

**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:

Salon Algonquin
Ancien hôtel de ville
111, Promenade Sussex
Ottawa (Ontario)

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Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Tuesday, May 24, 2005

APPEARANCES / COMPARUTIONS

Mr. Paul Cavalluzzo Me Marc David	Commission Counsel
Mr. Ronald G. Atkey	<i>Amicus Curiae</i>
Mr. Lorne Waldman Ms Marlys Edwardh	Counsel for Maher Arar
Ms Barbara A. McIsaac, Q.C. Mr. Colin Baxter Mr. Simon Fothergill Mr. Gregory S. Tzemenakis Ms Helen J. Gray	Attorney General of Canada
Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association
Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture

APPEARANCES / COMPARUTIONS

Colonel Me Michel W. Drapeau	The Muslim Community Council of Ottawa-Gatineau
Mr. David Matas	International Campaign Against Torture
Ms Barbara Olshansky	Centre for Constitutional Rights
Mr. Riad Saloojee Mr. Khalid Baksh	Canadian Council on American-Islamic Relations
Mr. Mel Green	Canadian Arab Federation
Ms Amina Sherazee	Muslim Canadian Congress
Ms Sylvie Roussel	Counsel for Maureen Girvan
Ms Catherine Beagan Flood	Counsel for the Parliamentary Clerk

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Tuesday, May 24, 2005

3 at 10:09 a.m. / L'audience débute le mardi

4 24 mai 2005 à 10 h 09

5 THE REGISTRAR: Please be seated.

6 Veuillez-vous asseoir.

7 THE COMMISSIONER: Mr. Cavalluzzo?

8 MR. CAVALLUZZO: Good morning,

9 Commissioner.

10 At the outset, I am going to deal
11 with a few housekeeping matters, and then my
12 friend Ms Edwardh would like to address you for a
13 few minutes on certain outstanding issues.

14 In respect of the housekeeping
15 matters, there are a number of exhibits that we
16 would like to introduce as public exhibits.

17 The first are RCMP documents.
18 There are two volumes which we have already
19 introduced as M-1 and M-2. They were used in a
20 context of a motion, I recall. The question is
21 whether we want to leave it as M-1 and M-2, or do
22 we want to change it to the next P numbers?

23 THE COMMISSIONER: Let's change it
24 to the next P numbers.

25 MR. CAVALLUZZO: That's fine.

1 THE REGISTRAR: 83 and 84.
2 EXHIBIT NO. P-83: Binder of
3 RCMP redacted documents (M-1)
4 EXHIBIT NO. P-84: Binder of
5 RCMP redacted documents (M-2)

6 MR. CAVALLUZZO: So the M-1 and
7 M-2 will become P-83 and P-84. They are the two
8 volumes of redacted RCMP documents.

9 THE COMMISSIONER: Okay.

10 MR. CAVALLUZZO: The second matter
11 relates to the redacted in camera exhibits.

12 We have given the parties four
13 volumes of in camera documents which have been
14 redacted, and they should be introduced now as
15 public exhibits as well.

16 THE COMMISSIONER: So can those
17 four volumes be P-85?

18 MR. CAVALLUZZO: Yes, they can.

19 THE COMMISSIONER: Okay.

20 EXHIBIT NO. P-85: Four
21 volumes of redacted documents

22 MS McISAAC: Might I suggest,
23 Mr. Commissioner, that we mark them separately.
24 P-85 and P-86, and thereafter?

25 MR. CAVALLUZZO: The tabs are

1 consecutive, so it's manageable. So P-85 probably
2 makes sense.

3 THE COMMISSIONER: Back to just
4 85.

5 MR. CAVALLUZZO: Now I call upon
6 Ms Edwardh, who would like to address you on a few
7 matters.

8 THE COMMISSIONER: Ms Edwardh?

9 MS EDWARDH: Thank you,
10 Mr. Commissioner. I have four matters I would
11 like to briefly raise with you.

12 Mr. Waldman, who is here with me
13 this morning, and I have been endeavouring to
14 obtain some resolution of our request to you that
15 we be relieved of our undertaking in order to use
16 a number of documents, in fact three documents,
17 and particularly one which we had from the
18 beginning said was very important in respect of
19 our proposed cross-examination of the witness,
20 Mr. Pardy, who is here this morning.

21 On Thursday last, I in rather a
22 grumpy state wrote to both Mr. Cavalluzzo and to
23 Ms McIsaac, asking for the courtesy of some reply,
24 because although we knew that national security
25 confidentiality had been claimed with respect to

1 the documents, we had also been told that there
2 might be some attempt to determine whether or not
3 it was in fact essential with respect to that
4 document or whether the claim might be
5 reconsidered. We tried and hoped to get an answer
6 from Ms McIsaac on Friday. We did not, despite
7 speaking with her on Thursday, and I know she
8 endeavoured to get us that response.

9 We got a letter this morning,
10 which by its very terms I think we cannot make
11 public, but I want to say something about the
12 letter. It is a proposal, and as it currently
13 stands, it is a proposal that is not acceptable to
14 Mr. Arar or his counsel.

15 In our view, the proposal would
16 result in putting misleading information on the
17 record. And furthermore, we are not prepared, on
18 behalf of Mr. Arar, to participate in any kind of
19 in camera process.

20 We are here because this is a
21 public inquiry. We believe, sir, you have already
22 seen these documents. Your counsel has seen these
23 documents. Everyone else has seen them, and
24 indeed we have seen them and so has Mr. Arar.

25 But what is at issue here is it is

1 a public inquiry. We take the view that the
2 documents ought to be made available now; that
3 they represent extremely overbroad claims of
4 national security. And indeed, if we had had the
5 opportunity to have a true hearing and get a
6 ruling from you, we think we could have convinced
7 you to put these documents in our hands for the
8 purposes of cross-examining Mr. Pardy.

9 Now, what's to be done? I spoke
10 with Mr. Cavalluzzo just moments before we
11 entered, and he is proposing that we meet at five
12 o'clock to discuss it. But from Mr. Arar's
13 perspective, we need some resolution.

14 I mean, I am not anxious to
15 involve Mr. Arar or any of this team that is
16 working hard in waiting and waiting. You, sir,
17 have the power to make a ruling, and we want the
18 opportunity to appear and argue this issue at the
19 first moment that we can, if the government won't
20 make this document or the three documents public.

21 THE COMMISSIONER: I gather the
22 government won't. So, then, I am going to have to
23 rule, I think, on the validity of their national
24 security confidentiality claim, which it comes
25 down to.

1 If the urgency is you wish to
2 argue that, as soon as we can we will schedule it.

3 The Commission thought that it was
4 prudent with this claim -- because this, unlike my
5 interim report which is the stage we are deferring
6 most of these claims to call expert evidence with
7 respect to this claim, and we are in the process
8 of arranging that as quickly as we can.

9 But if Mr. Arar would like the
10 motion argued before we call the expert evidence,
11 I will schedule it and deal with it solely on the
12 government --

13 MS EDWARDH: I will speak with
14 your counsel at the end of the day, and we will
15 decide whether it can be scheduled at some
16 convenient time so this can be properly done.

17 THE COMMISSIONER: Okay.

18 MS EDWARDH: Certainly now we are
19 right up to -- you know, Mr. Pardy is here. We
20 obviously cannot use this document with respect to
21 Mr. Pardy until there is some resolution.

22 THE COMMISSIONER: But we will
23 bring him back, if necessary.

24 MS EDWARDH: Thank you,
25 Mr. Commissioner.

1 THE COMMISSIONER: Mr. Arar is
2 here. You can say to Mr. Arar if he wants to
3 argue this motion in absence of evidence dealing
4 with it, it's his motion. I would think it's
5 imprudent to do so.

6 MS EDWARDH: I understand. We
7 intend to call evidence on the motion as well, and
8 so it will take some time to get it organized.

9 THE COMMISSIONER: Right.

10 MS EDWARDH: We will meet with
11 Mr. Cavalluzzo at five o'clock. I suppose I am
12 expressing some frustration that we tried to
13 resolve this before the public hearings began and
14 we are not one whit further.

15 My second procedural matter, I
16 have reviewed, and Mr. Waldman spent the better
17 part of the weekend reviewing, the position of the
18 Clerk of the House with respect to the assertion
19 of Parliamentary privilege.

20 It will not have escaped you,
21 Mr. Commissioner, that the Supreme Court of Canada
22 issued a decision. Although it's not directly on
23 point, I think it identifies the guiding
24 principles, and they did this on Friday.

25 We think that it will be extremely

1 difficult to hear in a coherent manner the
2 evidence of Minister Graham and Minister Manley
3 and Mr. Easter without having some regard of what
4 was said either in Hansard or before the various
5 committees. We do appreciate the limits, that
6 being that these statements cannot be impeached,
7 but my submission, quite frankly, is we should
8 revisit this issue before in fact Mr. Graham
9 testifies on Monday.

10 We wonder whether we could not --
11 if you are prepared to hear us on Wednesday or
12 another day -- notify the counsel who appeared for
13 the House and deal with this issue.

14 We have read the Gomery Inquiry
15 ruling, but quite simply we think that there is
16 something that is been done here that is
17 overbroad. We do appreciate there is a limit, but
18 it's going to make the next week very empty.

19 THE COMMISSIONER: Okay. I mean,
20 I would prefer, as I said, last week, not to have
21 this inquiry sidetracked into that issue. If it
22 is necessary, we will do it. If we need to argue
23 it, we will argue it fully. I will set tomorrow
24 night at seven o'clock for return of that motion
25 and I will do the work necessary to rule on it

1 before next week.

2 As a practical matter -- and I
3 don't want to be pessimistic. But depending how I
4 rule, I expect that it will head off to other
5 courts and it will have to be resolved there. But
6 I am prepared to do that.

7 MS EDWARDH: Perhaps if there are
8 some -- we appreciate the need for real boundaries
9 in respect of the privilege, so we have, I think,
10 a proposal that may work.

11 Anyway, we will notify the Clerk
12 that the hearing of the motion will be seven
13 o'clock tomorrow evening and they can arrange for
14 their counsel to be present.

15 If that should change, we will of
16 course alert you.

17 THE COMMISSIONER: Thank you.

18 MS EDWARDH: Two other things. I
19 will reserve them until I begin my
20 cross-examination of Mr. Pardy.

21 The first is the order of
22 cross-examination. I would like to revisit that
23 issue. Even though I am clearly aware of what the
24 rules say, and I will make a brief argument then,
25 but I will be asking, and I want to just alert my

1 friends, that the Government of Canada go before
2 Mr. Arar.

3 THE COMMISSIONER: It is a thought
4 that has occurred to me.

5 MS EDWARDH: Second,
6 Mr. Commissioner, I have provided to the Registrar
7 four or five cases which track the issue of
8 whether or not, when cross-examining a witness,
9 counsel who puts a suggestion to a witness is
10 implicitly undertaking to call that evidence.

11 I have no need to argue it now. I
12 have given cases to all my friends. I think that
13 the leading authority, being the Supreme Court of
14 Canada in a case of Little arising from the
15 Ontario Court of Appeal, puts to rest the
16 suggestion that such an implied undertaking is, in
17 fact, necessary.

18 That can be bedtime reading, but I
19 would deal with it, though, at the commencement of
20 my cross.

21 THE COMMISSIONER: Okay. Just in
22 terms of order of the cross-examination, the
23 thought that occurred to me, because of what
24 happened last week -- which I made my views known
25 at the time, I won't comment on it again -- it

1 does strike me, though, that in a circumstance
2 where the government acts for all government
3 witnesses, but is a circumstance where the
4 government sits in on the interviews and so on
5 when the witnesses are being prepared, it may be
6 fairer if the government examined before what is
7 truly the cross examiner, Ms Edwardh, rather than
8 sitting behind Ms Edwardh, as happened last week.

9 I don't say this was intentional,
10 sort of what we would call in the business,
11 "back-dooring it", that the government, who is not
12 a true cross examiner, follow Commission counsel.
13 Then, if there are matters that arise in the true
14 cross-examination that the government raise the
15 issue and seek leave to examine the witness with
16 respect to matters that were raised in the
17 cross-examination that require addressing from the
18 witness or from the government's standpoint.

19 I simply throw that out. I
20 haven't decided. But as I sat and watched that
21 exchange play out last week it is a thought that
22 occurred to me and it may be a basis for
23 proceeding from here. Okay?

24 MR. CAVALLUZZO: Thank you,
25 Mr. Commissioner.

1 THE COMMISSIONER: Mr. Cavalluzzo?

2 MR. CAVALLUZZO: Thank you,
3 Commissioner.

4 My friend, Ms Edwardh, said that
5 she was grumpy with me last week. I want to
6 assure her that all lawyers have been grumpy with
7 me, which means I may be just --
8 --- Laughter / Rires

9 THE COMMISSIONER: I think the
10 level of grumpiness has moved up significantly.

11 MR. CAVALLUZZO: Right.

12 MS EDWARDH: Thank you,
13 Mr. Cavalluzzo.

14 MR. CAVALLUZZO: Commissioner,
15 this morning we have Mr. Gar Pardy, and I would
16 ask that he be either sworn or affirmed at this
17 time?

18 THE COMMISSIONER: Would you like
19 to be sworn or affirmed?

20 MR. PARDY: Sworn, please.

21 SWORN: HENRY GARFIELD PARDY

22 THE COMMISSIONER: Your full name?

23 MR. PARDY: Henry Garfield Pardy.

24 THE COMMISSIONER: Thank you. You
25 may be seated.

1 MR. CAVALLUZZO: At the
2 outset, let me describe to counsel the manner in
3 which I intend to complete Mr. Pardy's evidence in
4 two days.

5 Mr. Pardy has a number of
6 documents to deal with, somewhere between 250 and
7 275 documents that I will be taking him through,
8 which means that I will be having him identify the
9 documents. We will be focusing upon those parts
10 of the documents that are important.

11 Mr. Pardy, if you have any further
12 comments you want to add, I would ask you to do
13 that. If you think I am going too quickly, I
14 would ask you to tell me that, because we intend
15 to complete your evidence in a couple of days.

16 At the outset, let me give
17 counsel an overview of where we are headed in
18 the next couple of days.

19 Initially, I want to discuss with
20 Mr. Pardy his education and professional
21 background. He does have an extensive background
22 in the foreign service and I want to spend some
23 time on that.

24 Second, I am going to be
25 discussing with Mr. Pardy the legal and practical

1 context that we find ourselves in the United
2 States in September of 2002 when Mr. Arar was
3 initially detained in the United States.

4 Third, we are going to deal with
5 the events surrounding Mr. Arar's detention in the
6 United States and his deportation to Syria.

7 Now, we have heard extensive
8 evidence from two previous witnesses on that, and
9 as a result of that I will be moving quickly
10 through that, except where Mr. Pardy would be of
11 unique assistance to us.

12 The fourth matter concerns
13 a travel advisory which was issued by DFAIT in
14 October 2002 as a result of an American
15 practice and policy which was instituted in
16 September of 2002.

17 Fifth, we will be dealing with the
18 Consular Affairs' actions during Mr. Arar's
19 detention in Syria. We know that we are going to
20 be having both Mr. Pillarella and Mr. Martel
21 testifying, and I want to give us the
22 headquarters' perspective of what was going on
23 during Mr. Arar's detention in Syria.

24 Sixth, we will be dealing with the
25 efforts to make Canada speak with one voice in

1 respect of getting Mr. Arar's release from Syria.

2 Seventh, we will be looking at the
3 allegations of torture and the report of the
4 Syrian Human Rights Committee.

5 Eighth, we will be looking at the
6 actions of DFAIT in respect of the trial which was
7 to take place in respect of Mr. Arar in Syria in
8 August and September of 2003.

9 Then, finally, we will be
10 looking at certain statements which were made in
11 the media after Mr. Arar's return to Canada and
12 after Mr. Pardy's retirement.

13 EXAMINATION

14 MR. CAVALLUZZO: Okay, Mr. Pardy.
15 I would like to start now with your education and
16 professional background. As far as your education
17 is concerned, you received a Bachelor of Arts from
18 Acadia University and a Master of Arts from
19 McMaster University?

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: I would like to
22 file at this time Mr. Pardy's curriculum vitae.

23 THE COMMISSIONER: Exhibit
24 No. P-86.

25 EXHIBIT NO. P-86: Curriculum

1 vitae of Henry Garfield Pardy

2 MR. CAVALLUZZO: It would appear
3 from your curriculum vitae that you started your
4 career in the Foreign Service in 1967.

5 Is that correct?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: Between 1967 and
8 2003 you remained in the Foreign Service?

9 MR. PARDY: Yes, exclusively.

10 MR. CAVALLUZZO: You retired on or
11 about August 31, 2003, after expending 36 years of
12 service in Foreign Affairs?

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: Okay. Now, I
15 would like to focus on certain aspects of your
16 career in the Foreign Service, certain aspects
17 which are quite relevant, it would seem to me, to
18 the situation of Mr. Arar.

19 If we look at your CV, it would
20 appear that between 1972 and 1975 you were with
21 something called the National Security Section,
22 Security Liaison Division, RCMP Foreign
23 Operations, International Secretary and Criminal
24 Issues, and I am wondering if you might just
25 briefly tell us what your duties and

1 responsibilities were in this section,
2 particularly in respect of your relationship with
3 the RCMP?

4 MR. PARDY: Yes. When I returned
5 to Ottawa in 1972 from the assignment in India,
6 this was in the aftermath of the massacre at the
7 Munich Olympics, and it preceded the arrangements
8 being made for the Olympics in Montreal in 1976.
9 At that time it was decided that there was a need
10 for enhancement within the Department of Foreign
11 Affairs with somebody looking at the issue of
12 international terrorism and the various roles
13 within the Canadian government and I was assigned
14 responsibility of that.

15 The National Security Section, or
16 if you like the Security Liaison Division, today
17 is equivalent to ISI.

18 MR. CAVALLUZZO: Okay. In
19 respect of this notation, in the third bullet down
20 on page 2, under that duty, it talks about the
21 "Memorandum of Understanding with RCMP on
22 operations overseas, updated in 1998."

23 What does that mean? That you
24 were involved in negotiating this particular MOU
25 with the RCMP relating to that topic?

1 MR. PARDY: Yes. I think it is
2 one of the elements the government looked at in
3 terms of enhancing its activities with respect to
4 security, and particularly with respect to
5 international terrorism. It was decided that a
6 Memorandum of Understanding should be entered into
7 between the Department of Foreign Affairs and the
8 Commissioner of the RCMP and I, along with one or
9 two other people, were responsible for the
10 negotiation of that document.

11 MR. CAVALLUZZO: Okay. Now,
12 between 1978 and 1982, it states that you were the
13 Consular, Canadian Embassy, Washington, D.C.
14 Intelligence Liaison Officer, Central Intelligence
15 Agency, Nuclear Nonproliferation Issues.

16 Now, what were you doing in
17 respect of that particular position?

18 MR. PARDY: This is in terms
19 of the various international political, economic,
20 and security issues, and basically we exchanged
21 information with the American government, both
22 with the Central Intelligence Agency and a
23 particular part of the State Department, and
24 obtained information from them on a full range
25 of international political, economic and

1 security issues.

2 MR. CAVALLUZZO: I see that in
3 1982 you received the CIA International Services
4 Award.

5 What is that award for?

6 MR. PARDY: Well, it is an award
7 given to people that would be working with the
8 Agency from foreign governments.

9 MR. CAVALLUZZO: Okay.

10 Did you maintain your contacts
11 with the CIA over the years?

12 MR. PARDY: No.

13 MR. CAVALLUZZO: That is a
14 simple no?

15 MR. PARDY: No.

16 MR. CAVALLUZZO: Okay. Okay.

17 Between 1983 and 1985 you were the
18 Director, United States United States Program
19 Division, and this included responsibilities
20 relating to the Immigration Program in the United
21 States?

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: Okay. Were you
24 located at this particular time in Ottawa or in
25 the United States?

1 MR. PARDY: In Ottawa.

2 MR. CAVALLUZZO: Between 1985 and
3 1989 you were still located in Ottawa, however,
4 you became the director for the Asia-Pacific South
5 Division. That job apparently dealt with all
6 aspects of Canada's relationship with the
7 countries of South and Southeast Asia and the
8 South Pacific?

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: I see that as far
11 as our case is concerned, if you go to page 4, we
12 see that your responsibilities gave you an
13 opportunity to deal with the bombing of Air India
14 Flight 182?

15 MR. PARDY: Yes, I took up these
16 responsibilities in, I think it was in July of
17 1985, and of course Air India was the largest
18 issue and over the next four years it was the
19 largest issue that I had to deal with.

20 MR. CAVALLUZZO: Okay. I also see
21 that you are responsible for the rescue of Soviet
22 prisoners of war in Afghanistan?

23 MR. PARDY: Yes.

24 MR. CAVALLUZZO: Do you have a
25 particular focus or experience in respect of the

1 politics of Afghanistan?

2 MR. PARDY: Yes. I think over the
3 years I have developed an interest and I followed
4 issues in Afghanistan I think throughout my
5 professional life.

6 MR. CAVALLUZZO: Okay. We will
7 come back to that.

8 It would appear that between 1989
9 and 1992 you took up a role as Ambassador to Costa
10 Rica, El Salvador, for a limited period of time,
11 Honduras, Nicaragua, and Panama?

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: Between 1992 and
14 1999 you were the Director of Consular Operations
15 Division, Assistance to Canadians in Foreign
16 Countries?

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: Generally
19 speaking, what was your role there?

20 Did you focus upon detainees,
21 Canadian detainees, in foreign countries when you
22 held that position?

23 MR. PARDY: No. In those days,
24 the Consular Operations Division was one of two
25 divisions in the Consular Bureau and we covered a

1 whole range of issues in that -- really all issues
2 affecting Canadians in foreign countries.

3 MR. CAVALLUZZO: When you held
4 that position during those years, I see at page 5
5 that you developed and deployed the Consular
6 Management and Operations System, the COSMOS or
7 CAMANT system?

8 MR. PARDY: Yes, I did.

9 MR. CAVALLUZZO: Did you
10 initiate the country travel reports that we may
11 deal with today?

12 MR. PARDY: Yes, I did.

13 MR. CAVALLUZZO: You have also
14 dealt with country and subject-specific
15 publications on safety abroad.

16 What is that? Indicating to
17 Canadians travelling abroad what they should be
18 looking for, and so on?

19 MR. PARDY: Yes, exactly.

20 MR. CAVALLUZZO: Okay. Finally,
21 between 1995 and 2003, you were the Director
22 General of the Consular Affairs Bureau and this
23 got you involved in negotiations with foreign
24 governments, coordination of policy with other
25 agencies of the Government of Canada, and

1 recommendations on policy and practice to
2 Ministers and the Cabinet.

3 As far as this job is concerned, I
4 would just focus on that you were involved in the
5 development of consular service standards that we
6 may refer to?

7 MR. PARDY: Yes. That was an
8 element, when we -- when it was agreed that we
9 would do cost recovery for the consular program,
10 then one of the associated issues was the
11 establishment of standards.

12 MR. CAVALLUZZO: Okay. I just
13 want to focus on a couple of other things, and
14 that is, you were involved in the initiation of a
15 five-country, that is Australia, Canada, New
16 Zealand, U.K. and U.S., consular consultative
17 group and the organization of regular meetings.

18 As far as that is concerned, were
19 there any meetings of this group subsequent to
20 9/11 to deal with the issues created by 9/11?

21 MR. PARDY: Yes, we had
22 generally -- depending on the international
23 climate, we tried for at least an annual meeting
24 and in some instances we had them more frequently.

25 MR. CAVALLUZZO: Okay. The

1 final point, I just want to give us some idea
2 that you had a number of things on your plate in
3 2003, apart from Mr. Arar's case, and that is, you
4 were involved in the Sampson case out of Saudi
5 Arabia; you were involved in the Kazemi case in
6 Iran; you were involved in the Bali bombing in
7 Indonesia in 2003; you were --

8 MR. PARDY: That is a mistake. It
9 should have been 2002.

10 MR. CAVALLUZZO: Okay. However,
11 the SARS crisis did occur in 2003?

12 MR. PARDY: Yes, it did.

13 MR. CAVALLUZZO: As did the
14 second Gulf War as of March 2003, which we will
15 come back to.

16 You told us that you retired as of
17 August 31, 2003.

18 I understand now you are a
19 private consultant?

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: You are employed
22 on contract with the Government of Canada at the
23 present time?

24 MR. PARDY: That is correct.

25 MR. CAVALLUZZO: Your contract

1 with the Government of Canada relates to this
2 public inquiry as well as any litigation
3 surrounding Mr. Arar?

4 MR. PARDY: That is correct, yes.

5 MR. CAVALLUZZO: How long have you
6 been on contract with the Government of Canada
7 relating to those duties?

8 MR. PARDY: I think May of 2004.

9 MR. CAVALLUZZO: Mr. Pardy, you
10 must forgive me, your awards are too numerous to
11 recount, starting with the fact that you were the
12 Valedictorian with your graduating class in
13 Acadia --

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: -- and it went
16 right through to the Public Service Award. I
17 leave that to counsel to read, but certainly there
18 are numerous awards as well as numerous
19 publications which are set out in the last few
20 pages of your CV.

21 Okay. Now, I would like to move
22 on now, Mr. Pardy, to deal with the background,
23 the background of 9/11, bringing us up to
24 September 26, 2002.

25 Before doing that, I just want

1 to -- we did this with Mr. Sigurdson, but I just
2 want to focus our minds in terms of the
3 organization, bureaucracy and hierarchy of DFAIT
4 and where consular affairs fit into that.

5 I wonder if counsel, and
6 Commissioner, if you would refer initially to
7 Exhibit No. 11.

8 Just to give us an overview, we
9 start initially at Tab 2.

10 We see the bureaucratic
11 organization of DFAIT with Mr. Graham at the top.
12 We see Mr. Harder was the Deputy Minister. For
13 some time before that it was Mr. Lavertu. We see
14 Jonathan Fried. As far as Consular Affairs are
15 concerned, if we go to the box at the right,
16 second box up, we see something called Corporate
17 Services, Passport, and Consular Affairs.

18 At that point in time,
19 Mr. Pardy, the Assistant Deputy Minister was
20 Katherine McCallion?

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: And then if we
23 can just focus on consular affairs, if we go to
24 tab 5, we see that within the corporate services,
25 passport and consular affairs division, we have a

1 number of bureaus. Consular affairs is one, and
2 we can see that on the third box from the right.

3 At that time it was Mr. Sigurdson.
4 You were known as JPD. Is that
5 correct?

6 MR. PARDY: There is a box
7 missing. They only put in four boxes. There are
8 five, actually. We managed our own infomatics
9 program.

10 MR. CAVALLUZZO: And we will come
11 back to that.

12 We can see who you are responsible
13 for. But for a little more detail and to ensure
14 that we have the correct number of boxes, we can
15 go now to Exhibit P-51.

16 The clerk will give you Exhibit
17 P-51.

18 You will see that you are right,
19 there are five boxes, not four.

20 And this is the Consular Affairs
21 Bureau as of July 2002, which is the material
22 time. We see that you are at the top of the scale
23 there.

24 We also see the name Laura Sear,
25 and she was your administrative assistant.

1 MR. PARDY: That is correct.

2 MR. CAVALLUZZO: We will see her
3 name a number of times on e-mails. Presumably she
4 was sending e-mails on your behalf?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: Then we see five
7 boxes. I guess the boxes, or divisions, which are
8 important for us would be emergency services, and
9 at that point in time we see Helen Harris was the
10 director of that.

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: We also see case
13 management, which is important.

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: And that
16 designation is JPO. Now, we have heard a witness
17 by the name of Collins who also called herself
18 JPO.

19 MR. PARDY: Yes. She was a Case
20 Management Officer working in the Case Management
21 Division.

22 MR. CAVALLUZZO: And she would
23 report to Mr. Carisse?

24 MR. PARDY: That is correct.

25 MR. CAVALLUZZO: And we need not

1 go into further detail. I just wanted to give us
2 an overview of the bureaucratic structure.

3 Let us come to, as I said before,
4 the context leading up to Mr. Arar's detention in
5 New York City in September of 2002.

6 Once again, we did this with
7 Mr. Sigurdson, but there are a few important
8 aspects of the Vienna Convention which will give
9 us context in respect of the scope of consular
10 services to which Mr. Arar was entitled, both in
11 New York City and Damascus.

12 I would ask you once again if you
13 could refer to Exhibit P-11 and go to tab 13,
14 which is the Vienna Convention.

15 What I will do, I will briefly
16 refer to these and ask if you want to comment on
17 any of them, because I think these are the
18 important articles of the Convention relating to
19 Mr. Arar's situation.

20 The first obviously is Article 2,
21 Section 1, which provides that:

22 "The establishment of
23 consular relations between
24 states takes place by mutual
25 consent."

1 That's an obvious point. The only
2 point I want to raise here is that Canada,
3 obviously, is a signatory to the Vienna
4 Convention?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: The United States
7 is a signatory to the Vienna Convention?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: Is Syria a
10 signatory to the Vienna Convention?

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: As far as what
13 services a Canadian citizen is entitled to in
14 respect of being detained in a foreign country, if
15 we go to Article 5 -- and these obviously relate
16 to state responsibilities and functions -- it
17 provides in paragraph (a):

18 "Consular functions consist
19 in:

20 (a) protecting in the
21 receiving State the interests
22 of the sending State and its
23 nationals, both individuals
24 and bodies corporate within
25 the limits permitted by

1 international law;"

2 Paragraph (e):

3 "(e) helping and assisting
4 nationals, both individuals
5 and bodies corporate, of the
6 sending State;"

7 Paragraph (i), which is very
8 important as far as this case is concerned:

9 "(i) subject to the practices
10 and procedures obtaining in
11 the receiving State ..."

12 And of course the receiving state
13 would be in our case either the United States or
14 Syria.

15 "... representing or
16 arranging appropriate
17 representation for nationals
18 of the sending State ..."

19 That is, Canada.

20 "... before the tribunals and
21 other authorities of the
22 receiving State, for the
23 purpose of obtaining, in
24 accordance with the laws and
25 regulations of the receiving

1 State, provisional measures
2 for the preservation of the
3 rights and interests of these
4 nationals, where, because of
5 absence or any other reason,
6 such nationals are unable at
7 the proper time to assume the
8 defence of their rights and
9 interests;"

10 And then, finally, if we refer to
11 Article 36, which is --

12 MR. PARDY: May I just make one
13 comment on that? I think it's important to
14 realize that these are functions that are
15 permitted under the treaty, and individual states
16 then make their own decisions with respect to what
17 particular policies they will follow within this
18 general granting of authority.

19 MR. CAVALLUZZO: Okay. I am going
20 to come back to that when we come to Article 36.

21 In a couple of references here,
22 Article 36 is entitled "Communication and Contact
23 With Nationals of the Sending State".

24 And Section 1 provides:

25 "With a view to facilitating

1 the exercise of consular
2 functions relating to
3 nationals of the sending
4 State:
5 (a) consular officers shall
6 be free to communicate with
7 nationals of the sending
8 State and to have access to
9 them. Nationals of the
10 sending State shall have the
11 same freedom with respect to
12 communication with and access
13 to consular officers of the
14 sending State;
15 (b) if he so requests, the
16 competent authorities of the
17 receiving State shall,
18 without delay, inform the
19 consular post of the sending
20 State if, within its consular
21 district, a national of that
22 State is arrested or
23 committed to prison or to
24 custody pending trial or is
25 detained in any other

1 manner."

2 And I will coming back to that
3 provision when we come and deal with the facts of
4 this case.

5 And:

6 "(c) consular officers shall
7 have the right to visit a
8 national of the sending State
9 that is in prison, custody or
10 detention, to converse and
11 correspond with him and to
12 arrange for his legal
13 representation."

14 And the only other provision which
15 I think is important is section 2 of Article --

16 MR. PARDY: Could I suggest as
17 well, I think paragraph 2 of that section is
18 extremely important in terms of the exercise of
19 those functions in paragraph 1.

20 MR. CAVALLUZZO: Paragraph 2,
21 that's what I am going to --

22 MR. PARDY: Oh, you are going to
23 come back --

24 MR. CAVALLUZZO: Definitely,
25 because I want to ask you some questions about

1 paragraph 2.

2 It provides:

3 "2. The rights referred to in
4 paragraph 1 of this Article
5 shall be exercised in
6 conformity with the laws and
7 regulations of the receiving
8 State, subject to the
9 proviso, however, that the
10 said laws and regulations
11 must enable full effect to be
12 given to the purposes for
13 which the rights accorded
14 under this Article are
15 intended."

16 And you were going to comment on
17 the importance of paragraph 2.

18 MR. PARDY: Well, I think the old
19 article, and as you will realize, I think, is
20 probably what lawyers would refer to as some loose
21 language. That loose language has never been
22 defined in any definitive way under international
23 practice, and as a result there is a high degree
24 of skill required in terms of the application of
25 those rights under that particular article, and

1 there is wide variation in terms of practice of
2 countries.

3 MR. CAVALLUZZO: I want to deal
4 with two aspects of Article 36. The first is the
5 statement that when you are in a foreign country
6 that you are entitled to be treated in the same
7 manner as a person who is a resident of the
8 foreign country.

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: And I want to be
11 clear on that, and that is that there are certain
12 minimum international law standards which must be
13 met by the foreign country in respect of dealing
14 with a detainee from Canada, or any other country
15 for that matter.

16 Isn't that correct?

17 MR. PARDY: There are certain
18 conventions out there that establish various
19 standards, and I use "standards" not in its
20 absolute sense but in a much looser sense.

21 But the problem that you run into
22 is whether those standards are enforceable, or
23 whether the standards provide a method by which,
24 when they are not adhered to, where you can go to
25 some particular mechanism by which redress might

1 be established and remedies effected.

2 That is not apparent in most of
3 these consular cases.

4 MR. CAVALLUZZO: Let me give you
5 an example. If I am a Canadian detained in a
6 foreign nation and I am tortured by that foreign
7 nation, and I complain about it and they say:
8 "What are you complaining about? We torture
9 everybody who is a resident in our country, so
10 what's the big deal?"

11 What would you say to that in
12 terms of --

13 MR. PARDY: Well, what we would
14 do, of course, is to try in effect prevent that,
15 and one of the mechanisms that we use -- there is
16 a whole variety of mechanisms. But even under
17 the -- there is, really one of the better
18 international conventions, the Convention Against
19 Torture, which in the specifics of this particular
20 case, Syria I don't think is a signatory to. So
21 it gives you your first problem there.

22 But the Convention Against Torture
23 has more specific language on this than most
24 conventions, and the redress mechanisms there are
25 not as good as most people would like to see.

1 MR. CAVALLUZZO: You may want to
2 refer to that, but the point that I am making can
3 be found once again in Exhibit 11 at tab 22, which
4 is your manual of consular instructions?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: And in
7 particular, page 8 of 75, Section 2.4, talks about
8 "Intervention with local authorities", and then
9 paragraph 2.4.1 in the second sentence states:
10 "Consistent with Canada's
11 commitment to fundamental
12 human rights consular
13 officers do what they can to
14 protect Canadians against
15 violation of these rights.
16 It is a basic principle of
17 international law that
18 whatever a State's treatment
19 of its own subjects, aliens
20 must be accorded an
21 international minimum
22 standard of treatment,
23 including freedom from
24 arbitrary arrest, due
25 process, and the

1 determination of legal rights
2 and respect for human rights
3 generally."

4 And that's basically the standard
5 that a Canadian can expect and that is, despite
6 how a foreign nation may treat its own subjects,
7 there are certain minimum international standards
8 which certainly require the foreign state to treat
9 me in a particular manner. And if they don't,
10 then obviously my consular official would do
11 whatever to attempt to ensure that that standard
12 is met?

13 MR. PARDY: Yes. And that is
14 exactly where the weakness is in the system, is
15 your latter comments.

16 MR. CAVALLUZZO: Right. And the
17 latter comments being that sometimes there are
18 what are called "rogue states", and your challenge
19 is much greater when you are dealing with rogue
20 states who flout international law?

21 MR. PARDY: Well, as you know, the
22 procedures of all states, when subject to the
23 level of scrutiny that is involved in this
24 article, most States are found wanting.

25 MR. CAVALLUZZO: Let us focus on

1 what particular state, and that is the United
2 States.

3 I want to ask you now, in terms of
4 the post-9/11 environment, I want to ask you
5 specifically whether the Americans demonstrated
6 less respect for generally accepted consular
7 protection practices and mobility rights of
8 travellers after that event, 9/11?

9 MR. PARDY: In that the Americans
10 put in place a number of specific measures that
11 were largely forecast in terms of their
12 legislation, the Patriot Act, and in doing so the
13 Americans -- and they were not unique in this by
14 any stretch. A lot of governments put in place
15 additional measures in terms of the entry and
16 departure of individuals and how individuals were
17 treated within their national jurisdiction.

18 The American measures were
19 particularly onerous in a number of areas, and our
20 efforts were to try to ameliorate those measures
21 with respect to Canadians. For the most part the
22 measures were quite specific with respect to
23 foreigners who were born in certain countries.

24 MR. CAVALLUZZO: And those certain
25 countries, for the most part, were Muslim

1 countries?

2 MR. PARDY: Were countries where
3 Islam was the predominant religion, or in I think
4 one instance where religion was not necessarily
5 the major factor.

6 MR. CAVALLUZZO: Okay. I want to
7 enter as an exhibit a travel bulletin which was
8 issued by the Americans on September 10th of 2002,
9 which was about two weeks --

10 MR. PARDY: Issued by the
11 Government of Canada.

12 MR. CAVALLUZZO: No, this -- yes,
13 issued by the Government of Canada. I am sorry.

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: Relating to an
16 American policy.

17 You should have two documents.
18 One is dated September 10th, the other September
19 17th?

20 MR. PARDY: Yes.

21 THE COMMISSIONER: Two documents,
22 P-87, Mr. Cavalluzzo?

23 MR. CAVALLUZZO: Okay.

24 EXHIBIT NO. P-87: Two travel
25 bulletins dated September 10,

1 2002 and September 17, 2002

2 MR. CAVALLUZZO: The first
3 document, dated September the 10th of 2002,
4 related to something called the U.S. National
5 Security Entry Exit Tracking, NSEET, program?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: And this
8 particular program, implemented by the Americans,
9 was going to be in effect at every American point
10 of entry on September 11th, 2002?

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: And it related to
13 persons who were born in Iran, Iraq, Libya, Sudan
14 and Syria, all countries in which Islam is
15 practised?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: And why don't
18 you, if you can, briefly tell us what was the
19 impact of the NSEET program which came in effect
20 on September 10th, 2002?

21 MR. PARDY: The impact -- I mean,
22 the object of the program was to track -- in
23 American terminology they refer to foreigners as
24 aliens -- was to track aliens from the moment that
25 they arrived in the country and, more importantly,

1 was to obtain information on their departure.

2 This was one of the -- all
3 governments run into problems. Entry is
4 relatively easy because it is controlled.
5 Departure normally in most democratic countries is
6 not a thing that is controlled by governments.

7 And the impact on the program --
8 it took some time before we were starting to be
9 able to see the impact on Canadians, but after the
10 11th of September we were getting reports from
11 Canadians who ran into difficulty in gaining entry
12 to the United States or who were already in the
13 United States and were investigated and found, in
14 some way or another, were out of status in the
15 United States.

16 MR. CAVALLUZZO: And this was a
17 travel bulletin given to Canadians --

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: -- saying this is
20 happening, beware?

21 MR. PARDY: Beware.

22 MR. CAVALLUZZO: And the second
23 bulletin, which is dated September 17th, 2002,
24 what was the purpose of that bulletin?

25 MR. PARDY: Well, that was to

1 update. We are starting to get a little bit of
2 experience on that and we had more details on the
3 program itself.

4 The reason why we issued it as a
5 travel bulletin, as a counter point to your next
6 document which you will probably look at, was that
7 travel bulletins had wide dissemination within
8 Canada to the travel industry and to the media,
9 and so there was almost an instant replay into the
10 public domain of this information.

11 MR. CAVALLUZZO: Okay. During
12 this period of time, do you have any idea of how
13 many people were detained by the Americans during
14 this period?

15 MR. PARDY: Canadians or --

16 MR. CAVALLUZZO: Canadians.

17 MR. PARDY: Canadians? A lot were
18 not detained in the sense that -- what would
19 happen is that Canadians seeking to enter the
20 United States would at a point of entry, when upon
21 being questioned and when being told that they had
22 to be fingerprinted or photographed, decided not
23 to enter the United States, so they withdrew their
24 application for entry.

25 I don't think there were a lot of

1 people actually detained. I think very few, as a
2 matter of fact. Most of the detentions that we
3 dealt with were people already in the United
4 States and were considered to be out of status.

5 MR. CAVALLUZZO: Right. And do
6 you have any idea, apart from Canadians, how many
7 people were detained by the Americans during this
8 period?

9 MR. PARDY: You see various
10 figures and as you know figures in this area are
11 very difficult to obtain, but there were
12 certainly -- I have seen upwards of 1200, perhaps
13 is the highest figure that I have seen with
14 respect to this particular program.

15 MR. CAVALLUZZO: Okay.

16 MR. PARDY: But those numbers, the
17 detentions then -- the people in detention -- they
18 were dealt with reasonably quickly in that sense,
19 certainly was our experience, although in our
20 term, I would use the term "reasonably quickly"
21 but you are still talking several months.

22 MR. CAVALLUZZO: Now, we have
23 looked at the American response, subsequent to
24 9/11, respecting rights of people travelling to
25 and from the United States.

1 I want to ask you now about
2 another aspect of this, and that is people that
3 are detained within the United States subsequent
4 to 9/11, was the American adherence to the Vienna
5 Convention somewhat less rigorous subsequent to
6 9/11 in respect of detainees as far as national
7 security cases are concerned?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: Did Canada do
10 anything in respect of that relating to the
11 Americans' lack of vigour in respect of
12 implementing the Vienna Convention as far as
13 detainees are concerned?

14 MR. PARDY: Yes. We had
15 discussions with the Americans. I should point
16 out that this area of notification under the
17 Vienna Convention is a very weak element in the
18 Vienna Convention and all States have problems.

19 I would say generally the
20 Americans were better than most countries with
21 respect to notification, but after 9/11, this one
22 area of national security, that became very weak
23 and we had several cases where there was no
24 notification and certainly we would certainly
25 bring those to the attention of the American

1 government.

2 MR. CAVALLUZZO: As far as
3 Mr. Arar was concerned, we will be coming back to
4 that particular issue of notification.

5 I guess the other point will be in
6 the course of your evidence we will be dealing
7 with the NSEER program and Canada's reaction to it
8 subsequent to Mr. Arar's detention.

9 Another contextual fact which I
10 think is important to the detention of Mr. Arar in
11 the United States on September 26, 2002 is what
12 have been referred to as the cases of "X" and "Y",
13 that is, we had experience with two other Canadian
14 detainees. In fact, I have spoken to counsel and
15 I understand that the counsel for "X" and "Y" have
16 agreed to have their names disclosed in these
17 proceedings. If we don't know who they are, they
18 certainly are prepared to share that with us now.

19 MS EDWARDH: "X" and "Y" are
20 currently actively involved with the Centre for
21 Constitutional Rights in a class action lawsuit in
22 respect of their detention in the United States.
23 We did get the claim and handed it out last week,
24 which certainly identifies them, from the web
25 site, having been directed to the web site by the

1 counsel. We have no reason at all, indeed
2 understand there is no objection, to referring to
3 them by name.

4 THE COMMISSIONER: Does the
5 government have anything to add?

6 MR. BAXTER: No. They were
7 protected on privacy grounds, so if they are
8 consenting that is fine.

9 THE COMMISSIONER: All right.
10 Mr. Cavalluzzo...?

11 MR. CAVALLUZZO: We heard evidence
12 last week from Ms Girvan and Ms Collins concerning
13 the cases of Baloch and Jaffri. Exhibit Nos. P-52
14 and P-53 summarize their situations.

15 THE COMMISSIONER: So those are
16 "X" and "Y."

17 MR. CAVALLUZZO: "X" and "Y".
18 "X" is Baloch and "Y" is Jaffri.

19 I understand, Mr. Pardy, that
20 Baloch was a Canadian citizen and Jaffri was a
21 landed immigrant in Canada?

22 MR. PARDY: That is correct.

23 MR. CAVALLUZZO: These two
24 gentlemen found themselves in the Metropolitan
25 Detention Center in Brooklyn shortly after

1 September 20, 2001?

2 MR. PARDY: Yes. My recollection,
3 both were detained by the American authorities in
4 September of 2001.

5 MR. CAVALLUZZO: Okay. These were
6 not situations, though, of flying into the United
7 States, but were situations where they were
8 already in the United States and there was a
9 sweep, if we can call it that, of people, and
10 these two gentlemen found themselves in the MDC?

11 MR. PARDY: When I referred
12 earlier to "persons out of status", that was the
13 characterization for both of them, yes.

14 MR. CAVALLUZZO: Okay. As far as
15 their similarity is concerned, Mr. Baloch was a
16 dual citizen of Canada and Pakistan?

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: Mr. Jaffri, as I
19 said before, was a landed immigrant. We
20 understand as far as their facts are concerned,
21 they were held in the MDC for a number of months.

22 Is that correct?

23 MR. PARDY: Yes.

24 MR. CAVALLUZZO: Neither of these
25 gentlemen was deported to Pakistan. Both were

1 deported to Canada.

2 Is that correct?

3 MR. PARDY: That is correct.

4 MR. CAVALLUZZO: As far as
5 their deportation to Canada is concerned, do
6 you recall approximately when that would have
7 been in relationship to Mr. Arar's detention in
8 September of 2002?

9 MR. PARDY: I think both were back
10 in Canada by April or May of 2002, I think it was.
11 I think April of 2002, both had been deported to
12 Canada, yes.

13 MR. CAVALLUZZO: Do you know in
14 either of these cases, did the Americans ever
15 threaten deportation to Pakistan?

16 MR. PARDY: I have gone over the
17 records and there is no reflection in the records,
18 although I have had a chance in the meantime to
19 read the Statement of Claim that has been filed in
20 the United States, and in that Statement of Claim
21 Mr. Jaffri makes such an allegation.

22 MR. CAVALLUZZO: Mr. Jaffri
23 alleges that they threatened to deport him to
24 Pakistan?

25 MR. PARDY: To Pakistan.

1 MR. CAVALLUZZO: Okay. Did you
2 know that in September of 2002?

3 MR. PARDY: No. Not as a
4 fact, no.

5 MR. CAVALLUZZO: The other
6 question I have in respect of Baloch and Jaffri is
7 whether you are aware the RCMP was involved in
8 either of those cases during the time that they
9 were detained in the United States?

10 MR. PARDY: Not to my
11 knowledge, no.

12 MR. CAVALLUZZO: The third
13 contextual fact that I would like to discuss
14 with you relating to Mr. Arar's detention is
15 that we understand that in the middle of August
16 of 2002 there were allegations of torture made
17 by a Canadian detainee while he was in Syria
18 between November 2001 and sometime in the early
19 part of 2002.

20 Do you recall that issue?

21 MR. PARDY: Yes, I do.

22 MR. CAVALLUZZO: You recall it
23 was Mr. El Maati and that in mid-August he said,
24 "When I was in Syria, detained in Syria, the
25 Syrians tortured me to get information," words to

1 that effect?

2 MR. PARDY: Yes. He was in
3 detention in Egypt at the time.

4 I'm not sure about the August
5 date. I thought it was a little bit earlier than
6 August, but so be it.

7 MR. CAVALLUZZO: Well, we can
8 refer you to exhibits that indicate that. In
9 fact, Exhibit M-1, which is now P-83, at --

10 MR. PARDY: Exhibit P-83?

11 MR. CAVALLUZZO: Exhibit P-83, in
12 tab 1 at page 182 --

13 MR. PARDY: I'm sorry, the
14 tab number again?

15 MR. CAVALLUZZO: Tab 1?

16 MR. PARDY: Tab 1.

17 MR. CAVALLUZZO: Okay, at
18 page 182.

19 You will see that there was a
20 meeting of Project A-OCANADA on August 15th of
21 2002. You will see in the first paragraph after
22 the black there, it says:

23 "This was a proactive measure
24 to discuss media lines to be
25 used when Ahmad El Maati's

1 allegations about torture in
2 Syrian authorities..."

3 And so on. It talks about
4 coordination.

5 You can see that in the middle of
6 August Canadian authorities were getting together
7 to formulate media lines to deal with his
8 allegations of torture, so that obviously his
9 allegations must have been shortly before then?

10 MR. PARDY: Or, again, my
11 recollection is that it was in June when we had
12 the first visit with Mr. El Maati, the first
13 consular visit with Mr. El Maati, in Cairo, yes.

14 MR. CAVALLUZZO: But in any
15 event --

16 MR. PARDY: In any event,
17 there was --

18 MR. CAVALLUZZO: -- there was a
19 great deal of activity in the Canadian government
20 in the middle of August 2002 concerning his
21 allegations of torture, so that when Mr. Arar
22 arrived in the United States in September of 2002,
23 certainly that was an event which was certainly
24 well-known to DFAIT officials?

25 MR. PARDY: Yes, but as you --

1 this meeting was not one that I was aware of, that
2 you are referring to in this particular instance.

3 MR. CAVALLUZZO: Right. But I'm
4 just concerned about the allegations, not the --

5 MR. PARDY: The allegations, yes.

6 MR. CAVALLUZZO: -- not the
7 meetings.

8 Certainly the other contextual
9 circumstance which I think is relevant is the
10 public record on Syria as far as their human
11 rights is concerned. We have the Department of
12 State exhibit, the Department of State Annual
13 Report, Exhibit P-27; the Amnesty report,
14 Exhibit P-29.

15 I don't know if you have to refer
16 to it, but just to summarize it, the human rights
17 record of that country is not exactly stellar and,
18 indeed, there is arbitrary arrest, corrupt judges,
19 detention without charge, a predilection to
20 torture for detainees, particularly relating to
21 national security cases, and I can go on and on.

22 I assume that you were quite aware
23 of the public record on Syria's human rights.

24 MR. PARDY: Very much so.

25 MR. CAVALLUZZO: Okay. Another

1 contextual fact which I think is important, once
2 again it relates to Syria, that is that prior to
3 Mr. Arar's detention in the United States and
4 deportation to Syria, Canada had some recent
5 experience as far as consular access is concerned
6 relating to Canadian citizens detained in Syrian
7 detention facilities.

8 Is that correct?

9 MR. PARDY: The experience was the
10 lack of consular access, yes.

11 MR. CAVALLUZZO: If we could focus
12 on two, we have referred to Mr. El Maati and we
13 understand that Canada was unsuccessful in getting
14 any consular access to him. He was a dual
15 citizen.

16 Is that correct?

17 MR. PARDY: Yes. Of Canada and
18 Egypt, yes.

19 MR. CAVALLUZZO: Okay.

20 Mr. Almalki was a dual citizen of
21 Syria and Canada?

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: Certainly as of
24 August 2002, we understand that a diplomatic note
25 had been sent to the Syrians saying, "Can we

1 please see Mr. Almalki?"

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: And by September
4 of -- in October of 2002, they had still denied
5 access to him?

6 MR. PARDY: Even to the point of
7 almost refusing to acknowledge that he was a
8 person within their custody.

9 MR. CAVALLUZZO: And we did, or
10 DFAIT did, treat Mr. Almalki as a consular case?

11 MR. PARDY: Absolutely.

12 MR. CAVALLUZZO: Okay.

13 Now, the final questions relating
14 to the time just before September 26, 2002, relate
15 to the role of Canadian agencies when we are
16 dealing with a Canadian who was detained in a
17 foreign nation.

18 The first is, in the course of
19 fulfilling your consular duties, would you
20 normally contact other Canadian agencies, such as
21 the RCMP and CSIS, in carrying out your functions?

22 MR. PARDY: No. It is very rare
23 to do so.

24 MR. CAVALLUZZO: Okay. The second
25 question I would have is, if you are having

1 trouble finding somebody, such as you say
2 Mr. Almalki, the Syrians denied him being there,
3 would you call on either CSIS or the RCMP to
4 assist you in trying to locate the Canadian?

5 MR. PARDY: No, we would use our
6 own resources to do so.

7 MR. CAVALLUZZO: Okay. The
8 next question is related to what the other
9 agencies should do, and that is if the RCMP or
10 CSIS become aware, through their own channels,
11 that a Canadian is detained abroad, would you
12 expect on behalf of DFAIT that either of those
13 agencies would notify you --

14 MR. PARDY: No.

15 MR. CAVALLUZZO: -- that there is
16 a Canadian detained abroad and get those consular
17 duties in motion?

18 MR. PARDY: No, I would not expect
19 it as a matter of course, although there have been
20 instances when we were provided with such
21 information from other Canadian agencies.

22 MR. CAVALLUZZO: So that you
23 wouldn't expect them to give you a tip-off, so to
24 speak, that there may be a problem here and you
25 guys should get moving to assist this Canadian?

1 MR. PARDY: No.

2 MR. CAVALLUZZO: Okay.

3 Now, another question I have
4 relating to the context, and that is your
5 knowledge of extraordinary rendition. We have
6 heard throughout these proceedings that there was
7 a practice of the Americans, in effect, wherein
8 they might, what is called, outsource or contract
9 out the questions they may have of an individual
10 by bringing them to particular countries that
11 are -- how shall I put it -- expert in
12 interrogating detainees.

13 Are you aware of that particular
14 practice now?

15 MR. PARDY: I was aware of a
16 rendition practice by the United States in terms
17 of bringing individuals into the United States for
18 appropriate judicial action.

19 MR. CAVALLUZZO: So that would be
20 a situation where the Americans felt that somebody
21 had broken American law, whereby they would take
22 somebody from a foreign nation and bring them into
23 the United States for due process?

24 MR. PARDY: Yes, sometimes with
25 the cooperation of the foreign government and

1 sometimes not.

2 MR. CAVALLUZZO: Okay.

3 MR. PARDY: The most noteworthy
4 case I should mention in that respect, of course,
5 was Manuel Noriega, the Head of Government I
6 should say, in Panama in 1989.

7 MR. CAVALLUZZO: What about the
8 other aspect, and that is where the Americans may
9 send or take an individual to a foreign country
10 for the purposes of being questioned by that
11 foreign country, whether it be from the United
12 States or from another foreign country?

13 MR. PARDY: In the latter part, my
14 understanding and knowledge -- and this is a
15 program that goes back, and much of this
16 information is post-Mr. Arar's detention in
17 September 2002 -- but the United States
18 established a program in the mid-1990s whereby
19 they would transfer individuals from one foreign
20 country to another.

21 To this day it is my
22 understanding, in terms of a transfer from inside
23 the United States to a foreign country under such
24 a program, Mr. Arar, if his case is to be
25 considered as an extraordinary rendition case,

1 then he is unique.

2 MR. CAVALLUZZO: Okay. Related to
3 that, as a DFAIT official responsible for the
4 consular functions which are granted by the Vienna
5 Convention, would you expect another Canadian
6 agency, if they are aware of this kind of
7 practice, to notify DFAIT that you should be aware
8 that the Americans are pursuing this particular
9 practice because it may impact on your roles?

10 MR. PARDY: No, as a matter of
11 course, I would not expect them -- if that was
12 part of their operational mandate and the
13 exchanges of information that they were engaged in
14 under Canadian law and practice, I would not
15 expect them to inform me of that.

16 MR. CAVALLUZZO: That is
17 surprising to me. I would have thought that that
18 may be useful information that a DFAIT official
19 may have, and I would be surprised if -- it is one
20 government, as we will see in May of 2003 when you
21 attempted to have Canada speak with one voice. It
22 is one government. Why shouldn't one arm of
23 government tell the other arm if it is going to be
24 useful, and indeed necessary, in respect of
25 fulfilling their functions?

1 MR. PARDY: I think there are
2 probably a variety of reasons behind the practice
3 at that time. I think probably it is an issue
4 that the Commission itself may want to make some
5 recommendations on.

6 But certainly at the time the
7 understanding that we worked under was that the
8 RCMP, specifically when they were involved in a
9 matter that was being investigated criminally,
10 this was information that was to be kept within
11 the bounds of the RCMP and not disseminated
12 elsewhere in government, and the practice is a
13 normal one in most governments I would suggest.

14 MR. CAVALLUZZO: First of all I
15 will just deal with the RCMP and suggest to you
16 that there is certainly a way that the RCMP could
17 have disclosed to you the practice of the
18 Americans, if they knew it, without disclosing the
19 interests of a particular investigation so that
20 their independence would be maintained.

21 Wouldn't you agree with that.

22 MR. FOTHERGILL: Excuse me.

23 Before the witness answers,
24 Commissioner, I am concerned about the premise
25 underlying that question, which seems to suggest

1 that the RCMP were aware of this U.S. practice
2 that Mr. Cavalluzzo has described and perhaps
3 failed to notify Foreign Affairs.

4 I know that it is an awkward
5 situation as we move between private and public,
6 but I think it is fair to say that you have heard
7 no evidence to that effect that would form a
8 proper evidentiary basis for this line of
9 questioning.

10 MR. CAVALLUZZO: Well, I don't
11 know how you can say that, Mr. Fothergill.

12 Most of the evidence was in
13 camera, so I don't think we should be talking
14 about what evidence was heard in camera. I have
15 been reprimanded on numerous occasions for that,
16 which gives me occasion to perhaps admonish you.

17 But in any event, what the
18 question relates to, as Mr. Pardy has suggested,
19 it may be of assistance to you, Mr. Commissioner,
20 in respect of the future, and that is that you may
21 possibly make recommendations as to how different
22 parts of the Canadian government should interact,
23 in particular in this situation where one
24 agency -- and I'm not saying that the RCMP had any
25 knowledge of this particular practice -- but when

1 one agency is aware of a practice or policy of a
2 foreign government which may be of assistance to
3 another arm of government in fulfilling their
4 responsibilities.

5 THE COMMISSIONER: Let me make
6 it clear then that one should read into the
7 question, one way or the other, the fact that the
8 RCMP did or did not know of this practice that
9 Mr. Cavalluzzo has referred to.

10 I think with that admonition
11 it makes sense for the line of questioning to
12 proceed.

13 MR. CAVALLUZZO: Do you remember
14 the question?

15 MR. PARDY: Why not repeat it?

16 MR. CAVALLUZZO: Because I have
17 forgotten it. I haven't forgotten it.

18 MR. PARDY: Good.

19 --- Laughter / Rires

20 MR. CAVALLUZZO: Generally
21 speaking, you would agree with me that a police
22 agency, whatever it is, could advise DFAIT of a
23 particular policy or practice of a foreign
24 government without disclosing the detail of an
25 investigation or an investigative interest that

1 they have to protect?

2 You would agree with that?

3 MR. PARDY: Up to a point. I
4 think that I am -- given my own experience, I am
5 more concerned with information moving outside,
6 and particularly in the area of criminal
7 investigations, and moving outside of that. It's
8 a very sensitive area in terms of the relationship
9 of the State and its citizens, and I think one
10 needs to protect that relationship as much as
11 possible.

12 In general terms, if there is
13 information out there, yes, I would think that it
14 should be shared. But again, I would say that
15 there are parts where information was shared with
16 us by other agencies of the Canadian government
17 which we found most useful.

18 But I should point out it wasn't
19 in the general sense of some particular program by
20 a foreign government; it was more person-specific.

21 MR. CAVALLUZZO: Right. And the
22 other question I would have is, in terms of other
23 arms of the Canadian government, and that is CSIS
24 wouldn't have the same criminal law or
25 independence concerns relating to communicating

1 information to you relating to foreign practices
2 or procedures?

3 MR. PARDY: If they had the
4 information, yes.

5 MR. CAVALLUZZO: Mr. Pardy, that
6 brings us then to the facts of Mr. Arar's case,
7 with that contextual background.

8 When did you first become aware
9 that Mr. Arar was detained in the United States?

10 MR. PARDY: Early on the morning
11 of October the 3rd, Ms Helen Harris called me -- I
12 think I was still at home -- to alert me to this
13 case. I had just, the evening before, returned
14 from overseas, and she said, "This is a case you
15 might want to take a look at early on." And I did
16 so in terms of reviewing the material that was in
17 the CAMANT file at that point.

18 MR. CAVALLUZZO: Do you know why
19 Ms Harris looked upon this particular case as
20 being unique -- well, not unique, but unusual to
21 the point where she thought that you should be
22 aware of it?

23 MR. PARDY: Well, all those kinds
24 of cases, if she was acting for me while I was out
25 of the country, she would bring them to my

1 attention, and she did this one, and I think later
2 in the day we sat down and she brought other cases
3 to my attention as well.

4 MR. CAVALLUZZO: Okay. And we
5 have heard a great deal of evidence in the last
6 week or so relating to what happened in the early
7 days, and I want to briefly take you through
8 because I understand that when you were notified
9 of Mr. Arar's situation, you did an overview of
10 what information that DFAIT had to that point in
11 time?

12 MR. PARDY: Yes, I did.

13 MR. CAVALLUZZO: Perhaps if we go
14 to Volume 1, I will take you through the
15 information that you would have learned as a
16 result of your overview.

17 I guess the first thing you would
18 have seen, if we look at tabs 1 and 2, we would
19 have seen that Mr. Arar's brother called
20 headquarters in Ottawa reporting that Mr. Arar was
21 missing, and we also see that his wife, Monia
22 Mazigh, was in Tunis at the time and she called
23 the Tunis mission concerning Mr. Arar?

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: And then if we go

1 to tab 8, we see that Mr. Arar had spoken to his
2 mother-in-law on or about October the 1st, and he
3 advised her that he was detained at the
4 Metropolitan Detention Center and that he had not
5 been well-treated.

6 Do you see that?

7 MR. PARDY: Yes, I do.

8 MR. CAVALLUZZO: Did you find
9 anything unusual about that, that we have a
10 Canadian citizen who is flying in from Zurich,
11 through New York, to Montreal, is stopped and is
12 detained at the MDC in Brooklyn?

13 MR. PARDY: Not in general terms.
14 What I found unique was they did allow Mr. Arar to
15 make a telephone call out of the MDC. I think in
16 the earlier cases, that was not -- Mr. Baloch and
17 Mr. Jaffri, that was not the case, certainly in
18 the initial weeks of their detention.

19 MR. CAVALLUZZO: We saw in the
20 Vienna Convention that the signatories to that
21 convention, the receiving country, should notify
22 the sending country without delay --

23 MR. PARDY: No, notify the
24 detained person that they have a right to contact,
25 and there's quite a distance in terms of those two

1 statements, yes.

2 MR. CAVALLUZZO: Now, assume that
3 Mr. Arar said, "Yes, I would like consular
4 assistance", then presumably that obligation on
5 the Americans would have kicked in at that point
6 in time?

7 MR. PARDY: Yes, the problem, as I
8 mentioned earlier, the phrase "without delay" has
9 never been adequately defined in practice.

10 MR. CAVALLUZZO: And at this point
11 in time, we are at October the 3rd, and we know
12 that Mr. Arar was detained on September the 26th,
13 which would be a period of approximately one week.
14 At that point in time DFAIT had still not been
15 notified by the Americans?

16 MR. PARDY: Well, my recollection
17 is that on the morning of October the 3rd, they
18 had confirmed that Mr. Arar was in detention and
19 that arrangements were made for Ms Girvan to see
20 him later that day, on October the 3rd, and I
21 think the arrangements were being put in place for
22 a lawyer to represent Mr. Arar.

23 MR. CAVALLUZZO: But there was
24 formal notification after that. Is that correct?

25 MR. PARDY: Well, again -- yes, on

1 October the 4th, there was formal notification
2 through the Canadian Embassy in Washington.

3 MR. CAVALLUZZO: And is that the
4 way one -- I just want to understand.

5 Is this the way the Vienna
6 Convention operates; that formal notification is
7 done from the capital --

8 MR. PARDY: To suggest that there
9 is any particular standard in this particular area
10 of activity under the Vienna Convention, that this
11 is the way that it is done, no.

12 Quite often we never receive
13 formal notification from an arresting government
14 other than through an acknowledgment through the
15 process of consular visits and making arrangements
16 on behalf of that person for legal representation.

17 MR. CAVALLUZZO: Okay. Now coming
18 back to what you would have been reviewing -- by
19 the way, you would have been reviewing this from
20 your home. Is that correct?

21 MR. PARDY: Most likely, yes.

22 MR. CAVALLUZZO: And what you
23 would have found out, if we go to tab 10, is that
24 on October the 1st that:

25 "Mr. Arar's brother phoned in

1 a state of panic and said
2 that Mr. Arar is being
3 threatened with deportation
4 to Syria."

5 Now that particular fact must have
6 raised your eyebrow somewhat?

7 MR. PARDY: Yes, in the sense that
8 it was part of the information set that I was
9 dealing with here. It was an element that I
10 looked at and certainly thought about it in terms
11 of any previous experience that we might have had
12 in this area, or my understanding of the way the
13 Americans might be operating with respect to
14 questioning of individuals such as Mr. Arar.

15 MR. CAVALLUZZO: And if we go to
16 tab 11, we see that what you would have read there
17 is you would have seen that an American official
18 says, "Well, if he's at the MDC, we don't deal
19 with deportation cases at the MDC."

20 MR. PARDY: Yes, and I think
21 somewhere within the package there, I am not quite
22 sure what the timing is, but I think -- no, we
23 only found that direct from Mr. Arar later on
24 where officials had said, "Well, give us a few
25 days and you're on your way back to Canada."

1 here was not conflicting
2 information, but certainly information that was
3 not definitive on which you could take good
4 decisions.

5 MR. CAVALLUZZO: But presumably
6 what would have been passing through your mind
7 when you read the threat to Syria is that, holy
8 God, a month ago we had this Canadian saying I was
9 tortured in Syria --

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: -- and you were
12 quite aware of the human rights record of Syria.
13 So that would have been part of the considerations
14 that were going through your mind?

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: As well on
17 October 1st, if you go to tab 11, you would have
18 read that Ms Girvan was told that if you want to
19 know the charges against Mr. Arar, she must fax a
20 request.

21 And then we will also see in that
22 tab that an INS officer advised her that this case
23 was of such seriousness that it should be taken to
24 the highest levels, and indeed he suggested that
25 the Canadian Ambassador in Washington should call

1 the Department of Justice in Washington to
2 raise the issue and raise the question about
3 whether it would be advisable to send a diplomatic
4 note to the State Department and protest, and so
5 on and so forth.

6 Now that's another fact, once
7 again, that must have raised your eyebrow in the
8 sense that this is becoming a serious issue with
9 this fellow. Is that correct?

10 MR. PARDY: Yes, I was puzzled by
11 that statement.

12 MR. CAVALLUZZO: Okay. And this
13 kind of suggestion or advice from an American
14 official, that you should ratchet it up, so to
15 speak, this is a case of such seriousness that you
16 should bring it to higher levels, is certainly not
17 something that was said in either the Baloch case
18 or the Jaffri case.

19 You would agree with that?

20 MR. PARDY: Not that I recall, no.

21 MR. CAVALLUZZO: Once again,
22 reviewing what you would have done in order to
23 bring yourself up to speed in respect of
24 Mr. Arar's case, if you go to tab 14, on the next
25 day, October 2nd, we would see that Nancy

1 Collins -- and her position at that point in time
2 was?

3 MR. PARDY: She was the Case
4 Management Officer for the United States.

5 MR. CAVALLUZZO: And she suggested
6 that this is like the Baloch case, where a
7 diplomatic note was sent in that case? You may
8 recall that?

9 MR. PARDY: Yes, I do.

10 MR. CAVALLUZZO: And I guess there
11 would have been discussion, and there is contact
12 with the Washington Embassy for their input as to
13 whether you should proceed through the embassy.
14 Mr. Archambault at the embassy was contacted and
15 so on and so forth?

16 MR. PARDY: That's correct, they
17 were kept informed, as I can see from the note, of
18 everything that was going on, yes.

19 MR. CAVALLUZZO: At tab 15 you see
20 that Ms Collins suggested you should wait on
21 sending the diplomatic note to see if they get a
22 response from the MDC?

23 MR. PARDY: Yes.

24 MR. CAVALLUZZO: And her concern
25 there, we understand, was that if we send a

1 diplomatic note, that may freeze informal
2 communications and therefore the status quo would
3 be frozen at that point in time?

4 MR. PARDY: And it was more than a
5 suspicion. I think it was almost certain that if
6 you did go in at the high level that was being
7 suggested there, everything that was going on in
8 New York would have been frozen, yes.

9 MR. CAVALLUZZO: Okay. At tab 16
10 we see that Ms Girvan gets a response from the
11 MDC?

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: And we see that,
14 an hour later, allowing her consular access to
15 Mr. Arar and was advised that he had made a "legal
16 call"?

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: At tab 18, in
19 terms of what should be done by the embassy,
20 Mr. Archambault in Washington agreed to wait until
21 after Girvan's consular visit before taking
22 action, which you would agree with me is a
23 reasonable response in those circumstances?

24 MR. PARDY: Very much so, yes.

25 MR. CAVALLUZZO: Okay. And at tab

1 22 we see that Mr. Arar's family have found a
2 lawyer for him?

3 MR. PARDY: Yes.

4 MR. CAVALLUZZO: At that point in
5 time when Mr. Arar's family retained or got a
6 lawyer on his behalf, did that really end the
7 consideration as to whether his case should be
8 ratcheted up to the point of a diplomatic note or
9 high-level consultations?

10 MR. PARDY: It did not end
11 thoughts about doing so. I think certainly when I
12 read all of the material on the morning of October
13 the 3rd, what was important in my mind was
14 Ms Girvan's visit to see Mr. Arar and what would
15 be talked about during that visit.

16 MR. CAVALLUZZO: And we note that,
17 in terms of the evidence, a diplomatic note was
18 never sent on behalf of Mr. Arar?

19 MR. PARDY: I am trying to think
20 if subsequent to October the 10th, whether -- I
21 don't think there was in the end, but there were
22 certainly high-level discussions that took place
23 and the registering of complaints with the
24 American authorities as to what had happened to
25 Mr. Arar.

1 But they were not given in a
2 diplomatic note, no.

3 MR. CAVALLUZZO: All right.

4 Mr. Commissioner, that brings us
5 to October the 3rd, where Mr. Pardy is up to
6 snuff, so to speak, in terms of his knowledge, and
7 it may be an appropriate time to break.

8 THE COMMISSIONER: Do we take 15
9 minutes?

10 MR. CAVALLUZZO: Fifteen minutes
11 would be appropriate, and it may be a few minutes
12 longer than that. I will be at a meeting and I
13 will notify you when we can reconvene, but
14 hopefully as quickly as possible.

15 THE COMMISSIONER: Okay. We will
16 rise now.

17 THE REGISTRAR: Please stand.
18 Veuillez-vous lever.

19 --- Upon recessing at 11:33 a.m. /

20 Suspension à 11 h 33

21 --- Upon resuming at 12:10 p.m. /

22 Reprise à 12 h 10

23 THE REGISTRAR: Please be seated.
24 Veuillez-vous asseoir.

25 MR. CAVALLUZZO: Mr. Pardy, we

1 are now at October 3rd, and I would ask you to
2 refer to tab 31, which is the consular visit of
3 Ms Girvan.

4 In this document we see that there
5 a factual allegation of inadmissibility under the
6 Immigration and Nationality Act of the United
7 States, indeed to the extent where the allegation
8 is that Mr. Arar is a member of al-Qaeda.

9 When you see this document, does
10 that raise concerns in respect of how the
11 Americans are going to treat Mr. Arar?

12 MR. PARDY: Yes, because it is
13 very rare to see the allegation -- or not the
14 allegation, the statement, as it is given there.
15 It is not an allegation, it is a statement of
16 fact. Immediately what came to mind was either a
17 long period within American custody or the
18 possible transfer to Guantanamo Bay.

19 MR. CAVALLUZZO: Right. Certainly
20 before you said the fact that he was at the MDC
21 indicated that it wasn't a deportation case, this
22 certainly changed.

23 MR. PARDY: This certainly changed
24 the dynamic.

25 MR. CAVALLUZZO: Whether he was

1 at MDC or not, the fact is that this is a
2 deportation case?

3 MR. PARDY: Not necessarily. You
4 mean in terms of the American practice was
5 conceivably that they would use the Immigration
6 Act as a means by which somebody could be detained
7 and then make subsequent decisions further to
8 their investigation.

9 MR. CAVALLUZZO: But certainly was
10 there such an allegation or assertion of fact in
11 respect of either Mr. Baloch or Jaffri?

12 MR. PARDY: No, although my
13 recollection is that of comments by American
14 officials that they were trying to investigate
15 whether or not there was some association with
16 terrorism.

17 MR. CAVALLUZZO: Right. But there
18 was no administrative or legal proceeding under
19 the Immigration and Nationality Act in terms of
20 inadmissibility in respect of --

21 MR. PARDY: Yes, there was.

22 MR. CAVALLUZZO: Was there
23 a hearing?

24 MR. PARDY: I think that there was
25 at the end, the process, but until they got to

1 that it was the investigation of whether or not
2 they were involved in terrorism that possibly
3 could lead to criminal charges under American law.

4 MR. CAVALLUZZO: Did it concern
5 you that these other two gentlemen had been there
6 for months before anything happened, whereas with
7 Mr. Arar's case within the week it is asserted he
8 is a member of al-Qaeda and there is a deportation
9 proceeding in process?

10 MR. PARDY: Balanced by other
11 factors in terms of consular access, access to
12 a lawyer, recognition of his Canadian citizenship,
13 all of those things were there as facts that I
14 was assessing.

15 MR. CAVALLUZZO: Okay. As well,
16 in terms of this important document, we see at the
17 second paragraph from the bottom that two
18 Immigration officers spoke to Mr. Arar and told
19 him that they were going to send him to Syria.

20 MR. PARDY: Mm-hmm.

21 MR. CAVALLUZZO: He said that he
22 asked why, since he had not been to Syria for
23 years and all his family is in Canada.

24 So that here clearly we have
25 two immigration officers threatening his

1 deportation to Syria --

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: -- which once
4 again is presumably a very important consideration
5 at this point in time?

6 MR. PARDY: Yes. It was a factor
7 that I took into account, yes.

8 MR. CAVALLUZZO: Okay. The fact
9 that he had a lawyer at that point in time, does
10 that absolve consular officials of their
11 responsibilities in terms of protecting the
12 interests of Mr. Arar?

13 MR. PARDY: No, I don't think we
14 ever are absolved of our responsibilities on these
15 cases, but the appointment of a lawyer to
16 represent a client before the tribunals of a
17 foreign country, it is a very important fact.
18 Because consular officers, as others have
19 explained to you, we are not experts on American
20 law in this area, and the appointment of that
21 counsel was absolutely essential, I think, to deal
22 with those issues.

23 MR. CAVALLUZZO: Certainly in
24 light of the kind of -- how shall I put it --
25 attitude that the Americans had, for example in

1 respect of the NSEER program that they instituted
2 that same month, the allegation that one is a
3 member of al-Qaeda in the United States is a very
4 serious charge?

5 MR. PARDY: Very much so.

6 I would add to that, the point
7 that our understanding was at that point that what
8 the Americans were looking for were individuals,
9 if they were members of al-Qaeda, they wanted to
10 deal with those individuals themselves within --
11 particularly ones within the United States.

12 MR. CAVALLUZZO: Okay.

13 If you go now to tab 34, the same
14 day, October 3, 2002. It is stated in the second
15 paragraph:

16 "We have not yet been
17 officially notified."

18 That means what we talked
19 about before, the official notification from
20 the Americans to Canada that a Canadian is
21 being detained.

22 Is that correct?

23 MR. PARDY: Yes, and I think there
24 are subsequent -- that there was material I think
25 in the file that Mr. Arar was presented with a

1 document, which is a standard item for the
2 Americans in these situations, and Mr. Arar signed
3 the document saying that he did want consular
4 access. I believe that was done at the airport.

5 The importance of that in the
6 American system, we mentioned earlier to
7 Mr. Baloch, Mr. Baloch signed a similar document,
8 but he stated categorically -- or he stated in the
9 document that he did not want consular access. We
10 only found that out after we sent a diplomatic
11 note. The American reply to us, to our diplomatic
12 note on Mr. Baloch, was a copy of the document
13 that Mr. Baloch had signed.

14 MR. CAVALLUZZO: Right. Okay.

15 Now, the note goes on to state:

16 "Also, subject was held for
17 four days at MDC without any
18 access to lawyer or family,
19 with no one knowing where
20 he was."

21 Anyone with a basic understanding
22 of American law would know that that is not the
23 way an American would be treated in terms of
24 detention. so that it would be --

25 MR. PARDY: An American

1 citizen, yes.

2 MR. CAVALLUZZO: An American
3 citizen would be treated?

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: Certainly under
6 the Vienna Convention you are at least entitled
7 the same treatment as a citizen of that country.

8 Was anything done by Canada
9 concerning a protest relating to the fact that for
10 four days the United States of America did not
11 notify his family, right to counsel, and any other
12 right that an American would have?

13 MR. PARDY: The rights
14 available to aliens in the United States under
15 American law are different than those available
16 to American citizens under American law, and so I
17 think you would need to take expert advice as to
18 whether or not this lack of process, as far as the
19 United States was concerned, was contrary to their
20 own laws.

21 MR. CAVALLUZZO: Would you agree
22 with me that they were in violation of the Vienna
23 Convention at least?

24 MR. PARDY: In terms of the
25 practice? My experience over the years, four

1 days, no. I do not consider a lack of notice
2 within four days as being a violation of the
3 Vienna Convention.

4 MR. CAVALLUZZO: Mm-hmm. That is
5 a very flexible convention --

6 MR. PARDY: As I mentioned to
7 you this morning, it is a document that -- it is
8 more of an art form in dealing with its provisions
9 than law.

10 MR. CAVALLUZZO: Okay. Tab 42, it
11 would appear that things are -- or not tab 42, but
12 tab 36.

13 If we move on, Mr. Arar's brother
14 has now called.

15 MR. PARDY: Mm-hmm.

16 MR. CAVALLUZZO: Presumably this
17 is par for the course? Family contact is frequent
18 in terms, obviously, if a family member is in
19 detention?

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: We see that at
22 tabs 37, 39 and 40 contact is made with the Centre
23 for Constitutional Rights?

24 MR. PARDY: The initial contact
25 took place before this on the 4th. I think there

1 was a contact, if I remember correctly, by
2 Ms Girvan on October the 2nd.

3 MR. CAVALLUZZO: Right. We see
4 from your notes -- and we would like to mark
5 Mr. Pardy's notes as the next public exhibit.

6 THE COMMISSIONER: P-88.

7 EXHIBIT NO. P-88: Personal
8 Notes of Gar Pardy

9 MR. CAVALLUZZO: At tab 1, page 2,
10 for Friday, October 4th, we see that
11 Mr. Archambault, Canadian consul at the embassy in
12 Washington, called to report that Ms Nancy Ryan of
13 the Canadian desk of the Department of State had
14 called to report on the detention of Mr. Arar.

15 So that is when Canada received
16 official notification of Mr. Arar's detention?

17 MR. PARDY: Yes, in very narrow
18 terms. The fact that officials of the American
19 government in New York had already acknowledged
20 that he was in detention could be considered as
21 such, as a notification as well.

22 MR. CAVALLUZZO: In terms of DFAIT
23 itself -- I have asked you questions before about
24 relationships with other agencies. As far as
25 DFAIT is concerned, what role, if any, was ISI

1 playing during this point in time up to October
2 the 4th of 2002? Were they involved?

3 MR. PARDY: To my knowledge, there
4 was no involvement on their part, no.

5 MR. CAVALLUZZO: Were you not
6 aware that contact had been made between Collins
7 and the ISI?

8 MR. PARDY: I am trying to think
9 if that took place on the 4th itself. Wasn't
10 it --

11 MR. CAVALLUZZO: Well --

12 MR. PARDY: No. My recollection
13 is that there was somewhere within that narrow
14 time frame, we are asked for whether or not there
15 is a criminal record in Canada of an individual
16 that we are dealing with. And this basically
17 requires a check with the CPIC system, which is
18 the responsibility of the RCMP, and for all of
19 these we would go through the ISI, yes.

20 MR. CAVALLUZZO: And in terms of
21 the role that ISI would be playing, and they do
22 become involved on or about -- around this
23 particular point in time, would ISI individuals
24 have access to the CAMANT notes which consular
25 officials have?

1 MR. PARDY: No.

2 MR. CAVALLUZZO: They wouldn't
3 have access?

4 MR. PARDY: No.

5 MR. CAVALLUZZO: What if they
6 sought access?

7 MR. PARDY: Then usually -- I
8 shouldn't say "usually". The requirement was that
9 all such requests would be referred to me, and
10 that I would make decisions based on my knowledge
11 and make an assessment as to whether the sharing
12 of such knowledge would be of assistance to our
13 client.

14 MR. CAVALLUZZO: Okay. So that if
15 ISI wanted access to information if it wasn't sent
16 to them, but if they wanted access to a CAMANT
17 note, ultimately you as the Director General of
18 consular affairs would make the decision as to
19 whether they needed to know or they would have
20 access to this information?

21 MR. PARDY: That's correct.

22 MR. CAVALLUZZO: What about if ISI
23 did have access to the information through
24 approval from you and they wanted to share that
25 information with other Canadian agencies, such as

1 the RCMP and/or CSIS. What would the practice be?

2 MR. PARDY: My decision would be
3 either one of two sorts: that you, ISI, could
4 have this information or that you, ISI, could have
5 this information and share it with others.

6 MR. CAVALLUZZO: And this
7 information would be -- would you say share it
8 with others, or would you be particular as to who
9 they would share it with?

10 MR. PARDY: Usually they would ask
11 me whether or not they could share it with another
12 part of government.

13 MR. CAVALLUZZO: And that approval
14 would be given or not by you?

15 MR. PARDY: That's correct, yes.

16 MR. CAVALLUZZO: And ultimately it
17 would have to be you or the person who was acting
18 in your absence if you were not there?

19 MR. PARDY: That is correct, yes.

20 MR. CAVALLUZZO: If we go to tab
21 43, we see what has been referred to as the INS
22 removal order, and we see that on this date,
23 October the 7th, that a determination has been
24 made, a Declaration of Inadmissibility, and that
25 Mr. Arar will not be permitted to be admitted into

1 the United States as a result of their findings.

2 Now presumably you would not have
3 seen this at this point in time?

4 MR. PARDY: No. I saw this
5 document in November 2003 for the first time.

6 MR. CAVALLUZZO: And if you go to
7 tab 45, in terms of how you would become aware
8 that something had happened to Mr. Arar, we see
9 that there was a call from Monia Mazigh in Tunis
10 to inform that the subject had not called and then
11 Ms Girvan states:

12 "Called MDC and learned that
13 subject was removed from
14 premises at 3 to 4 a.m. this
15 morning..."

16 This is October 8th.

17 "... but suggested checking
18 with INS Manhattan ..."

19 Et cetera, et cetera.

20 Did you become aware on this day
21 that Mr. Arar had been removed from the MDC and
22 was nowhere to be found?

23 MR. PARDY: Yes. We had made
24 arrangements for Mr. Arar to speak to his wife in
25 Tunis, I think it was on the 8th, and when

1 Dr. Mazigh's call to us, the fact that the call
2 had not taken place, this occasioned Ms Girvan
3 then to make inquiries.

4 MR. CAVALLUZZO: And I understand
5 that on that day that you were coincidentally
6 leaving for Washington, D.C.?

7 Can you bring that closer,
8 perhaps?

9 MR. PARDY: No. The eyes are
10 still good.

11 MR. CAVALLUZZO: They are still
12 good, are they?

13 MR. PARDY: I think it was the
14 night of the 8th that I went to Washington.

15 MR. CAVALLUZZO: Okay. If you go
16 to tab 47, this once again is a note from Girvan,
17 and she is trying to locate Mr. Arar and could not
18 find any record of him at the INS facilities in
19 the area. So she was told that:

20 "... he was not getting ...
21 and suggested that we call
22 the INS headquarters in
23 Washington and speak to
24 Mr. Victor Cerda, who is
25 counsel to the Commission."

1 Mr. Cerda, that's a particularly
2 high level position in the U.S. INS?

3 MR. PARDY: I think it's the
4 number 3 position in the hierarchy, yes.

5 MR. CAVALLUZZO: She explained
6 that she had been asked by the family to locate
7 Arar, and that he was moved. So in process
8 obviously your officials are trying to locate him
9 through whatever procedures are available to them?

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: At tab 54, this
12 is now on October the 9th. We see that Girvan
13 suggests to Nancy Collins to make a call to a
14 contact in the U.S. and suggest a possible meeting
15 with you, since you were in Washington at that
16 point in time?

17 MR. PARDY: Yes, and Ms Collins
18 and Ms Girvan were in the process of coming to
19 Washington at this time.

20 MR. CAVALLUZZO: We see at tab 55
21 that Collins was unable to connect with her U.S.
22 contact, and she gave you an update on the case?

23 MR. PARDY: Yes.

24 MR. CAVALLUZZO: You were there on
25 business, or at a seminar, or some conference or

1 something?

2 MR. PARDY: Well, we brought
3 together all of our consular officials in the
4 United States to a conference, which is something
5 that we try to do for the regions of the world on
6 an annual basis.

7 MR. CAVALLUZZO: Right. And we
8 see on that date, if you go back to your notes at
9 page 2, on October the 9th, it says:

10 "Washington Bob A."

11 And then it says:

12 "In meeting with
13 Mr. Archambault..."

14 Who is located at the Canadian
15 Embassy in Washington.

16 "Situation of Mr. Arar was
17 reviewed."

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: And what were you
20 discussing with him? Just ways to try and locate
21 Mr. Arar?

22 MR. PARDY: Yes. At that point
23 we -- I think Ms Collins had just arrived, and
24 this was about two o'clock in the afternoon on the
25 9th, and the three of us, along with Ms Bouchard,

1 we sat down and discussed what steps we could
2 take, what actions we could take, to try to find
3 out where Mr. Arar was located.

4 MR. CAVALLUZZO: Then on the next
5 day, October the 10th, if you go now to tab 57, we
6 see that Girvan called Harris, advising that
7 Mr. Cerda informed her that the subject had been
8 removed from the country and that he couldn't tell
9 anything else.

10 "Girvan asked that we contact
11 Damascus as the subject was
12 born in Syria and this may be
13 where he was sent on
14 departure from New York."

15 What I find interesting in this
16 document is that the first place that Girvan wants
17 to contact is Damascus, and it would seem to me, I
18 guess, what may have been going through Girvan's
19 mind is those threats that Mr. Arar related to us
20 were carried out.

21 Is that fair?

22 MR. PARDY: Yes, and the fact that
23 it was evident to us that Mr. Arar was not in
24 Canada at this point.

25 MR. CAVALLUZZO: I understand when

1 you got this information from Mr. Cerda through
2 Girvan that you used Canadian sources to confirm
3 or deny what had happened to Mr. Arar?

4 MR. PARDY: That is correct, yes.

5 MR. CAVALLUZZO: And could you
6 tell us what --

7 MR. PARDY: Well, there was an
8 intervening step in that an American official had
9 spoken to Ms Collins and Ms Bouchard and that
10 information came to me as well. I think it was
11 subsequent to those, both the conversation with
12 Mr. Cerda and the information from the American
13 official, that led me to call Ottawa and speak to
14 a Canadian official who had just received
15 information at that point from the American
16 Embassy that Mr. Arar had been deported to Syria.

17 MR. CAVALLUZZO: Okay. We are
18 going to deal with the intervening events.

19 So ultimately what happens on
20 October the 10th is that Cerda says he has been
21 removed and can't tell you anything else?

22 MR. PARDY: Mm-hmm.

23 MR. CAVALLUZZO: Next thing that
24 happens is that Bouchard and Collins, with an
25 American contact, are told that he has been

1 removed to Syria. The next step that happens is
2 that you contact a Canadian official in
3 Washington, who advises you --

4 MR. PARDY: No, in Ottawa.

5 MR. CAVALLUZZO: -- in Ottawa,
6 excuse me. Who advises you that the American
7 Embassy in Ottawa confirmed that he has been
8 removed to Syria?

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: And this Canadian
11 official was in DFAIT that confirmed this?

12 MR. PARDY: Yes, he was.

13 MR. CAVALLUZZO: I don't think --
14 just looking at my friend, his name I think we can
15 disclose, there is no -- it's in the will-say.

16 Who is the official that advised
17 you of this?

18 MR. PARDY: May I take counsel
19 here? I am not sure --

20 MR. BAXTER: I am not sure that
21 that official's name has been disclosed as yet.

22 MR. CAVALLUZZO: It's in the
23 will-say.

24 MR. BAXTER: Well, okay.

25 MR. PARDY: My will-say? I am

1 sorry.

2 MR. CAVALLUZZO: I understand it
3 is.

4 MR. BAXTER: If it's in the
5 will-say, I suppose it is public.

6 MR. CAVALLUZZO: It's in the
7 will-say that you approved. I think you can say
8 it.

9 MR. PARDY: Yes, it was Mr. Scott
10 Heatherington, who was the director of ISI.

11 MR. CAVALLUZZO: He is the
12 director of the Foreign Intelligence Bureau of
13 ISI?

14 MR. PARDY: That's correct.

15 MR. CAVALLUZZO: I want to deal
16 with you for a few minutes on this intervening
17 conversation.

18 You told us that Collins and
19 Bouchard met an American official who indicated
20 that Mr. Arar had been removed to Syria. We heard
21 testimony on Thursday that Collins said that this
22 official also said words to the effect that,
23 "Yeah, he's been deported or removed to Syria, and
24 there is nothing more that you Canadians could
25 have done to protect him", or words to that

1 effect?

2 Do you recall that testimony? You
3 were here on Thursday?

4 MR. PARDY: Yes, I was.

5 MR. CAVALLUZZO: Do you recall the
6 testimony?

7 MR. PARDY: I recall the
8 testimony, yes, I do.

9 MR. CAVALLUZZO: When Collins came
10 back to the embassy for the two o'clock meeting
11 with you and Archambault, did she relate that
12 conversation to you?

13 MR. PARDY: Yes, she did. As a
14 matter of fact, the conversation took place in the
15 embassy itself. I think we had just started our
16 afternoon session at the conference and either
17 Ms Collins or Ms Bouchard came in and took me out
18 of the conference and related that information to
19 me.

20 In my mind, what was important was
21 that the information -- how can I put this? -- was
22 not -- somebody was doing us a favour. A senior
23 official at the American government -- I shouldn't
24 say senior official. I am sorry. I withdraw
25 those comments.

1 But an official of the American
2 government gave us information, and the fact that
3 we couldn't use the information in any direct way,
4 that led to my call to Ottawa then to see whether
5 or not we couldn't use that information to extract
6 the information from the Americans in a more
7 official way, and that also led to a conversation
8 I had later on that afternoon with Mr. Cerda
9 myself.

10 MR. CAVALLUZZO: That kind of
11 information that a DFAIT official receives from a
12 member of the American government or the Syrian
13 government, we are constantly told "we can't
14 relate that information in public". How is it
15 that we can discuss openly that conversation that
16 Harris and Bouchard had with this American
17 official? Why isn't it protected by national
18 security confidentiality?

19 MR. PARDY: I look to --

20 MR. BAXTER: In fairness, after
21 last Thursday's events, I wrote to Commission
22 counsel. I am sure my friend has seen the letter.
23 What was always clear and understood was that the
24 source of that information, which was an
25 unauthorized disclosure, was to be protected, much

1 as the source of some of the information received
2 from Syrian officials has been protected. It was
3 not an official government-to-government
4 communication.

5 Now, I don't --

6 THE COMMISSIONER: But the content
7 can be disclosed?

8 MR. BAXTER: As it is in the case
9 of the information from Syrian officials, for
10 example.

11 THE COMMISSIONER: So the worries
12 that you keep telling me, that you are concerned
13 that sources will dry up if the content is ever
14 made known, that one doesn't apply to this type of
15 disclosure.

16 Is that what I am to hear?

17 MR. FOTHERGILL: Sir, I think the
18 concern is that the source's identity not be
19 known, so we are dealing with two very different
20 types of objection --

21 THE COMMISSIONER: But I have
22 heard evidence, I have heard evidence from the
23 government that says, "If you disclose of content
24 of this, not just the name of the source, if you
25 disclose the content, that will tend to reveal the

1 source, and you will have compromised our sources,
2 and sources are sacred."

3 MR. FOTHERGILL: That's right.

4 THE COMMISSIONER: So I have been
5 listening for months --

6 MR. FOTHERGILL: Yes.

7 THE COMMISSIONER: -- to evidence
8 from the government saying you can't reveal
9 content if there is any danger at all the content
10 would disclose the source.

11 Now you come along with this, and
12 I would have thought there is some danger in this
13 case that the content would reveal the source.

14 My only concern, Mr. Fothergill,
15 is that the government be making claim for
16 national security confidentiality but not when it
17 suits their position. And this, the way it came
18 out last Thursday, was clearly something the
19 government wanted out, and I am concerned --

20 MR. FOTHERGILL: Yes.

21 THE COMMISSIONER: -- that the
22 claim here, at least in view of the evidence I
23 have heard, could be interpreted as being
24 something that would further the Government's
25 position and would be a misuse of a claim of

1 national security confidentiality. That's my
2 concern.

3 MR. FOTHERGILL: If that were the
4 case, sir, I would agree with you. I have no
5 hesitation in saying that you are absolutely
6 right: national security confidentiality is not to
7 be used to achieve any sort of tactical advantage.
8 That would be a gross abuse if we were engaged in
9 that sort of activity, and it is never our
10 intention to do that.

11 As far as the source issue is
12 concerned, I agree with you again that we do
13 object to disclosing the content of the
14 communication if to do so would identify the
15 source.

16 If it is possible, however, to
17 disclose the content without revealing the source,
18 and you have heard care has been taken not to
19 identify where the official worked, the rank, the
20 gender, all of these things. Then it can be done.

21 The other thing I know from my
22 colleague Mr. Baxter's communication with
23 Commission counsel is we expressed some regret and
24 concern of our own about the way that that matter
25 came up, and we pledged ourselves to work

1 cooperatively with Commission counsel to -- if we
2 are dealing with issues of fairness as well as
3 national security confidentiality, that we look at
4 both sides of the coin, if I can put it that way.

5 So if there is even an appearance
6 of unfairness, we are most certainly open to
7 confining those kinds of evidence to the in camera
8 process. It is not our intention to be unfair to
9 anybody.

10 I gather that this particular
11 issue that we are dealing with now was canvassed
12 prior to the evidence and I think there must have
13 been a miscommunication between Commission counsel
14 and ourselves about the limits on disclosure of
15 it.

16 If it is your view or the view of
17 your counsel that it works an unfairness to any
18 participant, even if it is not subject to a
19 national security confidentiality claim, then it
20 may be that that kind of evidence is best reserved
21 for the in-camera process and we are quite open to
22 that.

23 MR. CAVALLUZZO: Okay. If we can
24 proceed...?

25 MS EDWARDH: Mr. Commissioner --I

1 apologize, Mr. Cavalluzzo -- may I make just one
2 observation?

3 I'm sure it would be very
4 convenient to the Government of Canada if we
5 shut the doors, we left, and you just proceeded in
6 camera. With the greatest of respect, I think
7 that is an outrageous suggestion. Fairness will
8 never be accomplished in circumstances where there
9 is no transparency.

10 THE COMMISSIONER: Thank you.

11 MR. CAVALLUZZO: Mr. Pardy, I
12 would like to deal with the content of that
13 conversation, because I have reviewed the
14 documents -- and there are 750 or so of them and
15 thousands of others that we reviewed in the course
16 of reviewing the DFAIT documents -- and I did not
17 find anywhere in writing a notation of that
18 conversation, even though several chronologies
19 were created by DFAIT.

20 I specifically looked to that
21 day of October 10th to see: Well, where in the
22 documents does it relate that conversation?
23 Unless I have missed something, I didn't find
24 that statement and I'm wondering if you could help
25 me there.

1 MR. PARDY: No, I think you are
2 quite right in observing that this is not
3 reflected in a specific document that said that
4 this conversation took place. But I think that
5 the circumstances at the time, we were attending a
6 conference, we were doing things in the midst of
7 that conference, I was chairing the conference,
8 they took me out and we discussed this.

9 I remember very clearly, if you
10 like, some of the atmospherics that surrounded
11 this was said to me, and it led me to make then
12 the subsequent call that I made to Ottawa to try
13 to find -- because we couldn't use the information
14 in the way that it was given to us in order to
15 protect the identity of the person who gave us
16 that information.

17 So then we went and looked for
18 whether or not we could get something from a more
19 open source, if I can use that term, so that we
20 could act upon it. It is reflected in our
21 consequential action, I guess is the right way to
22 put it, rather than a specific record.

23 MR. CAVALLUZZO: Don't let me
24 mislead you. There is a notation of the
25 conversation.

1 MR. PARDY: Mm-hmm.

2 MR. CAVALLUZZO: What there isn't
3 a notation of is this postscript, if I can put it
4 this way, that "You guys did everything that you
5 possibly could. Nice try."

6 Nothing like that. There is a
7 notation of the conversation --

8 MR. PARDY: Mm-hmm.

9 MR. CAVALLUZZO: -- but not, it
10 would seem to me --

11 MR. PARDY: Can I see the
12 notation? This might be useful here at this point
13 to review that document.

14 MR. CAVALLUZZO: It is tab 709.
15 It is in Volume 8. Tab 709 at page 6 of 19 in the
16 bottom right corner. For 10.10.02, October 10,
17 2002, it says:

18 "Consul..."

19 That is Girvan.

20 "Consul is advised by Cerda
21 that Mr. Arar has been
22 removed from USA. He advises
23 Consul that he is not able to
24 provide any additional
25 information."

1 Then it goes on.

2 This is Collins here:

3 "JPO is officially informed
4 by the INS that, because of
5 an immigration infraction,
6 Arar was removed from the US
7 to Syria, where he holds
8 citizenship, as well as being
9 a Canadian citizen and a long
10 time resident of Canada."

11 Okay? So that that conversation
12 is noted, but not the crucial part that said this
13 American official said, "You guys did everything
14 that you possibly could."

15 MR. PARDY: Well, we are back to
16 the same issue of how much do you record in
17 various notes.

18 But is there not another note
19 somewhere else that is contemporaneous with the
20 events, because this was prepared I guess some
21 time after the events.

22 MR. CAVALLUZZO: Oh, absolutely.
23 It was in October --

24 MR. PARDY: But if you will
25 recall that our concern with identity of the

1 person even manifested itself when I found out
2 from Mr. Heatherington, from his contact in the
3 American Embassy in Ottawa, I called Ms Harris
4 and asked her to put a note on the file. But we
5 disguised the source of that information, even
6 then when it came from the American Embassy,
7 because we were not sure what we were dealing
8 with here.

9 That is why then I called
10 Mr. Cerda later on that afternoon, to try to get
11 something that we could use in a more open way.
12 This was more by indirection as much as anything.

13 MR. CAVALLUZZO: Right. You
14 disguised the source, but you didn't disguise the
15 information --

16 MR. PARDY: No.

17 MR. CAVALLUZZO: -- which was
18 my point.

19 In terms of this particular
20 conversation is, yes, you are protecting the
21 source, but I would just -- it would seem to me it
22 is an important point that an American official --

23 MR. PARDY: Yes, in hindsight.
24 Yes, in hindsight it is an important point. At
25 the time when you are doing -- operating at

1 different levels, it probably did not have the
2 same importance as it does today.

3 MR. CAVALLUZZO: Okay. If we
4 take you through, then, tab 59, it just confirms
5 what you have said, that you were confirmed
6 through Canadian sources that subject has been
7 removed to Syria.

8 MR. PARDY: Mm-hmm.

9 MR. CAVALLUZZO: You also said on
10 that day you got that confirmed through speaking
11 to Mr. Cerda?

12 MR. PARDY: No.

13 MR. CAVALLUZZO: What was it?

14 MR. PARDY: I said I spoke with
15 Mr. Cerda and we danced around and he gave me no
16 more specific information than he gave to
17 Ms Girvan earlier in the day.

18 MR. CAVALLUZZO: Okay. Then at
19 tab 61 we see that direction is given as a result
20 of this information to Damascus.

21 I note that this particular
22 direction comes from Mr. Livermore, Director
23 General, Security and Intelligence Bureau.

24 Do you know why he is involved in
25 terms of giving direction to Mr. Pillarella and

1 Martel in Damascus?

2 MR. PARDY: I don't know
3 specifically, but I can only make one assumption
4 here, and that is that once this information came
5 into play I think Ms Harris probably had
6 discussions with him and she might have said,
7 "Look, I'm busy on something else. Could you get
8 a quick message off to Mr. Pillarella?"

9 We were particularly concerned
10 because the 11th is a Friday, and that is a day of
11 no business in Damascus. So we were very
12 concerned that we get this information up to
13 Mr. Pillarella as quickly as possible.

14 You will find that a companion
15 message, if you like, went out to our Head of
16 Mission in Amman, Jordan --

17 MR. CAVALLUZZO: Tab 63?

18 MR. PARDY: Yes. That was signed
19 I think by Ms Harris.

20 MR. CAVALLUZZO: Okay. We now are
21 pretty -- at least secure in your knowledge that
22 Mr. Arar has landed in Syria. Before we move on
23 to Damascus I want to give you the opportunity to
24 comment upon what I see to be the differences
25 between Mr. Arar's case and Mr. Baloch and

1 Mr. Jaffri.

2 MR. PARDY: May I comment on your
3 opening assumption there, that we were confident
4 in our assumption that Mr. Arar was in Syria?

5 No. All we had was this is what
6 the United States government told us. We made no
7 assumptions. We acted upon that information. We
8 were not in any position to validate that
9 information at that point.

10 MR. CAVALLUZZO: You also had
11 Mr. Arar's communications of the threats --

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: -- that the
14 Americans were going to send --

15 MR. PARDY: Correct.

16 MR. CAVALLUZZO: You had those
17 two things.

18 MR. PARDY: Mm-hmm.

19 MR. CAVALLUZZO: I want to give
20 you the opportunity to comment on seven points
21 which I think distinguish Mr. Arar's case from
22 Mr. Baloch's case and Mr. Jaffri, which may have
23 required distinction in treatment. Just let me go
24 through them.

25 The first are the threats of

1 deportation to Syria that were obviously present
2 in Mr. Arar's case.

3 The second is the advice you
4 received from Canadian officials saying, "You guys
5 should ratchet this up. This case is of such a
6 serious nature you should treat it seriously and
7 go to the top," so to speak, to the Canadian --

8 THE COMMISSIONER: That was from
9 an American.

10 MR. CAVALLUZZO: That is from an
11 American INS officer.

12 THE COMMISSIONER: Yes.

13 MR. CAVALLUZZO: Correct. The
14 third point is that it became clear on October 3rd
15 that assertions were made, legal assertions were
16 made very quickly that this is a deportation case,
17 this guy is a member of al-Qaeda, and we are
18 having a hearing on inadmissibility.

19 The fourth point, which wasn't
20 present in the Baloch/Jaffri cases was that travel
21 report that we saw effective September 11, 2002,
22 that people from certain countries are going to be
23 treated in a particular different way by the
24 Americans, including people coming -- or people
25 who are born in Syria, and that they are going to

1 be subject to intrusive measures, unlike others.

2 The fifth point which
3 wasn't present in the Baloch/Jaffri cases is
4 that the month before, in August of 2002, there
5 was a public disclosure by a Canadian, Mr. El
6 Maati, saying that, "When I was detained in
7 Syria in November of 2001 and thereafter that
8 I was tortured."

9 The sixth point which didn't seem
10 to be present in the cases of the two other
11 gentlemen is that we had certain knowledge or
12 information as to what happens when a Canadian is
13 detained in Syria, that is, that there was no
14 access in respect of those two other gentlemen,
15 Almalki and El Maati.

16 The final point, which you have
17 already commented upon, and that is the practice
18 of extraordinary rendition and the cooperation
19 that Syria gave to the Americans in accepting
20 persons from the Americans.

21 You have already commented on the
22 latter point and you need not address that, but
23 those are the kinds of considerations that someone
24 may throw out to say, "Hey, this case isn't like
25 Baloch and Jaffri. This is a unique case and you

1 guys should have treated the threats that he
2 communicated to you, that he was going to Syria a
3 lot more seriously than you did"?

4 I give you the opportunity to
5 comment on those points.

6 MR. PARDY: Can I list the other
7 side of the ledger --

8 MR. CAVALLUZZO: Absolutely.

9 MR. PARDY: -- which were
10 the elements that led us to the conclusions that
11 we did?

12 MR. CAVALLUZZO: Please do.

13 MR. PARDY: Which were elements
14 that were different than in Mr. Baloch and
15 Mr. Jaffri's cases.

16 In our view, the key one was the
17 acknowledgment by the Americans, on I think the
18 afternoon of October 1st, that he was in custody
19 at the MDC; that they were willing to discuss the
20 matter with us; that they asked for a written
21 instruction with respect to possible charges; and
22 on October the 2nd, very quickly, arrangements
23 were made for a visit to see Mr. Arar. Also, that
24 they acknowledged the fact that arrangements could
25 be made immediately as well for legal

1 representation for Mr. Arar.

2 So all of these things were
3 happening in parallel with the things that you
4 have just listed?

5 MR. CAVALLUZZO: Mm-hmm.

6 MR. PARDY: The threat of
7 deportation, always an element in cases of
8 Canadians in difficulty in foreign countries.
9 Generally speaking, the deportation, especially if
10 it is back to Canada, we see as a good thing. A
11 consular case where somebody is deported back to
12 Canada, that ends the consular case. So the
13 possibility of deportation was something that we
14 would look at.

15 The threat of deportation
16 specifically to Syria was balanced in terms of the
17 information that was available to us with comments
18 by other officials that said that, "You will be on
19 your way back to Canada before long."

20 The advice from the American
21 official again came into -- was part of our ken as
22 we looked at all of these factors.

23 As I said earlier this morning, I
24 found that information somewhat puzzling. It came
25 from one official, it came quite early on in the

1 process, and it was overtaken by the action of
2 other American officials in terms of discussing
3 the case with us, granting consular access and
4 making arrangements for legal representation.

5 The travel report on
6 September 11th I don't think is a factor in this
7 at all. The NSEERS program was very much of a
8 program that dealt with Canadians and other
9 foreigners upon arrival at an American point of
10 entry. NSEERS was exercised at that point.
11 Mr. Arar was already in the United States when
12 these actions were being taken.

13 MR. CAVALLUZZO: Technically
14 correct. But you would agree with me that the
15 NSEERS program indicated that five countries,
16 including Syria, were targeted --

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: -- by the
19 Americans as requiring special treatment?

20 MR. PARDY: And there was no
21 suggestion that as a result of people applying to
22 enter the United States and came up against the
23 NSEERS program, there was no evidence then and
24 there is no evidence today that the Americans then
25 turned around and deported them to a country other

1 than Canada if the people were Canadians.

2 The August 2002 public
3 disclosure -- or not public disclosure, it was
4 Mr. El Maati, as a result of a consular visit
5 that we arranged in Cairo, told us, but I did not
6 need Mr. El Maati to tell me that the Syrian
7 government tortured people within its ambit. It
8 was useful to have that information, we were
9 dealing with other cases in other parts in the
10 Middle East and torture or abuse, depending on the
11 circumstances, was never far from the centre of
12 most of those cases.

13 Knowledge. Your sixth one was
14 knowledge of Syrian practices, is it?

15 MR. CAVALLUZZO: Failure -- well,
16 the recent experience you had with --

17 MR. PARDY: Oh, in terms of --
18 yes.

19 Here you are into the area of dual
20 nationality and we have not touched on it before.

21 Most governments, when they have
22 one of their citizens within their ambit is not
23 willing to concede, even though they are a citizen
24 of Canada, are willing to concede that Canada has
25 any right in terms of consular access or any right

1 to provide consular services to such persons.
2 That is an issue out there and it really started
3 to come to the fore about, oh, in the early 1990s.

4 We started to take certain actions
5 to help us in that area, but fundamentally it is
6 still a major problem, and there is absolutely no
7 international law on this issue there for us to
8 come to grips with.

9 The seventh one being the
10 rendition issue, yes.

11 MR. CAVALLUZZO: Obviously
12 hindsight is 20:20, and we are three years after
13 the fact, but I put it to you that a high-level
14 consultation, as suggested by that INS official on
15 or about October 1st, may have prevented this
16 situation, may have prevented the situation
17 because you would have had a high-level person in
18 the Canadian government phoning a high-level
19 person in the American government, consulting and
20 saying, "What are you guys doing?" That may have,
21 in effect, prevented what occurred.

22 You would agree with that?

23 MR. PARDY: No. I would say that
24 that would be maybe of some significance -- or
25 could have been of some significance, but it could

1 have led to a hastened deportation of Mr. Arar
2 from the United States. They could have speeded
3 up their action, in the sense that the American
4 official might have said, "Well, the Canadians are
5 getting on to us here. Let's get this one out of
6 the way as quickly as possible and get this man
7 out of our country."

8 MR. CAVALLUZZO: Right.

9 MR. PARDY: I mean, as you
10 say, hindsight is always clearer than when you are
11 playing your game on Saturday night, but if you
12 play your game on Sunday morning it is always
13 easier.

14 MR. CAVALLUZZO: Well, let's go
15 into foresight then. We have dealt with
16 hindsight. Foresight.

17 Because what I have just given
18 you is the fact situation that we ultimately have
19 today with the Monterey Protocol. Because we
20 heard this is a great event in January of --

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: -- where now
23 Canadians are protected, because all it takes is
24 high-level consultation between American officials
25 and Canadian officials and this will prevent what

1 happened to Mr. Arar. That is the very --

2 MR. PARDY: That is not --

3 MR. CAVALLUZZO: No?

4 MR. PARDY: That is not what the
5 Monterey Protocol provides for.

6 MR. CAVALLUZZO: It isn't?

7 MR. PARDY: No, it does not. It
8 does not guarantee a repeat of a case like
9 Mr. Arar's.

10 MR. CAVALLUZZO: Certainly not.

11 MR. PARDY: What the protocol
12 provides for is consultation between the Director
13 General of Consular Affairs here in Ottawa and the
14 Undersecretary of State for Consular Affairs in
15 the State Department.

16 MR. CAVALLUZZO: Right.

17 MR. PARDY: Yes. And that is a
18 very useful -- I should say -- I'm making sure
19 that the factual record is correct with regards to
20 that protocol, and I think it is a major advance.
21 Whether you would have been able to negotiate --
22 if this was in place in 2002, yes, it would have
23 been useful, but this is the first case we had and
24 the protocol is one of the results of our
25 experience with Mr. Arar.

1 MR. CAVALLUZZO: That was my
2 point. I'm suggesting to you if there was some
3 kind of high-level consultation back in September
4 of -- or October of 2002, this thing may have been
5 prevented.

6 You disagree with that?

7 MR. PARDY: As I say, you can come
8 with hindsight, but at the time there was no
9 protocol in place; there was no obligation on the
10 part of American officials to consult with us; and
11 I would suggest to you another scenario that was
12 just as likely would have been a hastened removal
13 from the United States.

14 MR. CAVALLUZZO: Right. Thank God
15 they respect us so much.

16 Certainly you don't think that
17 would have -- that is how much we mean --

18 MR. PARDY: No, it is governments
19 are unique institutions and the officials who work
20 for that government will take action based on what
21 they consider to be their responsibilities.

22 MR. CAVALLUZZO: Okay.

23 Mr. Commissioner, we are about to
24 move on to another area now. This may be an
25 appropriate time to break until 2:15?

1 THE COMMISSIONER: 2:15, okay. We
2 will rise until then.

3 THE REGISTRAR: Please stand.

4 --- Upon recessing at 12:58 p.m. /

5 Suspension à 12 h 58

6 --- Upon resuming at 2:18 p.m. /

7 Reprise à 14 h 18

8 THE REGISTRAR: Please be seated.

9 Veuillez-vous asseoir.

10 MR. CAVALLUZZO: Mr. Pardy,
11 when we broke for lunch, we were at tab 63. This
12 is the notice or direction that was sent to
13 Amman, Jordan.

14 The question I have for you
15 relates to the third paragraph from the bottom,
16 where it states:

17 "Gar Pardy is currently in
18 Washington for consular
19 meetings and has received
20 information from sources
21 there that Mr. Arar was
22 removed to Syria and that
23 Syrian authorities 'dumped'
24 him into Jordan. It was at
25 his request that I contact

1 you this evening..."

2 Et cetera, et cetera.

3 This information that he was
4 dumped into Jordan from Syria, where did you
5 receive that information?

6 MR. PARDY: In the dance that I
7 did with Mr. Cerda the previous day when we I was
8 trying to draw him out and I probably suggested to
9 him that we could not find Mr. Arar in Syria and
10 he suggested that we look at Jordan. The way it
11 came out, it could have been either way. I passed
12 it on to Ms Harris and it could very well have
13 been he said that he was in Jordan on his way to
14 Syria, but I'm not sure in terms of the actual
15 recording of the information. It could have been
16 either way.

17 MR. CAVALLUZZO: Okay.

18 MR. PARDY: It would have made
19 more sense, and I think the information we have
20 today is, that he went to Jordan first. That
21 certainly in my mind would have made more sense.

22 MR. CAVALLUZZO: Right. I wanted
23 to clarify that on this date a protest was made to
24 the American government.

25 If you refer, for example, to

1 tab 97, and you go to page 4, or the last page of
2 that tab, you will see at the top there it says
3 that the Minister met with Mr. Cellucci:

4 "...on October 15 and
5 protested the action of the
6 United States in deporting
7 Arar to the United States."

8 Then it goes on:

9 "Earlier representations were
10 made to the American
11 authorities in Washington on
12 October 11 once we learned of
13 the deportation of Mr. Arar
14 to Syria."

15 As well, at tab 110, it is called
16 a "Public Backgrounder". It is a one-page
17 document. In the second paragraph from the bottom
18 it says:

19 "Upon learning of these
20 developments protests were
21 immediately made
22 representations to the
23 American authorities in
24 Washington on October 11."

25 So the question is: The reference

1 is to "protests". Were protests in fact made as
2 early as October 11th?

3 MR. PARDY: Yes. We had American
4 officials at our conference in Washington and
5 certainly they were officials from both the INS
6 and the State Department and I remember speaking
7 with the State Department official that was there.

8 MR. CAVALLUZZO: Okay. So was it
9 like an informal protest? Nothing in writing,
10 You are just complaining about the way that --

11 MR. PARDY: Fairly graphic
12 language was used, yes, telling them that we found
13 it very surprising that this sort of action would
14 be taken without any notification to us, given the
15 fact of the way things had been handled in New
16 York, and that we were surprised at our inability
17 to get timely information from the American
18 government once the action had been taken.

19 MR. FOTHERGILL: Commissioner, I
20 feel obliged to express at least a note of caution
21 about the witness' recounting of these exchanges
22 with officials in other countries.

23 Mr. Parady is himself, of course,
24 one of the prime subject matter experts on this,
25 and I take some confidence from the fact that he

1 is prepared to disclose these conversations, but
2 if I could only just perhaps ask you to direct the
3 witness to keep in mind the impact on other
4 consular relationships of disclosing these kind of
5 communications, I think that would be sufficient.

6 THE COMMISSIONER: I would think
7 Mr. Pardy is well aware of that.

8 You are aware of the importance
9 of protecting certain conversations and
10 communications?

11 MR. PARDY: Yes.

12 THE COMMISSIONER: Thank you.

13 Carry on.

14 MR. CAVALLUZZO: I don't know
15 whether the objection related to the fact that the
16 conversation took place, because it is part of a
17 public backgrounder, or that the witness used
18 graphic language.

19 THE COMMISSIONER: Please stand
20 when you are addressing the witness,
21 Mr. Fothergill.

22 MR. FOTHERGILL: I'm sorry, sir.

23 It wasn't an objection, it was
24 expressing a note of concern. I just want to be
25 satisfied that the witness had addressed his mind

1 to whether this could have a detrimental impact on
2 future consular efforts on behalf of Canadians
3 detained in other countries.

4 THE COMMISSIONER: He has assured
5 us he will.

6 MR. FOTHERGILL: Thank you.

7 MR. CAVALLUZZO: At tabs 64 and
8 80 -- let's look at 64 -- we see that as of
9 October 11th or 12th Mr. Arar's situation is being
10 picked up by the New York Times and the media is
11 starting to get interested in Mr. Arar's plight?

12 MR. PARDY: Yes. Even though that
13 page is dated at the top the 11th of October, my
14 understanding was the New York Times actually
15 published its article on October the 12th.

16 MR. CAVALLUZZO: That is correct.
17 Let's go to tab 80, you will see
18 confirmation of that.

19 MR. PARDY: Mm-hmm.

20 MR. CAVALLUZZO: The article by
21 Mr. DePalma in the Times is dated October 12th?

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: A well, the next
24 page, you will see The Globe and Mail at that date
25 has also picked up the story?

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: Prominent in
3 those articles are references to torture in Syria?
4 So that certainly at that point in
5 time the media is of the view that Mr. Arar has
6 gone to Syria? Whether that is correct or not is
7 another matter, but certainly that is the
8 prevailing public view.

9 MR. PARDY: That is our
10 operational -- that is what guided all of our
11 actions during this period, yes.

12 MR. CAVALLUZZO: Okay.
13 You returned to Ottawa from
14 Washington on October the 14th? If you now
15 refer to tab --

16 MR. PARDY: No, I arrived back in
17 Ottawa on the night of the 11th. I flew out that
18 Friday night to get back to Ottawa, yes.

19 MR. CAVALLUZZO: Okay. If you go
20 then to tab 72, please. This is October 14th. It
21 says:

22 "Pardy spoke to wife, Monia
23 and brother ... this
24 afternoon and provided them
25 with an update."

1 And so on.

2 Was this the first occasion upon
3 which you spoke to Ms Mazigh?

4 MR. PARDY: I believe it is, yes.

5 MR. CAVALLUZZO: In effect you are
6 basically updating, for example in the second
7 paragraph, about the lawyer and so on --

8 MR. PARDY: Mm-hmm.

9 MR. CAVALLUZZO: -- and what the
10 lawyer has reported.

11 In the third paragraph you are
12 dealing with her situation. At this time she is
13 in Tunisia and she is going to have trouble
14 travelling because of the lack of travel
15 documents, and so on?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: Just to save some
18 time, in terms of the documents issue and what you
19 did in respect of dealing with Ms Mazigh at this
20 point in time -- and I just refer to it, tab 75 --
21 you are dealing with Monia's question about where
22 her husband is and assuring his security.

23 Tab 76 relates to getting a
24 passport for Ms Mazigh's son, Houd.

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: Tab 70, you are
2 following up with the --
3 MR. PARDY: Tab 70?
4 MR. CAVALLUZZO: Yes, seven zero?
5 MR. PARDY: Seven zero.
6 MR. CAVALLUZZO: You are following
7 up with -- excuse me, that should be 80.
8 MR. PARDY: Yes.
9 MR. CAVALLUZZO: No. Let's just
10 try 70.
11 --- Pause
12 MR. CAVALLUZZO: It's not 70. We
13 will find it for you.
14 But you are following up in
15 respect of the travel documents.
16 Then, finally, tab 55 -- or 85,
17 excuse me. This is dated 16 October.
18 Do you see that?
19 MR. PARDY: Yes.
20 MR. CAVALLUZZO: So at this period
21 of time, through the latter part of October, you
22 are dealing directly with Ms Mazigh in Tunisia,
23 attempting to facilitate her return to Canada when
24 she wants to return. At this point in time she
25 doesn't, but later on --

1 MR. PARDY: Yes. I was dealing
2 with her, and other people were speaking with her
3 as well.

4 MR. CAVALLUZZO: Okay. Okay.
5 Now, let's come back to tab 73 in
6 terms of your communications with the Ambassador
7 in Damascus.

8 This is dated October 14th and it
9 says:

10 "Damascus has submitted a
11 Note Verbale..."

12 What is that?

13 MR. PARDY: It is a form of
14 diplomatic note, basically providing information
15 about the case to the Syrian government on which
16 they could base their inquiries.

17 MR. CAVALLUZZO: Okay.

18 MR. PARDY: Well, it is called
19 Mote Verbale. One of the idiosyncrasies of
20 diplomatic life is that every time you say
21 something you try to follow it up. There is a
22 written piece of paper that would be associated
23 with that.

24 MR. CAVALLUZZO: Was a similar
25 note given to Jordan?

1 MR. PARDY: I'm not certain, but
2 it is quite likely it was, although in the case of
3 Jordan, the Ambassador was speaking directly to
4 the Foreign Minister, I seem to recall. In that
5 sort of a situation, when you are talking to the
6 Foreign Minister, probably there would have been
7 less of a need for a note.

8 MR. CAVALLUZZO: Okay. Now, let
9 us come then to October 15th. October 15th is
10 when Minister Graham meets with the American
11 Ambassador to Canada, Mr. Cellucci --

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: -- for a
14 one-on-one luncheon?

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: October the 15th.
17 Did you attend that luncheon?

18 MR. PARDY: No, it was a
19 one-on-one luncheon.

20 MR. CAVALLUZZO: Okay.

21 If you go to tab 74, which is
22 dated October the 15th, and attached you provided
23 a briefing note?

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: Okay. On the

1 second page I guess is words of protest from
2 Canada to the American government that hopefully
3 Mr. Graham would share with Mr. Cellucci?

4 MR. PARDY: Yes.

5 I think it is worth pointing out
6 that second point there, not only was it a protest
7 but we were still looking for Mr. Arar and
8 Mr. Graham tackled the ambassador in terms of we
9 required information, even at that point, at that
10 late date, the 15th.

11 MR. CAVALLUZZO: Now, on the 15th
12 when Mr. Graham went into this meeting with
13 Mr. Cellucci, was Mr. Graham aware that the
14 Americans had threatened to deport Mr. Arar while
15 he was there?

16 I couldn't find it in the speaking
17 notes or the briefing note.

18 MR. PARDY: I remember having a
19 conversation that morning -- this was written
20 quite early and we were picking up other
21 information -- I remember having a conversation, I
22 think with one of the officials in Mr. Graham's
23 office, and briefing him verbally on some of the
24 other aspects of the case, yes.

25 I'm assuming that point would

1 have been raised with the person from Mr. Graham's
2 office.

3 MR. CAVALLUZZO: You have no
4 specific recollection, but it is something you
5 likely would have --

6 MR. PARDY: You would have done --
7 you would have done a piece of paper and then, as
8 the morning progressed, any additional
9 information, we would have provided him an update
10 with any additional facts and normally they would
11 have additional questions as well that they would
12 want answered.

13 MR. CAVALLUZZO: Okay. Now, I
14 can't ask you what Mr. Cellucci may have said to
15 Mr. Graham.

16 However, what I can ask you is:
17 Do you recall the public statements made by
18 Mr. Cellucci around this time, on October 15th and
19 thereafter, concerning Mr. Arar's plight?

20 MR. PARDY: Yes, I can remember
21 those statements.

22 MR. CAVALLUZZO: Can you share
23 those statements with us?

24 MR. PARDY: I mean I can't quote
25 verbatim, but the essence of what Mr. Cellucci was

1 saying publicly, I think the first report was with
2 a reporter from The Globe and Mail, and
3 Mr. Cellucci essentially said, "Look, don't come
4 complaining to us. "The information that you are
5 seeking is available with officials at the
6 Canadian government."

7 MR. CAVALLUZZO: Okay. Was that a
8 surprise to you, to see those public statements?

9 MR. PARDY: Yes. Two surprises:
10 One, the information itself, and the fact that
11 Mr. Cellucci was prepared to go to the media with
12 those comments.

13 MR. CAVALLUZZO: Okay. We will
14 come back to the precise wording in a minute or
15 two, but let us just complete October 15th.

16 If you go to tab 82, we see
17 that the Ambassador in Amman -- who was Mr. Bell
18 at that time?

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: He is
21 communicating with you as to the attempts he is
22 pursuing regarding locating Mr. Arar?

23 MR. PARDY: Mm-hmm.

24 MR. CAVALLUZZO: As indicated
25 in the unredacted portions, he is finding little

1 help from the Jordanians as to the location of
2 Mr. Arar?

3 MR. PARDY: That is correct.

4 Although I would point out
5 that five or six days later, the Foreign
6 Minister did confirm to the Ambassador certain
7 information here.

8 MR. CAVALLUZZO: Right. We will
9 come to that because there is a public reference
10 to that. I will bring you to that.

11 Now, on October 16th we find,
12 if you go to your notes at page 5, that there is
13 an interdepartmental meeting. It says:

14 "Wednesday, October 16, ISI,
15 Arar. Due to 9th hearing
16 appeal on the 8th,
17 transported to Syria ..."

18 Then it goes on:

19 "Interdepartmental meeting
20 chaired by S&I Division of
21 Foreign Affairs attended by
22 CSIS, RCMP, and department
23 officials. It was reported
24 that Arar had been due to
25 have an appeal hearing on

1 October 9th, but was sent to
2 Syria on October 8th before
3 it could take place."

4 What was the purpose of this
5 meeting, this interdepartmental meeting, which
6 took place on October 16th?

7 MR. PARDY: Well, if you go back
8 to the messages that were sent to Jordan and Syria
9 on October 10th and 11th, there is a reference
10 here to the fact that Mr. Arar was subject to
11 A-OCANADA investigation, which was the first
12 indication -- I wasn't aware of that when I was in
13 Washington -- and as soon as I came back to
14 Ottawa, I said, "Well, look, we had better sit
15 down and start talking with other parts of the
16 Canadian government about all of this."

17 When Mr. Cellucci made his
18 statement then on the 15th, clearly we needed to
19 talk to other officials at the Canadian government
20 about what was going on here.

21 MR. CAVALLUZZO: Right.

22 Presumably as a result of
23 the public statements of Mr. Cellucci, your
24 Minister must have said to the DFAIT officials,
25 "What are you guys doing? I don't know this" or"

1 I don't have any information on this," something
2 like that?

3 MR. PARDY: He wasn't that polite.

4 MR. CAVALLUZZO: He wasn't that
5 polite, okay.

6 MR. PARDY: No.

7 MR. CAVALLUZZO: Then if we go to
8 tab 84, this is a note from yourself to
9 Mr. Graham, the Minister, on October 16th?

10 MR. PARDY: Mm-hmm. Yes.

11 MR. CAVALLUZZO: You say in the
12 opening paragraph:

13 "Further to our briefing note
14 to the Minister on Mr. Arar
15 for use in his meeting with
16 the American Ambassador on
17 October 15, we can report the
18 following ..."

19 The reference you made to The
20 Globe and Mail can be found in the bottom
21 paragraph there about Mr. Cellucci's public
22 statements?

23 It says:

24 "In summary, the American
25 will be quoted as saying `I

1 think that the USINS
2 authorities acted properly in
3 deporting Mr. Arar to Syria.
4 You should talk to your local
5 people who may know the
6 reasons."

7 MR. PARDY: That was the statement
8 that The Globe and Mail reporter gave to the press
9 officer of the department as reflecting what
10 Mr. Cellucci had said publicly, yes.

11 MR. CAVALLUZZO: Right.
12 Certainly after that you saw
13 references to that statement being quoted in the
14 news widely across Canada that this is what
15 Mr. Cellucci was saying?

16 MR. PARDY: Yes. Yes.

17 MR. CAVALLUZZO: As far as this
18 particular memo relating to the interdepartmental
19 meeting is concerned, you say on the second page,
20 at least as far as the RCMP is concerned, in
21 paragraph 2:

22 "The RCMP indicated that they
23 will provide DFAIT with a
24 response by the close of
25 business Thursday 16 October.

1 At that time, we will provide
2 a memorandum..."

3 Et cetera, et cetera.

4 So that as a result of this
5 meeting with the RCMP, they say they will give you
6 an answer?

7 MR. PARDY: Yes. I gave them a
8 list of very specific questions that we asked to
9 have information on.

10 MR. CAVALLUZZO: Okay.

11 Now, there is no reference here
12 to CSIS.

13 Did you request information from
14 CSIS as well?

15 MR. PARDY: The redacted portion I
16 think reflects the dynamic far as CSIS is
17 concerned at that time.

18 MR. FOTHERGILL: Commissioner, as
19 you may be aware, there are sensitivities
20 surrounding CSIS' involvement in this matter. One
21 of the things that we are hoping to resolve, if we
22 can amicably, through discussion.

23 THE COMMISSIONER: All right.

24 Thank you.

25 MR. CAVALLUZZO: Okay. Now, in

1 terms of at least the RCMP's response to your
2 specific questions, if we refer to tab 104. This
3 is the memorandum dated October 18.

4 Do you see that?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: The first
7 question is:

8 "What information has been
9 shared with the U.S.
10 concerning Maher ARAR?"

11 And the answer is:

12 "RCMP investigators have
13 maintained an open line of
14 communication with its
15 Canadian and American
16 partners. All available
17 information obtained by the
18 Project A-OCANADA team has
19 been shared with ..."

20 And then there is a redaction
21 there.

22 And then the next question is:

23 "How did U.S. become aware or
24 interested in Arar?"

25 It says:

1 "U.S. authorities learned of
2 Arar through a sharing of
3 information between RCMP
4 investigators and ... Arar
5 was connected to an ongoing
6 RCMP investigation that
7 involved individuals ... also
8 of interest to U.S.
9 authorities. It's possible
10 that U.S. authorities are in
11 possession of information
12 relating to Arar's activities
13 during a period of time when
14 he lived and worked in the
15 Boston area."

16 MS EDWARDH: Excuse me.

17 Mr. Cavalluzzo, it might assist
18 the witness, the whole document is in the Garvie
19 report, with no redactions.

20 MR. CAVALLUZZO: All right. If we
21 refer to ...

22 MS EDWARDH: It is page 30.

23 THE COMMISSIONER: Thank you,
24 Ms Edwardh.

25 MS EDWARDH: I am glad I could be

1 helpful.

2 MR. CAVALLUZZO: The answer in --

3 MR. PARDY: Could I have page
4 reference in the Garvie report, please?

5 MR. CAVALLUZZO: I am sorry. It
6 is page 30.

7 THE COMMISSIONER: That was just
8 an oversight in the government over-claiming the
9 NSC in the one document?

10 MR. FOTHERGILL: I have to assume
11 that is the case, yes.

12 THE COMMISSIONER: All right.

13 MR. CAVALLUZZO: Do you see that,
14 Mr. Pardy?

15 MR. PARDY: Yes, I do.

16 MR. CAVALLUZZO: Now, the first
17 answer is blank in terms of who the information
18 was shared with. We can postulate. But in any
19 event it's blank.

20 And in terms of the second
21 question, "how did the U.S. become aware or
22 interested in Arar?" Why don't I just read that
23 portion which was blank:

24 The full text is:

25 "U.S. authorities learned of

1 Arar through a sharing of
2 information between RCMP
3 investigators and U.S.
4 authorities."

5 So "U.S. authorities" was
6 redacted. Now we know that it was U.S.
7 authorities that they were sharing this
8 information with.

9 In terms of the last question, it
10 says:

11 "Did the U.S. approach
12 Canadian authorities
13 regarding the possibility of
14 Arar's deportation?"

15 And the answer to that -- could
16 you just read that into the record, if you would?

17 MR. PARDY: Yes.

18 "U.S. authorities requested
19 the RCMP provide information
20 that might assist in the
21 filing of criminal charges
22 against Arar. U.S.
23 authorities made inquiries as
24 to the level of interest the
25 RCMP had in pursuing Arar

1 criminally. They also made
2 inquiries as well as the
3 RCMP's ability to refuse
4 Arar's entry into Canada.
5 The U.S. authorities were
6 advised that the RCMP was
7 interested in Arar from a
8 criminal perspective. They
9 were also advised that were
10 Arar ..."

11 That is a mistake there of some
12 kind. It should have been:

13 "... that as Arar is a
14 Canadian citizen, the RCMP
15 could not refuse him entry
16 into Canada."

17 MR. CAVALLUZZO: Okay. And I
18 guess the next question is very important because
19 it relates to something that is going to happen
20 later on, and that is the question being: What
21 was the level of threat relating to Arar's
22 presence in the U.S.?

23 And the answer is:

24 "The RCMP has no information
25 concerning any threat

1 associated with Arar."

2 So as of October the 18th, the
3 RCMP is telling you that they have no information
4 concerning any threat associated with Mr. Arar?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: That's clear and
7 unequivocal?

8 MR. PARDY: They wrote the letter.

9 MR. CAVALLUZZO: Okay. And the
10 final point, once again, is the point of Syria
11 is -- the question is, is Arar being held in
12 Jordan as possibly suggested by the INS?

13 And the answer is:

14 "The RCMP has confirmed that
15 Arar is being held in Syria."

16 And so that their view as well is
17 that their information is that he is being held in
18 Syria?

19 MR. PARDY: Yes. And I think the
20 previous question is of some limited importance
21 because there was some confusion over the names
22 that were being involved, and this answer from the
23 RCMP put to rest the confusion over the name.

24 MR. CAVALLUZZO: Okay. In terms
25 of your responsibilities, in terms of time, on the

1 same date you spoke to Marlene Catterall -- this
2 is at tab 87 -- who is Mr. Arar's Member of
3 Parliament, and she will also subsequently become
4 prominent in this inquiry, this case?

5 MR. PARDY: Yes. I think she
6 called me, yes.

7 MR. CAVALLUZZO: And then if we go
8 to tab 96 for the next day, October 17th, there is
9 an exchange of e-mails between you and
10 Mr. Pillarella, and there is a suggestion that
11 Mr. Pillarella may be meeting somebody important
12 in Syria?

13 MR. PARDY: Yes. And that was the
14 first suggestion that we might obtain although in
15 that initial meeting -- we will come to it, I am
16 sure, down the road.

17 MR. CAVALLUZZO: At tab 97, we see
18 at this point in time -- it's October 17th -- that
19 Mr. Graham is in Halifax for a conference that we
20 have heard some evidence about.

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: And press lines,
23 or Q&A's as you call them in the industry, are
24 sent to him so that he is prepared to deal with
25 any issues that may come up?

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: And I won't take
3 you through them. The only reference would be the
4 last Q&A, and the last question is:

5 "Have Canadian authorities
6 provided information to the
7 American authorities that
8 alerted them to the travels
9 of Mr. Arar?"

10 And then it says:

11 "Insofar as the Department of
12 Foreign Affairs is concerned,
13 no."

14 So this answer that you are giving
15 to that question relates to the information that
16 DFAIT has?

17 MR. PARDY: That is correct, and
18 based on the fact that I had sent a memo
19 previously to the Minister with the other
20 information there.

21 MR. CAVALLUZZO: Did you ask any
22 other Canadian agency whether they had supplied
23 information to American authorities that alerted
24 them to the travels of Mr. Arar?

25 MR. PARDY: Well, we had the

1 questions to the RCMP and CSIS in that meeting on
2 the 16th and then their reply on the 18th.

3 MR. CAVALLUZZO: The other
4 question I would have relating to tab 97, the
5 Q&A's, would also relate to page 4.

6 It states in the second-last
7 question:

8 "There have been allegations,
9 including those used by the
10 United States in ordering his
11 departure, that Mr. Arar is a
12 member of Al Qaeda. Are
13 these allegations accurate?"

14 And the answer is:

15 "The Department of Foreign
16 Affairs is not aware of
17 information to support the
18 allegation that Mr. Arar is a
19 member of Al Qaeda."

20 MR. PARDY: That's correct.

21 MR. CAVALLUZZO: And this is the
22 Q&A, this is the answer you were giving to your
23 Minister the day after you met with CSIS and the
24 RCMP?

25 MR. PARDY: That's correct.

1 MR. CAVALLUZZO: On the same date,
2 October the 17th, at tab 102, you send a letter to
3 Ms Mazigh, Mr. Arar's spouse?

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: Once again she is
6 still in Tunisia. And it's a fairly lengthy
7 letter that you have sent her.

8 What was the point of this letter,
9 just to --

10 MR. PARDY: Well, as you have
11 reflected in some of your questions, verbal
12 communications are sometimes less than
13 satisfactory, and certainly they are in terms of
14 communicating to our client sometimes the fairly
15 complex issues, and I find it's very useful -- and
16 I think the clients do too from time to time --
17 that you sit down and reflect what you are saying
18 to them in writing.

19 MR. CAVALLUZZO: Okay. I just
20 want to clarify certain things.

21 In particular at page 2, the
22 second paragraph from the bottom, it says:

23 "We have protested the action
24 of the American government.
25 In Washington, October 11 we

1 advised the American
2 authorities that we strongly
3 disagreed with their action."

4 And you have certainly clarified
5 that through your previous answer.

6 It goes on:

7 "On October 16 the Canadian
8 Foreign Minister, Mr. Bill
9 Graham, met with ..."

10 Cellucci. That should no doubt be
11 October 15th, or was there a second meeting on
12 October 16th?

13 MR. PARDY: No. I think that was
14 a frailty of memory.

15 MR. CAVALLUZZO: So there was only
16 that one meeting. Okay.

17 And finally in the next paragraph,
18 you say:

19 "We have had previous
20 instances of Canadians being
21 held by the Syrian
22 authorities and generally
23 they have not been willing to
24 provide confirmation of such
25 detentions immediately. At

1 this time we have one other
2 Canadian who also has Syrian
3 citizenship being held by the
4 Syrians and for whom they
5 have not provided
6 confirmation of his
7 detention..."

8 We have talked about the two
9 individuals that relates to.

10 And the question I have relates
11 to --

12 MR. PARDY: Could you tell me
13 which paragraph?

14 MR. CAVALLUZZO: I am sorry. The
15 second paragraph from the bottom on page 2,
16 starting with the second sentence>

17 "We have had previous
18 instances ..."

19 MR. PARDY: Okay. I found it.
20 Thank you.

21 MR. CAVALLUZZO: The question that
22 I have relates to what seems to be a practice of
23 Syrians holding detainees incommunicado for a
24 certain period of time.

25 Were you aware of that practice

1 and public record?

2 MR. PARDY: Until these cases
3 occurred -- the names -- can we use the names?
4 The names are in the public domain?

5 MR. CAVALLUZZO: Yes.

6 MR. PARDY: Mr. El Maati first and
7 Mr. Almalki. I can't remember any consular cases
8 in Syria -- no, I am sorry, there was one consular
9 case of a serious traffic accident in which a
10 Canadian died.

11 These first two cases in Syria
12 were the first examples that we had of direct
13 dealings with the Syrian authorities on this kind
14 of matter. We were in some ways surprised, in
15 other ways not surprised, particularly on the El
16 Maati case, because he was not a citizen of Syria.
17 Generally the rule is that if you are in a country
18 other than that of citizenship, the country that
19 shows up, and particularly if he was travelling on
20 a Canadian passport -- although we are not certain
21 of that -- then in effect there is some
22 expectation that you will get information.

23 We never did on Mr. El Maati, and
24 he was in Egypt, I think, for close on six months
25 before we got confirmation that he was in an

1 Egyptian jail.

2 MR. CAVALLUZZO: But the question
3 is whether you were aware of the public record as
4 to the practice of Syrian military security
5 intelligence services holding a detainee
6 incommunicado for a period of time during which
7 they extract whatever information they want and
8 then they tell the world that this individual is
9 there.

10 MR. PARDY: Maybe, but my
11 experience is based on these two cases that we
12 just referred to. That was the extent of our
13 experience at that point.

14 MR. CAVALLUZZO: I am talking
15 about the public record, the Department of State,
16 Amnesty International --

17 MR. PARDY: Oh. I am trying to
18 think of whether this is reflected in any of those
19 reports. I do not believe that it is in that
20 sense.

21 I could be proven wrong on that,
22 but particularly --

23 MR. CAVALLUZZO: I don't want to
24 prove you wrong, but let's look at Exhibits 27 and
25 28.

1 MR. PARDY: The State Department
2 report would have been the one that I would have
3 referred to, and they themselves -- it would be an
4 issue for them that they would reflect in that
5 report.

6 MR. CAVALLUZZO: If you look at
7 the State Department report, which is Exhibit
8 P-27?

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: For 2002, at the
11 second page, under "Disappearance", this is before
12 "torture and other cruel and inhumane and
13 degrading treatment or punishment". In that last
14 paragraph, under disappearance, it says:

15 "Despite inquiries by
16 international human rights
17 organisations and foreign
18 governments, the government
19 offered little new
20 information on the welfare
21 and whereabouts of persons
22 who have been held
23 incommunicado for years or
24 about whom little is known
25 for other than the

1 approximate date of their
2 detention. The government
3 claims it has released ..."

4 It goes on about Palestinians and
5 Jordanians, and so on and so forth.

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: The next section
8 deals with torture and indeed a much better
9 description can be found in the Amnesty
10 International report for 2002, which is tab 29.

11 MR. PARDY: Tab 29. Thank you.

12 MR. CAVALLUZZO: If you see tab
13 29, the very first paragraph, in the third
14 sentence, starts:

15 "Hundreds of political
16 prisoners, including
17 prisoners of conscience,
18 continue to be held, most
19 following unfair trials
20 before the supreme state
21 security court and field
22 military courts."

23 And then it goes on:

24 "Torture and ill treatment
25 continues to be used against

1 political prisoners
2 especially during
3 incommunicado detention."

4 And:

5 "There were reports that the
6 health of prisoners of
7 conscience and political
8 prisoners was deteriorating
9 as a result of lack of
10 medical care."

11 Indeed if you go on to the next
12 page, under Torture and Treatment, it says:

13 "Torture and ill treatment
14 continue to be inflicted
15 routinely on political
16 prisoners, especially during
17 incommunicado detention at
18 the Palestinian branch and
19 military interrogation branch
20 detention centre."

21 So that's the question, whether at
22 this point in time DFAIT, and you in particular,
23 were aware of the public record of Syria in
24 respect of torture, holding people incommunicado,
25 extracting information, et cetera?

1 MR. PARDY: Yes, and what I was
2 reflecting -- if you go back to the letter to
3 Ms Mazigh -- was the actual evidence we had of two
4 Canadians who had fallen into that process, which
5 I considered to be very germane to all of this.

6 Equally, I think -- and I don't
7 want to overstate this. But most of the reports
8 here, and you will see most of the reference, are
9 to Syrian citizens and their treatment by their
10 own government.

11 I mean, this is the underlying
12 assumption on many of those. There are references
13 occasionally to foreigners, Iraqis, Palestinians,
14 things like that. But when you turn around and go
15 after another government about one of your
16 citizens then you expect a better response than
17 what we got from the Syrians.

18 MR. CAVALLUZZO: Of course, the
19 whole point is that the Syrian government were
20 treating Mr. Arar as though he was a Syrian?

21 MR. PARDY: Yes. But we were
22 trying to bring home to them, and in the end they
23 treated him in part as a Canadian in terms of
24 access, yes.

25 MR. CAVALLUZZO: But the point is

1 that you didn't have contact with the Syrian
2 government until after they disclosed his
3 whereabouts?

4 MR. PARDY: That's correct, yes.

5 MR. CAVALLUZZO: Which may have
6 been ten days?

7 MR. PARDY: At least, yes -- well,
8 about ten days, I think, all told, yes.

9 MR. CAVALLUZZO: During which time
10 they were no doubt treating him as a Syrian.
11 That's they told you?

12 MR. PARDY: Well, they treated him
13 badly, yes.

14 MR. CAVALLUZZO: All right.

15 Finally in regard to the letter to
16 Ms Mazigh of October 17th, you do say in the
17 second-last paragraph on page 3:

18 "But you can be assured that
19 the efforts of the Canadian
20 government will continue and
21 our objective is the same as
22 yours - to see Maher returned
23 to Canada as quickly as
24 possible."

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: And that was your
2 intent at that time, and that was your intent
3 throughout --

4 MR. PARDY: It never wavered in
5 the 12 months that I was involved in this, yes --
6 I shouldn't say 12 months. Ten months.

7 MR. CAVALLUZZO: Ten months, okay.

8 At tab 105, we are getting closer
9 to the discovery of Mr. Arar in Syria.

10 At tab 105 you are communicating
11 once again with Mr. Pillarella, who is obviously
12 the ambassador. The document speaks for itself,
13 but there are a couple of questions I have in
14 respect of this document.

15 In paragraph (a), in the second
16 sentence, it says:

17 "It is our understanding that
18 Mr. Arar was deported from
19 the United States on October
20 8"

21 And these words here:

22 "... and was escorted to
23 Syria by American officials."

24 That "was escorted to Syria by
25 American officials", who told you that?

1 MR. PARDY: This came out of our
2 discussion -- and I am trying to think of where --
3 or it might have come out of the meeting on
4 October 15th, or October 16th --

5 MR. CAVALLUZZO: The
6 interdepartmental meeting?

7 MR. PARDY: The interdepartmental
8 meeting. It might have come out there. Again,
9 whether that is entirely correct is open to some
10 question right now, yes.

11 MR. CAVALLUZZO: Okay.

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: And then it goes
14 on to say in the last paragraph on that page:

15 "Mr. Arar is not a subject of
16 a police investigation in
17 Canada and can return to
18 Canada at any time."

19 So you were getting this
20 information from the RCMP, that he is not subject
21 of a police investigation.

22 MR. PARDY: I am summarizing here.

23 MR. CAVALLUZZO: But certainly --

24 MR. PARDY: A complex answer that
25 we have, but ...

1 MR. CAVALLUZZO: Right. That's
2 certainly the information you are giving
3 Mr. Pillarella?

4 MR. PARDY: So that he can use
5 with his Syrian contacts, yes.

6 MR. CAVALLUZZO: On the same day,
7 October the 19th, which would be two days after
8 your previous letter at tab 106, you write another
9 letter to Dr. Mazigh?

10 MR. CAVALLUZZO: What is the
11 purpose of this letter?

12 MR. PARDY: Again, the same
13 purpose as the earlier letter. I mean, given the
14 time difference, and Dr. Mazigh had young children
15 with her, I was trying to help her understand what
16 was going on and giving her the information in
17 written form so that she could read it rather than
18 trying to tie her down to a telephone call.

19 Telephone communications were --
20 not the communications themselves, but our ability
21 to talk to her direct was problematical at times,
22 yes.

23 MR. CAVALLUZZO: Okay. Once
24 again, the letter speaks for itself, but there are
25 three points that I would raise.

1 The first is, in the second
2 paragraph you point out that Minister:

3 "... Graham, raised the
4 matter with the Syrian
5 Ambassador to Canada
6 (Mr. Arnous) on October
7 18..."?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: We will deal with
10 that with him.

11 In the second paragraph, about
12 halfway down it says:

13 "There appears to be a
14 misunderstanding of Maher's
15 citizenship on the part of
16 the Syrians with one official
17 suggesting he has American
18 citizenship."

19 Do you know what --

20 MR. PARDY: I don't know where
21 that would have come from at that point, unless it
22 would have been a statement that somebody had made
23 to us in that interdepartmental meeting.

24 But to attribute that to
25 the Syrian's misunderstanding, later on that

1 became evident. But why it cropped up in
2 this October 19th letter, I can give you no
3 explanation.

4 MR. CAVALLUZZO: Okay. Then the
5 final question relates to the bottom paragraph
6 where it states:

7 "Further discussions will be
8 held with the American
9 authorities on Monday,
10 October 21 in the hope that
11 they will provide us with
12 precise details on when and
13 with whom Maher was deported
14 from the United States."

15 Do you know whether that meeting
16 with the Americans took place on October 21st?

17 MR. PARDY: No, I can't. No.

18 MR. CAVALLUZZO: Who was going to
19 participate in those discussions?

20 MR. PARDY: I think it would have
21 been through the Embassy in Washington most
22 likely. But again, I have no record or no
23 recollection of exactly that particular point.

24 MR. CAVALLUZZO: Okay.

25 MR. PARDY: Except for the second.

1 I think we had pinned down by this time that it
2 was the early morning hours of October 8th when he
3 went missing in New York. That gave us a fixed
4 point in time in terms of his disappearance.

5 MR. CAVALLUZZO: In your letter
6 presumably, if you look at the second and third
7 page, you appended newspaper articles so that she
8 could see what was happening in Canada, or was
9 this just part of this --

10 MR. PARDY: I think this is one of
11 these what you refer to as a dump.

12 MR. CAVALLUZZO: A dump.

13 MR. PARDY: I don't think I said I
14 attached -- although I think some of the newspaper
15 stories in Canada were sent to the Embassy in
16 Tunis with the request that it be passed on to
17 Dr. Mazigh.

18 MR. CAVALLUZZO: Then if you would
19 just go to the next tab, tab 107, you will see
20 that you did that. You will see:

21 "Attached is a letter for
22 Dr. Mazigh in Tunis. Could
23 you please fax it to her at
24 (whatever) but first call so
25 that the facsimile machine

1 can be activated. Also
2 please print some of today's
3 media stories and attach them
4 to the letter. Please ensure
5 the Ottawa Citizen and Globe
6 and Mail are included."

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: Just go back
9 one tab in terms of these media reports that you
10 would have -- tab 106, second page. You see the
11 bottom two lines there. This is in a Globe and
12 Mail article:

13 "Mr. Arar's wife, Monia
14 Mazigh, said the RCMP called
15 him last January. It was
16 concerned that he knew a
17 member of Ottawa's Syrian
18 community alleged to have
19 terrorist connections."

20 Were you aware at this point in
21 time that the RCMP had visited Mr. Arar in January
22 of 2002?

23 MR. PARDY: This was the first
24 time that piece of information came to our
25 attention.

1 MR. CAVALLUZZO: Okay. The RCMP
2 didn't tell you that on October 16th?

3 MR. PARDY: No, I do not think
4 they did. No.

5 MR. CAVALLUZZO: Okay. On
6 October 20th, if you go to tab 110, we have this
7 Public Backgrounder that we referred to earlier in
8 terms of the protest on October the 11th.

9 What is a Public Backgrounder? Is
10 this to be given to the Minister, or what is it?

11 MR. PARDY: No, the Minister's
12 office called and said that they were getting
13 calls from Members of Parliament concerning this
14 Mr. Arar and could I put together a piece of paper
15 that could be given to Members of Parliament that
16 they could respond to inquiries about the matter.

17 MR. CAVALLUZZO: Right. In that
18 Public Backgrounder for the public we see, in the
19 second paragraph from the bottom, halfway down:

20 "We have learned that the
21 American authorities informed
22 Mr. Arar that he was
23 considered to be a member of
24 Al Qaeda and therefore, was
25 ineligible for entry into the

1 United States."

2 Then the line:

3 "The Canadian authorities do
4 not have any information
5 which would support the
6 conclusion of the American
7 authorities."

8 Once again, you are relying on the
9 information you received from CSIS and the RCMP to
10 make that statement to the public?

11 MR. PARDY: And our own assessment
12 of that information.

13 MR. CAVALLUZZO: Okay.

14 Next tab 111. We are still at
15 October 20th. This is from yourself to Myra
16 Pastyr-Lupul.

17 Who is she? This is the time that
18 you can identify her position for us.

19 MR. PARDY: Yes. When our
20 activities in looking for Mr. Arar became focused
21 on the Middle East, Ms Pastyr-Lupul became the
22 desk officer concerned with this since her
23 responsibilities were in that area.

24 MR. CAVALLUZZO: Okay.

25 Finally, at tab 119, you get a

1 call from Mr. Pillarella. This is on the 21st
2 of October?

3 MR. PARDY: Yes.

4 MR. CAVALLUZZO: What does he
5 advise you?

6 MR. PARDY: This follows on a
7 message that he had sent us on the 20th when he
8 had spoken to a senior official in the foreign
9 ministry saying that Mr. Arar was not in Syria.
10 Twenty-four hours later he had another call saying
11 that, yes, they had just discovered that Mr. Arar
12 had arrived in Syria from Jordan.

13 MR. CAVALLUZZO: In this note it
14 indicates that you then contacted family members,
15 including Taufik --

16 MR. PARDY: Mm-hmm.

17 MR. CAVALLUZZO: -- Mr. Arar's
18 brother, and Dr. Mazigh?

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: And so on?

21 Now, in your notes at page 6 it
22 indicates that on Monday, October 21st you
23 received a call from Dr. Mazigh?

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: She called to

1 provide information on Mr. Arar's contact with the
2 Syrian Embassy in Ottawa?

3 MR. PARDY: Yes, and I think
4 that follows. I think when I had explained to her
5 that Mr. Arar was in Syria, immediately of course
6 her concern -- well, to a certain extent, focused
7 on the issue of military service and she reported
8 to me the information that Mr. Arar had been in
9 touch with the Syrian Embassy in the spring of
10 2002 with respect to his obligations for Syrian
11 military service.

12 MR. CAVALLUZZO: He was advised
13 that it would be fine for him to travel to Syria?

14 MR. PARDY: The report was that
15 the Syrian government had a program by which, in
16 effect, you paid a certain amount of money and
17 that you would get an escorted trip to Syria --

18 MR. CAVALLUZZO: Right.

19 MR. PARDY: -- and that would not
20 entail spending time with the Syrian army.

21 MR. CAVALLUZZO: I won't ask
22 what the fee was, but I have heard what it is. It
23 is quite --

24 MR. PARDY: It is in the note.

25 MR. CAVALLUZZO: Right. At

1 tab 120 -- this is October 21st still -- that
2 Mr. Graham is found in a press scrum.

3 Do you see that?

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: I guess this is a
6 rough transcription of the press scrum?

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: The question I
9 would have to you relates to the very first
10 statements where at the middle there it states,
11 Mr. Graham stating:

12 "He was a dual citizen with
13 Syria. We have registered
14 our complaint to them that in
15 fact while that may be true
16 it's not a sufficient reason
17 not to have him sent to
18 Canada."

19 Then there is a question:

20 "... actually had been
21 deported? Was the consular
22 staff aware that he was
23 going --"

24 Presumably be deported.

25 Mr. Graham answers:

1 "No, the consular staff had
2 access to him but were not
3 aware that he was going to be
4 deported."

5 Obviously Mr. Graham doesn't
6 say anything, but they had heard on two occasions
7 that they had threatened to deport him. I'm just
8 wondering whether Mr. Graham was aware at the
9 time that there were threats that Mr. Arar may
10 be deported?

11 MR. PARDY: No. I think it
12 reflects the information that on October 5th
13 Mr. Arar's lawyer was in to see him and there was
14 some expectation that there was going to be some
15 sort of a hearing. We were not certain what the
16 results of that hearing were going to be at that
17 time, and then he went missing on the 7th or the
18 8th of October.

19 What Mr. Graham I think is
20 reflecting here is that state of affairs when he
21 went missing. We were not aware that he was going
22 to be deported at that point in time.

23 MR. CAVALLUZZO: Okay. If you
24 go to the next tab, tab 121, for the same date,
25 October 21st. It is I guess referred to as

1 "Press Lines."

2 If you look at pages 4 and 5, in
3 particular Question 14, I would ask you about it.

4 These Press Lines, are these
5 drafted by you or do you have input into the
6 drafting of these Press Lines?

7 MR. PARDY: Yes, I drafted this.

8 MR. CAVALLUZZO: You drafted it,
9 okay.

10 MR. PARDY: You can tell by the
11 format that was used. These were then later sort
12 of transformed into this question-and-answer
13 format that you see here.

14 MR. CAVALLUZZO: I would ask you
15 about Question 14. The question is:

16 "There have been allegations,
17 including those used by the
18 United States in ordering his
19 departure, that Mr. Arar is a
20 member of Al Qaeda. Are
21 these allegations accurate?"

22 Then the answer is:

23 "The Department of Foreign
24 Affairs is not aware of
25 information to support the

1 allegation that Mr. Arar is a
2 member of Al Qaeda.

3 We have also been assured
4 that other parts of the
5 government of Canada does not
6 have information to support
7 such allegations either."

8 Just stopping there. The "other
9 parts of the government" are CSIS and the RCMP?

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: Are there any
12 other parts of government that confirm that there
13 is no substance to the American allegation?

14 MR. PARDY: Not unless you are
15 aware of other arms of government that is involved
16 in this work. I am not.

17 MR. CAVALLUZZO: Okay.

18 MR. PARDY: Can I just add --

19 MR. CAVALLUZZO: Absolutely.

20 MR. PARDY: -- because the next
21 question is of some relevance as well.

22 The question in my mind as to when
23 the Americans were obtaining advance information
24 from foreign airlines flying into the United
25 States as to their passenger list and whether or

1 not they had at that point the advanced
2 information on the September 26th.

3 MR. CAVALLUZZO: We are going
4 to come to that in terms of the NSEERS program,
5 but this question is, like I asked you the last
6 time, is:

7 "Have Canadian authorities
8 provided information to the
9 American authorities that
10 alerted them to the travels
11 of Mr. Arar?"

12 Then it says:

13 "In so far as Department of
14 Foreign Affairs is concerned,
15 no."

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: Once again in
18 answer to that question you said you were relying
19 on the RCMP and CSIS to provide that answer, as
20 well as DFAIT itself.

21 MR. PARDY: That is in terms of
22 what they were going to say to the public. In
23 terms of this whole issue I think we can probably
24 discuss as well when we go forward into March,
25 April and May of the spring and the deck that I

1 was involved in, yes.

2 MR. CAVALLUZZO: That is not a
3 game of poker, that is a PowerPoint presentation,
4 when you refer to the "deck?"

5 MR. PARDY: Oh, yes. As you know,
6 a deck can be shuffled like a deck of cards as
7 well, if it is done properly.

8 MR. CAVALLUZZO: It is my failed
9 sense of humour?

10 MR. PARDY: You haven't worked in
11 government long enough.

12 MR. CAVALLUZZO: No, I haven't.

13 --- Laughter / Rires

14 Tab 123. We are coming to the end
15 of Volume 1.

16 This I guess is a communication
17 from Mr. Pillarella, the Ambassador in Damascus,
18 to a number of people in DFAIT, in particular
19 yourself and Mr. Livermore, the Head of Security
20 and Intelligence?

21 MR. PARDY: That is correct.

22 MR. CAVALLUZZO: Let's just
23 spend a bit of time on this particular memorandum
24 or e-mail.

25 The name has been disclosed. In

1 fact, I am advised by my partner here that I
2 should start at page 7.

3 MR. PARDY: I'm sorry, which page?

4 MR. CAVALLUZZO: Page 7. My
5 partner is usually right.

6 MR. PARDY: The same tab?

7 MR. CAVALLUZZO: Right. The same
8 tab. Tab 123, page 7. It is just the
9 instructions you give.

10 This is an e-mail --

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: -- from yourself?

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: It is sent
15 by other people but it is clearly from yourself.
16 Basically you are advising the people in
17 Damascus that:

18 "In your representations to
19 the Syrians the following
20 points should be registered:
21 - Mr. Arar is a citizen of
22 Canada and has lived
23 continuously in Canada since
24 1987. He has extensive
25 family ties here and his wife

1 and children..."

2 Two:

3 "For reasons not know(n) to
4 us, the Americans decided to
5 deport him on October 8 to
6 Syria via Jordan."

7 And so on and so forth.

8 Three:

9 "The Government of Canada
10 would appreciate the
11 cooperation of the Syrian
12 authorities in arranging a
13 consular visit at the
14 earliest possible time so
15 that we can convey to
16 Mr. Arar('s) family proof of
17 his well being."

18 Finally:

19 "Equally, the government of
20 Canada would appreciate if
21 the government of Syria could
22 permit the return of Mr. Arar
23 to Canada, a country that he
24 can return to at any time."

25 Once again, the objective that you

1 told Dr. Mazigh in that letter of October 17th
2 that this was the goal, to get him to return to
3 Canada as soon as possible?

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: Okay. That was
6 the instruction you gave to the people in
7 Damascus?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: Okay. In terms
10 now of if you go back to the front page, which is
11 the note from Mr. Pillarella, he says:

12 "In a 45 minute meeting
13 with..."

14 The head of the military
15 intelligence -- his name has been disclosed now.
16 He is advised in paragraph 2 and
17 it says:

18 "...Arar appeared at the
19 Jordan/Syria border
20 yesterday..."

21 Which would have been October 21st
22 I guess.

23 "... without warning,
24 escorted by Jordanian
25 officials who had handed

1 him over."

2 There are a couple of points
3 there, obviously.

4 One is that they are saying that
5 he arrived yesterday. Right?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: They are saying
8 that he arrived yesterday without warning. Right.

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: What that means,
11 "without warning", they didn't know he was coming?

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: We have heard
14 on the public record that the Americans said
15 before they sent Mr. Arar to Syria that they got
16 assurances from Syria that he wouldn't be
17 tortured?

18 MR. PARDY: Yes. There is a
19 statement to the press by the American Attorney
20 General to that effect, yes.

21 MR. CAVALLUZZO: That is pretty
22 hard to do if the Syrians are correct that is he
23 is coming without warning. It is unlikely that
24 they would have given assurances.

25 Isn't that correct?

1 MR. PARDY: I fully agree with
2 you, yes.

3 MR. CAVALLUZZO: Okay. Then it
4 goes on, in the third paragraph and it says:

5 "According to (this
6 person who is the head of
7 Syrian Military
8 Intelligence, Mr.) Arar has
9 apparently already admitted
10 that he has connections with
11 terrorist organizations, (he
12 alluded to Pakistani groups)
13 and they would continue to
14 interrogate him."

15 The first question that I would
16 have is: That is pretty fast work you would
17 agree?

18 MR. PARDY: Even for the Syrians,
19 yes.

20 MR. CAVALLUZZO: Even for the
21 Syrians. He comes, he comes unannounced,
22 surprise-surprise, and within hours he has made
23 these admissions.

24 Did that give you pause to
25 say, "You know what, that sounds a little fishy

1 to me." Going back to your knowledge or the
2 public record of the Syrians that they have a
3 tendency to hold people incommunicado until
4 they get the information they want and then
5 disclose the whereabouts of the individual, did
6 you think of that?

7 MR. PARDY: When this was received
8 on the 22nd, I mean, you accepted it at face
9 value, but very quickly, of course, because at
10 that time we were still confused over what
11 happened to Mr. Arar from the date that he left
12 the United States to this particular date, there
13 was still some confusion as to how long he was in
14 Jordan. But the next day, when Mr. Martel spoke
15 to Mr. Arar, Mr. Arar said he was only a few hours
16 in Jordan. So this put paid to this sort of
17 suggestion that he had just arrived the night
18 before in Syria.

19 MR. CAVALLUZZO: It sounds to me
20 like you are giving more credence to what Mr. Arar
21 said than what the Syrians said?

22 MR. PARDY: Absolutely, yes.

23 MR. CAVALLUZZO: Okay.

24 MR. PARDY: I think Mr. Arar lived
25 the experience, yes.

1 MR. CAVALLUZZO: This note goes on
2 and states:

3 "... and they would continue
4 to interrogate him."

5 MR. PARDY: Mm-hmm.

6 MR. CAVALLUZZO: Now that must
7 have worried you somewhat. Knowing the public
8 record of their methods of interrogation, you
9 probably were concerned about that?

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: Then it goes on
12 to say:

13 "In the [Syrian Military
14 Intelligence former head's]
15 view, this admission
16 obviously excluded any return
17 to Canada."

18 And then it goes on:

19 "He added that Arar would be
20 permitted to return to Canada
21 only if it were proven that
22 he had no connections with
23 terrorist activities, an
24 unlikely occurrence, given
25 the alleged admission."

1 Now this point that he would only
2 be permitted to return to Canada if it were proven
3 that he had no connections with terrorist
4 activities, that point there, are you aware -- and
5 you have seen a document that Ms Edwardh will show
6 you in her cross-examination through access to
7 information that the Americans obtained
8 information from the Syrians as to why they
9 released Mr. Arar in November of 2003. And the
10 answer was that they had nothing on him. They
11 didn't prove anything.

12 MR. PARDY: That's right.

13 MR. CAVALLUZZO: You saw that?

14 MR. PARDY: Yes, this is the
15 October 9th document, a report on the American
16 State Department officials speaking to the
17 Syrians, yes.

18 MR. CAVALLUZZO: That's correct.

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: So that here on
21 October -- and we can file that as an exhibit now.

22 THE COMMISSIONER: Exhibit P-89.

23 Mr. CAVALLUZZO: It this P-89?

24 THE COMMISSIONER: Yes.

25 EXHIBIT NO. P-89:

1 Unclassified document
2 obtained from Secretary of
3 State in Washington

4 MR. CAVALLUZZO: And just for your
5 information, Mr. Commissioner, this is an
6 unclassified document which was obtained from the
7 Secretary of State in Washington through the
8 American embassy in Ottawa, and this was obtained
9 through the access to information procedures in
10 the United States.

11 The reference I would make is to
12 paragraph number 7 on the second page, and it
13 says:

14 "Maher Arar case. One of the
15 specific cases discussed was
16 that of Maher Arar."

17 And the context here is you will
18 see that it is a discussion -- if we go back to
19 the first page, you will see that it's a
20 discussion, and it says: The SARG's Ministry of
21 Foreign Affairs, that's the Syria Arab Republic
22 Governments. That is what SARG stands for.

23 "The Syrian Arab Republic
24 Government's Ministry of
25 Foreign Affairs discussed

1 Syria's human rights record
2 with polof."

3 Polof is not a person. A polof is
4 a political officer.

5 MR. PARDY: But it is a person in
6 this case.

7 MR. CAVALLUZZO: It is a person,
8 but they refer to polof as a political officer in
9 the Department of State.

10 That was a discussion that was
11 being held between the Syrian government MFA, or
12 Ministry of Foreign Affairs, along with a
13 political officer with the Department of State.

14 Now we come to Mr. Arar in
15 paragraph 7.

16 It states:

17 "Maher Arar case. One of the
18 specific cases discussed was
19 that of Maher Arar, the
20 Canadian Syrian dual national
21 deported by the United States
22 to Syria in October 2002
23 because of his suspected ties
24 to terrorism. Polof ..."

25 Or the political officer.

1 "... asked the Syrian
2 representative the reason for
3 Arar's October 5, 2003,
4 release. The Syrian official
5 responded that the Syrian
6 government had completed its
7 investigation of Arar and
8 found that there was 'nothing
9 there'. The Syrian official
10 asked, not rhetorically, if
11 the political officer thought
12 that the Syria government's
13 handling of the case would
14 improve Syria's human rights
15 reputation."

16 So this document at least, which
17 represents a discussion between the Syrians and
18 Americans, indicates that indeed the Syrians
19 fulfilled their promise that the only way they
20 would release Arar is, as the general stated on
21 October 22nd, 2002, a year before, is if it were
22 proven that he had no connections with terrorist
23 activities?

24 MR. PARDY: Yes. And I think it's
25 worth pointing out that the Syrian ambassador in

1 Ottawa and the Syrian ambassador in Washington
2 made substantially the same statement publicly at
3 the time that Mr. Arar had been released.

4 MR. CAVALLUZZO: In October of
5 2003?

6 MR. PARDY: In October of 2003.

7 MR. CAVALLUZZO: Okay. So we have
8 the Syrian ambassador to Canada, who is
9 Mr. Arnous, the Syrian ambassador to the United
10 States -- the name I forget.

11 MR. PARDY: Imad Moustapha.

12 MR. CAVALLUZZO: And this
13 particular representative of the Syrian government
14 all saying that as of October 2003, their
15 investigations indicated that Mr. Arar did not
16 have ties with terrorist activities?

17 MR. PARDY: That is correct.

18 MR. CAVALLUZZO: Mr. Pardy, I
19 would now like to move on to the travel advisory
20 that was issued by the Canadian government around
21 this point in time, in October.

22 If we go to Volume 2 --

23 Commissioner, it's 3:30 now. I
24 don't know if you want to take a break at this
25 point in time. We are moving into a completely

1 different area.

2 THE COMMISSIONER: We are going to
3 sit until five o'clock today. Was that the plan?

4 MR. CAVALLUZZO: At least until
5 five o'clock, yes. Unless the witness is getting
6 tired, we will --

7 MR. PARDY: I am fine.

8 THE COMMISSIONER: You will let me
9 know at any time if you are wearing down.

10 MR. PARDY: I certainly will.

11 THE COMMISSIONER: Well, we can
12 sit as late as you think is advisable.

13 But we will take 15 minutes.

14 MR. CAVALLUZZO: Fifteen minutes;
15 thank you.

16 THE REGISTRAR: Please stand.

17 --- Upon recessing at 3:27 p.m. /

18 Suspension à 15 h 27

19 --- Upon resuming at 3:53 p.m. /

20 Reprise à 15 h 53

21 THE REGISTRAR: Please be seated.

22 Veuillez-vous asseoir.

23 MR. CAVALLUZZO: Commissioner,
24 before we resume, a housekeeping matter.

25 I have just spoken to counsel for

1 Parliament, and she advises that it is virtually
2 impossible for her to be here tomorrow. She is in
3 Montreal, and it would be virtually impossible to
4 be here for the seven o'clock motion. However,
5 she did indicate that she could be here at any
6 time on Thursday, so that if we were to have a
7 motion commencing at 8:30, it might --

8 THE COMMISSIONER: At 8:30
9 Thursday morning.

10 MR. CAVALLUZZO: Yes, 8:30
11 Thursday morning may be appropriate.

12 THE COMMISSIONER: Do you think
13 that would be enough time, or should we start it
14 at eight o'clock?

15 MR. CAVALLUZZO: Hopefully, if
16 it's 8:30, we would be completed. If not, eight
17 o'clock is fine as well.

18 THE COMMISSIONER: Do you have a
19 feeling how long you would be?

20 MR. WALDMAN: I don't think it's
21 very complex. I have given my friend
22 Mr. Cavalluzzo copies of the authorities, and my
23 friends a list of the ones I have been able to
24 find. I think I could manage half an hour.

25 THE COMMISSIONER: Okay.

1 MR. WALDMAN: We will submit in
2 writing before then. I will give you before the
3 end of tomorrow.

4 THE COMMISSIONER: That would be
5 helpful if I could get the case law before. And
6 if someone speaking to the counsel for the Clerk
7 could say if they could give to me any authorities
8 they would be relying upon or any material they
9 want me to read, I would read it the night before.

10 MR. CAVALLUZZO: I will ask
11 Mr. Waldman if he could communicate.

12 MR. WALDMAN: I will go outside
13 right now, and I will communicate to her and ask
14 her to send to you by the end of tomorrow all the
15 authorities that she is going to rely on.

16 THE COMMISSIONER: That's
17 terrific, thank you.

18 So we will meet here at 8:30 and
19 do the motion at 8:30 Thursday morning.

20 MR. WALDMAN: I will communicate
21 that to her.

22 THE COMMISSIONER: Thank you,
23 Mr. Waldman.

24 Yes, Mr. Cavalluzzo?

25 MR. CAVALLUZZO: I wonder if I

1 might file at this time a number of travel reports
2 issued by DFAIT?

3 THE COMMISSIONER: P-90.

4 EXHIBIT NO. P-90: Travel
5 reports issued by DFAIT

6 MR. CAVALLUZZO: Mr. Parady, these
7 are travel reports. These are issued by the
8 Department of Foreign Affairs?

9 MR. PARDY: Yes, the Consular
10 Affairs Bureau, yes.

11 MR. CAVALLUZZO: The first one we
12 have in front of us is one dated June 14th, 2002,
13 which would have been, I understand, the report
14 that was in existence prior to Mr. Arar's
15 detention in New York other than that travel
16 bulletin that we looked at on September --

17 MR. PARDY: The two travel
18 bulletins, yes.

19 MR. CAVALLUZZO: The two travel
20 bulletins of September 10th and the 17th.

21 If we look at the first page of
22 the June 14th document, Canadians travelling
23 between Canada and the U.S., it goes on in the
24 next paragraph:

25 "The government has imposed a

1 requirement..."

2 And so on and so forth. What is
3 the gist of this particular advisory to Canadians
4 travelling into and out of the United States?

5 MR. PARDY: In the aftermath of
6 9/11, the Americans, as did most other
7 governments, implemented new security measures in
8 order to verify the bona fides of persons who
9 wanted to enter the United States, and we were
10 giving Canadians a heads up: plan accordingly.

11 MR. CAVALLUZZO: What it indicates
12 is that:

13 "The U.S. has imposed a
14 requirement that all airlines
15 operating flights into the
16 United States collect the
17 following information for
18 every passenger: name,
19 gender, date of birth,
20 nationality..."

21 MR. PARDY: Yes. Earlier I was
22 trying to remember whether this requirement was in
23 effect on September 26th, and clearly it was.
24 Yes.

25 MR. CAVALLUZZO: It goes on to

1 say:

2 "This information is provided
3 to the U.S. Customs service
4 in advance of a flight's
5 arrival in the United States.
6 All passengers travelling to
7 the United States or in
8 transit through the U.S. to a
9 third country must provide
10 this information at the time
11 of the flight check and as a
12 condition of travel."

13 And it goes on.

14 MR. PARDY: Yes. As you can see
15 in the next sentence, this is not the same as
16 NSEERS.

17 MR. CAVALLUZZO: Right.

18 MR. PARDY: This is an advance
19 passenger information system. APIS, I think they
20 called it, or something like that.

21 MR. CAVALLUZZO: And then at page
22 4 of the travel report, the only other reference
23 in this document would be to the fourth paragraph
24 down, where it says:

25 "Canadians arrested or

1 detained have the right to
2 contact a responsible
3 Canadian government office,
4 embassy, high commission ...
5 listed below. Arresting
6 officials have a
7 responsibility to assist you
8 in doing so. Canadian
9 consular officials can
10 provide a list of local
11 lawyers upon request."

12 The next event that occurs is the
13 travel bulletins of September 10 and September
14 17th of 2002, which we reviewed with you earlier.

15 That was called NSEET rather than
16 NSEERS?

17 MR. PARDY: NSEERS. There are two
18 or three different names that have been applied to
19 that particular program.

20 MR. CAVALLUZZO: Then the next
21 travel report of relevance is October 29th, 2002.

22 Before we get to that, could you
23 refer to Volume 2, tab 177.

24 In particular, if you could refer
25 to page 4 of 5, which is an e-mail that you sent

1 on October 19th to John Allen. Do you see is
2 that?

3 MR. PARDY: Yes.

4 MR. CAVALLUZZO: Who is Jon Allen?

5 MR. PARDY: He is my opposite
6 number, Director General for the United States
7 Relations Bureau.

8 MR. CAVALLUZZO: You say in your
9 e-mail.

10 "Jon, in view of the manner
11 in which Mr. Maher Arar was
12 treated by American
13 authorities, would plan to
14 add something along the
15 following lines to our
16 Current Issues page of the
17 Website as well as to the
18 Travel Reports for the United
19 States. Would plan to do so
20 on Monday and as such would
21 appreciate views and comments
22 as early as possible on
23 Monday."

24 And then the quote is:

25 "'All Canadians could be

1 affected by the United States
2 NSEERS program ... In
3 particular it is affecting
4 Canadians who were born in
5 Iran, Iraq, Libya, Sudan and
6 Syria or who may be citizens
7 of those countries. As well,
8 Canadians who were born in or
9 who have the citizenship of
10 Pakistan, Saudi Arabia and
11 Yemen could also attract
12 special attention from
13 American immigration and
14 security officials."

15 And then it goes on:

16 "In these circumstances, the
17 Department of Foreign Affairs
18 advises Canadians who were
19 born in these countries or
20 who may have the citizenship
21 of these countries to
22 consider carefully whether
23 they should attempt to enter
24 the United States for any
25 reason, including transit to

1 other destinations or on
2 return to Canada from third
3 countries. As well, the
4 Department of Foreign Affairs
5 advises other Canadians who
6 may believe that there is
7 reason to believe they could
8 attract special attention of
9 American immigration and
10 security authorities to
11 consider carefully the need
12 to enter the United States
13 for any reason."

14 And then finally it goes on:

15 "The Department of Foreign
16 Affairs stresses that
17 Canadian consular officials
18 will assist all Canadians who
19 are affected by the NSEERS
20 program or who are detained
21 or arrested for other reasons
22 by the American authorities.
23 However, all such persons
24 while in the United States
25 are subject to American law,

1 and legal and administrative
2 processes. When problems
3 occur it could take several
4 weeks or longer for them to
5 be resolved."

6 That was your recommendation in
7 respect of the travel advisory.

8 If we go to the travel report for
9 October 29, 2002, starting at the bottom
10 paragraph, it says:

11 "The United States NSEERS
12 program ..."

13 Going through to the next two
14 paragraphs on page 2, we will see that your
15 recommendation was accepted?

16 MR. PARDY: It's amazing. There
17 are hardly any changes in ten days that it took to
18 implement. That was unique in my experience.

19 --- Laughter / Rires

20 MR. CAVALLUZZO: And the only
21 other reference would be at page 7, where it's
22 pointed out in the travel report, in the fifth
23 paragraph down that:

24 "All carriers, noticeably
25 airlines, but also rail and

1 bus services, have become
2 much stricter about requiring
3 proof of admissibility to
4 Canada as a result of the
5 heavy fines they face for
6 carrying inadmissible
7 passengers."

8 And so on and so forth, and
9 describing the kind of documentation.

10 MR. PARDY: This refers to
11 Canadians, though, returning home, in terms of
12 additional security measures taken by Canada that
13 were applied to people trying to enter Canada,
14 especially Canadian citizens.

15 MR. CAVALLUZZO: Okay.

16 The next report is one week later,
17 on November 7 of 2002, and we see that the
18 references to the NSEERS program have been
19 deleted. Could you tell us why?

20 MR. PARDY: Yes. It was an
21 unprecedented step to issue a travel advisory, the
22 Canadian government issuing a travel advisory
23 vis-à-vis the United States when you realize the
24 sheer volume of traffic. And I think as a result
25 of doing so, we got the attention of the American

1 authorities and they agreed quite early on that
2 they would send out an instruction to the
3 officials at all points of entry that Canadians
4 were not to be subjected to -- that Canadian
5 citizens were not to be subject to the rigours
6 that were being applied to other persons trying to
7 enter the United States.

8 We felt that that was sufficient
9 then to withdraw the travel advisory.

10 MR. CAVALLUZZO: The next travel
11 report is December 6th of 2002, and there is
12 reference in the first paragraph under Attention,
13 which is the advisory portion, where it says in
14 the last sentence:

15 "Some Canadians may also be
16 affected by the United States
17 NSEERS program. Please see
18 entry requirements below for
19 further details."

20 Why that admonition or warning?

21 MR. PARDY: Well, we carried over
22 earlier the information -- I am not sure whether
23 we carried -- we carried over some information
24 into the November 7th report on NSEERS. I think
25 we amplified that in this report, so that the kind

1 of information that we had put into the travel
2 advisories of September 10th and 17th were carried
3 over into the report itself.

4 MR. CAVALLUZZO: Okay. And for
5 counsel's benefit, if you refer to pages 10, 11,
6 and the top line of 12, it describes the
7 information and requirements of the NSEERS
8 program, and we need not --

9 MR. PARDY: As you can see there
10 is considerable detail that we didn't have earlier
11 on, and this sort of reflects then the operation
12 of the program itself; actual experience with it,
13 yes.

14 MR. CAVALLUZZO: Just to complete
15 the record, the final travel report is December
16 20th of 2002, and that's pretty well the same as
17 the previous document.

18 MR. PARDY: Yes. I think the
19 major change was earlier on, as you know, the
20 Americans had a colour code for security alerts,
21 and they were going up and down. And by this time
22 they had gone down to, I think, their lowest
23 level, and earlier on they were a higher level.
24 So we reflected that in this report.

25 MR. CAVALLUZZO: There was

1 something called a special call-in registration
2 procedure for non-immigrants which was added and
3 described --

4 MR. PARDY: It was a program of
5 the day and that was reflected in this report.

6 MR. CAVALLUZZO: The final
7 documents that I need not take you through, there
8 are a couple. One is dated March 26th of 2003;
9 one is dated April 15th, 2003.

10 It would appear that the NSEERS
11 program is being expanded.

12 MR. PARDY: May I have copies of
13 those? I do not have copies of those.

14 MR. CAVALLUZZO: Oh, I am sorry.

15 MR. PARDY: Oh, I am sorry.

16 MR. CAVALLUZZO: You do?

17 MR. PARDY: Yes, they are attached
18 at the end.

19 MR. CAVALLUZZO: Okay. This is an
20 expansion of the program to different countries.
21 For example, in March of 2003, it's extended to
22 Bangladesh, Egypt, Indonesia, Jordan, and Kuwait?

23 MR. PARDY: Yes. I think we ended
24 up with about 26 different countries that were
25 covered under this particular regulation.

1 MR. CAVALLUZZO: Right. And the
2 last document just relates to information on the
3 NSEERS program, and I leave that for counsel to
4 read.

5 If we could go back to the
6 chronology, we are now at October 22nd, 2002, and
7 I would like to refer to an e-mail that you sent
8 Dr. Mazigh.

9 MR. PARDY: The tab number?

10 MR. CAVALLUZZO: It's going to be
11 a new document that we are going to file.

12 MR. PARDY: Oh, okay.

13 THE COMMISSIONER: P-91.

14 EXHIBIT NO. P-91: E-mail
15 from Gar Pardy to Dr. Mazigh

16 MR. CAVALLUZZO: The first
17 reference, Mr. Pardy, is the first e-mail at the
18 bottom of the page, October 22nd, and you are
19 sending this from yourself to Dr. Mazigh.

20 You state -- the subject matter is
21 "Good News".

22 "Dr. Mazigh, we received word
23 this morning that a Canadian
24 embassy official, our consul
25 in Damascus, will visit Maher

1 tomorrow morning at 10:00
2 a.m. Damascus time. I will
3 get back to you as soon as I
4 have a report of the meeting.
5 I would ask that you not give
6 this information to the media
7 at this time. It will be
8 okay after the meeting takes
9 place but let's not do
10 anything now that would
11 jeopardize it taking place."

12 Do you recall sending that e-mail
13 to Ms Mazigh?

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: If we go now back
16 to the document book at tab 131, this would appear
17 to be you giving instructions to Mr. Martel, who
18 is the consular official that will be making the
19 visit. You are listing information that he should
20 have with him when he goes in to see the Syrian
21 authorities?

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: And once again I
24 refer to paragraph (e), just to talk about the
25 consistency of your objective at page 2, wherein

1 it states:

2 "(e) our objective is to try
3 and make arrangements for his
4 return to Canada but this may
5 take some time and in the
6 meantime we will do
7 everything to ensure that he
8 is provided with the
9 appropriate amenities. If
10 there is anything that is
11 needed please let us know."

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: That consular
14 visit, as you know, did take place, and if we
15 refer to 130, the previous tab, we have the report
16 for what is known as the first consular visit.

17 In this description -- and before
18 I take you through it, I just want to file as the
19 next exhibit another description of this meeting,
20 which is redacted in different places.

21 MR. PARDY: I am sorry? It's the
22 same report --

23 MR. CAVALLUZZO: The same report.

24 MR. PARDY: -- but redacted.

25 MR. CAVALLUZZO: That's right.

1 THE COMMISSIONER: P-92.

2 EXHIBIT NO. P-92: Page 1 of
3 Tab 130, unredacted

4 THE COMMISSIONER: Is there a
5 second page to P-92?

6 MR. CAVALLUZZO: No, there isn't.
7 Actually, there should be.

8 THE COMMISSIONER: There are two
9 pages to the other one.

10 MR. CAVALLUZZO: Right, there are
11 two pages to the other one.

12 The only portion that's relevant,
13 though, is the redaction and the unredaction at
14 the bottom paragraph --

15 THE COMMISSIONER: Paragraph 7?

16 MR. CAVALLUZZO: Paragraph 7. You
17 will see the redaction. It reads in the redacted
18 document:

19 "When asked if he wished the
20 Embassy to provide him with
21 anything he might need he
22 answered that his needs were
23 taken care of by his Syrian
24 hosts..."

25 And that's redacted. And what the

1 words were as unredacted are:

2 "His answer was dictated to
3 him in Arabic by the
4 Syrians."

5 THE COMMISSIONER: So the words
6 "His answer was dictated to him in Arabic by the
7 Syrians" was the government initially claimed NSC
8 on that, but no longer claim NSC.

9 Do I understand that correctly?

10 MR. CAVALLUZZO: No. This is a
11 document that was obtained through the access to
12 information process.

13 THE COMMISSIONER: So that in the
14 access process, they didn't claim NSC, but in this
15 inquiry they did.

16 Is that how I understand it?

17 MR. FOTHERGILL: That appears to
18 be the case, sir.

19 THE COMMISSIONER: These things
20 keep cropping up. Is there any explanation as to
21 why there would be more stringent claims for
22 national security confidentiality in this process
23 than there would in the access process, or is that
24 something we should just say, ho hum, it's another
25 mistake by the government? Should I just do that?

1 MR. FOTHERGILL: What I can say is
2 this is a tremendously challenging job for those
3 of us on the government side. I am told there
4 have been something in the range of 200 different
5 access requests, and as you know we have had
6 something like 10,000-odd pages disclosed to you.
7 Of necessity, we can't have the same person doing
8 this entire redaction process; it has to be
9 delegated.

10 I think different people will
11 reasonably bring different approaches to bear.

12 If we look at the redaction in
13 issue here, "His answer was dictated to him in
14 Arabic by the Syrians", I can understand somebody
15 reading that and saying disclosure of that,
16 because of its implicit criticism of the Syrian
17 government, could damage the relationship.

18 THE COMMISSIONER: You can
19 understand someone also reading it and saying to
20 redact that will make the previous part grossly
21 misleading, unfair to Mr. Arar.

22 MR. FOTHERGILL: Yes.

23 THE COMMISSIONER: You can
24 understand that as well.

25 MR. FOTHERGILL: I can understand

1 that as well.

2 THE COMMISSIONER: So you can
3 understand if somebody would say, "Well, I wonder
4 if that was redacted with a view to doing that
5 rather than..."

6 MR. FOTHERGILL: I can see why the
7 question would arise, but I think the
8 inconsistency in some ways is in response to that.

9 If it were always withheld, then I
10 think that might be a reasonable assumption.

11 But I can just tell you that --
12 and I know that I seem to be putting my own
13 credibility on the line here -- that is not our
14 approach. And if these things are brought to the
15 attention of Commission counsel, we will look at
16 it and we will adjust the approach as best we can.

17 But it has been a huge job for us
18 to it keep track of these things, and it really I
19 do think is more practical, if people are aware of
20 inconsistencies, to bring them to our attention
21 and let's resolve them before we get a witness up
22 on the stand, if we can.

23 THE COMMISSIONER: I must just
24 say -- and it is an impression. But my
25 impression, looking at these on occasion, really

1 causes me to ask questions like this.

2 In any event, I won't go on about
3 it now.

4 MR. CAVALLUZZO: In terms of the
5 cooperation of government counsel, my recollection
6 is that this document was handed over by
7 Ms Edwardh in a motion on May 3rd. So if
8 government counsel had that, I don't know why they
9 didn't come to Commission counsel and say unredact
10 the redacted.

11 THE COMMISSIONER: Right.

12 MR. CAVALLUZZO: Anyway ...

13 Mr. Pardy, back to the visit
14 itself, it would appear -- and I will quickly take
15 you through this -- that as far as Mr. Arar's
16 condition was concerned on October the 23rd, which
17 was the date of the first visit, that in paragraph
18 4:

19 "He appeared to be healthy
20 but that was difficult to
21 assess. He looked resigned
22 and submissive. Numerous eye
23 signals seemed to indicate
24 that he was not free to speak
25 out."

1 I would have thought that, to you,
2 you would have expected something like that? Was
3 that a surprise to you?

4 MR. PARDY: No, it wasn't a
5 surprise, no.

6 MR. CAVALLUZZO: Okay. In the
7 next paragraph, it makes reference to what you
8 said earlier, and that is that in the paragraph 5,
9 three lines up from the bottom.

10 Mr. Arar said that:

11 "He said he only stayed in
12 Jordan for a couple of hours
13 before being taken to the
14 Syrian border. He would
15 therefore have been detained
16 in Syria for the past two
17 weeks, contrary to what we
18 had been led to believe."

19 So that is what you were talking
20 about earlier; that Arar said he was only in Syria
21 for a few hours.

22 MR. PARDY: It's an example.
23 Perhaps the Syrian government would have wanted to
24 redact that information as well, but it got said.
25 It's on the record.

1 MR. CAVALLUZZO: Okay. At this
2 point in time, as far as the length of time that
3 he spent in Jordan and/or Syria, had you made any
4 conclusions or were you still in the dark, trying
5 to figure this out as to where he was?

6 MR. PARDY: No. This is the first
7 specific piece of information that we had that the
8 transit through Jordan was -- and I think the time
9 that we subsequently learned, about ten hours, is
10 roughly the time it takes to drive from Amman to
11 the Syrian border.

12 MR. CAVALLUZZO: And I guess I
13 repeat the question, and that is that one real
14 possibility in terms of this, if we can call it
15 the twilight zone, is that, yes, he was in Syria
16 during this period of time being held
17 incommunicado, and as a result of the public
18 record perhaps having information extracted from
19 him through aggressive questioning?

20 MR. PARDY: That's the conclusion
21 I reached quite early on, yes.

22 MR. CAVALLUZZO: Okay. Apart from
23 that, were you surprised at the access that
24 Mr. Pillarella and Mr. Martel got so early on in
25 the piece?

1 MR. PARDY: It was unprecedented
2 for the ambassador to see someone of the level of
3 the general. The general, as you probably know
4 and have realized by now, was one of the
5 senior-most officials in the Government of Syria.
6 Officials involved in security in that government
7 are at the very top of the senior officials, and
8 to have that level of access was unprecedented,
9 yes.

10 MR. CAVALLUZZO: In terms of the
11 advice that the Minister received concerning this
12 consular visit, could you go to tab 129, which is
13 also dated 23 October.

14 This is at page 7 of tab 129.
15 This backgrounder -- and it says "For Minister's
16 eyes only" -- just so that we can understand,
17 because there are several tabs like this, the
18 first part indicates possible questions and
19 answers that may be posed and answers to give in
20 terms of a scrum or in Parliament?

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: Then we have the
23 last two or three pages which are called
24 Backgrounder for the Minister?

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: For the
2 Minister's eyes.

3 These backgrounders were prepared
4 by Myra Pastyr-Lupul and approved by you?

5 MR. PARDY: Yes. Or a combination
6 of both of us doing this work, yes.

7 MR. CAVALLUZZO: Okay. In terms
8 of just the first page, the very first paragraph
9 where it says that:

10 "We were advised this morning
11 that the Canadian Embassy was
12 granted access to Mr. Arar
13 today. Syrian officials
14 arranged a meeting between
15 the Consul and Mr. Arar at an
16 office of the Syrian Security
17 Service."

18 Then it goes on:

19 "Mr. Arar appeared to be
20 healthy. We learned that he
21 had been detained in the US
22 for two weeks before being
23 transferred by private plane
24 to Jordan. It was not clear
25 from the conversation exactly

1 how long Mr. Arar had been in
2 Syria, given that the Syrian
3 officers intercepted the
4 questions."

5 Now, just the description there,
6 that Arar appeared to be healthy, and certainly
7 the report itself qualified that --

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: -- to a certain
10 extent.

11 Is that normally the way
12 the Minister would be briefed, that is just
13 giving him --

14 MR. PARDY: No. In addition to
15 the written record of course there would be
16 briefings that would be done to both his staff and
17 to Mr. Graham. Mr. Graham was very heavily
18 involved in a very direct sense on this issue. I
19 remember speaking to him on a number of occasions
20 and gave him some of the additional information,
21 background information, yes.

22 MR. CAVALLUZZO: Then if we can go
23 back to Exhibit P-91, which is the two e-mails
24 that we just filed --

25 MR. PARDY: Okay.

1 MR. CAVALLUZZO: This is
2 October 23rd and this is you are reporting back to
3 Dr. Mazigh:

4 "I have tried to call and
5 will keep trying. My number
6 is..."

7 Et cetera, et cetera.

8 So that it would appear that you
9 tried to call her on several occasions prior to --

10 MR. PARDY: Yes. And because in
11 some of these calls our preference was to speak to
12 her and give her a larger flavour that sometimes
13 it was difficult to reflect in the written word.

14 MR. CAVALLUZZO: Right. Then in
15 the next couple of paragraphs you attempt to
16 describe Mr. Arar's condition and he is obviously:

17 "He asked that his concern
18 for you and the children via
19 his brothers be sent. We
20 provided him with information
21 on your concerns and he was
22 most appreciative that you
23 and the children are well and
24 still with your parents in
25 Tunis. He stated that his

1 needs are all being looked
2 after. The Syrian
3 authorities indicated that he
4 will remain at the present
5 location in Damascus for some
6 time yet. I will discuss
7 with you on the phone what
8 could be future
9 developments." (As read)

10 As we go on, your contacts with
11 Dr. Mazigh, particularly when she is in Tunis, are
12 almost on a daily basis?

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: If we go on the
15 next day, October 24th, to your notes, at page 7,
16 we see at the top there, this is for Thursday,
17 October 24th.

18 MR. PARDY: Is this still tab 129?

19 MR. CAVALLUZZO: No, this is your
20 notes, your notebook at page 7.

21 At the top there you will see that
22 there appears to be another phone call to
23 Dr. Mazigh and the subject is "Debriefing on
24 meeting with Maher Arar."

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: And so on?
2 It says:
3 "Dr. Mazigh was briefed on
4 the meeting with Mr. Arar by
5 Canadian consul in Damascus.
6 Rest of conversation taken up
7 with need for documentation
8 to support passport
9 application for child."
10 (As read)
11 In other words, at that point in
12 time you start talking about helping her coming
13 back from Tunisia to Canada because of the
14 documentation requirements, and so on?
15 MR. PARDY: That's right. We
16 wanted to ensure that when she decided that she
17 was coming back there was no impediment with
18 respect to travel documentation.
19 MR. CAVALLUZZO: Okay. I just
20 want to take a very brief diversion at this point
21 in the chronology and give you a couple of
22 documents.
23 --- Pause
24 THE COMMISSIONER: Ninety-three,
25 is this?

1 MR. CAVALLUZZO: We were just
2 given this this afternoon. Each bundle contains
3 separate reports of consular visits, so that each
4 bundle will be the same consular report.

5 Mr. Commissioner, if we could
6 start with yours and introduce them individually.

7 THE COMMISSIONER: Okay. The
8 one I have is SUPERtext. I guess that is just the
9 cover sheet.

10 It is Wednesday, April 23, 2003?

11 MR. CAVALLUZZO: That will be the
12 second one. Just hold that. That will be the
13 second one.

14 This one here will be the first
15 one in the chronology.

16 --- Pause

17 MR. CAVALLUZZO: Okay,
18 Mr. Commissioner, if we could introduce these in
19 order?

20 The first would be the document
21 that says 3601, and it is dated -- there is a
22 second page, the fax is dated November the 4th,
23 and it incorporates the consular visit of
24 October 23rd, if that could be the next exhibit?

25 THE COMMISSIONER: That will be

1 Exhibit No. P-93.

2 EXHIBIT NO. P-93: Consular
3 report dated October 23 and
4 statement from Mr. Pillarella
5 dated November 3rd. Document
6 No. 3601

7 MR. CAVALLUZZO: The next exhibit
8 has NSIB 00197 on it. It incorporates the
9 April 22, 2003 visit.

10 THE COMMISSIONER: Exhibit
11 No. P-94.

12 EXHIBIT NO. P-94: Consular
13 report dated April 23rd.
14 Document NSIB 00197

15 MR. CAVALLUZZO: The other one
16 incorporates the consular visit of August 14, as
17 well as other matters.

18 THE COMMISSIONER: That will be
19 Exhibit No. 95.

20 EXHIBIT NO. P-95: Consular
21 report with attached letter
22 from Dr. Mazigh to Prime
23 Minister Chretien dated
24 July 23, 2003; attached final
25 consular visit report dated

1 August 14, 2003;, and
2 confidential memorandum dated
3 September 3, 2003

4 MR. CAVALLUZZO: I will come to
5 the other agency in a minute, but what these
6 documents represent are these consular reports
7 being faxed to the RCMP. These were part and
8 parcel of the RCMP file.

9 So in Exhibit P-93 the RCMP was
10 sent the consular report of October 23rd. As well
11 you can see the statement from Mr. Pillarella
12 dated November 3rd.

13 Similarly, in respect of P-94, the
14 RCMP were forwarded the report of the April 23rd
15 meeting, which was both a politicians' meeting and
16 also turned into a consular visit.

17 Exhibit P-95 is the RCMP were
18 given a copy of Ms Mazigh -- Dr. Mazigh's letter
19 to Prime Minister Chretien of July 23rd, as well
20 as the report of his final consular visit on
21 August 14, 2003, and another confidential
22 memorandum which is dated September 3, 2003,
23 about -- the second page about Maher Arar, the
24 statement is:

25 "The Foreign Minister assured

1 Ambassador Pillarella that
2 the Embassy would continue to
3 have regular access to Arar
4 and promised that he would
5 receive a fair trial as soon
6 as possible." (As read)

7 The question that I would put to
8 the witness, after I get clarification on the
9 other agency -- in the Statement of Anticipated
10 Evidence we do refer to the sharing of these
11 consular reports with both RCMP and CSIS, and we
12 can correct the record in terms of what reports,
13 if any, were received by CSIS.

14 I just want to ensure that my
15 friends are in agreement to that.

16 MR. FOTHERGILL: Yes, there
17 would be.

18 These are the RCMP documents, and
19 if there were an issue of disclosing the fact they
20 had been received they would be blacked out in
21 their entirety.

22 I just point out, Commissioner,
23 Exhibit P-93 is the document we were just
24 discussing. You will see that the line that
25 caused concern to Mr. Cavalluzzo is not redacted

1 in the RCMP version of this document.

2 THE COMMISSIONER: Right.

3 MR. CAVALLUZZO: In any event, am
4 I permitted to advise the Commissioner which
5 consular report CSIS received, if any?

6 MR. FOTHERGILL: Yes, you are.

7 MR. CAVALLUZZO: Thank you.

8 CSIS received the consular reports
9 for -- these are different -- January 7, 2003; and
10 the consular report for 22nd of April, 2003,
11 similar to -- presumably similar to Exhibit P-94.

12 With that in mind --

13 MS EDWARDH: Excuse me. Do you
14 mean received from DFAIT?

15 Do we know whether they received
16 them from the RCMP?

17 MR. CAVALLUZZO: Our understanding
18 is that they were received from DFAIT.

19 THE COMMISSIONER: The RCMP didn't
20 get the January 7, 2003 one?

21 MR. CAVALLUZZO: That's correct.

22 THE COMMISSIONER: Right.

23 MR. CAVALLUZZO: And CSIS didn't
24 get the October 23rd one or the --

25 THE COMMISSIONER: August 14th.

1 MR. CAVALLUZZO: -- August 14th.
2 Now, with that context in mind,
3 Mr. Pardy, I would ask you if you could answer the
4 following question, and that is: What is DFAIT
5 doing sharing this information of consular visits
6 with a police agency, and indeed a security
7 intelligence agency, when my reasonable
8 expectation, if I refer to your website, for
9 example, "A Guide for Canadians Abroad", is that
10 anything that I tell a consular official will
11 remain completely confidential and will be
12 protected under the Canada Privacy Act, and it
13 will not be passed on -- I'm quoting now:

14 "Will not be passed on to
15 anyone other than consular
16 officials concerned with your
17 case without your
18 permission."

19 Then it finally states -- just
20 for counsel's reference, I am referring to
21 Exhibit P-11, tab 14, page 4. The final
22 statement says:

23 "The RCMP and other police
24 agencies have their own
25 international contacts,

1 however, and may know of your
2 circumstances through other
3 sources."

4 So it would appear that the
5 expectation that I would have as a Canadian
6 detained abroad is that any information I give my
7 consular official is private and will not be
8 shared with police and security agencies.

9 Can you please comment on that?

10 MR. PARDY: Yes. A number of
11 comments.

12 The statements that you read in
13 terms of our standard that we use here I think was
14 written before we had cases similar to this before
15 and I think there was some effort under way now to
16 bring that up to date.

17 There are two points I would
18 register. The Privacy Act provides for the
19 dissemination of information essentially on two
20 bases: One is with the permission of the
21 individual.

22 Mr. Arar, in our view, gave us
23 permission to disseminate information to people
24 that would help him in the situation that he was
25 in. That permission was given to Ms Girvan on

1 October the 3rd in her meeting with him.

2 Second, the Privacy Act gives a
3 general permission which says that the information
4 that is collected can be used for the purposes for
5 which it was collected. We were collecting
6 information to help Mr. Arar and it was, in my
7 view, that that information could be passed to
8 individuals that could assist Mr. Arar, then it
9 was appropriate to do so.

10 We will take one at a time.

11 Do you think that the RCMP was
12 attempting to assist Mr. Arar, particularly if we
13 look at the April consular visit and May consular
14 visit, after your experience with them trying to
15 get a joint letter, which we will come to, in May
16 and June of 2003?

17 Do you think the RCMP was honestly
18 trying to help Mr. Arar?

19 MR. PARDY: I made an assessment.
20 As you know, it was a very restricted process.
21 Mr. Solomon would come to me, as I explained this
22 morning, and would say that in his view perhaps we
23 should share that information? I would assess the
24 information with respect to its potential injury
25 for Mr. Arar as versus its potential benefit and

1 the conclusion that I reached in these cases was
2 that I saw some potential benefit.

3 Now, in the full history of this
4 case a reasonable argument could be made that
5 didn't work out, but at every time I was still
6 trying to obtain cooperation from other parts of
7 the Canadian government, because throughout this
8 case the most difficult element here was to get
9 that cooperation, and if I felt that the sharing
10 of information with those agencies that was of no
11 direct cost or no direct injury to Mr. Arar, then
12 I felt that was an appropriate step to take.

13 MR. CAVALLUZZO: Just to assist
14 the Commissioner, you said that you thought that
15 Mr. Arar had given you permission to do this. I
16 am referring to Volume 1, tab 30, at October 3rd,
17 as you have stated.

18 Why don't we just give that to you
19 to refresh your memory.

20 This is the permission you were --

21 MR. PARDY: I'm sorry, the tab
22 number again?

23 MR. CAVALLUZZO: This is tab 30,
24 three zero. The author of the note is Girvan, and
25 she states in the first paragraph:

1 "Called and left a message.
2 Mr. Arar gave his verbal
3 approval to discuss case with
4 his brother, mother-in-law,
5 and wife, anyone who could
6 help him, including his
7 company, MathWorks."

8 (As read)

9 Is that the permission you were
10 talking about Mr. Arar gave?

11 MR. PARDY: That is the
12 permission, yes.

13 MR. CAVALLUZZO: So by "anyone who
14 could help him," once again you are saying that it
15 is possible that the RCMP could help him in the
16 sense that you were trying to get their
17 cooperation in getting a letter signed by the
18 Solicitor General and the DFAIT Minister in order
19 to get his release from Syria?

20 MR. PARDY: Not only that, but I
21 think there was the secondary issue involved here,
22 and this was the possibility that you would end up
23 with a trial in Syria. Certainly in the spring of
24 the year that manifests itself as a specific
25 suggestion and then, of course, in August, it was

1 even a more direct suggestion on the part of the
2 Syrians.

3 It was my view that some of the
4 information that potentially the Syrians had given
5 us with respect to Mr. Arar, there was a
6 possibility that that could be countered by
7 evidence from the Canadian agencies.

8 MR. CAVALLUZZO: Okay. I assume
9 the same rationale is true in respect of the CSIS
10 receiving these documents, that they could be of
11 assistance to him in the future?

12 MR. PARDY: Absolutely.

13 MR. CAVALLUZZO: I guess the
14 question that I would have respecting this is that
15 it doesn't quite say that in the guide. In other
16 words, if I am reading that --

17 MR. PARDY: Well, the reference to
18 the Privacy Act is your key there, and I am sure
19 that every incarcerated Canadian doesn't have a
20 copy at their elbow, but certainly it is a very
21 important guide for us. And those two exceptions
22 are important ones to us in terms of our work to
23 assist Canadians in difficulties overseas.

24 MR. CAVALLUZZO: And the two
25 exceptions are consistent use?

1 MR. PARDY: A use consistent with
2 the purpose for which it was collected, yes.

3 MR. CAVALLUZZO: What's the second
4 exception?

5 MR. PARDY: The second one is that
6 where you get a grant from the individual that we
7 can use that information, yes.

8 MR. CAVALLUZZO: Okay. Just to
9 complete this, do you specifically recall giving
10 your approval to, presumably, somebody in ISI
11 sending these documents to the RCMP and CSIS?

12 MR. PARDY: My recollection is
13 that it was always Mr. Solomon. That's where the
14 agreement was, for a number of reasons. I knew
15 Mr. Solomon very well. I trusted his judgment on
16 a number of things. In addition to this, he was a
17 lawyer himself and understood the sensitivity of
18 some of those issues, yes.

19 MR. CAVALLUZZO: And you recall
20 giving Mr. Solomon approval to pass this
21 information --

22 MR. PARDY: I mean, I can't give
23 you -- you won't find any reflection, but I am
24 absolutely certain that Mr. Solomon would have
25 come to me on each and every occasion and sought

1 that permission, yes.

2 MR. CAVALLUZZO: Okay. You would
3 agree with me that for future reference -- and
4 this isn't a criticism, in light of the fact that
5 you are operating in a particular context.

6 For example, in April, you are
7 dealing with a number of cases, including the SARS
8 situation. The war in Iraq has just broken out
9 and you are dealing with the Iranian government.
10 You are dealing with the Saudi Arabian government
11 with Mr. Samson's case, and I could go on.

12 So I certainly don't mean this as
13 a criticism.

14 But certainly in the future, you
15 would agree with me that if these kinds of reports
16 were to be transferred to a police agency or a
17 security intelligence agency, there is a way to
18 caveat that information so that purely personal
19 information may be removed if it's not necessary
20 for the agency's use in terms of assisting the
21 citizen?

22 MR. PARDY: Sometimes the personal
23 information can be just as influential as more
24 factual information. I would not qualify it in
25 the way that you suggest, no.

1 MR. CAVALLUZZO: Okay. So you
2 don't think that there may be a way to protect the
3 citizen, while at the same time assisting him or
4 her in terms of advancing their cause to the
5 police or security --

6 MR. PARDY: Oh, absolutely there
7 is a way you can. As the Commission has found
8 out, the redaction process is there. In the
9 situations that I was dealing with, we could have
10 used it then but I didn't, no.

11 MR. CAVALLUZZO: If we move to
12 October 24th and go back to your notes, why don't
13 we look at page 7.

14 I think it's important for the
15 Commissioner to be aware that certainly during
16 this period of time -- and we are looking at
17 October 24th at page 7 -- your time is almost
18 exclusively spent on Mr. Arar's case.

19 For example, in respect of
20 Mr. Robert Fry -- first of all, you speak to
21 Dr. Mazigh in the morning, giving her an update,
22 and then there is a reference that you speak to
23 Robert Fry, who will be a witness in these
24 proceedings.

25 He is the executive assistant to

1 the Minister. Is that correct?

2 MR. PARDY: That's correct, yes.

3 MR. CAVALLUZZO: You are giving
4 him an update. Then you are dealing with
5 Mr. Archambault who, as we know, is a consular
6 officer in the Embassy in Washington.

7 Is that dealing with the Arar
8 case? Do you recall?

9 MR. PARDY: I am assuming that it
10 is, and I have been wracking my brains as to what
11 information he was talking about, and I am sorry I
12 can't --

13 MR. CAVALLUZZO: The point is you
14 were spending it on Mr. Arar.

15 MR. PARDY: Oh, yes, very much so.

16 MR. CAVALLUZZO: Then we see John
17 McNee. I understand that he is an Assistant
18 Deputy Minister?

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: And in respect of
21 him, you are talking that you have reported that
22 Mr. Edelson, the Ottawa based lawyer for Mr. Arar,
23 wanted to be in contact to discuss developments.

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: So you are

1 dealing with Mr. Arar's Canadian counsel?

2 MR. PARDY: Mm-hmm.

3 MR. CAVALLUZZO: Then at 4:30
4 arrangements were made to meet with somebody to
5 discuss the Arar case?

6 MR. PARDY: Yes. That was not a
7 non-typical day, I think, throughout the ten
8 months that I was dealing with -- I don't think
9 there are many days there when there wasn't some
10 element of this case that I was involved in.

11 MR. CAVALLUZZO: Finally Yannick,
12 and then Minister's office requesting update on
13 the question/answer for Mr. Arar?

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: Now at tab 135,
16 if we go back to Volume 2? We are still at
17 October 24? This seems to be an e-mail from the
18 ambassador in Jordan, and I guess he was
19 complaining about or surprised at certain press
20 comments relating to Jordan's handling of the Arar
21 case?

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: Without
24 disclosing whatever is under that redaction, do
25 you know what this was about?

1 MR. PARDY: No. I think what he
2 was complaining about -- and there is another
3 document, I think, somewhere in the file where I
4 respond to this.

5 What he is saying is that in the
6 press statement made by the department it did not
7 reflect the information that he had received, I
8 think, on the 21st or the 22nd of October from the
9 Jordanian foreign minister, and he is saying, come
10 on, you guys, get your act together.

11 I went back to him and apologized
12 and it was a matter of making sure the information
13 got transmitted to the press office before they
14 spoke so they were up to date, yes.

15 The ambassador was quite sensitive
16 in the sense that the foreign minister of Jordan
17 went out of his way himself to get us the
18 information that we were seeking. It was a bit
19 late in the day, but certainly we got it. And in
20 all of this, of course, one wants to make sure
21 that those kinds of contacts are kept in good
22 repair because tomorrow morning you may have need
23 to go back on something else.

24 MR. CAVALLUZZO: The next day,
25 October 25th, if you go to tab 137, we see that

1 you e-mail Damascus advising that you would be
2 meeting with Mr. Arar's brothers in the morning
3 and would be meeting with Mr. Edelson, his lawyer,
4 on October 29th?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: And then you make
7 reference that there is media attention continuing
8 on this particular case; that 200 letters have
9 been received, et cetera, and then you ask
10 Damascus when the next visit was going to be.

11 I guess the other thing is the
12 consistent objective, once again, of you, is in
13 the last two lines on page 1.

14 It says:

15 "These largely deal with the
16 actions of the Americans in
17 deporting Mr. Arar but also
18 emphasize the responsibility
19 of the government of Canada
20 in having Mr. Arar returned
21 to Canada as soon as
22 possible."

23 And then you go on to say that
24 there is political interest in this, and so on and
25 so forth.

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: At tab 138 -- we
3 are still at October the 25th -- we have another
4 CAMANT note which contains talking points and so
5 on that would be prepared by you?

6 MR. PARDY: Yes, it's an updating
7 of the public backgrounder that we spoke about
8 earlier, and what I did was add some additional
9 talking points that reflect where we were on 25 of
10 October.

11 MR. CAVALLUZZO: Just a couple of
12 questions relating to the document itself. You
13 can see that the consistent objective once again
14 is to have Mr. Arar returned.

15 But on the first page, it says
16 five lines up:

17 "The Minister of Foreign
18 Affairs on October 15 raised
19 his grave concerns with the
20 US Ambassador concerning the
21 deportation of Mr. Arar."

22 And then it goes on to say:

23 "Further representations are
24 being made to the American
25 authorities on this matter."

1 What are you referring to there in
2 terms of further representations are being made to
3 the Americans?

4 MR. PARDY: Well, our orientation
5 was very much Mr. Arar in Syria at this point. We
6 were not letting slide the issue of what happened
7 in New York and the lack of consultation by the
8 Americans when they took this action. We consider
9 that of sufficient importance to keep it active in
10 the Canada-U.S. relationship.

11 MR. CAVALLUZZO: Who would be
12 carrying the ball, so to speak, on that? Would
13 that be the ambassador to the United States,
14 Mr. Kergin?

15 MR. PARDY: It was a combination
16 of people. The ambassador certainly was involved,
17 and Mr. Graham was still involved, and anybody
18 that was in touch with American officials that had
19 a responsibility in this area, we continued to
20 raise that issue with them, yes.

21 Bearing in mind that we were
22 aware, I think by this time, that Mr. Graham was
23 going to be meeting with Mr. Powell. That was
24 already scheduled, the meeting. I think the first
25 one was in Mexico, I think it was, and there was

1 another one in Ottawa, and then there was one in
2 Prague.

3 MR. CAVALLUZZO: I would like to
4 finally make reference to page 2 of this note. In
5 the middle paragraph, it begins with "The Canadian
6 ambassador to Syria".

7 And then if you jump down two
8 lines, and I am quoting now -- this is still part
9 of tab 138:

10 "The Syrian authorities
11 initially responded on
12 October 20 that he was not in
13 Syria. They responded again
14 on October 21 saying that
15 Mr. Arar had just arrived in
16 their country from Jordan."

17 Then it goes on:

18 "Previous to this, we had
19 made enquiries of the
20 Jordanian authorities as to
21 whether Mr. Arar was in their
22 country. At the time, they
23 replied that he was not but
24 on October 21 reported that
25 he had been in Jordan but 'in

1 transit' to Syria."

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: So that publicly
4 you were saying here that the Jordanian government
5 advised you that Mr. Arar was in Jordan, but only
6 in transit to Syria?

7 MR. PARDY: Yes. I think that
8 cleared up the confusion over where Mr. Arar was
9 from October 10th to October 21.

10 MR. CAVALLUZZO: So that nailed it
11 down?

12 MR. PARDY: Very much so, yes.

13 MR. CAVALLUZZO: Okay. There is
14 another document that I would like to introduce at
15 this time that I think Ms Edwardh was going to
16 file with us.

17 --- Off microphone / Sans microphone

18 THE COMMISSIONER: Ninety-six.

19 EXHIBIT NO. P-96: E-mail
20 from Laura Cyr to HOM Amman,
21 dated 25 October 2002

22 MS EDWARDH: Mr. Commissioner, if
23 I might add for everyone's reference, the note at
24 the top "Not in DFAIT documents" doesn't mean it
25 wasn't in the DFAIT documents. It just didn't

1 form part of the volume of material that was
2 before the Commission of Inquiry. It is in fact
3 Ms Davis' handwriting and it indicates that it is
4 an Access document.

5 THE COMMISSIONER: Thank you.

6 MR. CAVALLUZZO: This document is
7 also dated Friday, October 25th, 2002. It is from
8 Laura Cyr, JPD.

9 Laura Cyr is your administrative
10 assistant and she is sending this document on your
11 behalf?

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: And you are
14 sending it to the embassy in Amman?

15 MR. PARDY: To the Head of Mission
16 there specifically, yes.

17 MR. CAVALLUZZO: Okay. And that
18 was Mr. Bell at the time?

19 MR. PARDY: Correct, yes.

20 MR. CAVALLUZZO: And then there
21 are copies to a number of individuals in DFAIT.

22 You say:

23 "Rod, thanks for your quick
24 eye in noting this."

25 Rod is who?

1 MR. PARDY: Rod Bell, he is the
2 ambassador.

3 MR. CAVALLUZZO: And:
4 "However, the problem was
5 ours and not with the press
6 spokesman about Mr. Arar
7 being in transit."

8 And then it goes on in paragraph
9 2:

10 "The Jordanian information
11 was partially confirmed by
12 Mr. Arar in his meeting with
13 Leo Martel on the 23rd before
14 he was cut off by his Syrian
15 captors. Mr. Arar suggested
16 that he was only in Jordan
17 for a few hours probably on
18 the 8th or 9th of October
19 following his deportation
20 from the United States.
21 However, I am not ready to
22 close the book completely on
23 this until such time as we
24 can sit down with Mr. Arar
25 and go over the sequencing

1 without people with large
2 mustaches looking on. Many
3 thanks for your assistance on
4 this one."

5 --- Laughter / Rires

6 MR. CAVALLUZZO: Having a large
7 moustache myself, I am wondering why you are
8 making pejorative comments about people with large
9 moustaches?

10 MR. PARDY: I did not know you at
11 that time.

12 MR. CAVALLUZZO: Fair enough.

13 I guess the point of this was that
14 you were concerned that while Mr. Arar was being
15 interviewed, there were Syrian officials sitting
16 in the same room and you were concerned about how
17 free he was to talk?

18 MR. PARDY: Yes. One is always
19 sceptical of these things, and I think --
20 subsequently, I think the information is quite
21 confirming about the routine of Mr. Arar between
22 New York and Damascus, yes.

23 MR. CAVALLUZZO: Okay. If we go
24 back to Volume 2, still on the same date, tab 140,
25 Ms Girvan is communicating with you about having

1 spoken to the Centre for Constitutional Rights,
2 and they have forwarded on excerpts from the
3 relevant legislation.

4 What is DFAIT doing here; in other
5 words, contacting or being in contact with the
6 Centre for Constitutional Rights when Mr. Arar is
7 already in Syria?

8 MR. PARDY: As I mentioned to you
9 earlier, while our focus was Syria, we had not
10 given up in any way on the issue of what the
11 United States had done, and this was part of our
12 effort to try to understand American law.

13 The Centre for Constitutional
14 Rights, as you have probably come to learn, is a
15 group of people in the United States that are
16 quite expert in this area, and we are going out
17 seeking their opinion on all of this.

18 I think you will find quite a bit
19 of correspondence in the file with a person by the
20 name of Steven Watt, who is considered to be an
21 expert on this. We were asking him and people at
22 the centre for their opinion, and to give us
23 copies of what they thought was relevant American
24 law and regulation in this area.

25 MR. CAVALLUZZO: Indeed in the

1 previous tab, at tab 139, we see Ms Girvan sending
2 you another excerpt from the relevant legislation:
3 "Title V-Alien Terrorist Removal Procedures"?

4 MR. PARDY: Yes. If you have
5 trouble sleeping, just try to read that late at
6 night.

7 MR. CAVALLUZZO: Yes. Let me see
8 if I can --

9 MR. PARDY: I would just like to
10 add one other comment in terms of talking to
11 American officials. What we tried to do is know
12 as much about their laws at this point, or
13 regulations, as they did in terms of the
14 procedures. We did not want to go in and say:
15 "Well, you tell us." We wanted to at least have
16 some of this information available to us from
17 independent sources.

18 MR. CAVALLUZZO: You don't have to
19 refer to it now, but we can see on page 8 that you
20 are dealing with Ms Girvan in respect of the
21 Centre for Constitutional Rights.

22 This is in your notes; I am sorry.
23 Your notes at page 8, Exhibit P-88.

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: And the other

1 point on page 8 which I think is important, which
2 we are leading up to, we see at the top there, it
3 says:

4 "Minister's office called to
5 inquire about briefing notes
6 for the meeting with
7 Mr. Colin Powell, the
8 American Secretary of State."

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: That meeting is
11 going to be occurring in the next few weeks, and
12 we will come to that as well.

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: If you go now to
15 tab 141, we see an e-mail from you, once again, to
16 Dr. Mazigh.

17 MR. PARDY: No -- I am sorry, yes.

18 MR. CAVALLUZZO: Okay. And this
19 is dated October 27th. We see that it has reached
20 a point where you are calling her by her first
21 name?

22 That not a criticism.

23 MR. PARDY: In the intensity of
24 discussions with people, very quickly you get to
25 the point of first names.

1 MR. CAVALLUZZO: Okay. And it
2 says:

3 "Monia, Ms Pastyr-Lupul and I
4 met with Bassam on Friday..."

5 So on the previous Friday you had
6 met with Bassam, who is Mr. Arar's brother,
7 concerning developments and so on?

8 MR. PARDY: Yes, it was a number.
9 He was sort of the other brother -- for some
10 reason I was dealing almost exclusively with
11 Bassam after the events in New York, yes.

12 MR. CAVALLUZZO: Okay. At tab
13 144, on October the 28th, we see a message from
14 Michael Chesson, who is GMR - C4.

15 The C4 obviously is the secret
16 message. He is the head of the Middle Eastern
17 desk. Am I correct on that?

18 MR. PARDY: He was what we would
19 refer to as the desk officer for Syria, along with
20 several other countries in the region, yes.

21 MR. CAVALLUZZO: There are just a
22 couple of points I would make in regard to this
23 message.

24 In the second paragraph he says:
25 "We should like to caution

1 that great discretion should
2 be used in discussing
3 Mr. Arar's detention by the
4 Syrian authorities and the
5 fact that we have been given
6 consular access. This is a
7 major concession made in the
8 interest of good bilateral
9 relations and we judge it to
10 have been the result of the
11 Syrian Ambassador's
12 intervention with the MFA..."

13 That is the Minister of Foreign
14 Affairs.

15 "... Deputy Minister on
16 Friday October 18, following
17 the Ambassador's encounter
18 with Minister Graham."

19 Then it goes on in paragraph 4:

20 "With due regard for what has
21 been said already and for the
22 pressures DFAIT spokespersons
23 come under from the media, we
24 believe our lines should
25 express appreciation for the

1 cooperation Syria has
2 extended, without being
3 overly specific, as in `the
4 Syrian authorities have
5 stated that the Canadian
6 consul can visit Mr. Arar on
7 a regular basis.' Nor should
8 we speculate about what may
9 happen in future, as in `We
10 will endeavour to have
11 Mr. Arar returned to Canada
12 at the earliest possible
13 date." Assertions such as
14 these can become hostages to
15 fortune."

16 Now, who is this gentleman
17 admonishing in respect of these statements?

18 MR. PARDY: No, I think that
19 Mr. Chesson was playing the role that he would
20 normally play in this. He has deeper knowledge
21 and understanding of dealing with the Government
22 of Syria in terms of how they are likely to react
23 in certain circumstances, and he knows full well
24 that we run a global program. You know, and I
25 mentioned earlier, we had very little by way of

1 specific dealings with the Government of Syria and
2 he is telling us, "Well, okay."

3 As we did come to find out, I
4 think one of the elements that led to the
5 withdrawal of Syrian cooperation in 2003 might
6 very well have been a lot of the press comments
7 in Canada.

8 MR. CAVALLUZZO: We will come
9 to that.

10 MR. PARDY: We will, yes.

11 MR. CAVALLUZZO: There may be
12 other concerns the Syrians had.

13 Just moving along, if you go
14 to tab 145. This is an e-mail, once again from
15 you to Damascus giving further instructions
16 because it appears that Mr. Arar's going to have a
17 second visit --

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: -- on
20 October 29th.

21 Once again, you are keeping
22 in contact with Mr. Martel, giving instructions
23 as to what he should be looking for and so on and
24 so forth?

25 MR. PARDY: Yes. I am also

1 suggesting in paragraph 3 that the Ambassador
2 go back to his high-level contact and start
3 pumping them for any additional information
4 that they can get.

5 MR. CAVALLUZZO: Okay. It says:

6 "...if they can provide us
7 with..."

8 This is the last line:

9 "...if they can provide us
10 with information on the state
11 of their investigation and
12 any conclusions they have
13 reached."

14 Here we have in fact you are
15 instructing Canadian officials to get as much
16 information on the state of their investigation
17 and any conclusions they have reached.

18 Some people might criticize that,
19 saying, "What would you be interested in a Syrian
20 investigation for? We know their tactics. We
21 know that their human rights record is a very poor
22 one. Why would we want any information from them
23 as to their investigation? Aren't we just
24 tolerating or acquiescing to their investigation?"

25 MR. PARDY: Not at all.

1 MR. CAVALLUZZO: What would your
2 comment be?

3 MR. PARDY: Mr. Arar was in the
4 total custody of the Syrian authorities. In order
5 to get to change that situation we needed to know
6 what the Syrians were about and anything that they
7 were prepared to say to us it was very important
8 that we know that. This is a standard instruction
9 that goes out to the Ambassador and Consular
10 Officer for anything that they can pick up in that
11 area, because that is the kind of information that
12 then starts to guide our future actions.

13 MR. CAVALLUZZO: You can see,
14 Mr. Commissioner, that paragraph 4 is redacted.
15 In the past we have requested from the government
16 to release the redacted information in paragraph 4
17 and I'm wondering if we have an answer yet on
18 that request.

19 MR. FOTHERGILL: I think the
20 answer will be influenced in part, sir, by the
21 outcome of the discussions and proposals that we
22 have to Commission counsel and to Ms Edwardh.

23 THE COMMISSIONER: Is it necessary
24 for me to understand that, because I don't.

25 --- Laughter / Rires

1 MR. CAVALLUZZO: It may be
2 necessary for me to understand that, because
3 I don't.

4 MR. FOTHERGILL: I'm sorry, I have
5 to be slightly circumspect.

6 THE COMMISSIONER: No, I
7 understand.

8 MR. FOTHERGILL: It does relate
9 to the same issue that is raised by the possibly
10 inadvertent disclosure of information to counsel
11 for Mr. Arar. If we can come to a resolution on
12 that issue, I think we should be able to come to
13 a comparable resolution on this particular
14 paragraph.

15 MR. CAVALLUZZO: I have always
16 been known for my segues, Mr. Commissioner. It is
17 now five o'clock. We can just go into that
18 meeting, and this may be an appropriate time to
19 break for the day.

20 THE COMMISSIONER: Okay. Are we
21 starting tomorrow -- is ten o'clock going to be
22 fine, or do we need an early start?

23 MR. CAVALLUZZO: If you give me a
24 minute with my counsel? \ THE COMMISSIONER: That's
25 fine.

1 --- Pause

2 MR. CAVALLUZZO: I guess a lot has
3 to do with the cross-examinations. It may be
4 preferable to start at 9:30, just to be --

5 THE COMMISSIONER: We have two
6 more days scheduled for this witness.

7 MR. CAVALLUZZO: That's correct.
8 That's correct.

9 THE COMMISSIONER: Are you likely
10 to finish tomorrow?

11 MR. CAVALLUZZO: If we start at
12 9:30 I will guarantee to be finished tomorrow and
13 hopefully maybe even before the end of the day.

14 THE COMMISSIONER: Is that going
15 to be good enough for the cross-examiners?

16 MS EDWARDH: I think so.

17 We do have the two issues we
18 would like to raise with you: One being the
19 order of cross-examination that we canvassed this
20 morning.

21 THE COMMISSIONER: Right.

22 MS EDWARDH: The other being
23 the issue of whether or not suggestions can be
24 put to a witness and what properly ought to be
25 taken from the suggestion put, if it is put in

1 good faith.

2 THE COMMISSIONER: Right. I have
3 read the case law and I don't think either issue
4 will take a lot of time.

5 MS EDWARDH: Certainly. Then we
6 can be brief.

7 THE COMMISSIONER: I will want to
8 hear from the government.

9 MR. BAXTER: I think the amount
10 of time that the government's re-exam will take
11 will depend partially on the decision as to the
12 order of --

13 THE COMMISSIONER: I put out a
14 suggestion this morning. Let's deal with it now.

15 Does the Government disagree with
16 the suggestion I made this morning?

17 MR. BAXTER: We have a nuanced
18 proposal that we would like to discuss and perhaps
19 we could do that at five o'clock as well?

20 THE COMMISSIONER: Why don't you,
21 and maybe you can let me know what the nuances
22 are. Okay.

23 MR. CAVALLUZZO: In terms of other
24 cross-examiners, there may be another
25 cross-examiner. Mr. Bayne may --

1 THE COMMISSIONER: The absent
2 Mr. Bayne.

3 MR. CAVALLUZZO: Well, let's have
4 his cross-examination right now.

5 --- Laughter / Rires

6 THE COMMISSIONER: That's right,
7 okay.

8 Any more questions, Mr. Bayne?
9 That's it.

10 --- Laughter / Rires

11 MR. CAVALLUZZO: Thank you.

12 THE COMMISSIONER: Okay. We will
13 start at 9:30, though, the suggestion is.

14 MR. CAVALLUZZO: 9:30 is fine.

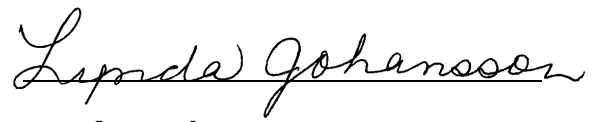
15 THE COMMISSIONER: 9:30 tomorrow.

16 THE REGISTRAR: Please stand.
17 Veuillez-vous lever.

18 --- Whereupon the hearing adjourned at 5:06 p.m.,
19 to resume on Wednesday, May 25, 2005,
20 at 9:30 a.m. / L'audience est ajournée à
21 17 h 06, pour reprendre le mercredi
22 25 mai 2005 à 9 h 30

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Lynda Johansson,

C.S.R., R.P.R.

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