8 case, without your
9 permission. You have the
10 right, for example, to
11 determine who may be notified
12 of your situation, and who
13 may act as your
14 representative. Your family
15 and friends will not have
16 access to any information
17 without your consent. The
18 Royal Canadian Mounted
19 Police (RCMP) and other
20 police agencies have their
21 own international contacts,
22 however, and may know of your
23 circumstances through those
24 sources."

25 MR. LIVERMORE: Mm-hmm.

1 MS EDWARDH: Now, it's palpably
2 obvious from what the Government of Canada is
3 saying, is that the communications during a
4 consular visit aren't going to be shared with the
5 cops?

6 MR. LIVERMORE: The information is
7 liable to be shared if it falls under the
8 provisions of the Privacy Act, and there are --
9 and as I reported earlier, in a small number of
10 cases, and there are between 20 and 40 of
11 700,000 --

12 MS EDWARDH: No, that's not
13 what --

14 MR. LIVERMORE: -- this is the
15 case.

16 MS EDWARDH: I guess my difficulty
17 is, Mr. Livermore, we both read English and it's
18 late in the day, and you'll agree with me --
19 forget what you do do; let's look at what you tell
20 citizens of Canada.

21 What you tell them is that, while
22 the police may have other sources, the
23 communications at a consular visit are
24 confidential, and any ordinary person reading
25 those words, Mr. Livermore, is going to be very

1 surprised that there's a big "but", and that "but"
2 is, if we find it in our interests to pass it on
3 to the RCMP? You don't think that's a dishonest
4 statement in there?

5 MR. LIVERMORE: I continue to
6 believe that what governs our behaviour is the
7 Privacy Act, irrespective of particular words
8 there.

9 But I think that the phrase that
10 you use in your question, about whether it's in
11 our interest, misstates the situation.

12 We don't decide arbitrarily and
13 simply because we have had a bad day that somehow
14 it's in our interests to pass information to other
15 people.

16 If I could put this in some
17 context -- and I think it's important possibly at
18 this juncture to put it in some context -- we were
19 dealing here with a particularly difficult period
20 of time. I was dealing myself with a particularly
21 difficult time because almost every week we had in
22 the office from the variety of sources that you
23 quite rightly characterize are at our disposal
24 threats to Canadian interests abroad, threats to
25 our embassies, threats to Canadians, and threats

1 which did result in the deaths of Canadians
2 abroad. This was an extraordinary time.

3 Everyone after 9/11, after 2001,
4 the year before, resolved to share information
5 more thoroughly. We did so.

6 Now, we didn't do so with respect
7 to all information. We restricted ourselves very
8 deliberately, and there were basically two
9 categories of information that we sought to ensure
10 were distributed to appropriate channels, not
11 arbitrarily but in very discreet ways.

12 One of those was information on
13 what I could characterize as criminal intelligence
14 information. The second was national security
15 information. And those governed a very small
16 number of Canadians indeed, and they were governed
17 in accordance with the Privacy Act.

18 And I think this is what governed
19 our conduct. It wasn't that we had arbitrarily
20 decided on a whim that this was something that we
21 could give away on behalf of the vast majority of
22 Canadians who were either detained abroad or who
23 had consular difficulties abroad.

24 MS EDWARDH: No. But we can agree
25 that certainly the exception that you have just

1 described is not reflected in what is held out to
2 be the case to Canadians who are accessing and
3 trying to get an understanding of the nature of
4 the relationship they might have with a consular
5 official.

6 It simply does not say there that
7 there are exceptions; correct?

8 MR. LIVERMORE: It does not say
9 that there are exceptions, and it may be that
10 people are unaware of the provisions of the
11 Privacy Act.

12 MS EDWARDH: Now the other
13 curiosity I have, and maybe you can tell me, I
14 have had my own personal experience with consular
15 affairs and worked with them on very difficult
16 cases and sometimes those cases involved
17 wide-ranging disputes over the legality of police
18 conduct, and in particular RCMP conduct.

19 Am I to assume that those -- and
20 they were very, very much serious criminal
21 allegations of multiple homicide. Am I to assume
22 that in obtaining the benefit of consular
23 services, if this occurred post-9/11, that my
24 working with consular officials, their meeting
25 with the accused persons, et cetera, were all

1 subject to furthering criminal intelligence?

2 MR. LIVERMORE: It's difficult to
3 answer a hypothetical question without knowing
4 what the specifics of the question are.

5 MS EDWARDH: Okay. I will refine
6 it but I won't name anybody.

7 Let's suppose there is a case
8 where the RCMP are alleged to have engaged in
9 methods to obtain a confession which are highly
10 controversial. All right? And if the confession
11 is admissible, then the person who is on trial
12 could potentially face the death penalty. And I
13 work closely with American defence counsel and
14 consular affairs to gather information against the
15 RCMP.

16 Am I to understand, for example,
17 in that kind of situation of serious crime, that
18 they would be aware of the communication that I
19 had with the consular affairs persons or that my
20 client had? Is that what this means?

21 MR. LIVERMORE: I am afraid I am
22 not able to characterize your example.

23 The issues on which my bureau was
24 engaged were exceptionally narrow. They were, as
25 I indicated before, two types of individuals or

1 cases, if I could characterize it like that:
2 individuals who were persons of interest to the
3 RCMP in criminal investigations, and people who
4 came to the attention of Canadian agencies for
5 national security reasons. That is it.

6 Other types of issues involving
7 the RCMP were not within my knowledge and I am
8 afraid that I wouldn't be able to characterize
9 your question one way or another.

10 MS EDWARDH: So if the RCMP were
11 interested in facilitating the prosecution of a
12 person charged with a very serious crime and that
13 prosecution happened to be of a Canadian citizen
14 abroad, it's fair to say that if consular services
15 could be harnessed to the aid of that prosecution,
16 this exception would apply?

17 MR. LIVERMORE: I think that is
18 too hypothetical for me to comment on.

19 MS EDWARDH: The next thing we
20 will know is that people are confessing.

21 I would like to turn to one last
22 question about human rights, and perhaps you can
23 answer it.

24 Leaving aside any general comment
25 about the government of Syria, you can agree, can

1 you not, that it was well-known within your
2 circles, including police circles, that Mr. El
3 Maati was interviewed by Foreign Affairs in mid
4 August of 2002 in Egypt and he alleged he had been
5 the victim of torture in Syria?

6 You were aware of that?

7 MR. LIVERMORE: I don't believe I
8 can comment on this case.

9 MS EDWARDH: I am sorry, could you
10 answer the question, please?

11 MR. LIVERMORE: I don't believe I
12 can comment on this case.

13 MS EDWARDH: Well, I am sorry, you
14 are going to have to answer the question unless
15 you wish to object.

16 MR. LIVERMORE: Could I ask if I
17 could be excused from answering on the grounds of
18 national security confidentiality?

19 MS EDWARDH: Yes.

20 THE COMMISSIONER: Yes, you could.
21 Perhaps I might ask Ms. McIsaac.

22 If it is national security
23 confidentiality, then the answer is yes. But I am
24 not sure that there is a claim made for national
25 security confidentiality over that answer.

1 Ms McIsaac, I might ...

2 MS McISAAC: It is my
3 recollection, and perhaps we could -- my
4 recollection is that the fact is on the public
5 record that Mr. El Maati made such allegations to
6 consular officials when interviewed in Egypt, and
7 we are prepared to confirm that.

8 THE COMMISSIONER: Okay, good. So
9 I think --

10 MR. LIVERMORE: Yes.

11 THE COMMISSIONER: In that
12 instance then, I think you can answer the question
13 as where it goes at this moment.

14 MS EDWARDH: Thank you very much.

15 MR. LIVERMORE: I can confirm that
16 then, yes.

17 MS EDWARDH: And you would have
18 been aware of that at approximately the time that
19 consular officials became aware of it?

20 MR. LIVERMORE: Roughly the same
21 time, yes.

22 MS EDWARDH: So in August of 2002
23 you were alive to reports of a Canadian being
24 tortured in Syria?

25 MR. LIVERMORE: Well, I had not

1 yet arrived in my job until the end of August
2 2002. I did become aware, subsequent to arriving
3 at the office, of the allegations that Mr. El
4 Maati had brought forward, yes.

5 MS EDWARDH: And I take it,
6 although my friend listed a number of factors that
7 one could in some cases view as increasing the
8 index of suspicion when Mr. Arar vanishes, I take
9 it the fact that Mr. El Maati had recently been
10 visiting in Syria and was detained and alleged
11 that he had been tortured, that did not increase
12 your index of suspicion?

13 MR. LIVERMORE: Well, if I might,
14 Mr. Commissioner, go into some of this at -- our
15 or my personal general disposition is to be rather
16 sceptical of virtually everything I see and read
17 until such time as I have gathered evidence. And
18 that in part is borne from some of the consular
19 experiences I have had.

20 If I may give an example, for
21 instance, drawn from my experience in Chile, I
22 don't think there is any doubt that Chile under
23 the Pinochet regime was one of the most brutal
24 regimes in the western hemisphere and possibly in
25 the world. Yet I dealt with consular cases at the

1 time where Canadians or dual nationals had been
2 incarcerated, and unfortunately Chile at the
3 time -- I am not sure if the same system obtains
4 right now -- had almost an identical system to
5 Syria; namely, that you were a Chilean for life,
6 if you were born in Chile, and if you acquired a
7 second nationality, they didn't recognize it, and
8 in fact they wouldn't allow you to renounce your
9 Chilean nationality.

10 I dealt with incarcerated dual
11 nationals who had no particular difficulty in the
12 Chilean prison system. They were not beaten.
13 They were not tortured. They were not mistreated
14 in any way. And contrary to Chilean doctrine,
15 which was to ignore the Canadian nationality, we
16 had no problems getting consular access.

17 Would I then go on from this
18 particular to say that prison conditions in Chile
19 were wonderful? Absolutely not. I would
20 characterize them as I did at the beginning:
21 absolutely brutal, with torture being practised on
22 certain people.

23 I knew people -- they didn't
24 happen to be Canadians but I knew people who were
25 tortured. I met relatives of people who had loved

1 ones killed while they were in prison, et cetera,
2 et cetera.

3 So that is one of the reasons why
4 I am a little sceptical of the idea of casting a
5 particular report and then trying to extrapolate
6 that report on a particular situation one way or
7 another.

8 It could be that we would want to
9 characterize the Government of Syria in one way or
10 another. I am not free to do so. I want to see
11 what the evidence was.

12 It might be -- it could well be
13 true that two Canadians, detained in the same
14 country, experienced different fates. I don't
15 know. But I would want to see the evidence
16 adduced in each particular case.

17 I heard of that case that is
18 mentioned, the El Maati case, but the evidence I
19 have is the evidence that you could have before
20 you. I have no firsthand evidence on that case.

21 MS EDWARDH: Well, rarely will we
22 have the firsthand evidence of torture or
23 mistreatment or abuse. We don't often get it
24 firsthand.

25 And with the greatest of respect,

1 Mr. Livermore, I am going to say you are quite
2 right, that in order to say something will happen
3 all of the time, that's difficult. But what we
4 can do is form a view, based upon the evidence,
5 about patterns, their persistency, and that can
6 become a basis to at least identify risks.

7 It's like a risk assessment. You
8 can't say with certainty something happened but
9 you can say that there is a possibility or a
10 probability that the risk will accrue. You guys
11 do that all the time, do you not, Mr. Livermore?
12 That's part of the function.

13 MR. LIVERMORE: It's part of the
14 function. At times we do that, yes.

15 MS EDWARDH: Yes. I found it
16 surprising when Mr. Cavalluzzo asked you -- and
17 maybe I mistook your word or your language. He
18 asked you about the period from October 8th and
19 9th to Mr. Arar's appearance or reappearance, and
20 he asked you about that missing space or hunk of
21 time and the concern that it raises when a
22 prisoner is held incommunicado and the evidence
23 that Syria had done this in the past.

24 Now, you said that you didn't have
25 a shred of evidence before you that Mr. Arar was

1 held incommunicado in Syria.

2 Do you recall that statement?

3 MR. LIVERMORE: I don't think I
4 quite made it in that way. But the point is --
5 the point is that I simply don't have any evidence
6 one way or another. There's a chunk of space
7 where Mr. Arar leaves New York, and there's a
8 chunk of space that transpires and then we have a
9 consular visit.

10 I don't have any evidence with
11 respect to what is in the middle.

12 MS EDWARDH: What troubles me is
13 the degree to which he personally is discounted.
14 He made it very clear to Leo Martel that he had
15 only been in Jordan for a short time and then he
16 had been taken to the Syrian border and admitted
17 into Syria.

18 So you do have his statement --

19 MR. LIVERMORE: Yes.

20 MS EDWARDH: -- and that is some
21 evidence, in the absence of any other explanation
22 of where he might be; right?

23 MR. LIVERMORE: That is the
24 evidence that we have, I think.

25 MS EDWARDH: It is certainly not

1 no evidence.

2 MR. LIVERMORE: No. I would say
3 that's his evidence, yes.

4 MS EDWARDH: And do you identify
5 any interest that Mr. Arar might have at the time
6 he told Mr. Martel that, that renders that
7 statement -- or there is something about it that
8 makes it unreliable?

9 Does it raise your index of
10 suspicion in the circumstances?

11 MR. LIVERMORE: Well, it's an
12 interesting question because the index of
13 suspicion -- you are probably right to
14 characterize it that way too because it comes from
15 a suspicious nature.

16 It is raised and I have to be
17 careful here. I pointed out it is not raised at
18 that particular time but it comes about because of
19 subsequent writings and particular writings that
20 have come out -- Seymour Hirsch's book on the
21 Middle East, and a number of other magazine
22 articles which have endeavoured to explore what
23 American policy has been since 2001, which is an
24 interesting area.

25 I was never briefed. I have no

1 firsthand information from any American sources
2 that we normally deal with one way or another.

3 But the interesting point, or at
4 least one interesting point for me, has been that
5 the Americans have apparently had -- and again let
6 me emphasize this is according to Seymour Hirsch
7 and others; it's not according to what I know
8 professionally -- they have a detention centre in
9 Jordan.

10 So to me one logical question at
11 the outset would have been: Well, why didn't they
12 send him there as opposed to Syria?

13 Let me make it clear. If Mr. Arar
14 says that this was his itinerary, and we have no
15 evidence that contradicts him, I have no interest
16 in contradicting him at all. But I simply don't
17 know. And there are lots of articles, there are
18 lots of things coming out now in the public
19 domain, based on investigative journalism in the
20 United States, that are exposing a lot of things.

21 I have no sources one way or the
22 other, but a sceptical person like me begins to
23 wonder about what happened and why.

24 MS EDWARDH: Well, certainly the
25 U.S. said he went to Syria.

1 MR. LIVERMORE: Yes.

2 MS EDWARDH: And Mr. Arar
3 essentially said he took a short jaunt through
4 Jordan and he went to Syria, and there is no
5 evidence to the contrary.

6 MR. LIVERMORE: That's right.

7 MS EDWARDH: One of the -- and we
8 will go through some of the other
9 documents --other alarming aspects of the consular
10 visits, if you will forgive my characterization
11 for a moment, is it is clear that General Khalil
12 admitted Canadians to Arar to give effect to
13 consular access, and not only did Mr. Arar's words
14 and whatever go into the intelligence and policing
15 community but that the visits themselves were
16 structured in a way to get information,
17 intelligence information, to pass on back to
18 Canada.

19 They always begin, or many of them
20 include as much intelligence information as can be
21 had at that time and it is shipped back.

22 We can go through them. There is
23 a meeting, there is a discussion after
24 pleasantries are exchanged. My hunch is that
25 Mr. Martel spends as much time with the General as

1 he does with Mr. Arar.

2 MR. LIVERMORE: I have no way of
3 characterizing that.

4 One of the things that we learn as
5 professionals is how to write reports, and one of
6 the things that you saw -- I think, in fact, it is
7 Ambassador Pillarella's first report. I think it
8 is about a page and a half long and it is a
9 45-minute meeting.

10 We leave to the head of mission,
11 we leave to the author of the report, the
12 responsibility of summing up the essence of that.
13 We don't ask for a blow-by-blow verbatim account
14 of what he said, "How's your mother-in-law," and
15 things like this. This cuts to the essence of the
16 problem.

17 We also are taught as to how to
18 characterize the meeting, and I think Leo Martel
19 was extremely astute about this because he did
20 make comments: how did Mr. Arar appear?

21 I wouldn't characterize that as an
22 intelligence comment, but anyone who had just been
23 to see -- any consular officer who had just been
24 to see any Canadian detained anywhere has to write
25 in the report what is fundamentally obvious to

1 anyone; namely, how are they?

2 There are other things that one
3 has to cover too. But in the course of a normal
4 report, it's not necessarily my business at
5 headquarters, possibly not Gar Pardy's business
6 either, to know how much time was spent in the
7 meeting. What we have to know is the essence of
8 the issue, and those reports from Damascus covered
9 them especially well.

10 MS EDWARDH: But my general
11 proposition -- and we will start through them --
12 is that on each of the occasions that consular
13 access is negotiated, they are also used as
14 occasions to endeavour to obtain information from
15 the Syrian intelligence about what is going on.

16 MR. LIVERMORE: I would have to
17 review each consular visit to check to see.

18 The first occasion that I can
19 recall, Ambassador Pillarella I think was offered
20 the information that was already available to
21 them. And I would have to go through visit by
22 visit to see what happened during that visit.

23 MS EDWARDH: Let's look at some of
24 the important visits then, if we could -- if I
25 could just clear this desk for a moment.

1 Before we turn to the visits,
2 there's just a couple of brief questions I wanted
3 to ask you.

4 Beyond your reference to the
5 Privacy Act, in choosing to share information with
6 CSIS or the RCMP or, I assume, a municipal police
7 force -- you could do that too -- are there any
8 protocols in place beyond your reference to the
9 Privacy Act -- and I should ask you what sections
10 you are referring to -- that govern the sharing of
11 this information?

12 MR. LIVERMORE: There have been in
13 the past protocols which govern. They tend to be
14 a bit dated because the protocols were put into
15 effect at a time when we didn't have the C4
16 communication system, before 9/11.

17 The second, the Privacy --

18 MS EDWARDH: Let's stick with the
19 protocols.

20 When Mr. Arar disappeared or was
21 detained in the U.S. and then removed to Jordan
22 and Syria, were there any protocols or policies in
23 place that you believe governed how, when, and
24 under what circumstances you were to share or not
25 share information with the Mounties and CSIS?

1 MR. LIVERMORE: With respect to --
2 that's when he was detained in New York?

3 MS EDWARDH: Yes, from New York
4 right through to, let's say, December of 2002.

5 MR. LIVERMORE: Because the -- it
6 depends on the circumstances. I hate to sound so
7 vague, but the normal unfolding of a consular
8 case, one of the 700,000, would not trigger any
9 sharing whatsoever.

10 What would trigger sharing or
11 cooperation might be a number of factors, and I
12 can go into what the factors were in this case.
13 But the generic factors are things like did the
14 consular bureau wish to know anything that they
15 weren't able to discover about a case on their own
16 devices? In other words, did they need our
17 assistance for some reason?

18 There are occasions that have
19 happened in my tenure over the last three years
20 where we have gone out to friendly agencies
21 requesting information because we simply don't
22 know things about a case.

23 The other situation that might
24 trigger the exchange of information is a flow in
25 the opposite direction, where the plight of a

1 Canadian has been brought to our attention by the
2 information obtained by a friendly intelligence
3 agency. And that has happened.

4 So the flow could be a number of
5 directions. But that is what engages the exchange
6 of information in the first place, rather than a
7 formal protocol.

8 THE COMMISSIONER: Sorry to
9 interrupt, Ms Edwardh, but your question is
10 directed towards sharing of consularly -- I'm not
11 sure if that's a word -- obtained information.

12 MR. LIVERMORE: That's right. I
13 would have to defer to Gar Pardy on the actual
14 consular information.

15 MS EDWARDH: All right. When you
16 are involved in transmitting big "I" intelligence,
17 I take it it's clear to everyone that while you
18 may transmit it back and forth consistent with
19 your mandate that that by no means excludes direct
20 communication by CSIS with other Foreign
21 Intelligence agencies or by the RCMP with other
22 policing entities?

23 MR. LIVERMORE: It depends on what
24 the caveats are in the circumstances.

25 We have, for example, in the

1 Canadian government, a caveat which is called
2 "Canadian eyes only". So if we have a report that
3 has come in from a mission and it's characterized
4 as Canadian eyes only, that would be the caveat
5 placed upon it. And a agency in receipt of that
6 information could not pass it on to anyone, any
7 foreign agency.

8 We also have classification
9 restrictions appropriate to each document. And in
10 the case, for example, of material passed on to
11 the RCMP or CSIS, if it's classified as, let's
12 say, secret or confidential, they are not free to
13 pass that document on to people who do not have
14 security clearances.

15 So, for example, with respect to
16 municipal police, they couldn't do that. They
17 can, however, pass on other information that is
18 not so classified.

19 So there are a number of rules and
20 procedures that have been developed over the years
21 to handle this type of information.

22 MS EDWARDH: So just help me
23 understand your role for a moment.

24 If there is a document that has
25 "Canadian eyes only" on it and it comes to your

1 attention that it is being transmitted to a
2 foreign policing entity or a foreign intelligence
3 entity, do you have some role to ensure that it
4 not go, or does it then have to be reviewed and
5 declassified?

6 MR. LIVERMORE: Well, what we also
7 have is a -- it's more of a concept than an
8 administrative procedure, but it's known as
9 originator control. That is that the originating
10 individual who puts that classification on is the
11 person who is also responsible for controlling the
12 course of that document.

13 If someone, for example, has
14 created a document and that document is labelled
15 "Canadian eyes only", then that is the way that
16 document stays, and the originator is the one that
17 determines whether or not it can be passed to
18 foreign agencies. And it may be that someone in
19 the chain of receipt could decide well, there's
20 not much in this document that's too restricted,
21 and another agency might well might it useful.

22 They would have to go back to the
23 originator to seek approval and the vetting
24 required to pass it on, in which case the
25 classification would change.

1 In some cases you find documents
2 where there's a mixture of things in a message.
3 There might be something that is essentially
4 unclassified or, as I have suggested earlier, a
5 large part of almost anything is unclassified.

6 Somebody may want to sever the
7 document and pass that on. But there are rules
8 about how the originator is intended to control
9 that process.

10 MS EDWARDH: And I take it when
11 you are merely a conduit for the passage of
12 information, the caveats or other things
13 controlling the distribution or use of that
14 information don't rest with DFAIT or ISD but
15 rather the originating agency that's passing it
16 on?

17 MR. LIVERMORE: By and large, yes.
18 It is possible for us to go back to those
19 originators, as I have suggested. But if those
20 are the caveats and they hold, then we don't
21 process them accordingly.

22 MS EDWARDH: Let me ask you this
23 question: If in fact the Royal Canadian Mounted
24 Police decided they would have liked to have
25 assisted the Syrian Military Intelligence and

1 forward information to them in aid of the Syrian
2 investigation, would you, sir, have any view of
3 whether it is within the mandate of the Department
4 of Foreign Affairs to say, "Whoa, we don't want to
5 send this kind of information into a system where
6 we have no control about how it's going to be used
7 or what inferences are going to be drawn, or
8 whether the person could be abused in the process
9 of an interrogation"?

10 MR. LIVERMORE: I can describe the
11 generic situation. It's certainly within the
12 power of the head of mission, as the manager of
13 Canadian policy abroad, to have a role in that
14 situation.

15 Whether it comes to my attention
16 or not depends a bit on the nature of the
17 information. For instance, we have Mutual Legal
18 Assistance Treaties with a number of countries.
19 We have active cooperation. That tends to go on
20 directly between the RCMP and those countries as a
21 seamless matter of cooperation. We have
22 absolutely no role in that one way or another.

23 As I say, the idea is it comes
24 together.

25 There's also -- and I don't want

1 to belabour this point. But there is the concept
2 of the whole-of-government approach, which is
3 basically that the government should act together
4 as a coherent whole.

5 MS EDWARDH: And so if I
6 understood what you just said, sir, and indeed
7 following up from a question that was asked by
8 Mr. Cavalluzzo, the ambassador in Damascus expects
9 to have notice that other governmental or persons
10 coming from the RCMP or CSIS or whatever, are
11 landing in Damascus, the ambassador expects, first
12 of all, to be notified of that fact?

13 MR. LIVERMORE: Yes, that would be
14 normal.

15 MS EDWARDH: And the ambassador
16 expects to have some control, in the loose sense,
17 in particular being in a position to provide
18 direction, if necessary?

19 MR. LIVERMORE: Yes.

20 MS EDWARDH: So, for example, if
21 the RCMP or CSIS had information that they wanted
22 to pass on to Syrian Military Intelligence, it's
23 well within the ambassador's bailiwick to say,
24 "I'm concerned about you doing that"?

25 MR. LIVERMORE: It is within the

1 ambassador's bailiwick, indeed, to do that. A lot
2 of it would depend upon the mandate of any agency
3 in acting abroad. I can't speak, of course, about
4 the specific example that you are saying --

5 MS EDWARDH: I wasn't using a
6 specific example. I wish I could.

7 MR. LIVERMORE: You are speaking
8 at least of the Syrian case.

9 I can speak, for example, of cases
10 where Ministers have directed somebody to do
11 something. It's a bit awkward for the ambassador
12 concerned to say that he would choose to overrule
13 a Minister who has decided on something.

14 So there is a consultative
15 framework that we try to operate in to avoid these
16 types of problems.

17 MS EDWARDH: Did you, sir, ever
18 become aware, during the course of your
19 involvement with the Arar matter, of any steps
20 taken by the RCMP or CSIS to provide information
21 or any kind of investigative brief about Mr. Arar
22 to Syrian Military Intelligence?

23 MR. LIVERMORE: I am trying to
24 recall each case with respect to CSIS and the
25 RCMP.

1 MS EDWARDH: I am talking about
2 Mr. Arar.

3 MR. LIVERMORE: Yes, yes.

4 MS EDWARDH: I don't want to go
5 beyond that.

6 MR. LIVERMORE: Yes, yes. I am
7 trying to feel my way through national security
8 confidentiality considerations which govern at
9 least one situation, at least in part.

10 If your question is information
11 going to the Syrian side, the answer is no.

12 MS EDWARDH: From either entity?

13 MR. LIVERMORE: You mean from the
14 Syrian side --

15 MS EDWARDH: No, no.

16 MR. LIVERMORE: Oh, CSIS/RCMP.

17 MS EDWARDH: Yes.

18 MR. LIVERMORE: No, no.

19 MS EDWARDH: Are you aware, sir,
20 that an offer was made to provide that
21 information? And I would like to know where in
22 the line it was that it got stopped so that no
23 information was provided.

24 MR. LIVERMORE: I --

25 MS McISAAC: I am going to have to

1 ask Ms Edwardh to take the witness to the
2 particular document or reference that she is
3 referring to.

4 MS EDWARDH: Then I will come back
5 to it. I'm sorry, I don't have it handy. I will
6 come back to it after the break.

7 THE COMMISSIONER: Okay.

8 MS EDWARDH: Now one of the odd
9 things about some of the consular notes -- and we
10 can take a look at them. The first one doesn't
11 help much because it's written by --

12 THE COMMISSIONER: Which tab?

13 MS EDWARDH: I'm sorry, that's tab
14 123. That's written by the ambassador.

15 But if we jump to some of the
16 others, maybe we could look at tab 507 for some
17 comparison, where Mr. Martel is writing on the 507
18 tab. And perhaps you could explain this.

19 Under 507, it's the third page.
20 Just get those two out.

21 You see under tab 507 that Leo
22 Martel drafts the consular note, which is dated
23 August 14th, 2003. Do you see that?

24 MR. LIVERMORE: Yes, I see that,
25 yes.

1 MS EDWARDH: And there's an
2 indication below that that it is approved by the
3 ambassador.

4 MR. LIVERMORE: Yes.

5 MS EDWARDH: And that's unusual,
6 is it not?

7 MR. LIVERMORE: Not particularly,
8 no.

9 MS EDWARDH: Why does the
10 ambassador approve what Mr. Martel is reporting
11 back to Ottawa?

12 MR. LIVERMORE: Usually with
13 outgoing messages there is -- this is not a
14 consistent pattern across the department, so you
15 find it varies enormously case to case. But there
16 is a line about somebody who drafted the document.
17 If that person wishes to consult somebody else in
18 the embassy, they consult somebody, and then you
19 get an approval line. Usually it's the boss who
20 approves the work of the other person in the
21 embassy.

22 So this is simply a normal
23 occasion where the ambassador would have approved
24 the message.

25 MS EDWARDH: And we can look

1 through the other consular notes, but I take it
2 you will agree with me that the ambassador is only
3 present physically for the first consular visit --
4 I'm sorry, there are two?

5 MR. CAVALLUZZO: The ambassador is
6 only present on April the 22nd.

7 The confusion is the first
8 document you are looking at is just a meeting
9 between the ambassador and the general.

10 MS EDWARDH: Thank you very much.
11 I appreciate your assistance, Mr. Cavalluzzo.

12 So if the ambassador is there on
13 only one visit, most of the notes are approved,
14 most of the consular notes are approved by the
15 ambassador in respect of Mr. Arar's case.

16 So let me go back to the question
17 again. Since the ambassador is not present for
18 most of these consular visits, why would
19 Mr. Martel's record of his consular visits have to
20 go through or go through the ambassador?

21 MR. LIVERMORE: I think you would
22 have to ask Ambassador Pillarella that.

23 I made a point when I was in
24 Guatemala of approving most messages that went to
25 Ottawa. That was just my practice. And that's

1 the practice that I asked for at the embassy, and
2 that's the one that obtained for the three years
3 that I was in Guatemala.

4 MS EDWARDH: We can agree, can we
5 not, that --

6 MR. CAVALLUZZO: If it would save
7 some time, you will hear that frequently
8 Mr. Martel will put in his reports information
9 from Mr. Pillarella, and as a result of that
10 Mr. Pillarella often approved these reports.

11 MS EDWARDH: Thank you very much.
12 If I could just have your
13 indulgence, Mr. Commissioner.

14 THE COMMISSIONER: Sure. I'm easy
15 as to how long we sit before a break, but any time
16 you want a break, just let me know.

17 MS EDWARDH: Thank you very much.
18 If I could go back to tab 507,
19 interestingly enough this consular note is
20 classified as secret.

21 Would that be the stature of most
22 consular notes? I take it this is unusual.

23 MR. LIVERMORE: Well, the ones --
24 as we were indicating with respect to the 700,000,
25 if you want to characterize it like that, or the

1 CAMANT system itself is unclassified. It's on the
2 SIGNET "D" system. So anything that goes into
3 CAMANT automatically is unclassified.

4 Most of what -- and there are
5 examples I believe before us.

6 Anything that one wanted to
7 classify, they had to use the C4 system. So that
8 largely explains the difference.

9 MS EDWARDH: Yes. And my
10 question, though, is a little different,
11 Mr. Livermore.

12 As a record of a consular visit,
13 it's fair to say that most consular visits are not
14 put into the documents --

15 MR. LIVERMORE: No.

16 MS EDWARDH: -- that have to
17 acquire the stature of secret?

18 MR. LIVERMORE: No. That is
19 absolutely correct.

20 MS EDWARDH: And it is because in
21 fact that this deals with Mr. Arar and the alleged
22 acts or allegations of terrorist involvement?

23 MR. LIVERMORE: Well, that and as
24 well we wanted to make sure that we were
25 safeguarding completely our thinking vis-à-vis

1 what the Syrian authorities may have been thinking
2 and what others might have been thinking at the
3 same time. And the way you safeguard that is to
4 make it a classified document and to send it via a
5 secure communication system.

6 MS EDWARDH: And that, of course,
7 protects you from Syrian ears, as best as you --

8 MR. LIVERMORE: One hopes.

9 MS EDWARDH: One hopes.

10 Now, in this document, 507, there
11 is a discussion about a number of things that we
12 will leave to others, but there is a discussion
13 about the proposed trial and its form, and then
14 there is a redaction.

15 I'm going to just ask you this:
16 Without telling us anything about what the
17 contents of the redaction is, does that reflect a
18 private meeting, as you recall, with General K?

19 MR. LIVERMORE: I don't recall one
20 way or the other.

21 MS EDWARDH: Okay.

22 Then we'll go back, if I could,
23 and perhaps -- in order to get this better
24 organized, Mr. Commissioner, can I just ask you,
25 if it is not a burden, if we could take our break

1 now.

2 THE COMMISSIONER: Sure,
3 absolutely.

4 MS EDWARDH: And that will allow
5 me to organize these documents a little better.

6 THE COMMISSIONER: We'll rise for
7 15 minutes.

8 THE REGISTRAR: Please stand.

9 --- Upon recessing at 3:20 p.m. /
10 Suspension à 15 h 20

11 --- Upon resuming at 3:38 p.m. /
12 Reprise à 3 h 38

13 MS EDWARDH: Thank you,
14 Mr. Commissioner.

15 If I could, before we turn to some
16 specific notes, I'd like you to look at tab 482,
17 Mr. Livermore, and --

18 MR. LIVERMORE: Excuse me? Is it
19 482?

20 MS EDWARDH: Four eight two, yes.

21 MR. LIVERMORE: Four eight two.

22 Thank you.

23 MS EDWARDH: Yes.

24 And can you describe this
25 document? It obviously comes from Mr. Saunders,

1 is that correct?

2 MR. LIVERMORE: The --

3 MS EDWARDH: Or is it to
4 Mr. Saunders?

5 MR. LIVERMORE: The formatting of
6 this, the way it comes out on the system, is a bit
7 odd. Saunders would have been the drafting
8 officer.

9 MS EDWARDH: Okay.

10 MR. LIVERMORE: And normally this
11 would have been at the top right-hand side of the
12 document, and it's -- the "To" and the "From"
13 things have been left out, but I would imagine
14 that it's to USS, to the Deputy Minister of
15 Foreign Affairs.

16 MS EDWARDH: Is this a document
17 which in similar form actually made it from
18 Mr. Saunders' desk on up through the department?

19 Do you have any reason to believe
20 it did not go forward?

21 MR. LIVERMORE: Boy. I know that
22 there was a document that went forward at some
23 point, but I don't think this was the document.

24 MS EDWARDH: All right. It does
25 as a document, though, express some concerns.

1 I guess it's hard to capture it,
2 there's a lot of black, but let me just read a
3 couple lines and see if we can capture those
4 concerns.

5 "On the Arar case... is
6 concerned about the recent
7 comment by the Solicitor
8 General about "rogue
9 elements" in the RCMP passing
10 intelligence to the Americans
11 about Arar which led to his
12 arrest in New York and
13 deportation to Syria. The
14 RCMP has worked closely...
15 since September 11, 2001 to
16 detect and deter further
17 terrorist operations in North
18 America. To that end there
19 is full sharing of
20 information about suspected
21 terrorists."

22 Now, let me just talk about my
23 interpretation of that statement -- and it's one I
24 think that the Solicitor General made in the House
25 as well and indeed I think it's been made

1 elsewhere -- but that post-9/11 there was a full
2 sharing of either criminal intelligence or
3 national security intelligence in relation to
4 possible terrorist actions, and that by full
5 sharing -- and I'm going to suggest to you, sir --
6 that everyone was well aware that it was not
7 caveated, there were no caveats on it?

8 MR. LIVERMORE: I can't tell you
9 about RCMP information. I can say -- I mean, it's
10 not because it's national security
11 confidentiality, I simply don't know.

12 But I can say that the notion in
13 this document, that there is full sharing of
14 information, is a phrase that you see repeated
15 again and again because, as I indicated earlier,
16 post-9/11, the impetus was on a lot of people in
17 the Canadian government to ensure that patterns of
18 established silos, patterns of absence of sharing
19 of information ended, and that there was a full
20 sharing of appropriate information to reach the
21 appropriate people at the right time.

22 MS EDWARDH: Right. And in order
23 to fully share information to reach the right
24 people at the right time -- I'm going to add one
25 other phrase -- "and to permit them to use it in a

1 way they may need to" was part of the full
2 sharing?

3 MR. LIVERMORE: I couldn't tell
4 you that about the RCMP, no.

5 MS EDWARDH: How about your own
6 division?

7 MR. LIVERMORE: Well, I can tell
8 you that the reason that we share -- I can give
9 you some examples, if you like. But we get
10 information passed to us which, by its very
11 nature, is always rather general and always rather
12 tantalizingly unsatisfactory.

13 But it's provided to us and most
14 of it you would have to characterize as threat
15 information, and we would use that to advise our
16 missions abroad about the safety and security of
17 Canadians, for example.

18 So, yes, they pass us the
19 information. It tends -- it is caveated in this
20 sense. Most of the information we receive is is
21 caveated. It's caveated in terms of
22 classification. It's caveated in terms, for
23 example, of who, which nationalities can have
24 access to it.

25 We are then free, as Foreign

1 Affairs, that is, to apply ourselves to use that
2 information to protect Canadian information.

3 So that's the practical way that
4 we use it.

5 MS EDWARDH: I'm sorry, you
6 said -- maybe you misspoke yourself -- you're
7 allowed to use that information to protect
8 Canadian information. I think you meant Canadian
9 property or persons --

10 MR. LIVERMORE: Yes.

11 MS EDWARDH: -- or whatever?

12 MR. LIVERMORE: I'm sorry, yes.

13 MS EDWARDH: So, if you had some
14 tantalizing general, but nonetheless caveated,
15 information that indicated a threat to the offices
16 of the Consul General in New York, and it was
17 appropriate to hand that on to policing
18 authorities promptly in the U.S. in order that
19 they might take steps to provide adequate
20 protection to that facility and, if necessary, get
21 a search warrant or get a wiretap, you wouldn't,
22 for one second, hesitate to pass it on, would you,
23 sir?

24 MR. LIVERMORE: Well, what we
25 would do -- your latter comment is absolutely

1 right. What we generally do is receive that
2 information, pass it to the mission, and then ask
3 the mission to take appropriate action with
4 respect to that information.

5 But as I say, the normal type of
6 information that we get is tantalizingly vague.
7 It's very rarely specific.

8 MS EDWARDH: Right. But in the
9 circumstances where the mission felt it was
10 appropriate to pass it on to the New York police
11 department or the FBI, they would certainly have
12 authority to do it?

13 MR. LIVERMORE: Well, again, it
14 doesn't lend itself to a categorical answer. I'm
15 sorry.

16 What normally, in fact ironically,
17 most of the information comes from other agencies
18 outside of Canada.

19 So in a sense, if you are talking
20 about a threat to Canadian interest in New York,
21 it may well be that American security authorities
22 already knew about it. They were simply informing
23 us --

24 MS EDWARDH: But can you stick
25 with the fact pattern of you becoming aware of a

1 threat to Canadian persons and property in New
2 York City, and if that information is caveated,
3 whether or not if the threat were imminent, you
4 just said pass it to the mission, and you would
5 expect them, would you not, to provide it to the
6 authorities if it were the kind of information
7 that might be used to protect the people and the
8 property?

9 MR. LIVERMORE: What we would
10 expect them to do would be to take that
11 information and act upon it without necessarily
12 passing the information directly. They would
13 probably not, because of the caveat, be able to
14 simply pass it on to local authorities. They
15 would have to respect the caveat.

16 But they could well -- thinking of
17 an example, let's say that someone claimed there
18 was a car bomb outside of our consulate general in
19 New York, that material might be classified secret
20 or top secret.

21 We would not be able to divulge
22 that information. But on the other hand we would
23 be able to go to the New York Police and say, "We
24 have reason to suspect that there will be a threat
25 against the building and we have reason to suspect

1 that it might come as a result of a vehicle-borne
2 device, and what we suggest is that we block off
3 the street or that we put up barriers because that
4 seems to be the type of threat that we're
5 confronting".

6 So there's a fine line between
7 divulging the exact information, which we're
8 prohibited from doing, and giving the local people
9 enough that they take seriously the type of threat
10 that we face.

11 MS EDWARDH: Let me test your
12 hypothesis one more time.

13 Let's suppose that the information
14 you had came from a CSIS wiretap, and it allowed
15 one to draw an inference as to the possible
16 identity of the bomber or the person who had put
17 the bomb in the car and that the time frame for
18 which that bomb might be placed in the vehicle was
19 between two to four days.

20 Is it your view, sir, that the
21 identity of the prospective bomber would not be
22 handed off to the NYPD or to the FBI?

23 MR. LIVERMORE: Well, that's
24 getting down a speculative trail that I'm a little
25 reluctant to follow in the sense that you're

1 getting into an area where CSIS would be better
2 positioned to speak about their cooperation with
3 American authorities which would be relevant.

4 They, of course, are constrained.
5 We don't receive from CSIS, necessarily,
6 information of that order. We don't -- we aren't
7 free to pass on to others information that is
8 caveated by CSIS, so it's a bit fraught with
9 speculation.

10 MS EDWARDH: Well, it would seem
11 to me that what you're saying is by no stretch of
12 the imagination could we say that there's a full
13 sharing. Because if you can't hand on the
14 specifics and to permit the American authorities
15 to use the information as they see -- I don't want
16 to say "as they see fit", but as is appropriate to
17 the occasion and sense of urgency, then there is
18 not, in the ordinary course -- we'll leave aside
19 Mr. Arar -- there is not, in the ordinary course,
20 full sharing of information for the purposes of
21 policing and intelligence?

22 MR. LIVERMORE: I think -- let me
23 give you, if I could, my general take on this.

24 MS EDWARDH: Sure.

25 MR. LIVERMORE: I can't speak for

1 the RCMP and CSIS. I'm afraid that they would
2 have to speak about what their full sharing is.

3 I don't think there's a country in
4 the world that exercises what I would calling full
5 sharing. We have something I described earlier as
6 Canadian eyes only. These are our innermost
7 opinions. These are the assessments that we have
8 about situations. We have information that comes
9 to us of a certain sensitivity that they're
10 safeguarded among Canadians.

11 So the full sharing is the ideal
12 world where we would pass to others not
13 necessarily 100 percent of the facts, or not
14 necessarily -- but at least enough to be able to
15 share the patterns or to be able to have the
16 principle accepted that we are engaged in their
17 security as well as our own.

18 MS EDWARDH: All right. Let me
19 turn the coin over.

20 At tab 484, and I hear your
21 answer, at tab 484, there's another document I
22 would like to ask you about. It appears to be
23 signed off by Mr. Heatherington?

24 MR. LIVERMORE: Yes.

25 MS EDWARDH: And it is sent to the

1 Deputy Minister, is that correct?

2 MR. LIVERMORE: It is, yes.

3 MS EDWARDH: And it is sent
4 through you to the Deputy Minister?

5 MR. LIVERMORE: It is, yes.

6 MS EDWARDH: And someone has
7 called or gotten in touch with you?

8 MR. LIVERMORE: I think it is a --
9 what I think it is is a call by someone on the
10 Deputy Minister. That's what I would surmise that
11 it is, because it says -- in the first line, I
12 think it says, "be calling on you at 10:00". If I
13 think -- if that's part of the same message.

14 MS EDWARDH: And is there an
15 effort -- I mean, perhaps it doesn't come out of
16 this document as clearly as I thought it did --
17 but is there an effort to assure those in the
18 United States that the events involving Mr. Arar
19 will not impede the flow of information that
20 exists? Are you aware of that occurring?

21 MR. LIVERMORE: I can't say with
22 certainty what is concluded in this memo.

23 MS EDWARDH: All right. Then go
24 back to 482. This is in the context of a
25 discussion of Mr. Arar, and if you go to the

1 fourth paragraph, it says:

2 "On this point you could
3 reassure... that we
4 understand the value of
5 information-sharing and will
6 do our utmost to keep
7 channels open."

8 MR. LIVERMORE: Yeah.

9 MS EDWARDH: And that's not the
10 RCMP speaking or CSIS speaking --

11 MR. LIVERMORE: That's right.

12 MS EDWARDH: -- that's DFAIT and
13 ISD and ISI?

14 MR. LIVERMORE: That is Foreign
15 Affairs in general, yes.

16 MS EDWARDH: And so Foreign
17 Affairs was concerned, I take it, that the Arar
18 case might close, impede, or shut down whatever
19 free flow of information there was. Is that fair?

20 MR. LIVERMORE: I think you could
21 say that we were concerned that the sharing of
22 information might somehow be compromised. I'm not
23 sure that we had thought through how fully that
24 might be compromised, but there was a suspicion
25 that could happen, yes.

1 MS EDWARDH: And if you go to
2 tab 547 -- which means, I'm sorry, you have to go
3 to another volume. It will be in volume 6.
4 --- Pause

5 This is a memorandum from
6 Mr. Saunders, who is one of the policy analysts in
7 the department?

8 MR. LIVERMORE: That is right,
9 yes.

10 MS EDWARDH: And it is sent to --
11 now, is that the Deputy Minister again?

12 MR. LIVERMORE: That is the
13 Assistant Deputy Minister, Jim Wright.

14 MS EDWARDH: Right. And it goes
15 through your office again?

16 MR. LIVERMORE: Yes, although I'm
17 not certain that this was sent because it doesn't
18 have a signature and I don't see my initial
19 through my acronym.

20 MS EDWARDH: So I take it, sir --
21 well, let's see if it's the kind of concern and
22 sentiment that might have been expressed in other
23 language or expressed more felicitously by someone
24 else. And there are two aspects of this that are
25 interesting.

1 At paragraph 3, there is a
2 reference to the Deputy Commissioner Loepkky. See
3 that?

4 MR. LIVERMORE: Yes.

5 MS EDWARDH: And he is concerned
6 you haven't told him quickly enough about the
7 October 3 consular visit. Do you see that?

8 MR. LIVERMORE: That's right, yes.

9 MS EDWARDH: He's dead wrong. But
10 nonetheless, he wasn't satisfied with the flow of
11 information. Is that fair?

12 MR. LIVERMORE: That is fair.

13 MS EDWARDH: It's interesting that
14 he expected to know that, but nonetheless, we've
15 canvassed that.

16 And you go on and say:

17 "We shared most of the
18 information we had on this
19 case with our RCMP Liaison
20 Officer who passed it on to
21 his headquarters."

22 MR. LIVERMORE: Mm-hmm.

23 MS EDWARDH: So I take it it's
24 fair to say that there was a full, or almost full,
25 sharing of information that went right up to

1 headquarters?

2 MR. LIVERMORE: Yes.

3 MS EDWARDH: All right.

4 "We also met with a group of
5 RCMP and CSIS officers on
6 October 21 to discuss the
7 case."

8 And you go on.

9 Do you want to take a moment to
10 read it? I don't want to take you through the
11 whole memo.

12 But what's at concern here is also
13 the maintenance of lines of communication with the
14 RCMP. They're concerned they didn't have any
15 information. You assured them in effect that they
16 did. But what they're concerned about is that
17 there's a free flow for them.

18 MR. LIVERMORE: My recollection is
19 slightly different, although I wouldn't quarrel
20 completely with what you're saying.

21 My recollection of that is that at
22 some point Deputy Commissioner Loepky saw Jim
23 Wright and made the observation which is contained
24 in the first part of this memo, namely, that the
25 RCMP had not known until two weeks ago that a

1 consular official had visited New York. Now, he
2 said this is what he understood was the case.

3 I think Don Saunders was in that
4 meeting, if I recall correctly, and Don Saunders
5 came back and said, "Well, this isn't the case
6 because, in fact, we had shared this information
7 with the RCMP as the case developed."

8 Now, it could have been the
9 case -- and this would have to be addressed I
10 think by the RCMP -- it could have been the case
11 that Mr. Loepky didn't get the information for
12 whatever reason, but certainly we had passed the
13 information to the RCMP.

14 So it was not a case that he was
15 especially worried about the system; he was more
16 concerned about that one particular incident and
17 why he had -- he personally had not known it at
18 the time.

19 MS EDWARDH: Well, before you just
20 conclude your thought on that, Mr. Livermore, take
21 a look at the last paragraph in the letter.

22 "Our letter would be designed
23 to be reassuring about
24 information-sharing with the
25 RCMP and also to assure them

1 in writing that we are not
2 attributing blame to them for
3 Arar's deportation to Syria."

4 So in effect it's not simply about
5 this one incident, it's about assuring the
6 Mounties that they can have some confidence in the
7 information-sharing agreement beyond Arar, is it
8 not?

9 MR. LIVERMORE: Not -- I wouldn't
10 put it that strongly, but what the letter -- now
11 my recollection is this not -- it was either not
12 sent or not -- or we didn't act on it, but that
13 doesn't matter, because it was drafted anyways.

14 My recollection is that what we
15 had -- what that sentence was designed to address
16 was, at no point in this situation had we denied
17 to the RCMP any information which was relevant to
18 them. At no point. And we wanted to assure Garry
19 Loepky that that was the case, and we were going
20 to put that -- we had no trouble putting that in
21 writing.

22 MS EDWARDH: Let me then flip the
23 coin all the way around.

24 Can you agree with me,
25 Mr. Livermore, that Mr. Arar's case raises

1 troubling issues?

2 MR. LIVERMORE: It certainly
3 raises troubling issues to me, yes.

4 MS EDWARDH: And do you know
5 whether or not after everyone had an opportunity
6 to absorb what had happened, or at the best we
7 know what happened, and reflect upon it, there has
8 been any change in policy in ISD or ISI about the
9 free flow of information and the role of caveats?

10 MR. LIVERMORE: No, there has not
11 been any change in information-sharing because we
12 had been confident from the initiation that the
13 information-sharing was completely appropriate and
14 above-board.

15 When I indicate that I find this
16 case troubling, I don't find it troubling from the
17 Canadian point of view at all. I find it
18 extremely troubling from the point of view of the
19 American government. And that has always been my
20 take on the situation.

21 MS EDWARDH: Can I just stop you
22 and go back to the "we"?

23 MR. LIVERMORE: Yes.

24 MS EDWARDH: You said -- I'm not
25 sure I can duplicate your answer. But you said

1 you have no trouble with the information we
2 shared, and I just want to make sure I understand
3 who the "we" is.

4 Is the "we" the Department of
5 Foreign Affairs and International Trade, or is the
6 "we" to the extent you know it was shared by the
7 policing, intelligence and departmental officials,
8 in your view, was appropriate?

9 MR. LIVERMORE: The way that we in
10 Foreign Affairs, in the Foreign Affairs part that
11 I'm responsible for, namely the Bureau of Security
12 and Intelligence, the way that we shared
13 information with the agencies of the Canadian
14 government that we deal with.

15 MS EDWARDH: And do you know that
16 when you were sharing that information with the
17 RCMP, or CSIS, or other parts of the Department of
18 Foreign Affairs, do you know whether anyone passed
19 that information on to a foreign entity, such as
20 the United States?

21 MR. LIVERMORE: There's no way
22 that I could know that. Absolutely no way.

23 MS EDWARDH: Certainly, sir, you
24 didn't, I take it?

25 MR. LIVERMORE: No.

1 MS EDWARDH: I can't resist asking
2 you, as someone who has worked in the field that
3 you have worked on so long, what it is that you
4 find troubling about the conduct of the U.S.
5 government.

6 You have obviously had an
7 opportunity to reflect upon it and it would, I
8 think, be an omission for me not to invite you to
9 comment for the Commission.

10 MR. LIVERMORE: I would be glad
11 to. I find troubling the entire course of
12 activity that the American government has embarked
13 upon since about 2001 with respect to what they
14 call extraordinary rendition, a practice about
15 which we knew absolutely nothing and about which
16 we have never been ever informed by the American
17 government.

18 I find particularly troubling that
19 the American government would hold an
20 administrative tribunal in the middle of the night
21 and deport someone back to his native country
22 where they must have known that it was difficult,
23 to say the least, for him.

24 I find all these things troubling.
25 I have no difficulty at all with that. It is

1 exceptionally troubling.

2 MS EDWARDH: And obviously you
3 would find, given your human rights history, it
4 equally troubling for someone to be detained
5 without charge or access to counsel, whether that
6 be in the United States or Syria?

7 MR. LIVERMORE: I would. I must
8 say that I am also realistic about some of these
9 situations; that I have dealt with situations
10 where people have been denied counsel and denied
11 trial where things had turned out all right with
12 respect to other countries. And I am not speaking
13 here about the United States, nor am I speaking
14 about Syria.

15 But I find it troubling that there
16 are countries in the world that do not obey the
17 rather general provisions of the Vienna Convention
18 on consular relations.

19 MS EDWARDH: And certainly you
20 became aware that while ultimately the persistence
21 of Ms Girvan got her into the MDC, I take it you
22 are aware that not only was Mr. Arar a person held
23 in the MDC but so were other persons with --
24 either landed immigrants or Canadians who were not
25 in a position to have the American authorities

1 contact consular affairs and notify them?

2 MR. LIVERMORE: I must say that I
3 did not really become aware of this until fairly
4 well into the incident in question with respect to
5 Mr. Arar alone. So I am not aware of other
6 incidents.

7 MS EDWARDH: Well, then, we will
8 leave that until Mr. Pardy testifies.

9 My friend took you to the note,
10 and we can review it. I believe it's 239 if you
11 need some assistance preparing Minister Graham --
12 it's the wrong note.

13 Maybe 439.

14 MR. CAVALLUZZO: 288.

15 MS EDWARDH: It is 288? Thank
16 you, Mr. Cavalluzzo. I will just have you move
17 over here.

18 And we have the messages, the
19 summary I guess reflected at -- yes, tab 288. I
20 am sorry, it's the last point, and you have been
21 referred to it before.

22 I want to ask you and have you
23 reflect upon it. Certainly for the Minister to
24 have to get on the telephone and to address the
25 issue in order to correct a misimpression is a

1 matter of some significance.

2 Can you agree with that?

3 MR. LIVERMORE: I would say that
4 that's his job. I don't find this extraordinary,
5 that we find ourselves at times in a situation
6 where a government comes to us and they are on the
7 wrong wavelength as far as what we think or what
8 we are supposed to be doing, and we have to brief
9 our Minister and say, "Please disabuse them of the
10 following."

11 That's the whole point of talking
12 points, is to put before the Minister the need to
13 do this.

14 MS EDWARDH: And he is speaking
15 for the nation at that point, nation to nation.

16 MR. LIVERMORE: He is speaking as
17 the spokesperson of Canada.

18 MS EDWARDH: And he is speaking to
19 a person specifically designated to receive the
20 communications on behalf of the Government of
21 Syria?

22 MR. LIVERMORE: Yes.

23 MS EDWARDH: And clearly in order
24 to disabuse his counterpart of this wrong
25 impression, I would like to ask you to just

1 reflect back on where do you suppose, and how do
2 you suppose, that wrong impression was delivered
3 to the Syrian government?

4 MR. LIVERMORE: I can't say that I
5 have a clear answer to that.

6 MS EDWARDH: Do you have less than
7 a clear answer?

8 MR. LIVERMORE: I have almost no
9 answer to that. I do know that somewhere along
10 the way the Syrian government expressed the
11 view -- and I am not even sure who expressed it
12 when and I am not even certain what authority, in
13 other words the Foreign Ministry or somebody else,
14 expressed the view that we do not wish to see
15 Mr. Arar return to Canada.

16 MS EDWARDH: And the "we" was that
17 somebody in Canada --

18 MR. LIVERMORE: "We" was the
19 generic we, the "we". And each time that this was
20 expressed, we went back with an expeditious reply
21 basically along the same lines as this little
22 bullet from Mr. Graham.

23 MS EDWARDH: So then perhaps I was
24 mistaken. I had thought, sir, that on January
25 15th, 2003, when this message was being sent by

1 the Minister of Foreign Affairs in Canada to his
2 counterpart in Syria, this was the only occasion
3 where the Minister had to disabuse his counterpart
4 that it was not the case, that Canada wasn't clear
5 about this, that they did wish to see Mr. Arar
6 returned?

7 MR. LIVERMORE: I can't be certain
8 as to how many times Mr. Graham spoke to people on
9 this, or to whom.

10 MS EDWARDH: You used just a
11 moment or two ago an expression which led me to
12 believe there were at least a couple of occasions
13 that this message had to be brought home to the
14 Syrians.

15 MR. LIVERMORE: I think, in fact,
16 there were. I can't be sure about it. But we
17 developed this generic talking point, and that
18 became the one that we put to Mr. Graham.

19 MS EDWARDH: And to the best of
20 your recollection, it was a matter he had to say
21 at least on more than one occasion?

22 MR. LIVERMORE: Well, to the best
23 of my recollection, yes, but I can't be confident
24 too much in that recollection.

25 MS EDWARDH: All you can do is

1 give us your best recollection, Mr. Livermore.

2 Sir, I want to ask you whether or
3 not you had any specific role in working to redact
4 the documents that have been made available to the
5 Commission of Inquiry or through Access?

6 MR. LIVERMORE: Yes, I do have a
7 role.

8 MS EDWARDH: And without
9 disclosing any secrets, can you tell us what your
10 role was?

11 MR. LIVERMORE: Well, the normal
12 line of authority in Foreign Affairs in general
13 resides at the directorate level, and normally we
14 would have an individual who was in charge of
15 redaction of documents for privacy reasons or for
16 other reasons. Those documents would be redacted
17 in preliminary fashion and they would go up to a
18 director for approval, and then some of those
19 documents would come to me for redaction -- not
20 for the physical act of redaction but for the
21 approval process.

22 MS EDWARDH: Right. And I just
23 want to draw to your attention what I consider to
24 be a slightly troubling, at least what appears to
25 be, dialogue about the redaction process.

1 You start with tab 480. So I want
2 to put the two tabs together, 480 and 481.

3 We have both these documents. So
4 the issue of information not being put in the
5 public domain does not arise.

6 But I want you to take a look at
7 481. You will observe at page 2 that the two
8 numbered paragraphs are redacted or removed --
9 there's no black there. It's 481, page 2,
10 paragraphs 5 and 6.

11 Do you see that?

12 MR. LIVERMORE: Yes.

13 MS EDWARDH: The reason for the
14 removal is carefully set out: that they have been
15 deleted as they do not relate to the issue of the
16 RCMP's involvement in the Arar case.

17 Do you have that,
18 Mr. Commissioner?

19 THE COMMISSIONER: Yes, I do.

20 MS EDWARDH: Then if you go back
21 to the same document, just in the tab earlier, at
22 480, you see that unlike the document at 481
23 number 6 is left in.

24 Do you see?

25 MR. LIVERMORE: Yes.

1 MS McISAAC: It's not the same
2 document. One is a draft. The second one is a
3 draft of the first one. It is not signed.

4 MS EDWARDH: Well, you help me,
5 sir, because I would have thought they were
6 documents. I appreciate that one is signed and
7 the other is not signed.

8 MR. LIVERMORE: One I think is an
9 earlier version of whatever was eventually
10 produced. I would imagine it is a draft. 481 is
11 the draft because it's not signed and there are no
12 little marks between the ISD and A/MJW which would
13 be the hallmark of a memo that had gone up.

14 MS EDWARDH: Can I just stop you?
15 I am sorry to interrupt.

16 You have made this reference a
17 couple of times, little marks between the ISD. I
18 don't know what you are referring to.

19 MR. LIVERMORE: You see in the
20 draft, 481, it says USS at the top?

21 MS EDWARDH: Yes.

22 MR. LIVERMORE: And then it says
23 "(through ISD and A/MJW)".

24 MS EDWARDH: Yes.

25 MR. LIVERMORE: When a memo goes

1 forward, we initial through those.

2 ISD, for example, I would put an
3 "L" through ISD, and that would be the sign that I
4 have approved this on the way up.

5 MJW would put his initial there.
6 I think I was acting MJW at the time, but there
7 would be another mark. It would dignify it to say
8 it was a legible initial, but that's what it is
9 supposed to be.

10 And then the bottom of the memo
11 would have had to be signed.

12 And then the other one, you see
13 that it is signed, or I think that's a signature.

14 MS EDWARDH: Yes.

15 MR. LIVERMORE: And then I have
16 initialled both, yes. I put my "L" through the
17 ISD and A/MJW. What the thing above the USS means
18 is that USS has received it and seen it and has
19 marked it back to us, and I guess it's marked back
20 for file in this case.

21 MS EDWARDH: So what that does, I
22 take it, is leave open the suggestion that it is
23 possible that the six listed in the draft is
24 different from the six that is not redacted in the
25 memorandum that is actually forwarded up the line?

1 MR. LIVERMORE: The two documents
2 are slightly different in length, not much, but
3 slightly. I am not sure what would have been
4 included or left out in the final.

5 MS EDWARDH: Now I would like to
6 turn to tab 15 of the volume of PCO documents.

7 THE COMMISSIONER: What number
8 exhibit is that?

9 MS McISAAC: I think it's C-48.

10 MS EDWARDH: Is it C-49? P-48.

11 It goes into a reference to the
12 DFAIT deck, and without telling me any tales out
13 of school, if you could, sir, just tell me what is
14 a deck?

15 MR. LIVERMORE: A deck is a paper
16 copy, so you end up with a paper, sheets of paper
17 like this, prepared on PowerPoint basically, that
18 is written usually sideways. It has big titles
19 and big points made upon it.

20 And usually -- I don't want to
21 comment adversely upon modern techniques of
22 management, but a deck is what passes for memos.
23 You present a deck and the whole story is laid
24 out, and it's often a multicolour thing that
25 people take you through.

1 Usually they contain only points
2 and then whoever is speaking to that deck, as we
3 call it, fills in the text.

4 MS EDWARDH: Thank you. I didn't
5 have a clue what that was.

6 I am interested in the subject
7 line. It says: "DFAIT deck, consular services
8 related to terrorist cases".

9 I want to ask you some general
10 questions, if I could.

11 Is it your understanding, sir,
12 that beyond the information-sharing that you have
13 already described, that once there is an
14 allegation in respect of a person and their
15 relationship to a terrorist case, once that
16 allegation is made, they are not entitled to
17 access or have delivered to them the consular
18 services generally held out to Canadians?

19 MR. LIVERMORE: No, that is
20 absolutely not true. But I think, as the expert
21 on consular service, I would have to defer to Gar
22 Pardy on that.

23 MS EDWARDH: Is that an answer
24 which says that beyond taking the view that it's
25 not correct to say there is differential provision

1 of services, you don't want to go any further and
2 the matter should be left to Mr. Pardy to comment
3 on?

4 MR. LIVERMORE: No, I wouldn't
5 even characterize it as a differential of
6 services. What I would characterize it -- and I
7 think, as I recall correctly, what the deck
8 probably referred to was how does the
9 interdepartmental process work vis-à-vis these
10 cases? It's not the consular services that are
11 affected one way or the other.

12 But, again, I think that's
13 something that Mr. Pardy would be the expert on.

14 MS EDWARDH: Do you recall there
15 being a dispute as to the content of consular
16 services and the privacy of consular services if
17 there was an allegation in respect of terrorism?

18 MR. LIVERMORE: My recollection is
19 that privacy was never a particular concern. I
20 think you have seen one document in which Garry
21 Loepky drew a conclusion that he wasn't aware of
22 a certain piece of information at a particular
23 time.

24 My recollection of this deck was
25 to make sure that people, appropriate people, knew

1 at appropriate times as to what was going on.

2 MS EDWARDH: So what I take from
3 your comment, sir, is in cases where there is an
4 allegation that a person is involved in terrorist
5 actions, there is a chain or flow of information
6 that has been set out in the deck?

7 MR. LIVERMORE: I am trying to
8 recall exactly what conclusion the deck reached
9 without breaching the confidentiality of the deck
10 itself.

11 But I think it's fair to say the
12 deck did not lay out procedures. The deck laid
13 out a broad rule, and that broad rule was
14 consultation.

15 MS EDWARDH: So in effect it lays
16 out the rule of information-sharing?

17 MR. LIVERMORE: "Rule" would
18 probably be too firm a word for what was arrived
19 at.

20 MS EDWARDH: A commitment, then,
21 to the flow of information to relevant partners
22 outside of DFAIT, if necessary?

23 MR. LIVERMORE: That would
24 probably be fair.

25 MS EDWARDH: And in accordance

1 with your understanding of the exceptions in, for
2 example, consular visits, that flow of information
3 could well go to both the RCMP as well as to CSIS?

4 MR. LIVERMORE: It could, yes.

5 MS EDWARDH: I would like then to
6 turn, if I could, to another document found in the
7 PCO documents, and it is at tab 49.

8 In particular, you will see first
9 of all at page 1 there is a reference to a
10 telephone conversation between Gerry Deneault --
11 do you see that, sir?

12 It's under Comments. I should
13 probably let you describe the document before I
14 try to interpret it. It is probably faster.

15 This is a fax transmission?

16 MR. LIVERMORE: Yes, it is a fax
17 transmission, yes.

18 MS EDWARDH: And there are certain
19 comments recorded in the body of it?

20 MR. LIVERMORE: Yes.

21 MS EDWARDH: It is sent by the
22 Security and Intelligence Secretariat?

23 MR. LIVERMORE: It's sent by, I
24 think, the office of Gerry Deneault who at the
25 time would have been, if I am not mistaken,

1 Director of Security Operations in the Privy
2 Council Office.

3 MS EDWARDH: And he is referencing
4 a telephone conversation. Is that correct?

5 MR. LIVERMORE: I think what is
6 happening is that someone in Mr. Deneault's
7 office, namely Guy St. Martin, is sending to Glen
8 Mather this fax. I think that is what is going
9 on. The fax is a bit busy.

10 But it is describing then below
11 that Gerry Deneault and Scott Heatherington have
12 apparently spoken and the date, November 10th, and
13 then it describes what the situation is.

14 MS EDWARDH: And the situation is
15 that the government has concerns about an alleged
16 leak of information reported in the Ottawa
17 Citizen?

18 MR. LIVERMORE: That's right.

19 MS EDWARDH: And the Vancouver
20 Sun?

21 MR. LIVERMORE: That's right.

22 MS EDWARDH: And, of course, they
23 are directing an administrative inquiry in the
24 department?

25 MR. LIVERMORE: That's right.

1 MS EDWARDH: In respect of the
2 information disclosed in those articles?

3 MR. LIVERMORE: Yes.

4 MS EDWARDH: And the document or
5 the article of interest that has raised the need
6 for an administrative inquiry is the article by
7 Juliet O'Neill. We have a published version
8 attached in this tab. I think we don't need to
9 worry about the Vancouver Sun one, but it is just
10 behind there. Okay?

11 MR. LIVERMORE: That's right.

12 MS EDWARDH: First of all I want
13 to ask you: In directing an administrative
14 inquiry into the Department of Foreign Affairs to
15 look at how this information became available, can
16 we agree, sir, that this is the kind of
17 information, as set out in the article, generally
18 the type of information that would have been in
19 your files?

20 MR. LIVERMORE: If you mean
21 classified information relating to the case, yes.

22 MS EDWARDH: And indeed classified
23 information of the kind that is described here --
24 leave aside the particular facts -- of an
25 admission, or an interrogation, or a statement

1 made by Mr. Arar to Syrian Military Intelligence.
2 That would have been in your files, because
3 Mr. Pillarella brought it back.

4 MR. LIVERMORE: I am just trying
5 to recall the specifics of the case.

6 If this related to -- again, I
7 have to be speculative because I haven't read
8 recently the O'Neill article. But if it related
9 to that material that Ambassador Pillarella
10 brought back, then indeed we would have the
11 results of that in our file, yes.

12 MS EDWARDH: Leaving aside any
13 final conclusion, one of the things Ms O'Neill
14 says in her article -- and I will take you about
15 halfway down the page. This is in the Ottawa
16 Citizen.

17 One of the leaked documents is
18 about what Mr. Arar allegedly told Syrian Military
19 Intelligence officials during the first few weeks
20 of his incarceration.

21 MR. LIVERMORE: Yes.

22 MS EDWARDH: For example, when you
23 got the Pillarella memo, either the first one or
24 if any others came, were you able to determine the
25 dates of Mr. Arar's interrogation so as to

1 determine that in fact it fell within the first
2 two weeks of his detention in Syria?

3 MR. LIVERMORE: I certainly was
4 not able to determine that, no.

5 MS EDWARDH: And do you know
6 whether the RCMP shared with you all the
7 information that they received from Syrian
8 Military Intelligence?

9 MS McISAAC: Mr. Commissioner,
10 that assumes that the RCMP received information.

11 I think we are getting into a
12 difficult area here, and I would ask that my
13 friend stop this line of questioning or rearrange
14 the line of questioning slightly.

15 MS EDWARDH: Were you aware, sir,
16 of whether the RCMP received any material from
17 Syrian Military Intelligence independently of the
18 material you provided?

19 MS McISAAC: Again, I am going to
20 have to object to that question, sir, because we
21 are claiming national security confidentiality
22 with respect to the situation of the RCMP, or
23 indeed any other agency with respect to Syria.

24 THE COMMISSIONER: Well, that may
25 be more broadly than what your claim is. What you

1 are claiming here is national security
2 confidentiality for any information that Syria may
3 have provided to the RCMP or another agency?

4 MS McISAAC: That's correct, sir.

5 THE COMMISSIONER: That's what I
6 understand is your claim. I am not ruling on
7 that. I am just saying --

8 MS EDWARDH: Other than to the
9 Ambassador, surely.

10 THE COMMISSIONER: We have seen
11 that.

12 MS McISAAC: Yes, that's correct.
13 And early on in the proceedings we reached an
14 agreement with Commission counsel with the
15 intervention of the amicus with respect to the
16 particular information that Mr. Pillarella brought
17 back, because that had been confirmed I believe
18 independently to, I believe, Ms Catterall and
19 perhaps Mr. Assadourian.

20 THE COMMISSIONER: I think the
21 point is, as I understand it, Ms Edwardh, is that
22 you are free to question about that information.
23 What I think the objection is -- and again I am
24 not ruling on it. It is simply an objection to
25 you going further and saying is there other

1 information that was provided, not the information
2 to the ambassador but to other agencies?

3 That is the objection.

4 MS EDWARDH: I will go around that
5 to one other question, if I could?

6 THE COMMISSIONER: Please.

7 MS EDWARDH: Were you aware,
8 Mr. Livermore, that Mr. Pillarella received
9 information, the ambassador received information,
10 from the Syrian Military Intelligence on more than
11 one occasion?

12 MR. LIVERMORE: I am not aware of
13 that, no.

14 MS EDWARDH: And turning now to
15 the Juliet O'Neill article, and starting about
16 halfway down, beginning with the words "One of the
17 leaked documents" -- do you see that?

18 MR. LIVERMORE: Yes.

19 MS EDWARDH: "One of the leaked
20 documents is about what Mr.
21 Arar allegedly told Syrian
22 Military Intelligence
23 officials during the first
24 few weeks of his
25 incarceration. It contains

1 minute details of seven
2 months of supposed training
3 at the Khalden camp in
4 Afghanistan by the Mujahedin
5 in 1993."

6 Sir, to the best of your
7 recollection, is that the information that you
8 passed on from the ambassador to -- I am sorry --
9 that was passed on to the ambassador from Syrian
10 Military Intelligence?

11 MS McISAAC: Mr. Commissioner,
12 again I am going to object.

13 As you are aware, the exact nature
14 of the document or documents, or information which
15 were provided to Ms O'Neill is currently the
16 subject matter of an investigation being conducted
17 by the RCMP pursuant to the Security of
18 Information Act, and we continue to claim, as is
19 claimed within that proceeding and within the
20 proceedings that are currently before Justice
21 Ratushny with respect to the quashing of the
22 search warrant, national security confidentiality
23 with respect to any element of the document,
24 documents, or information which are the subject of
25 that investigation.

1 THE COMMISSIONER: I understand
2 that. But to come back -- and perhaps I
3 misunderstood the question.

4 The question, it seemed to me, was
5 directed to an area over which national security
6 is not claimed; that is, the disclosure through
7 the ambassador.

8 MS McISAAC: Well, what we had
9 agreed to do, sir, as a compromise with respect to
10 national security information is that a summary of
11 the information brought back by the ambassador was
12 prepared and provided to Mr. Arar and his counsel,
13 or at least I assume it was.

14 MS EDWARDH: No, it wasn't.

15 MS McISAAC: I am sorry, I guess
16 it wasn't.

17 MS EDWARDH: I am not at all sure
18 that I have what my friend thinks, and without
19 some lengthy discussion with Commission counsel --

20 THE COMMISSIONER: I think there
21 should be some discussion with Commission counsel.

22 Can we take this and let it
23 wait -- do you know how much longer you are going
24 to be? I am not --

25 MS EDWARDH: That shortens that

1 one.

2 --- Laughter / Rires

3 THE COMMISSIONER: That shortens
4 that one.

5 What I was thinking is today we
6 would sit until five o'clock. I have a meeting at
7 five.

8 If you were not complete, then we
9 might resume early tomorrow so that we wouldn't
10 fall behind schedule.

11 MS EDWARDH: Well, I am not
12 complete. And indeed, Mr. Commissioner, I might
13 do it faster and quicker in the morning. But I am
14 prepared to just go as long as -- but I take it I
15 can't go into that whole area.

16 THE COMMISSIONER: I think you are
17 best on that area, listening to the discussion, if
18 this evening you have a brief discussion with
19 Mr. Cavalluzzo and Ms. McIsaac.

20 MS EDWARDH: Does it makes
21 sense -- because it was an area that I was going
22 to spend some time in -- to try to resolve it now
23 before I continue?

24 THE COMMISSIONER: Do you have
25 other areas that you are going to do in your

1 cross-examination?

2 MS EDWARDH: I have a few.

3 THE COMMISSIONER: What I would
4 suggest we do is finish your cross-examination
5 except for that area.

6 MS EDWARDH: All right. I will do
7 my best to do that.

8 THE COMMISSIONER: Okay. If you
9 can do that, then let's see where we are when you
10 do that.

11 MS EDWARDH: Maybe I can ask one
12 question about the O'Neill article.

13 Leaving aside any comparisons
14 about its relation to, you will agree, will you
15 not, Mr. Livermore, when you became aware of that
16 document that you were very surprised to find it
17 in the newspaper: the suggestion that there was a
18 leak in respect of alleged interrogations of
19 Mr. Arar in Syria?

20 MR. LIVERMORE: I was surprised to
21 see that there was an allegation of a leak,
22 period. I don't believe I am allowed to
23 characterize the exact document that I was
24 surprised at. It talks about one of the leaked
25 documents.

1 MS EDWARDH: Yes.

2 MR. LIVERMORE: I don't know what
3 was leaked and what wasn't leaked. I was simply
4 surprised that there was an article about this.

5 MS EDWARDH: Right. I am going to
6 a more human side of this.

7 Clearly for the person -- assuming
8 for a moment that any of this information lies in
9 the hands of any government department, yours or
10 anyone else, the consequences of putting this kind
11 of information into the public domain, with no
12 assessment of any reliability, no assessment of
13 whether anything had been confirmed, or no
14 assessment of whether it's worth two hoots, is a
15 deeply destructive and nasty thing to do to
16 someone like Mr. Arar?

17 MR. LIVERMORE: That wasn't my
18 characterization of it at the time. My
19 characterization of it at the time -- and forgive
20 me if I am speaking narrowly from my point of
21 view, but I am also the departmental security
22 officer.

23 My concern at the time was that we
24 have a classified document, and the classified
25 document is now in the public domain, and that's

1 my concern.

2 MS EDWARDH: I hear you, and
3 that's even helpful for another day.

4 But my question, though, was:
5 Certainly you have departmental concerns when you
6 see this happen. I understand that. It affects
7 your work; it affects the persons with whom you
8 share it.

9 want to talk about -- you have
10 dealt with human rights cases, and I am sure you
11 have seen information and disinformation and
12 whatever else comes out of government from time to
13 time.

14 My concern is to ask you to
15 acknowledge, as someone familiar with this, that
16 this is a very destructive thing to have done in
17 respect of Mr. Arar in circumstances where
18 information is neither confirmed or proven, given
19 its alleged source?

20 MR. LIVERMORE: Well, you are
21 asking me for a personal view.

22 MS EDWARDH: Yes.

23 MR. LIVERMORE: And I am happy to
24 oblige you.

25 What we endeavour to do in the

1 Department of Foreign Affairs, and certainly from
2 my experience -- and I have been seconded to the
3 Privy Council office and I have worked closely
4 with other people -- is to safeguard carefully
5 sensitive information that is put into our care.

6 One of the reasons that
7 information is classified -- we live under a
8 certain regime -- is that information when it's
9 put out -- and I think you have characterized it
10 properly -- when it's put out and that information
11 is either inaccurate or unfair or biased, that
12 does damage to a lot of individuals and it's
13 exceptionally harmful.

14 I find it personally distasteful.
15 And that's why it was so serious on a personal
16 level.

17 But I say, I must confess on a
18 personal level I share your view completely. My
19 professional view was somewhat more restricted
20 though.

21 MS EDWARDH: I appreciate that.
22 You wear many hats?

23 MR. LIVERMORE: I am responsible
24 for classified material within the department.

25 MS EDWARDH: I want to take you to

1 tab 123.

2 If you accept for a moment what
3 Mr. Arar said to Leo Martel, and what the
4 Americans said when they told you when Mr. Arar
5 was sent out of the U.S. and was at least heading
6 into Syria, the statement is made:

7 "... Arar appeared at the
8 Jordan/Syrian border
9 yesterday without warning,
10 escorted by Jordanian
11 officials who handed him
12 over."

13 That would have to be a lie, if
14 you accept what the U.S. said and what Mr. Arar
15 said?

16 MR. LIVERMORE: Well, my only
17 comment is that there aren't two truths, and that
18 is why I am a little sceptical. I trained as an
19 historian, working on evidence, and I like to see
20 it.

21 That is why I say to you, when I
22 read reports coming in of this nature, I accept
23 them at face value for what they are, but in fact
24 they may not be the truth as we know it on that
25 particular day.

1 Sorry to be convoluted about it --

2 MS EDWARDH: No, it's not
3 convoluted. All I am trying to establish,
4 Mr. Livermore, as an historian, you will
5 appreciate the proposition that this may be one
6 small example of a nation or persons in a nation
7 holding formal positions who lie as a matter of
8 their self-interest?

9 MR. LIVERMORE: Well, I would have
10 a slightly different take on it, and I don't mean
11 to spring to anyone's defence. But I have been in
12 situations before on many occasions -- and I think
13 it even happened to Franco Pillarella, if I am not
14 mistaken on this case -- where a couple of days
15 before he is told "We don't have Mr. Arar --"

16 MS EDWARDH: Sorry, we don't
17 have...

18 MR. LIVERMORE: "We don't have
19 Mr. Arar. We don't know where he is."

20 That precise case has happened to
21 me where you are in a local situation and you are
22 talking to a local government and you see one
23 interlocutor whom you believe is a credible
24 individual, and he tells you one story and it
25 turns out not to be the truth.

1 Well, I don't spring to the
2 conclusion necessarily that it was a deliberate
3 lie. It might have been. That could be a
4 conclusion --

5 MS EDWARDH: From time to time
6 nations lie in their self-interest?

7 MR. LIVERMORE: I simply wouldn't
8 characterize it one way or the other. I say we
9 have two different stories. So be it.

10 MS EDWARDH: Okay. Let me ask you
11 then to turn to page 7, and this is relevant to
12 another matter we discussed with your colleague
13 from the Department of Foreign Affairs.

14 On page 7 of 15, this is from Roch
15 Dussault?

16 MR. LIVERMORE: What number are we
17 at?

18 MS EDWARDH: I am at page 7 in the
19 same tab. It is tab 123 and it is page 7.

20 MR. LIVERMORE: Yes.

21 MS EDWARDH: And can you just
22 describe this document for us? To whom is it sent
23 and -- I can at least identify the date, October
24 21st, 2002.

25 MR. LIVERMORE: Okay.

1 MS EDWARDH: And it looks to me to
2 be directed to the ambassador in Damascus?

3 MR. LIVERMORE: This is a -- well,
4 it's a message going out of Roch Dussault from the
5 consular bureau.

6 MS EDWARDH: In Canada?

7 MR. LIVERMORE: In Canada.

8 MS EDWARDH: Yes.

9 MS EDWARDH: And it says on the
10 top here from Gar Pardy. I assume that -- well,
11 Mr. Pardy will be able to clarify that, but I
12 assume that it's coming from Mr. Pardy, but he's
13 asking one of his people to do the drafting on it.
14 It's going to Damascus, to the Head of Mission.
15 HOM is what we call the Head of Mission or the
16 ambassador. And it's copied to ISI; it's copied
17 to -- which is Foreign Intelligence Division and
18 my shop -- another consular division; it's copied
19 to John McNee, who is MJM; to GMD, which is the
20 Middle East Director General; and it's copied to
21 Gar Pardy as well.

22 MS EDWARDH: And we have a date
23 which tells us we -- this is before any consular
24 visit to Mr. Arar, correct?

25 MR. LIVERMORE: I'd have to

1 refresh my memory on the chronology, but...

2 MS EDWARDH: I'm sorry. Any
3 consular visit in Damascus, that he has just been
4 really identified as having been located in Syria.

5 MR. LIVERMORE: Yes.

6 MS EDWARDH: You're content with
7 that chronology, sir?

8 MR. LIVERMORE: Yes.

9 MS EDWARDH: All right. And what
10 I want to draw to your attention is the
11 information Mr. Pardy is encouraging the
12 ambassador to focus on in his representation to
13 the Syrians, and I'm going to take it one step
14 further and say, really what he's trying to arm
15 the ambassador with are the important factual
16 matters to stress in order to ask that the Syrian
17 government recognize Canadian consular access. Is
18 that fair?

19 MR. LIVERMORE: Let me just
20 refresh my memory on one point, please.

21 Yes. He's asking essentially, in
22 the third bullet, as I understand it, for a
23 consular visit.

24 MS EDWARDH: Well, let me -- the
25 first paragraph is saying, I'm sending you some

1 materials in relation to any information we have
2 provided by the police; this was not intended to
3 be given to the ambassador for any purpose other
4 than -- it wasn't to be transmitted to the
5 Syrians."

6 He makes that clear. Do you see
7 that?

8 MR. LIVERMORE: Yes.

9 MS EDWARDH: Then paragraph
10 number 2 is the factual matters which Mr. Gar
11 Pardy urges to be raised with the Syrians, and
12 it's in order to justify Canadian consular access.
13 Because you have this problem: Mr. Arar is also a
14 national of Syria, right?

15 MR. LIVERMORE: I'm not aware of
16 how strongly they felt about that, but that's
17 factually correct, yes.

18 MS EDWARDH: Right. It's
19 factually correct. And you are now facing the
20 delicate moment of determining whether or not --
21 or Mr. Pardy is facing it -- whether or not access
22 will be given?

23 MR. LIVERMORE: Well, I'm reading
24 this along with you because it's -- I didn't draft
25 it or -- I'm trying to make sense of this.

1 What he's done is, the first half
2 of the message, given a lot of context, which is
3 exactly the thing to do. And context, by the way,
4 which would not be handed over to the Syrian
5 government.

6 MS EDWARDH: Right.

7 MR. LIVERMORE: The second point
8 he's giving him, and again this is fairly common
9 in a case, "Here's your ammunition. Here's what
10 we want, and here's what we want you to say."
11 Without -- at the same time, I think, without
12 knowing much about how the Syrians might react to
13 these points.

14 MS EDWARDH: Of course. Because
15 this is the delicate moment.

16 MR. LIVERMORE: Yes.

17 MS EDWARDH: Will Canada be
18 recognized as having a right of consular access?

19 MR. LIVERMORE: Yes.

20 MS EDWARDH: Or will they be told
21 that, "This is a Syrian national, go take a
22 flier." Right?

23 I want to go through the points.

24 The first point that Mr. Pardy
25 tells the ambassador to raise:

1 "Mr Arar is a citizen of
2 Canada and has lived
3 continuously in Canada since
4 1987. He has extensive
5 family ties here and his wife
6 and children are also
7 citizens of Canada."

8 So one of the important aspects of
9 pressing Canada's right to give consular access is
10 to say, not only does he have Canadian
11 citizenship, but he is a resident of Canada with
12 strong family ties to Canada?

13 MR. LIVERMORE: One of the -- if I
14 might, just on a more general note --

15 MS EDWARDH: Can you agree that
16 those are important things in pressing for
17 consular access where there's a dual national
18 involved?

19 MR. LIVERMORE: Absolutely,
20 because the question you are often confronted
21 with -- and I can't speak for Syria, but I have
22 encountered this in other cases -- is, "What is
23 your standing?" They use the word "standing",
24 which I'm sure you know better than me. You're a
25 lawyer and I'm not. But if you have no standing,

1 they will basically say to you, "Well, why are you
2 here?"

3 MS EDWARDH: Right.

4 And pressing the issue of standing
5 relates to those components of citizenship,
6 residence, and extensive family roots in Canada?

7 MR. LIVERMORE: Yes.

8 MS EDWARDH: Thank you.

9 I want to take you to tab 130.

10 --- Pause

11 So this is the first consular
12 visit. Interestingly enough, it follows shortly
13 after Mr. Pardy's note, and I want to just review
14 your own experience with consular visits.

15 One of the important things you
16 are tasked to do is to ascertain something about
17 the conditions of confinement, if possible. Is
18 that fair? That's what one of the purposes of a
19 consular visit is?

20 MR. LIVERMORE: That would be if
21 possible, yes.

22 MS EDWARDH: Right, if possible.
23 Right.

24 And it's obvious from paragraph 3
25 that the author, Mr. Martel, is conveying

1 information to everyone that it is not within his
2 powers to access or see where Mr. Arar is being
3 detained.

4 Do you see that? That's
5 paragraph 3. The end of the first sentence, he
6 says:

7 "It was not possible to see
8 where exactly Arar was being
9 detained."

10 MR. LIVERMORE: Yes.

11 MS EDWARDH: Right. And that
12 single sentence conveys a lot, does it not?

13 MR. LIVERMORE: I'm not certain.
14 Again, to me, it contains only what I find is the
15 norm in consular visits in many parts of the
16 world.

17 In fact, I know very few parts of
18 the world where you're allowed to go into the
19 prison cell. In almost every case, you're
20 taken -- you are taken into a visiting room and
21 the prisoner is brought to see you.

22 MS EDWARDH: No, no, I'm sorry.
23 It's embedded in other documents. Mr. Martel was
24 driven to this site where he met Mr. Arar,
25 correct?

1 MR. LIVERMORE: Mm-hmm.

2 MS EDWARDH: Mr. Martel wasn't in
3 the prison complex.

4 MR. LIVERMORE: Mm-hmm, mm-hmm.

5 MS EDWARDH: So when I go or you
6 go to the Ottawa Detention Centre or to a Toronto
7 detention centre or to a penitentiary, we are in
8 the physical building and space, we may be in an
9 area confined for lawyers or consular visits, but
10 Mr. Martel never even saw the space where Mr. Arar
11 was.

12 MR. LIVERMORE: Mm-hmm.

13 MS EDWARDH: He's visiting General
14 Khalil.

15 MR. LIVERMORE: Yes. I must
16 admit, when I read that, I drew no conclusions.

17 MS EDWARDH: Okay. But you don't
18 dispute what I'm saying now, that they're not in
19 the same facility?

20 MR. LIVERMORE: Factually, I
21 simply don't know. It wouldn't -- I just don't
22 know.

23 MS EDWARDH: We'll leave that
24 question, then, to Mr. Martel.

25 Now, Mr. Cavalluzzo took you to a

1 number of references -- I don't want to repeat
2 them -- but it's obvious to you, sir, is it not,
3 that everything about this communication to
4 Mr. Martel and Mr. Arar's communication is being
5 monitored closely, is being translated, and is
6 being directed and under the supervision of the
7 Syrian Military Intelligence?

8 MR. LIVERMORE: I think it's being
9 translated, and he indicates that notes are being
10 taken. There's also in here some comments
11 about -- I don't know where if I can find them.

12 MS EDWARDH: Well, in paragraph 5,
13 for example, there's a request for more
14 information. Mr. Martel:

15 "When prompted further for
16 answers, the Syrians told him
17 in Arabic he was not to
18 answer those questions."

19 So they're controlling the
20 discourse, correct?

21 MR. LIVERMORE: I can't say. I
22 think Leo Martel would be best advised to answer
23 that.

24 MS EDWARDH: But if you're -- I
25 mean, you have some experience in reading in -- I

1 mean, this is your culture. It's not ours.

2 MR. LIVERMORE: Yeah.

3 MS EDWARDH: When I read this --
4 if I saw this, for example, in a police officer's
5 notebook, I would conclude that I was being told
6 that this was not a person who is at liberty to
7 speak, that his communications were being
8 monitored closely, that at some points he was
9 directed not to answer, and let me take you to
10 paragraph 7, because we do know what that
11 redaction is. It's not in front of you, but it is
12 in the public domain now. Essentially it's a
13 reference that he answers, all his needs are taken
14 care of by his Syrian hosts, because he's ordered
15 to do it.

16 So there's a huge amount of
17 control being exercised through this process --

18 MR. LIVERMORE: Yeah. I'm sorry,
19 I can't -- I really can't speak authoritatively
20 about that.

21 MS EDWARDH: All right.

22 You're uncomfortable then
23 interpreting the fact that when one of your
24 colleagues says that these were the conditions and
25 he looked resigned and submissive and numerous eye

1 signals, you're not prepared to interpret that in
2 any way that indicates that Mr. Arar could not --
3 that he was a frightened man under the control of
4 Syrian Military Intelligence?

5 MR. LIVERMORE: I simply took that
6 to be what Leo Martel had reported. I also took
7 it to be, when you flip the page over to the next
8 page, where Leo Martel reported verbatim what
9 Mr. Arar is supposed to have said, I take that as
10 an indication from Leo Martel as to the tenor of
11 the conversation. But that's the only conclusion
12 I draw from it.

13 MS EDWARDH: Yeah. The difficulty
14 is, I don't hear you drawing any conclusion about
15 tenor.

16 MR. LIVERMORE: Yeah.

17 MS EDWARDH: I hear you looking at
18 the material. And as a colleague who's worked in
19 consular affairs, who has provided consular
20 service, you don't, I take it, draw any inference
21 that this is potentially a person who has had some
22 serious difficulty, given what is going on in this
23 interview?

24 MR. LIVERMORE: Personally, and I
25 must say I have to speak personally here because

1 once again this is -- at this point, these are
2 consular considerations that enter into it.

3 I have no doubt, on reading this,
4 that Mr. Arar is having a difficult time. That is
5 not -- the degree of difficulty is what you're
6 getting into. How serious was the situation?

7 I've dealt with a lot of consular
8 cases which I could myself have drafted a document
9 which was very similar to this.

10 In other words, you go into a
11 prison. The prisoner is presented. The prisoner
12 is basically told -- you must conclude, in your
13 own mind, the prisoner is told, "You better not
14 say anything that is critical of the government",
15 or that's how you have to interpret the sign
16 language of the situation.

17 I've been in situations as well
18 where the individual who is incarcerated was not
19 allowed to speak English -- or French, for that
20 matter.

21 MS EDWARDH: Well, indeed, we
22 don't have to go far in these visits until
23 Mr. Arar has to speak in Arabic --

24 MR. LIVERMORE: I must say that in
25 my experience that's the norm, because you go to

1 very few countries where prison officials, or
2 especially people in charge of local prisons,
3 would speak a language other than their own, and
4 they're not about to let you sit with the prisoner
5 and speak in a language that they don't
6 understand.

7 Now, you can argue about the
8 Vienna Convention and whether this is acceptable,
9 but that's the situation, and you confront it.

10 MS EDWARDH: That's a point I'd
11 like to just make for the Commissioner.

12 MR. LIVERMORE: Yeah.

13 MS EDWARDH: Is one of the perhaps
14 defects of the Vienna Convention is, while
15 providing for information to be given to someone
16 who needs consular access or wants it, providing
17 in some states for there to be notice, one of the
18 things it doesn't guarantee is confidential access
19 to someone who is detained. You're always subject
20 to having a conversation and, if they want, there
21 can be 15 guards standing over, listening in.
22 Fair enough?

23 MR. LIVERMORE: Not only is that
24 fair enough, but I think I'd go a little further
25 than what you're saying.

1 MS EDWARDH: Sure.

2 MR. LIVERMORE: You would have to
3 say one of the fundamental issues is whether the
4 terms of the Vienna Convention are upheld in
5 certain countries at all.

6 So the guarantees themselves might
7 well be contained in a convention; whether they're
8 applied in practice is a different question.

9 MS EDWARDH: Fair enough.

10 --- Pause

11 If you'll indulge me,
12 Mr. Commissioner, I'd like to take you to tab 105
13 and 114. This is October 9, 2002.

14 Tab 105 I believe you will be
15 familiar with. Maybe tab 114.

16 Let me take you to 114 first, sir.

17 Do you have anything to do with
18 tab 114 and the document on the very last page
19 under the heading "SECRET CDN EYES ONLY"? Does
20 this come through you in any way or is it drafted
21 by anyone in your department?

22 MR. LIVERMORE: Excuse me for just
23 a second.

24 MS EDWARDH: Sure. Take your
25 time.

1 MR. LIVERMORE: I want to have a
2 perusal of the document.

3 --- Pause

4 As I recall, there were two
5 similar messages drafted. One was sent out of my
6 shop; one was sent out of consular.

7 MS EDWARDH: That's what I
8 understood, sir. That's what I wanted to ask you.

9 So, can you first start with the
10 identification of the similar but consular
11 message? And that was sent by Mr. Pardy, is that
12 correct?

13 MR. LIVERMORE: I think we
14 referred to it earlier today. My recollection is
15 that I sent, under my signature, a document to
16 Damascus.

17 MS EDWARDH: Yes?

18 MR. LIVERMORE: The consular sent
19 a similar message to the embassy in Amman. That's
20 my recollection.

21 MS EDWARDH: Okay. Well, let's go
22 through this, then, because I'm looking at --

23 MS McISAAC: Sorry to interrupt,
24 but I believe this is just another version of the
25 document -- the messages were sent out -- 61 is

1 the message sent to Damascus and 63 is the message
2 sent to Amman in Jordan.

3 MS EDWARDH: You're going to have
4 to help me there. Sixty-one is the message sent
5 to Damascus?

6 --- Pause

7 Okay. I'd like to ask you about
8 the differences, if there are any, between the two
9 messages -- so thank you very much, Ms. McIsaac --
10 as I am looking then at documents 62 and 63.

11 THE COMMISSIONER: 61 and 63?

12 MS EDWARDH: I'm sorry, 61 and 63.
13 So let's start with 61.

14 And you write the document at 61
15 and it goes to Damascus, correct?

16 MR. LIVERMORE: I don't think I
17 wrote it, but I recall sending it. I recall -- it
18 goes out under my acronym or signature, if you
19 like.

20 MS EDWARDH: It's under your
21 signature?

22 MR. LIVERMORE: Yes.

23 MS EDWARDH: So you have to take
24 responsibility for it?

25 MR. LIVERMORE: Absolutely,

1 absolutely.

2 MS EDWARDH: So let's go to the
3 second paragraph:

4 "Maher Arar was born in
5 Syria, came to Canada at an
6 early age and became a
7 Canadian citizen. He is
8 known to the RCMP, and is one
9 of the subjects of their
10 "OCanada" investigations
11 (please protect)."

12 Do you see that?

13 MR. LIVERMORE: Yes.

14 MS EDWARDH: And you were
15 providing this information to the ambassador?

16 MR. LIVERMORE: Yes, we are.

17 MS EDWARDH: And this is copied to
18 Mr. Pardy?

19 MR. LIVERMORE: Yes, it is.

20 MS EDWARDH: On a confidential
21 basis or through a secure --

22 MR. LIVERMORE: Well, it's secret
23 "Canadian Eyes Only", so it's copied C4, which is
24 a secure communications system.

25 MS EDWARDH: Now let's take a look

1 at -- and the date, of course, tells us something
2 significant because neither -- nobody in the
3 government really clearly knows where Mr. Arar is
4 at this time?

5 MR. LIVERMORE: Yes, that's right.

6 MS EDWARDH: It's a hunt that's
7 going on.

8 Mr. Pardy, his division, and it's
9 through or under the signature of Helen Harris,
10 who is the Acting Director General, because I
11 guess Mr. Pardy is not available -- this is tab
12 63?

13 MR. LIVERMORE: Yes.

14 MS EDWARDH: Also sends
15 information to Amman and also says to Amman:

16 "He is known to the RCMP and
17 is one of the subjects to
18 their OCanada investigation."

19 MR. LIVERMORE: Yes.

20 MS EDWARDH: I would like to know,
21 if I could, whether or not -- let me just go then
22 to Tab 105. This may be my mistake.

23 Do you see Tab 105?

24 MR. LIVERMORE: Yes.

25 MS EDWARDH: And this is from Mr.

1 Pardy; is that correct?

2 MR. LIVERMORE: I believe it is.
3 He says "Gar" at the bottom.

4 MS EDWARDH: Right. And this is
5 going to the Ambassador again?

6 MR. LIVERMORE: This is going to
7 Damascus, to Franco Pillarella, yes.

8 MS EDWARDH: Yes. It is copied to
9 you -- I'm sorry, it is copied to Mr.
10 Heatherington?

11 MR. LIVERMORE: Copied to Mr.
12 Heatherington, yes.

13 MS EDWARDH: Which I take it would
14 mean in the ordinary course you would eventually
15 see that document.

16 MR. LIVERMORE: Well, if I were
17 around he would bring it to my attention, I
18 assume.

19 MS EDWARDH: Right. And in this
20 document Mr. Pardy says:

21 "Mr. Arar is not the subject
22 of a police investigation in
23 Canada and can return to
24 Canada at any time."

25 MR. LIVERMORE: Mm-hmm.

1 MS EDWARDH: So within a sort
2 period of nine days, eight or nine days, two very
3 different messages are being sent out to the
4 Ambassador in Damascus; is that correct?

5 MR. LIVERMORE: It appears that
6 the information is different, yes.

7 MS EDWARDH: Well, one is that Mr.
8 Arar is not the subject of a police investigation
9 in Canada and can return home any time, and the
10 other is, he is the subject of a police
11 investigation in Canada.

12 MR. LIVERMORE: Mm-hmm.

13 MS EDWARDH: And this is an
14 O-Canada investigation. Maybe it means something
15 to the Ambassador, maybe it doesn't. Would that
16 designation mean something, an O-Canada
17 investigation?

18 MR. LIVERMORE: You would have to
19 ask Franco, but I would doubt it at this stage.

20 MS EDWARDH: Now, can you explain
21 to us, or do you have any information that would
22 tell us what has transpired between the 10th and
23 11th and when Mr. Pardy wrote this other document
24 on the 19th that would allow the information to
25 change so dramatically?

1 MR. LIVERMORE: No, I can't
2 explain it.

3 THE COMMISSIONER: Is that a good
4 place to end for the day?

5 MS EDWARDH: Yes, and if I can
6 hopefully resolve this amicably with my friends or
7 find out what to do with this other document, I
8 wouldn't expect to be much more than a few minutes
9 tomorrow, if that's suitable.

10 THE COMMISSIONER: Okay. Do you
11 know how long you'll be, Ms. McIsaac, or Mr.
12 Baxter?

13 MS McISAAC: Well, I'll review my
14 notes over the evening, but I think I might be an
15 hour.

16 THE COMMISSIONER: Okay. And Mr.
17 Cavalluzzo, you'll be a bit of time?

18 MR. CAVALLUZZO: I might be 15
19 minutes to half an hour.

20 THE COMMISSIONER: What's your
21 estimate? Should we start at nine? I'm happy to
22 start at 8:30. I'm at your disposal. Are you
23 content? We've got two witnesses scheduled
24 tomorrow that we will be finishing tomorrow, and I
25 have a dinner with a conference I have to be at at

1 6:30.

2 MR. CAVALLUZZO: I have several
3 meetings tonight so I think it would be more
4 appropriate if we started at nine than 8:30.

5 THE COMMISSIONER: Nine? Anything
6 we can do to obviously move it along would be
7 appreciated.

8 MS EDWARDH: Does Mr. Cavalluzzo
9 have time to meet with us now or do you have
10 another obligation, sir?

11 MR. CAVALLUZZO: I have another
12 obligation but I can meet with you now?

13 THE COMMISSIONER: I have a
14 meeting now.

15 Okay. We'll rise until nine
16 o'clock tomorrow.

17 THE REGISTRAR: Please stand.
18 Veuillez-vous lever.

19 --- Whereupon the hearing adjourned at 1704, to
20 resume on Wednesday, May 18, 2005, at 9:00 /
21 L'audience est ajournée à 17 h 04, pour
22 reprendre le mercredi 18 mai 2005 à 9 h 00

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Lynda Johansson,

C.S.R., R.P.R.

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