

**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)

le jeudi 26 mai 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Thursday, May 26, 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 Ms Breese Davies Ms Brena Parnes	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

APPEARANCES / COMPARUTIONS

Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture
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

TABLE OF CONTENTS / TABLE DES MATIÈRES

	Page
<u>PREVIOUSLY SWORN: Henry Garfield Pardy</u>	3829
<u>Examination by Mr. Cavaluzzo (Cont.)</u>	3829
<u>Examination by Ms Edwardh</u>	3839

1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Thursday, May 26, 2005

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

4 26 mai 2005 à 10 h 10

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning.

8 Mr. Cavalluzzo, did you have

9 further questions as a result of the new process?

10 MR. CAVALLUZZO: Yes. As a result

11 of the new process, Mr. Commissioner, I have three

12 very brief areas that I want to discuss with

13 Mr. Pardy initially this morning.

14 PREVIOUSLY SWORN: HENRY GARFIELD PARDY

15 EXAMINATION (Continued)

16 MR. CAVALLUZZO: The first area,

17 Mr. Commissioner, relates to a discussion that I

18 had with government counsel, and we both agree

19 that there are no national security concerns with

20 the answer I am going to elicit. But I just

21 advise the witness to ensure that the answer he

22 gives me relates to his own information and not

23 relating to any in camera information or

24 information that is protected by national security

25 confidentiality.

1 The area I would like to initially
2 ask you about, Mr. Pardy, relates to, if I can
3 call it, the evolution of the attitude of the
4 Syrians to Canada in respect of the prospects of
5 releasing Mr. Arar.

6 One point that I am going to ask
7 you relates to the listing of Hezbollah on the
8 terrorist organization list under the Criminal
9 Code on or about December 15th of 2002, and ask
10 you whether the listing of Hezbollah had any
11 impact whatever in terms of the Syrian response to
12 our efforts to have Mr. Arar released?

13 MR. PARDY: Yes, very much so.
14 The issue of the listing of Hezbollah had been
15 under discussion in Canada for some time by the
16 government, and I think there was an awareness of
17 the sensitivity of this insofar as the Syrian
18 government was concerned.

19 The sensitivity wasn't in Syria
20 per se but it was the role of Syria in
21 neighbouring Lebanon, and Hezbollah was very much
22 seen as -- I wouldn't say a client of the
23 Government of Syria, but certainly acted with the
24 full support of the Syrian government, and this
25 was particularly so in southern Lebanon, next to

1 the border with Israel.

2 MR. CAVALLUZZO: Okay. The second
3 area of questioning relates to the CAMANT notes.

4 We saw in your curriculum vitae
5 that you were instrumental in implementing the
6 CAMANT note system or the COSMOS system, and there
7 was some discussion through the evidence of
8 Ms Girvan as to the propriety of destroying notes
9 after information was uplifted into the CAMANT
10 system.

11 I wonder, as the key implementer
12 of this system, whether you can comment on her
13 actions?

14 MR. PARDY: Yes. In large
15 measure, the development of COSMOS, and in
16 particular the CAMANT module, which was for case
17 management, the problem that we were facing in all
18 of this is you had a lot of information scattered
19 throughout the system. Particularly when you run
20 the consular business, headquarters, very
21 straightforward. But we had upwards of over 200
22 points of service overseas.

23 So one of the things that we were
24 concerned with is that we try to bring together
25 that information so that it was available in a

1 coherent way to anybody who could be involved in a
2 particular case.

3 Consistent with this of course, as
4 well, was to protect the information, consular
5 information about individuals, and restrict access
6 to it, which was one of the things that went along
7 with the development of the COSMOS system.

8 But insofar as the people keeping
9 personal notes, we never gave any direction in
10 this area. It was pretty much left to the
11 discretion of the individual. Some people kept
12 them; some didn't.

13 I didn't myself. For instance, in
14 terms of -- I had the desk diary book, which I
15 think is before the Commission, but as you can see
16 in there, the notes are very cryptic and
17 essentially that was meant as a means by which I
18 could give reminders to myself if I had to do
19 something later on in the day.

20 But the destruction of those kinds
21 of notes was entirely normal, and I would say most
22 people followed the practice of Ms Girvan.

23 MR. CAVALLUZZO: Thank you.

24 Finally, the third area will -- I
25 wonder if the clerk might give you Volumes 2 and

1 9.

2 --- Pause

3 MR. CAVALLUZZO: And if we start
4 at Volume 2, I was advised by counsel that I
5 slipped over the third consular visit. It's the
6 only visit that we skipped over. So let us do
7 that now, at tab 192.

8 THE COMMISSIONER: Tab 192?

9 MR. CAVALLUZZO: That's correct.

10 As you will recall,
11 Mr. Commissioner, the third consular visit was on
12 November 12th of 2002.

13 I am going to ask you a particular
14 question relating to paragraph 4, but just the
15 typical question that I would have: Is there
16 anything unusual in the third consular visit
17 report that you should bring to the attention of
18 the Commissioner, or is it business as usual?

19 MR. PARDY: Just give me one
20 moment here and I will review the information,
21 please?

22 --- Pause

23 MR. PARDY: No. I think the key
24 thing is probably in some ways paragraph 5, where
25 Mr. Martel of course tried to, as he was want to

1 do I think just about on every visit, to obtain
2 information about the progression of this
3 "investigation" by the Syrians. The people that
4 he was talking to were certainly aware of the
5 General's conversation with Ambassador Pillarella
6 the week before, and they reflected that in their
7 response to Mr. Martel.

8 MR. CAVALLUZZO: Okay. The
9 specific question relates to paragraph 4, and I am
10 reading it now:

11 "He asked the following be
12 sent to his wife and asked
13 that she continued dating her
14 letters. He spoke Arabic (as
15 requested by the Syrians) and
16 Col. Majed why I had acted as
17 interpreter. 'I hope to be
18 released soon. Thank you for
19 sending me your message. I
20 am asking you to continue
21 sending me letters as this is
22 the only way for me to know
23 of your whereabouts. I
24 believe the decision you have
25 taken is a wise one as the

1 family is returning to
2 Canada. As we had discussed
3 before the chances of working
4 in Tunis did not turn out to
5 be positive. With God's will
6 we will be re-united.'"

7 And I would like to ask you now
8 about tab 808 in the last volume.

9 As you may recall, Ms Girvan was
10 extensively questioned about this particular
11 memorandum, which appears to be dated either June
12 5th or May 6th of 2004. In particular, she was
13 asked about the paragraph at the bottom of page 1,
14 and I read:

15 "He also told me ..."

16 And this, of course, was when
17 Mr. Arar was in detention in New York City.

18 "He also told me that he and
19 his wife and children had
20 moved from Tunisia some
21 months previously, and had
22 given up their home in
23 Canada, because his wife
24 wanted to be nearer her
25 father, who was very ill. He

1 said that he was looking for
2 work in Tunisia first, but
3 that there were not many
4 prospects. He is a computer
5 expert. He had been on his
6 way to Canada to see about
7 business opportunities, as he
8 had had a discussion, he
9 said, with his wife about the
10 need for him to either look
11 in Europe or North America
12 for work. He talked about
13 how much work he had done for
14 Mathworks in the U.S. and
15 that he had travelled often
16 to the United States during
17 that period. He wondered if
18 this had made the authorities
19 suspicious of him."

20 This information, which is noted
21 in 2004, was apparently given to the witness
22 Girvan allegedly on or about October 3rd of 2002
23 when she visited Mr. Arar in detention in New
24 York.

25 The question I have for you is

1 twofold: The first is whether you became aware of
2 this information from Ms Girvan around the time of
3 Mr. Arar's detention in New York City?

4 MR. PARDY: Yes. As my notes
5 indicate, I had a number of telephone
6 conversations with Ms Girvan right after I had
7 returned to Ottawa on October the 3rd.

8 In addition, as you know, we met
9 in Washington on October 9th, I think it is that
10 Ms Girvan arrived there. I was there a day
11 earlier. And we had a number of face-to-face
12 discussions. And some of those points came up
13 very clearly in those discussions.

14 My recollection is that most of it
15 came up in Washington, and particularly there was
16 one other piece of information. As you know,
17 there was some discussion of it earlier, and this
18 was the issue of the use of points by Mr. Arar and
19 the reason why he was flying through the United
20 States was that he had points, I think from
21 American Airlines. I very clearly remember in my
22 mind saying it's probably the most costly use of
23 points that I had experienced up to that point.

24 And it was that kind of context.
25 We just saw it not as being significant

1 information at the time. It was part of our
2 understanding of what was going on.

3 Mr. Arar also, if you will
4 recall -- and I think this is recorded in Ms
5 Girvan's notes of her discussion with him --
6 mentioned MathWorks, the company that he had
7 worked with in the Boston area. Things like that.

8 So all of these things were there.

9 Very early on, as you know, in
10 terms of the family being in Tunis, I was talking
11 to Dr. Mazigh, and the reasons for them being
12 there: illness in the family, the situation in
13 Canada with respect to possible work. The
14 high-tech industry had certainly bottomed out, or
15 was bottoming out I guess is a better way to put
16 it.

17 But in all of this, I would
18 emphasize that where a Canadian is located in
19 terms of our responsibility to provide consular
20 services does not matter one jot to us. I mean,
21 we deal with Canadians who have never been in
22 Canada in their lives.

23 So that element of it was of no
24 consequence whatsoever.

25 MR. CAVALLUZZO: Thank you. You

1 just answered my second question.

2 MR. PARDY: Oh, okay.

3 MR. CAVALLUZZO: That would
4 complete the final line of questions.

5 THE COMMISSIONER: Thank you,
6 Mr. Cavalluzzo.

7 Ms Edwardh?

8 EXAMINATION

9 MS EDWARDH: Thank you,
10 Mr. Commissioner.

11 We will come back to the issue of
12 where a Canadian is located.

13 It certainly has no relevance to
14 whether a person is a Canadian citizen, Mr. Pardy.

15 MR. PARDY: No.

16 MS EDWARDH: But as the construct
17 of dominant nationality has evolved, it's
18 certainly not a matter that is irrelevant in
19 pressing your right to have access to a dual
20 national, the issue of residence?

21 MR. PARDY: Well, as you know -- I
22 am getting into the issue of -- as you know, under
23 international law, there is in my understanding no
24 recognition of this concept of dominant
25 nationality except in a 1930 League of Nations

1 treaty, which essentially states that a dual
2 national when living in a country of second
3 nationality then the country of first nationality
4 has no right to intervene and provide consular
5 service.

6 We found that concept -- Canada
7 was a signatory to that treaty in 1930. It's
8 still in effect, by the way.

9 And we found in the early '90s
10 that that was such a limiting factor to our work
11 in this area that we took action to have Canada
12 denounce that treaty.

13 And it's certainly my
14 understanding that it's the only time that Canada
15 has ever denounced a treaty of this -- or any
16 treaty, for that matter.

17 MS EDWARDH: But certainly -- and
18 we can go to the note a little later, but I just
19 make this point now, since the Commissioner's mind
20 is on it.

21 When you instruct the Ambassador
22 and Mr. Martel with respect to the objectives of
23 their first few consular visits, as they approach
24 those visits, having not had them then, you
25 specifically instruct them to stress Mr. Arar's

1 continued residency in Canada. That's one of the
2 factors?

3 MR. PARDY: Oh, yes, very much so.
4 We had mentioned it in one of the -- I think it's
5 mentioned in one of the notes.

6 MS EDWARDH: Yes.

7 MR. PARDY: But again, you know,
8 you work with the information that you have and
9 try to put the very best face on it that you
10 possibly can.

11 MS EDWARDH: Right. And
12 essentially you knew that there had been an
13 extended stay in Tunisia, but Mr. Arar and his
14 wife, and their children -- all Canadian
15 citizens -- had deep roots in Canada and expected
16 to return?

17 MR. PARDY: Yes, and that's
18 reflected in our instructions to Ambassador
19 Pillarella, yes.

20 MS EDWARDH: Fair enough.

21 Mr. Pardy, my hope, if you will
22 bear with me, is that we can cover some large
23 swaths of information without going in detail
24 through the chronology that Commission counsel led
25 you through, but I suppose I should say, if I

1 overstep that mark and you want reference to some
2 document, stop us, and I am sure everyone will
3 search for it.

4 But I would like to have some
5 general discussion with you, if I could.

6 It's fair to say that your view,
7 not only in this case but in other cases, has been
8 that the public discussion of some issues can
9 compromise the efficacy of quiet diplomacy?

10 MR. PARDY: Yes.

11 MS EDWARDH: Right. And we see it
12 on a number of occasions in this case,
13 particularly after August in 2003, where you
14 become aware of allegations of torture and you
15 have a concern, as does Mr. Martel and the
16 Ambassador, that public discussion of that could
17 impair the delivery of consular services to
18 others, particularly in Syria?

19 MR. PARDY: Yes.

20 MS EDWARDH: And that it's not
21 only in relation to the future -- I mean, the
22 future of delivery of services to others -- it's
23 generally your view that consular services are
24 most effective if they are not carried on at the
25 same time as a public campaign in the nation that

1 is concerned about the wellbeing of one of its
2 citizens?

3 MR. PARDY: Yes. My views on this
4 are in writing, and certainly I have spoken
5 publicly about it as well.

6 MS EDWARDH: You said that to
7 Mr. Cavalluzzo. It's a wisdom that certainly is
8 not written in stone, is it?

9 MR. PARDY: No, and it's almost
10 counter-intuitive for Canadians, yes.

11 MS EDWARDH: If I take you back to
12 another case, certainly you have in your
13 curriculum vitae your involvement with a Canadian
14 citizen who found herself tragically in Vietnam?

15 MR. PARDY: Yes.

16 MS EDWARDH: And indeed you worked
17 in that case with a number of people, the family,
18 and also AIDWIC?

19 MR. PARDY: Yes. And the Toronto
20 police who played a very large role.

21 MS EDWARDH: And indeed you had
22 the assurances of the government of Vietnam that
23 they would await a contingent of police officers
24 from Toronto so that they could review evidence
25 of -- it's Madam Hiep?

1 MR. PARDY: Yes, Nguyen Thi Hiep,
2 yes.

3 MS EDWARDH: Yes. Her innocence,
4 that was the objective?

5 MR. PARDY: It wasn't awaiting.
6 The two visits did take place by officers of the
7 Toronto police and they delivered evidence to the
8 Government of Vietnam, yes.

9 MS EDWARDH: It was the object of
10 those visits to show she was innocent?

11 MR. PARDY: Yes.

12 MS EDWARDH: Now, you will agree
13 with me, sir, that the issue of whether to have a
14 public campaign or leave it to private diplomacy
15 was a matter that was discussed in her case as
16 well, and that you advised the board of AIDWIC, or
17 those of us who were involved, that
18 confidentiality and privacy and not having a
19 public campaign is the best way to bring about a
20 positive result --

21 MR. PARDY: Yes, that was my
22 recommendation to the organization, yes.

23 MS EDWARDH: And you will agree
24 that, tragic though it may be, we all woke up one
25 morning, and having been silent, learned that this

1 Canadian citizen was buried in a shallow watery
2 grave in Vietnam?

3 MR. PARDY: I think it's fair to
4 say that you are overcharacterizing the scene in
5 Canada as one of silence. There was a fair amount
6 of public comment about this case in the Canadian
7 press.

8 MS EDWARDH: Well, I am going to
9 suggest there wasn't much until she was executed?

10 MR. PARDY: Oh, I follow these
11 things fairly carefully. There was a fair bit of
12 comment in the press. I would have wished it as
13 otherwise, and I will wait for your other
14 questions in terms of why we ended up with the
15 situation that we did there.

16 MS EDWARDH: My point is simply to
17 the extent that that case was much quieter than
18 the Arar case -- you will agree with that?

19 MR. PARDY: I would want to review
20 my notes and the file on that one to make that
21 determination. I mean, a death penalty case where
22 the possibility of a death penalty takes on a
23 particular connotation in the Canadian body
24 politic, and certainly the fact that Madam Thi
25 Hiep had been sentenced to death, and we were

1 working against that sentence, I think resonated
2 within the Canadian media.

3 MS EDWARDH: Of course. The fact
4 that you are not prepared to agree with me on is
5 that was a case where organizations like AIDWIC,
6 which are usually loud and clamouring, in fact
7 opted for silence in deference to allowing
8 diplomacy to go forward, and you are not prepared
9 to say that there was less coverage in that case,
10 certainly, by --

11 MR. PARDY: The other element in
12 that case was the fact that the family members
13 themselves were concerned as to whether or not
14 publicity in Canada was going to be helpful to
15 Madam Nguyen Thi Hiep, yes.

16 MS EDWARDH: All I am really
17 trying to establish is that there are different
18 ways to approach it. If you assume that being
19 quiet always works, it would be a terrible
20 mistake, because being quiet may not work to your
21 advantage?

22 MR. PARDY: And then I would like
23 to be in a position to make that decision based on
24 what I know about the case and whether or not
25 moving from one of a quiet approach on a case to

1 one of publicity is going to be beneficial to the
2 individual involved.

3 That is the key determination
4 here. On my part, it's not a determination that I
5 am trying to protect the Government of Vietnam, or
6 any other government for that matter; it has to do
7 with what is going to work to help the person that
8 is in difficulty.

9 MS EDWARDH: That's my point. I
10 am not suggesting you were trying to help, in this
11 advice, any foreign government, but that your
12 judgment about quiet diplomacy is one that
13 certainly we cannot say always works?

14 MR. PARDY: At my age, nothing is
15 absolute, Ms Edwardh.

16 MS EDWARDH: There was a question
17 put to you by Mr. Cavalluzzo about the media
18 campaign, and we can certainly agree with this
19 fact: Mr. Arar's wife and his supporters, and
20 members of the media, and other concerned citizens
21 raised their voices very loudly in the Canadian
22 public, and the issues that they were concerned
23 with were given significant press?

24 MR. PARDY: Yes.

25 MS EDWARDH: And in fact close to

1 the time he returned and thereafter, and shortly
2 thereafter, it was your view -- and we can go to
3 the documents if you need -- but it was your view,
4 and I think expressed to others in that group,
5 that there would be no public inquiry?

6 MR. PARDY: My view was that the
7 mechanism that was available, that mechanism under
8 Canadian law, to review action by the Canadian
9 Police Complaints Commission, was a vehicle that
10 was available and could conceivably arrive at
11 certain conclusions with respect to the conduct of
12 certain Canadian officials, yes.

13 MS EDWARDH: But you also told --
14 and we have the minutes of the meeting -- those
15 that were Mr. Arar's supporters that it was highly
16 improbable and extremely unlikely that a public
17 inquiry would ever be called?

18 MR. PARDY: Yes, that was my view
19 then. But then as you know, other events
20 intervened that --

21 MS EDWARDH: Certainly.

22 MR. PARDY: Yes.

23 MS EDWARDH: But you will agree
24 with me that one of the reasons there is a public
25 inquiry today was the public pressure put on the

1 government to create such an inquiry?

2 MR. PARDY: I am not sure whether
3 that was the main reason that led to the decision
4 of the government, when it did, to call a public
5 inquiry.

6 MS EDWARDH: How about a
7 significant contributing reason?

8 MR. PARDY: The government, if you
9 follow the statements throughout the fall of 2003,
10 were united on this issue in terms of not having a
11 public inquiry. Then an event occurred that led
12 to the government to change its mind.

13 If you look at the statements made
14 publicly, not in the House of Commons, by members
15 of the government, they had concluded that a
16 public inquiry was not warranted in this
17 situation, and they were sticking to this until a
18 certain event occurred.

19 MS EDWARDH: And that event was
20 the publication of an article written by Juliet
21 O'Neill?

22 MR. PARDY: That was the
23 initiating event, but the event itself, I think,
24 that led to the inquiry were the search warrants,
25 yes.

1 MS EDWARDH: Search of her home?

2 MR. PARDY: And the offices of the
3 Ottawa Citizen, yes.

4 MS EDWARDH: I am going to suggest
5 to you, sir, throughout this whole period there
6 was significant public pressure, as well, for a
7 public inquiry?

8 MR. PARDY: Oh, yes. And as I
9 said earlier, the government's response to that
10 pressure, based on the situation previous to the
11 search warrants, was that a public inquiry was not
12 necessary in these circumstances.

13 MS EDWARDH: So I guess, given
14 your view, Mr. Pardy, and I just found it odd and
15 a little unreasonable that certainly from the
16 outside looking at government, it is not
17 infrequent to find Members of Parliament, cabinet
18 ministers, or the Prime Minister, respond to
19 matters of great public concern? They respond?

20 MR. PARDY: Oh, the Canadian
21 political system is highly reactive to what
22 happens within -- it's probably one of the most
23 reactive systems in the world, certainly in terms
24 of my experience.

25 MS EDWARDH: And certainly you

1 will agree with me that one of the principal
2 vehicles promoting a reaction is the media?

3 MR. PARDY: Oh, yes, absolutely.

4 MS EDWARDH: And so it won't
5 surprise you if I share some of Mr. Cavalluzzo's
6 surprise that the pressure for action to bring
7 home Mr. Arar, that was certainly placed on the
8 government may have been a significant factor in
9 the Prime Minister's decision to bring about a
10 consensus and move this matter forward?

11 MR. PARDY: Well, I think you
12 would have to call the former Prime Minister to
13 find out what his exact reasons were.

14 But if you go back and look at the
15 file that is before this Commission, long before
16 there was any public clamour to assist Mr. Arar,
17 the record of my actions were taken right from the
18 very beginning to assist Mr. Arar independent of
19 any of the pressures that were going on in the
20 body politic.

21 MS EDWARDH: Mr. Parady, you
22 misunderstand me. I am not suggesting that from
23 the get-go you didn't pursue this objective.

24 MR. PARDY: Yes.

25 MS EDWARDH: I am interested in

1 how you get to a stage where the waters are
2 sufficiently calm between the various entities of
3 the Government of Canada so that you go above the
4 concerns of CSIS, above the concerns of the RCMP,
5 you go around them and you end up with a letter
6 from the Prime Minister.

7 All I am doing is putting to you
8 the simple proposition that there is no doubt that
9 by that time, by the time the Prime Minister signs
10 on to this proposal, that there is significant
11 public support for bringing Mr. Arar home?

12 MR. PARDY: Yes, and that public
13 clamour was there, I would say, for several months
14 prior to the decision for the Prime Minister to be
15 involved in it. So he was living with that, and
16 he became certainly very aware, I think through
17 discussions that his own officials would have had
18 with him, that there was a need here to break
19 through, if you like, the lack of consensus at the
20 ministerial, if you like, or below the ministerial
21 level in the Government of Canada.

22 MS EDWARDH: And that public
23 expression of concern would certainly be a matter
24 that we would expect the Prime Minister to note
25 when he decided to forge that consensus and write

1 that letter. That's all I am saying.

2 MR. PARDY: Yes. And there is a
3 counter interpretation of all of this. It is
4 possible that we could have arrived at a consensus
5 within the Government of Canada earlier on if the
6 public clamour had not been there.

7 I think one of the issues here,
8 the issue of public policy, is that that level of
9 agitation that was going on could have delayed a
10 consensus arriving at a lower level and possibly
11 earlier within the Government of Canada.

12 MS EDWARDH: Well, we certainly
13 have no evidence that the blocks in your road,
14 sir, arose from the public concern as expressed to
15 Members of Parliament, to the Government of Canada
16 and to the Prime Minister's Office. Those weren't
17 the location of the blocks as you knew them, as
18 you described them over the last two days?

19 MR. PARDY: No. And I would
20 suggest to you that institutions of government and
21 the way that they respond to public pressure
22 varies widely. Some respond to it positively;
23 some respond to it negatively.

24 And certainly we had found insofar
25 as the Government of Syria was concerned, and

1 foreign governments generally respond negatively
2 to public pressure in other countries, and that
3 was my experience on any number of cases that I
4 had dealt with over the years.

5 MS EDWARDH: But my question is
6 really is quite narrow, Mr. Pardy. All I am doing
7 is asking you to agree with me that in the couple
8 of months leading up to the Prime Minister's
9 decision to write the letter that you think had
10 such an important impact on the Syrian government,
11 all I am really saying, sir, is that there was a
12 continuous public concern expressed in wanting
13 action to bring Mr. Arar home, and that there is
14 no doubt that that was a factor that led to the
15 Prime Minister's decision.

16 I am not saying exclusive. He is
17 a politician. Clearly a factor.

18 MR. PARDY: And I think in my
19 response, I think it's important that in effect
20 the issue be laid out in all of its manifestations
21 and not just one narrow interpretation.

22 MS EDWARDH: Absolutely.

23 MR. PARDY: Yes.

24 MS EDWARDH: Can you concede that
25 that would at least be a factor --

1 MR. PARDY: Oh, I have said right
2 at the very beginning that it was a factor. I
3 didn't say that.

4 What I am saying to you is that,
5 as a factor, it could have cut both ways.

6 MS EDWARDH: Sure. It didn't in
7 this case. I don't think it did anyway.

8 MR. PARDY: Okay.

9 MS EDWARDH: We don't have any
10 evidence that it cut both ways?

11 MR. PARDY: Well, as I said to
12 you, the reaction of institutions of government
13 meant, in my view, that it did cut both ways.

14 MS EDWARDH: All right. So what
15 you are talking about is not the Prime Minister's
16 Office. You are talking about institutions of
17 government that are other than the Prime
18 Minister's Office?

19 MR. PARDY: Yes.

20 MS EDWARDH: Such as the RCMP and
21 CSIS?

22 MR. PARDY: And CSIS, yes.

23 MS EDWARDH: They don't like the
24 public clamour because they don't like operating
25 in the public domain?

1 MR. PARDY: But in my mind --

2 MS EDWARDH: Is that a fair
3 statement?

4 MR. PARDY: That's a fair
5 statement.

6 But in my mind it wasn't
7 necessarily exclusive to those organizations. It
8 was the reaction of the Government of Syria, where
9 Mr. Arar was located.

10 MS EDWARDH: So that's the third
11 component?

12 MR. PARDY: That's the third, yes.

13 MS EDWARDH: I am not trying to
14 argue with you, Mr. Pardy.

15 MR. PARDY: No.

16 MS EDWARDH: I want to thank you
17 for your candid acknowledgment yesterday that
18 there is a very significant public record about
19 human rights abuses in Syria.

20 MR. PARDY: Yes.

21 MS EDWARDH: And particularly, it
22 appears, that detainees of military intelligence
23 were more vulnerable to abuse or degrading
24 conditions of confinement or perhaps even torture?
25 That accords with your understanding of the public

1 record?

2 MR. PARDY: Yes. My understanding
3 is that people who find themselves within the
4 purview, if you like, or captivity of intelligence
5 organizations, not infrequently they are outside
6 of any rule of law that exists in a given country.

7 MS EDWARDH: And I think that's an
8 important observation, Mr. Pardy, because, you
9 see, in Canada, if one were arrested and detained,
10 generally the provisions of the criminal law come
11 into play.

12 MR. PARDY: Yes.

13 MS EDWARDH: Police officers have
14 certain duties about giving information to
15 detainees, then they must bring detainees before a
16 court within a reasonable period of time. So the
17 idea of an allegation of criminal wrong-doing in
18 the face of no charge, no access to a court and no
19 trial is something most Canadians are unfamiliar
20 with?

21 MR. PARDY: Very much so.

22 MS EDWARDH: But it is in fact the
23 standard fare of detention by organizations that
24 are really like the Military Intelligence Division
25 of the Syrian government?

1 MR. PARDY: That is correct, yes.

2 MS EDWARDH: We knew, and you
3 described being aware in mid-August, that Mr. El
4 Maati had claimed that he had been tortured by the
5 Syrians.

6 You talked about that yesterday.

7 I take it you received this
8 information when Mr. El Maati was given consular
9 visits when he was in Egypt?

10 MR. PARDY: Yes. I think --
11 again, I didn't have a chance to check the record,
12 but I think it was earlier than August. I think
13 it was July.

14 MS EDWARDH: Yes, you actually
15 said that you thought that it was a little
16 earlier.

17 And the place that Mr. El Maati
18 was, where was he? Was he also under the control
19 as a detainee of Syrian Military Intelligence, to
20 your knowledge?

21 MR. PARDY: We are talking Egypt
22 now?

23 MS EDWARDH: That's right, no.
24 You talked to him in Egypt?

25 MR. PARDY: Yes.

1 MS EDWARDH: When he was in Syria,
2 please forgive me.

3 When he was in Syria, he was a
4 detainee of Syrian Military Intelligence?

5 MR. PARDY: I don't have that as
6 conclusive evidence because we had no access to
7 him whatsoever, and we had no information from the
8 Syrian authorities where he was located in Syria.

9 But I think that it's a reasonable
10 conclusion that that's where he was being held,
11 yes.

12 MS EDWARDH: And I take it if he
13 were held by the Syrian Military Intelligence, he
14 was most probably held in what we now know as the
15 Palestine Branch, if he was held in the Damascus
16 area?

17 MR. PARDY: I have no evidence,
18 one way or the other, on that particular issue.

19 MS EDWARDH: All right.

20 You said in answer to a couple of
21 questions yesterday that you acknowledge the
22 public record in respect of Syrian human rights,
23 and the Military Intelligence branch included a
24 practice of holding people incommunicado during
25 periods of intensive interrogation and the

1 techniques of interrogation may well amount to,
2 certainly abuse, if not torture.

3 You acknowledged that?

4 MR. PARDY: If you recall that as
5 the record, yes.

6 MS EDWARDH: Well, we can look at
7 the record --

8 MR. PARDY: No, I am quite -- you
9 are quoting the record to me. I have not seen it
10 since I said it yesterday.

11 MS EDWARDH: Well, if you have any
12 concern about whether you said it, I can just
13 remind you specifically that Mr. Cavalluzzo took
14 you to the Amnesty International report that
15 specifically talked about incommunicado detention
16 and torture.

17 MR. PARDY: I will not be shy in
18 differing with you if I think the record is
19 different from what you suggest.

20 MS EDWARDH: Thank you, Mr. Pardy.
21 It is not my intention to mislead at all.

22 MR. PARDY: No.

23 MS EDWARDH: Yesterday you said a
24 couple of important things, and I just want to
25 break them down because they certainly are

1 important for Mr. Arar.

2 You said that from your knowledge,
3 from the time he leaves the United States until
4 the time everyone is prepared to say "Ah, he's
5 here", that being October 21st, that what happened
6 to Mr. Arar is certainly, from your perspective,
7 not only consistent with, but now it is confirmed,
8 that he was held incommunicado in Syria?

9 MR. PARDY: I think that's a very
10 reasonable conclusion to reach based on the
11 information that we have, yes.

12 MS EDWARDH: And it's also fair to
13 say, Mr. Pardy, that you knew that there was a
14 substantial, if not probable, risk that if he was
15 held incommunicado in Syria and held by Syrian
16 Military Intelligence, that there was a probable
17 risk he would suffer abuse, perhaps even torture,
18 in the interrogation process?

19 MR. PARDY: Yes.

20 MS EDWARDH: And you made the
21 comment, sir, that the consular report, where it
22 is described as Mr. Arar saying the investigation
23 was much more intensive earlier, was consistent
24 with your knowledge of this initial period of
25 incommunicado detention and interrogation?

1 MR. PARDY: Yes. I think I would
2 need to be reminded of what visit that was.

3 MS EDWARDH: Well, we will find it
4 at tab 229, August --

5 MR. PARDY: Oh, this is the very
6 last visit.

7 MS EDWARDH: No, it's not the very
8 last?

9 MR. PARDY: No.

10 MS EDWARDH: I am being taken
11 astray here.

12 It is indeed --

13 THE COMMISSIONER: Tab 214, is it?

14 MS EDWARDH: Yes -- I am sorry,
15 it's 229.

16 THE COMMISSIONER: Tab 229?

17 MS EDWARDH: Yes, Mr. Commissioner
18 229.

19 And in particular paragraph 7,
20 Mr. Pardy. Commission counsel took you to this
21 paragraph I guess in your first day of testimony.

22 "Upon being questioned..."

23 I am looking at the second line.

24 Do you see that?

25 MR. PARDY: Yes.

1 MS EDWARDH: It says:

2 "Upon being questioned on his
3 current health compared to
4 the day he was first visited
5 he indicated he had been
6 afraid at the beginning as
7 the investigation was more
8 intensive."

9 MR. PARDY: Yes, and I think I
10 went on to say that this was consistent with other
11 experiences that I had with cases in the Middle
12 East.

13 MS EDWARDH: Yes. And you even
14 went further in your testimony yesterday. You
15 said it was certainly not only consistent with
16 your understanding of the public record of
17 incommunicado detention and interrogation, but
18 from your perspective, you said it was very
19 consistent as well with the statements made by
20 Mr. Arar when he returned home?

21 MR. PARDY: Yes.

22 MS EDWARDH: Right. And not to
23 challenge in any way, just to put on the record
24 what those statements were, Mr. Pardy, I would ask
25 you to turn to tab 693.

1 You will recall that Mr. Neve and
2 Mr. Waldman, and several others, appeared with
3 Mr. Arar when he made a public statement, and that
4 public statement was transcribed.

5 It won't surprise you if you find
6 it in the notes here. I am sure it was of
7 interest to persons at the department.

8 You will see it transcribed, and
9 the portion of this that I want to take you to,
10 just to acknowledge what words Mr. Arar spoke when
11 he returned, begins at page 4 of 6.

12 MR. PARDY: Four of six? Yes.

13 MS EDWARDH: And I am going to
14 start, if I could, with what Mr. Arar said.

15 For the record, let's be clear.
16 He made this public statement early in November,
17 November 4th, 2003. Is that correct?

18 MR. PARDY: Yes, about a month
19 after he had returned to Canada, yes.

20 MS EDWARDH: And what he said --
21 and if you just want to follow with me in case I
22 fail in my reading. About eight or ten lines down
23 on page 4 it begins:

24 "It was about 6:00 in the
25 evening..."

1 Do you see that?

2 "...6:00 in the evening on
3 October 9th. Three men came
4 and took me into a room."

5 Do you see that?

6 MR. PARDY: Yes, I do.

7 MS EDWARDH: And:

8 "Three men came and took me
9 into a room. I was very,
10 very scared. I was crying
11 all the time. They put me on
12 a chair and one of the men
13 started asking me questions.
14 I later learned this man was
15 a... Colonel. He asked me
16 about my brothers and why we
17 had left Syria. I answered
18 all the questions. If I did
19 not answer quickly enough, he
20 would point to a metal chair
21 in the corner and ask, do you
22 want me to use this?"

23 Let me just stop there.

24 In the reports in the public
25 record, there certainly is reference to the use of

1 a metal chair in torture sessions in Syria that
2 involve breaking people's backs. Do you recall
3 those references?

4 MR. PARDY: I will take your word
5 that they are there. I can't recall them. But
6 certainly this is not inconsistent with other
7 situations that I have dealt with the use of a
8 metal chair.

9 MS EDWARDH: Thank you.

10 "And he said it many times,
11 do you want me to use this?
12 I did not know then what that
13 chair was for. I learned
14 later it was used to torture
15 people. I asked him what he
16 wanted to hear. I was very
17 terrified and I did not want
18 to be tortured. I would say
19 anything to avoid torture.
20 This lasted for four hours.
21 There was no violence. Only
22 threats. At about 1:00 in
23 the morning, the guards came
24 to take me to my cell
25 downstairs. We went into the

1 basement and they opened a
2 door and I looked in. I just
3 could not believe what I saw.
4 I asked how long I would be
5 kept in this place. He did
6 not answer. But put me in
7 and closed the door. It was
8 like a grave, exactly like a
9 grave. It had no light. It
10 was three feet wide. It was
11 six feet deep. It was seven
12 feet high. It had a metal
13 door with a small opening in
14 the door which did not let in
15 light because there was a
16 piece of metal on the outside
17 for sliding things into the
18 cell. There was a small
19 opening in the ceiling, about
20 one foot by two feet, with
21 iron bars. Over that was
22 another ceiling so only a
23 little light came through
24 this. There were cats and
25 rats up there, and from time

1 to time, the cats peed
2 through the opening into the
3 cell. There were two
4 blankets, two dishes, two
5 bottles. One bottle was for
6 water and the other one was
7 used for urinating during the
8 night. Nothing else. No
9 light. I spent ten months
10 and ten days inside that
11 grave ... The next day, I was
12 taken upstairs again. The
13 beatings started that day and
14 was very intense for a week.
15 And then less intense for
16 another week. The second and
17 the third days were the
18 worst. I could hear other
19 prisoners being tortured and
20 screaming and screaming."

21 Let me stop you there.

22 From your vast knowledge of human
23 rights issues, this technique of letting people
24 just hear others who are being tortured, would you
25 agree with me, Mr. Pardy, is a form of

1 psychological torture?

2 MR. PARDY: Yes, and it's a very
3 common technique. As you will note from my
4 curriculum vitae, I spent three years dealing with
5 what was going on in Idi Amin's Uganda from 1975
6 to 1978 and certainly Uganda in those years where
7 the theory and practice of hell was very evident,
8 yes.

9 MS EDWARDH: And:

10 "Interrogations are carried
11 out in different rooms. One
12 tactic they use is to
13 question prisoners for two
14 hours and then put them in a
15 waiting room so they can't
16 hear the others screaming,
17 and then bring them back to
18 continue the interrogation.
19 The cable is a black electric
20 cable, it's a shredded cable,
21 about two inches thick. They
22 hit me with it everywhere on
23 my body. They mostly aim for
24 my palms but sometimes missed
25 and hit my wrists. They were

1 sore and red for three weeks.
2 They also struck me on my
3 hips and lower back.
4 Interrogators constantly
5 threatened me with a metal
6 chair, tire, and electric
7 shocks. The tire is used to
8 restrain prisoners while they
9 torture them with beating on
10 the sole of their feet. I
11 guess I was lucky because
12 they put me in the tire but
13 only as a threat."

14 And on and on it goes.

15 I take it, given your knowledge of
16 the human rights record and the conditions of
17 detention and confinement under the auspices of
18 the Syrian Military Intelligence, that does not
19 surprise you and is consistent with what you know
20 about the initial periods of detention?

21 MR. PARDY: Yes.

22 MS EDWARDH: Thank you, Mr. Pardy.
23 Now, let me turn to one -- excuse
24 me.

25 And it's those comments that you

1 believe were consistent when you said that his
2 public statements upon his return were consistent
3 with what your understanding was of what kind of
4 thing he would have experienced in the initial
5 period of his interrogation?

6 MR. PARDY: Yes.

7 MS EDWARDH: Thank you.

8 Without taking you through the
9 consular notes -- and we can go through them all
10 if you want to -- can we at least agree on this,
11 and I think Mr. Cavalluzzo used almost as an
12 expression "the moustached men". But it's quite
13 clear that none of these visits -- none of them --
14 permitted Mr. Martel or Mr. Arar to have any kind
15 of a free and candid exchange?

16 MR. PARDY: No, and that's
17 characteristic of almost all consular visits in
18 situations where these kinds of circumstances
19 prevail, yes.

20 MS EDWARDH: And so what we do see
21 on the record is the domination and the control of
22 the detainee through various mechanisms. Is that
23 fair?

24 One of the most important
25 mechanisms is, "Mr. Arar, you speak in Arabic"?

1 MR. PARDY: Yes.

2 MS EDWARDH: And of course that's
3 done because the one thing that the persons who
4 are detaining Mr. Arar want control of is what he
5 says?

6 MR. PARDY: Yes.

7 MS EDWARDH: We do see in the
8 consular reports certain signs that Mr. Arar has
9 had difficulty or is having difficulty. Is that
10 fair?

11 MR. PARDY: Yes, there are
12 indications in, I think, at least two if not three
13 of the reports when you read the sentence, even at
14 the time I read them, that sort of suggested
15 that -- I mean, this was not a very pleasant place
16 to be, but certainly the confirmation of that in
17 any absolute sense was through the information
18 that you just read into the record, yes.

19 MS EDWARDH: Sure. For example,
20 one of the ones -- well, my friend Mr. Cavalluzzo
21 has pointed out:

22 "The first red flag for me
23 was that after someone has
24 disappeared for a period of
25 time, we are told by the

1 Syrians that within 24 hours
2 he has made a confession."

3 You recall that there was --

4 MR. PARDY: Oh, yes. The visit on
5 October 23rd, yes.

6 MS EDWARDH: And that's a big red
7 flag. Because if the Syrians are telling you the
8 truth, that they just got him the night before,
9 then they have done some very rapid and effective
10 interrogation?

11 MR. PARDY: Or they had a standard
12 script to use in these situations.

13 MS EDWARDH: Or they were lying?

14 MR. PARDY: Yes.

15 MS EDWARDH: Fair enough. If you
16 want to, we can turn some of these up, because I
17 think they are useful.

18 THE COMMISSIONER: What's the tab?

19 MS EDWARDH: Let's look at tab 131
20 and 130, because I think you are very good at
21 reading your consular notes and see things in
22 them, Mr. Pardy, that may not be obvious to those
23 of us who are reading them.

24 So if we turn to tab 130, there
25 are a couple of observations I made, and you tell

1 me whether you attach any significance.

2 This relates to the first consular
3 visit, the 23rd of October, 2002.

4 The first sign is we know that
5 Mr. Arar is not meeting Mr. Martel in any prison.
6 He has been taken out from wherever he is and
7 brought to an office; right?

8 MR. PARDY: Yes, but I think your
9 assumption that there isn't a prison involved in
10 the narrow meaning of that word is wrong, because
11 we find quite often in countries that a prisoner
12 is brought to another location for these kinds of
13 meetings and not in the place where incarceration
14 is taking place.

15 MS EDWARDH: But one of the things
16 you are instantly alive to is you can't see what
17 that place is?

18 MR. PARDY: Absolutely.

19 MS EDWARDH: And if I go into
20 Millhaven or Collins Bay, I know what I am
21 getting.

22 MR. PARDY: What you are getting,
23 yes.

24 MS EDWARDH: You have no idea here
25 what you are getting. Is that fair?

1 MR. PARDY: Oh, yes, yes.

2 MS EDWARDH: And that's indeed the
3 observation Mr. Martel makes, and it's a thing to
4 note that he could not see where Mr. Arar was
5 being detained; right?

6 MR. PARDY: Yes.

7 MS EDWARDH: Now, here's another
8 interesting observation: Mr. Arar is sat at a
9 distance. He is not sitting, as you and I would,
10 across a desk for a discussion. He is placed some
11 distance away.

12 And I am going to suggest to you
13 that -- you may not know the distance, but you
14 wouldn't disagree if I said it was 10 or 12 feet
15 sitting away from Mr. Martel?

16 MR. PARDY: Mm-hmm.

17 MR. BAXTER: I am afraid I wonder
18 how Ms Edwardh can lead that question, and how
19 Mr. Pardy can have any opinion with respect to
20 that without running afoul somewhat of where we
21 were yesterday.

22 THE COMMISSIONER: Mr. Martel is
23 going to give evidence, so we will hear from him.

24 I don't know if the witness can
25 answer it from his experience that that might be?

1 I don't know. Maybe he was told by Mr. Martel? I
2 just don't know.

3 MR. BAXTER: Fine.

4 THE COMMISSIONER: One thing I
5 notice is this witness is very able to answer
6 these questions, and when he doesn't know the
7 answer --

8 MR. BAXTER: He will tell you so.

9 THE COMMISSIONER: He is very
10 helpful.

11 I will say this to you,
12 Mr. Pardy -- I am not sure I need to say it to
13 you, but let me say it. If you are not able to
14 answer a question, please say so.

15 MR. PARDY: Yes, thank you.

16 MS EDWARDH: And knowing you,
17 Mr. Pardy, and reading the language that the
18 person, the detainee, is put away from any really
19 close eye-balling, that raises a concern -- or it
20 would to me. Did it to you?

21 MR. PARDY: Yes. The ideal
22 situations in all of these -- I mean conditions
23 for all of these kinds of things is to see
24 Mr. Arar up close, be able to touch him, talk to
25 him in private and all of these things. I fully

1 agree that that's the ideal circumstances.

2 But yet -- can I just draw a
3 conclusion here for you. When you are not in
4 control of those conditions, or if the conditions
5 are such in a given country where you cannot
6 expect that, you don't let your desire for the
7 best kill the little bit of good that is evident.
8 And that is seeing Mr. Arar --

9 MS EDWARDH: He is alive.

10 MR. PARDY: He is alive. He is
11 talking to us.

12 MS EDWARDH: I am with you,
13 Mr. Pardy.

14 What I am really trying to
15 establish is that when you are told by Mr. Martel
16 that this distance is established, one of the
17 things distance does is it makes sure that you
18 don't see any of the marks and bruises that are on
19 a body?

20 MR. PARDY: Yes, or clothes is
21 used, whether it's long sleeves, short sleeves --
22 all of these kinds of things come into play here,
23 yes.

24 MS EDWARDH: And certainly, to the
25 best of your knowledge in any of the early visits,

1 Mr. Martel was not in a position to say to
2 Mr. Arar, "Would you mind discreetly showing me
3 your body? Can I see?"

4 None of that ever happened?

5 MR. PARDY: None of that ever
6 happened, no.

7 MS EDWARDH: And it wouldn't have
8 been allowed to happen?

9 MR. PARDY: Exactly.

10 MS EDWARDH: So Mr. Martel tells
11 you that it's quite clear that Mr. Arar is not
12 free to answer all the questions?

13 MR. PARDY: Yes.

14 MS EDWARDH: And he appears
15 healthy, but it's a difficult question for him to
16 properly assess?

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: And certainly, given
19 the structure of the interview that he had with
20 Mr. Arar, it would be impossible to assess whether
21 someone had been the victim of physical abuse?

22 MR. PARDY: Exactly, yes.

23 MS EDWARDH: Now, one of the other
24 indications -- I just want to see whether you
25 share my concern, sir.

1 Mr. Martel tells you that Mr. Arar
2 is required to puppet the directions given to him
3 by the Syrians. In other words, he is instructed
4 about certain things to say?

5 MR. PARDY: Yes, and how to
6 behave, exactly, and areas that were not to be
7 discussed. Very specific.

8 MS EDWARDH: And he was completely
9 compliant?

10 MR. PARDY: Yes, except on one or
11 two occasions I remember that he pushed against
12 those directions and additional information came
13 out.

14 MS EDWARDH: But that's much
15 later?

16 MR. PARDY: That's much later,
17 yes.

18 MS EDWARDH: In October --

19 MR. PARDY: In October, yes.

20 MS EDWARDH: -- Mr. Martel makes
21 it clear to you that the man he sees is submissive
22 and resigned. That conveys a whole lot, doesn't
23 it?

24 MR. PARDY: Yes, it does.

25 MS EDWARDH: And people who are

1 described that way in the language of a consular
2 note are people for whom you would have profound
3 concern had been abused significantly in the
4 detention, up to that time?

5 MR. PARDY: I would draw a
6 conclusion that this was a very difficult
7 situation, and what led to all of these things --
8 I mean, I still had an open mind -- I shouldn't
9 say I had an open mind. I made certain
10 assumptions that that was quite likely the case,
11 that he was subject to what the British used to
12 say in colonial days -- what was it? -- harsh
13 conditions or harsh imprisonment or something like
14 that -- rigorous imprisonment.

15 RI was the term the British used
16 to use.

17 MS EDWARDH: And in modern
18 discussions in liberal democratic countries like
19 our own, you will agree with me that those
20 conditions and the physical abuse that has gone on
21 in no way comport with the minimum standards of
22 confinement and indeed frequently violate the
23 Convention Against Torture, which prohibits cruel,
24 degrading treatment?

25 MR. PARDY: Yes, but I -- and this

1 came up I think once before, where you made the
2 assumption that there are international standards
3 with respect to prison conditions.

4 As you know, if you narrow your
5 question down to just prison conditions, there are
6 no international standards in this area and it's
7 one of the large issues that I think the
8 international community need to come to
9 conclusions on.

10 Efforts have been made to do so,
11 but they have failed.

12 MS EDWARDH: I read those books
13 that said there were minimum standards.

14 But in any event, physical abuse,
15 conditions that are cruel, degrading, and are
16 inhuman -- we are not worried about international
17 standards; we are worried about Convention Against
18 Torture?

19 MR. PARDY: And the Convention
20 Against Torture was a major step by the
21 international community in this area, yes.

22 MS EDWARDH: Certainly in the
23 first report you have all these red signals going
24 off, that this is consistent with this typical
25 program of interrogation abuse in the initial

1 stages. But there are some things that are
2 missing, and I am curious about the function of a
3 consular note.

4 Mr. Martel doesn't say certain
5 things, or he may not have the information, but if
6 you were going to assess some of the information
7 about Mr. Arar, you would have wanted to know how
8 was he dressed? Is he dressed in full pants --

9 MR. PARDY: Mm-hmm.

10 MS EDWARDH: -- are his arms
11 covered? Would you agree with me that that would
12 be an important observation?

13 MR. PARDY: It was -- it would be.
14 And I think he did refer to those kinds of things
15 in subsequent notes.

16 MS EDWARDH: Only one.

17 MR. PARDY: Only one about the
18 dress? I am not sure.

19 But certainly I think what we are
20 looking for here in these kinds of reports, you
21 try to provide what the client had to say, which
22 is very important, his words. You describe the
23 conditions under which the interview was taking
24 place, and you then try to provide certain
25 conclusions, if you like.

1 You know, Mr. Martel said,
2 "Subject appeared to be healthy, but this is
3 difficult to assess."

4 I think that's the kind of
5 information that we are looking for from notes on
6 these visits.

7 MS EDWARDH: All right. But my
8 observation is if one were really alive to a
9 concern that a person may be the victim of
10 treatment that falls below the standards of the
11 Convention Against Torture, it would be helpful to
12 have the kind of record that one could say
13 Mr. Martel could only see Mr. Arar's arms on
14 August the 14th, which was the first time he said
15 he is wearing a T-shirt. Other than that, he is
16 either warmly dressed --

17 MR. PARDY: Warmly dressed.

18 MS EDWARDH: Which implies totally
19 covered, to me, or there is no notation.

20 There is no discussion in the
21 notes, for example, of whether Mr. Arar appears
22 over the months that pass to lose considerable
23 weight.

24 There is no discussion of -- well,
25 those are the kinds of things that I would think,

1 if you had a real concern that someone might be,
2 or is likely the subject of treatment that falls
3 below -- there might well be a protocol where
4 those consular officials who get access are
5 looking specifically for things?

6 MR. PARDY: All of these things,
7 yes, I don't disagree with you. But I think you
8 have to look at it in the sense of we had five
9 consular visits in a matter of 10 weeks, I think
10 it's fair to say. I think that's what it was, to
11 the end of December, say, for example.

12 Now, what was the weight loss?
13 Ten pounds? Would you notice a drop of ten pounds
14 or even 15 pounds on the part of an individual?

15 Then when the visits started to
16 space themselves out, unfortunately on the April
17 23rd visit, Mr. Martel was not part of the group
18 that went in to see Mr. Arar. That might have
19 been an observation at that point, because the
20 people that were there were seeing Mr. Arar for
21 the first time.

22 Then it was not until August that
23 Mr. Martel saw him again.

24 So those kinds of -- yes, it would
25 be nice to have that information but, again, I

1 think you have to rely on the individual that's in
2 there. And he is doing a number of things in
3 terms of talking to the individual, providing some
4 measure of encouragement to him, trying to
5 ameliorate the conditions of imprisonment by
6 conversations with the guards and other officials
7 that are around.

8 As I mentioned yesterday, part of
9 the process is to try to humanize the situation
10 for the person that is incarcerated. And it's a
11 very difficult role to play.

12 I have gone into these situations
13 and afterwards I said to myself in my mind, I
14 didn't observe this and I should have observed
15 this. These are trying situations, not only for
16 the individual, but for the consular officer in
17 trying to think, "Well, what do I really need to
18 look for here?"

19 As you say in this visit, at a
20 distance, there was a conversation, there was
21 communication, there was information passed, and
22 Mr. Martel was able to make certain observations.

23 But I did not need Mr. Martel to
24 tell me his suspicions as to whether or not
25 serious abuse or torture had taken place. I mean,

1 this is something that I am working with on a
2 daily basis, and it's something that I bring to
3 the equation as a result of my experience.

4 MS EDWARDH: And you read it into
5 these circumstances?

6 MR. PARDY: Yes, absolutely. And
7 I think anyone back in Ottawa that deals with
8 these cases would do exactly that.

9 MS EDWARDH: Fair enough. I see
10 you as being more attuned to this, because by the
11 time you are giving some instructions on the 29th
12 of October, you ask that any changes in Mr. Arar
13 be noted.

14 MR. PARDY: Yes. Could I --

15 MS EDWARDH: Yes, you will find
16 that at tab 147.

17 That's a visit. I think it's 145
18 where you give the instruction.

19 Just before you get into number 2,
20 you say:

21 "Also to see whether there is
22 any change in Maher's
23 presentation/demeanour over
24 the past six days."

25 MR. PARDY: Yes.

1 MS EDWARDH: So you specifically
2 send Mr. Martel in to look for that?

3 MR. PARDY: Mm-hmm.

4 MS EDWARDH: And, interestingly,
5 he says for the first time, if you turn to the
6 consular visit, and he doesn't note this in the
7 first visit, but he tells you at tab 147,
8 paragraph 5, that:

9 "He did not seem to be
10 disoriented anymore..."

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

12 MS EDWARDH: So might we draw from
13 that that certainly it's fair to conclude that
14 Mr. Martel would have understood that, when he
15 first saw Mr. Arar, his presentation was as a
16 person who was disoriented, and there is an
17 improvement now noted?

18 MR. PARDY: Yes, I think that's a
19 reasonable conclusion to draw from the report that
20 Mr. Martel did on -- what's this? October 29th
21 now, yes.

22 MS EDWARDH: So it's just between
23 the 22nd and the 29th, there is some improvement?

24 MR. PARDY: Yes.

25 MS EDWARDH: If you go to the

1 fourth consular exhibit as another example, which
2 you will find at tab 229 -- I am sorry, that's in
3 the next volume, Volume 3.

4 MR. PARDY: Yes.

5 MS EDWARDH: There is a suggestion
6 that the Syrian officials make him stand up?

7 MR. PARDY: Yes.

8 MS EDWARDH: And they do this to
9 show how well he is taken care of?

10 MR. PARDY: Yes, which was a real
11 surprise to me, quite frankly, but, yes --

12 MS EDWARDH: It told you he could
13 stand?

14 MR. PARDY: He could stand.

15 MS EDWARDH: Does it really tell
16 you anything else other than he is still utterly
17 compliant?

18 MR. PARDY: He is under their
19 instruction still, and they want to restrict the
20 amount of information that could become available
21 to us in these circumstances, yes.

22 MS EDWARDH: And that's how you
23 understood it when Mr. Martel was conveying it to
24 you?

25 MR. PARDY: Absolutely.

1 MS EDWARDH: All right. Now,
2 there is another --

3 MR. PARDY: But I would add
4 another point. Over the period of these visits --
5 and I think Mr. Martel noted this once or twice --
6 there seemed to be a -- I don't want to use too
7 strong a word here, but certainly a relaxation on
8 the rigidity of the Syrian authorities here with
9 respect to these visits, which I found equally
10 encouraging, and that led us to conclusions as
11 well.

12 MS EDWARDH: And when you say
13 "relaxation" with respect to the visits, I take it
14 from what you are saying, Mr. Pardy, is what you
15 found there to be was less of the
16 domination/control/direction that you saw in the
17 earlier consular visits?

18 MR. PARDY: Yes. They were
19 allowing, they were willing -- they said well, you
20 can give him -- pass magazines and newspapers.
21 Whether the Syrian guards were interested in
22 reading those themselves, I don't know. But
23 whether they got to Mr. Arar, I am not sure.

24 But again, on their part, it was
25 part of the psychology that surrounds these

1 visits.

2 MS EDWARDH: Right. We will come
3 back to the newspapers, because one of the
4 interesting things that you drew is that Mr. Arar
5 was in fact getting the newspapers.

6 But in fact, if you go to tab
7 192 -- sorry, you have to go back a volume.

8 MR. PARDY: Yes.

9 MS EDWARDH: It is absolutely
10 clear that Mr. Martel is telling him certain
11 things about the news.

12 I would ask you to look at
13 paragraph 3 where he explains the purpose of the
14 visit:

15 "... to provide consular
16 assistance, moral support, as
17 permitted by Syrian
18 authorities and that Canada
19 was doing what it could on
20 his behalf. Arar indicated
21 he hoped to be released soon.
22 Martel kept to the lines that
23 are public knowledge as they
24 appeared in the press."

25 And I took that to be that

1 Mr. Martel -- and of course he will tell us. But
2 I am going to suggest to you that Mr. Martel
3 conveyed certain information to Mr. Arar about
4 what was in the press?

5 MR. PARDY: Yes, that's one
6 conclusion, but on that particular point it's a
7 very narrow one. Mr. Martel would be in the best
8 position, I would think, to provide the Commission
9 with an interpretation of what he meant there.

10 MS EDWARDH: But when you took
11 some comfort in the next consular visit when
12 Mr. Arar asked about something in the press or if
13 it continued in the press, I take it -- you said
14 well at least he was getting the magazines.

15 Well, it may be all he was doing
16 was asking about what Mr. Martel said on an
17 earlier occasion. Fair enough?

18 MR. PARDY: Yes, and I may have
19 overstated that.

20 But I am still open to
21 Mr. Martel -- or, I am sorry, Mr. Arar could -- I
22 don't think it was referred to in his November 4th
23 statement, I think --

24 MS EDWARDH: It wouldn't surprise
25 you for a second --

1 MR. PARDY: No.

2 MS EDWARDH: -- if he never saw a
3 single newspaper or magazine that was dutifully
4 brought to him by consular officials?

5 MR. PARDY: In these
6 circumstances, you are never surprised by
7 anything.

8 MS EDWARDH: And it sure wouldn't
9 surprise you that when you learned something about
10 the conditions of confinement in a shady,
11 grave-like cell, if you couldn't read because it
12 was too dark, that wouldn't surprise you either?

13 MR. PARDY: No, no.

14 MS EDWARDH: These are not the
15 airy, well-lit facilities that we in Canada would
16 expect?

17 MR. PARDY: I don't have any
18 firsthand knowledge of those conditions in Canada.

19 MS EDWARDH: Well, I can vouch for
20 those.

21 --- Laughter / Rires

22 MR. PARDY: I assume you do.

23 MS EDWARDH: Innocently,
24 Mr. Commissioner.

25 There is another interesting

1 thing, and it's almost humorous if you don't
2 translate the significance of it. It is the
3 January 7th consular visit, tab 267. And that is
4 in Volume 3.

5 I just want to make sure your
6 interpretation is the same as mine.

7 MR. PARDY: I am sorry, the tab
8 number again?

9 MS EDWARDH: This is 276.

10 MR. PARDY: Oh, 276.

11 MS EDWARDH: January 7th, 2003
12 consular visit?

13 MR. PARDY: Yes.

14 MS EDWARDH: And there is an
15 almost funny paragraph, paragraph 9:

16 "At the end of the meeting
17 and once Arar had left the
18 room the two officials spent
19 considerable time discussing
20 the detention condition.
21 They went out of their way to
22 say Arar was receiving
23 special treatment. They said
24 he was being kept in a
25 separate room and not mixed

1 with other detainees, was
2 given decent clothing and was
3 provided with the necessary
4 food and water."

5 Well, let me just focus on the
6 separate room.

7 When we go to the hospital or live
8 in a hotel for a while, we love a separate room.
9 I translate that, as I am sure you did, Mr. Pardy,
10 that Mr. Arar was held in utter isolation?

11 MR. PARDY: When anybody in these
12 kinds of conditions uses the word "special", I
13 don't see it necessarily as a positive element.
14 You can be special and be very bad, and that's
15 what I looked at.

16 But in terms of the isolation that
17 was taking place, which is a concern for you,
18 because if there is a mixing of prisoners, that in
19 itself denotes a certain progress, possibly, in
20 terms of what's going on in these circumstances.

21 MS EDWARDH: Well, he is saying he
22 is not mixed with other people --

23 MR. PARDY: Exactly. And I took
24 that to mean that there were still things going
25 on, that they wanted to keep him isolated. And

1 isolation, as you know in these conditions, is in
2 effect a form of abuse.

3 MS EDWARDH: It's complete and
4 utter in his circumstances. If he can't see other
5 prisoners, he can't see his family, he can't see
6 his wife and children, and the only people he has
7 any human contact with are those who hold him in
8 captivity or a consular official, it's pretty
9 clear that is abuse?

10 MR. PARDY: Oh, absolutely, yes.

11 MS EDWARDH: And you and I can
12 agree as well that detention in conditions of
13 isolation that are prolonged inevitably produce a
14 very serious deterioration in mental health and
15 wellbeing?

16 MR. PARDY: Yes, isolation is -- I
17 think there is all sorts of medical literature on
18 that particular point, yes.

19 MS EDWARDH: So you and I agree on
20 that?

21 MR. PARDY: Yes. I have even read
22 Robinson Crusoe.

23 MS EDWARDH: Let me just move and
24 try to summarize this as quickly as possible.

25 You stated in your testimony that

1 the understanding you had from the beginning and
2 continued with you throughout the period of time
3 that Mr. Arar was in detention was that the
4 significant abuse, physical abuse,
5 torture/whatever, which took place in the early
6 days, and -- that's what you are saying?

7 That's your understanding of what
8 happened?

9 MR. PARDY: I think -- and again,
10 I am not going to ask to check the record.

11 But certainly what I was trying to
12 suggest here -- I don't want to use the term
13 "serious". All abuse is serious. What I am
14 trying to say is there was a concentration of
15 attempts, if you like, by the Syrian authorities
16 to condition Mr. Arar quite early in the process,
17 and that is again a normal element that I have
18 observed over the years in terms of people that do
19 this kind of thing.

20 MS EDWARDH: Let me then flip
21 through a whole other time period.

22 I would like to take to you tab
23 508, if I could, and it relates to the last
24 consular visit.

25 Just to summarize the context of

1 that visit, you had seen the Syrian Human Rights
2 Committee report, and then you get a letter passed
3 on to you from Mr. Arar's wife documenting or
4 saying he has been the victim of torture.

5 Mr. Martel obviously goes back
6 into that last visit, and one of the things he is
7 concerned about -- and as you said, there was no
8 real time frame to the allegations put forward by
9 the human rights committee. He goes and he is
10 looking in his mind --

11 I would ask you to turn over to
12 the next tab, 508?

13 MR. PARDY: 508 is a New York
14 Times article -- I am sorry, there is a written
15 note on 508. Tab 507 is the report of Mr. Martel.

16 MS EDWARDH: Right. Is 508
17 anything you are familiar with, or the
18 handwriting?

19 MR. PARDY: No, I don't recognize
20 this report at all.

21 MS EDWARDH: Fair enough. Let's
22 go back to the other tab, 507.

23 It's clear in your mind that what
24 Mr. Martel is going to do is he is going to look,
25 because you haven't had access to Mr. Arar since

1 April. He is looking to see if there are any
2 signs of present, ongoing torture.

3 Is that fair?

4 MR. PARDY: Yes.

5 MS EDWARDH: That was his focus
6 when he went into that meeting.

7 MR. PARDY: We used that issue as
8 the pressure point on the Syrians to grant us
9 access, because as you know, we had nothing since
10 April.

11 MS EDWARDH: Right. So what
12 Mr. Martel wants to know is, "Mr. Arar, have you
13 been recently tortured?" That's what he is
14 looking for it, signs of it, physical signs of it,
15 et cetera?

16 MR. PARDY: Yes.

17 MS EDWARDH: What Mr. Martel was
18 not concerned about, because you guys already had
19 a working set of hypothesis, was whether when
20 months and months and months in the past he had
21 been held incognito, he had been tortured. That
22 was the subject matter of the inquiry?

23 MR. PARDY: And as I mentioned,
24 the information that was received from the SHRC,
25 as I said, did not have a time context, and we

1 were concerned, given the specificity of that
2 information, as to whether something was going on
3 in August of 2003.

4 MS EDWARDH: So certainly
5 Mr. Martel's inquiry was about, "Are you being
6 tortured now?"

7 MR. PARDY: Yes.

8 MS EDWARDH: Let's leave that
9 whole area -- it's always troubling for the
10 soul -- to another one for a moment.

11 I am troubled by tab 502,
12 Mr. Pardy. I am troubled with it because -- just
13 give me a moment to find it.

14 I can find the tab, it's just the
15 page.

16 MR. PARDY: Yes, there are ten
17 pages there.

18 MS EDWARDH: Because there is a
19 reference, and this is sent from Mr. Pillarella,
20 the ambassador.

21 This is the very top one, August
22 12th, 2003. So you are just getting ready to go
23 into this visit; correct?

24 MR. PARDY: This is the page 1 you
25 are referring to.

1 MS EDWARDH: Yes, I am looking at
2 page 1.

3 MR. PARDY: Okay.

4 MS EDWARDH: The first e-mail.

5 MR. PARDY: Yes.

6 MS EDWARDH: It goes to a number
7 of people -- and perhaps you will just describe
8 it -- sent August 12th, 2003.

9 It goes to Graeme McIntyre. Who
10 is he again?

11 MR. PARDY: I think he was the
12 desk officer for Syria in the Political Relations
13 Division at that time, yes.

14 MS EDWARDH: And the person who
15 was the desk officer for Political Relations, what
16 is their function?

17 MR. PARDY: Their function is to
18 have an overview of all of the elements that go
19 into Canada's relation with a specific country,
20 and that would include political, economic, social
21 conditions, human rights conditions. All of that
22 should fall within the purview of the desk
23 officer.

24 MS EDWARDH: And are they
25 fundamentally tasked with promoting both Canada's

1 values and interests, but in the maintenance of
2 the relationship?

3 MR. PARDY: An element in that,
4 yes, quite clearly. That's why the Department of
5 Foreign Affairs exists up to a certain point, yes.

6 MS EDWARDH: And it is copied to a
7 number of other persons whom we have seen before?

8 MR. PARDY: Mm-hmm.

9 MS EDWARDH: Do you get this memo?

10 MR. PARDY: I can't recall, I am
11 not on the -- which I find surprising, that there
12 is no one in the Consular Affairs Bureau that is
13 copied on this memo.

14 MS EDWARDH: And I do, too.

15 MR. PARDY: Yes.

16 MS EDWARDH: Because of course --

17 MR. PARDY: That does not say,
18 given the way the system operates, that one of the
19 addressees on the message says, "Oh, god, we
20 didn't copy Pardy. Let's get it over to him."

21 I can't discount that possibility.

22 MS EDWARDH: No, but I can't find
23 any record.

24 MR. PARDY: Yes.

25 MR. BAXTER: It's coming from your

1 secretary, Mr. Pardy. Does that assist you in any
2 way?

3 The CAMANT note is a posting by
4 Laura Cyr.

5 MR. PARDY: Okay. So that would
6 indicate that I would have seen it then, if she
7 had posted it into CAMANT as one of the data dumps
8 that she was doing.

9 Is that what you are suggesting?

10 What's the record number? Oh, I
11 am sorry, yes. Exactly. This is a record out of
12 CAMANT -- I am sorry. I forgot to look at the top
13 of the page.

14 So quite obviously it did come to
15 my attention, yes.

16 MS EDWARDH: When you say it did
17 come to your attention -- I am unclear about these
18 dumps. All of a sudden you get 20 e-mails --

19 MR. PARDY: Can I explain?

20 MS EDWARDH: Sure. Would you help
21 us?

22 MR. PARDY: It's a puzzle.

23 CAMANT, as I explained earlier, is
24 a very restricted database, and we restrict the
25 people who do have access to this. But when you

1 get high-profile cases, the number of people that
2 are involved in the case is quite broad and they
3 are outside of the information that is available
4 in CAMANT.

5 A large part of this information
6 would come to me through e-mail. It would come
7 and given a variety of preoccupations -- and it's
8 very simple. Every time I had a piece of this, I
9 could have copied it over into CAMANT, and would
10 have done so. But I was dealing with so many
11 subjects, I would put them in an e-mail file, and
12 the arrangement then was for Miss Cyr to go in
13 every couple of days -- and sometimes, as you will
14 see, there is larger gaps than that -- and she
15 would cut and paste them all over into CAMANT on
16 my behalf.

17 MS EDWARDH: And was your practice
18 then to carefully review them all, or do you just
19 know that they are in the file and if you need
20 them you could go back? If you have reviewed
21 them, great.

22 MR. PARDY: No, I would have
23 reviewed them when they came to me in their
24 original form. I would not have gone back into
25 CAMANT after they had been posted there by Miss

1 Cyr, other than if I was going for something that
2 was in the file, I would note the fact that this
3 material was there.

4 MS EDWARDH: So somehow this gets
5 into the CAMANT file. Can you tell what date it
6 was posted by your secretary?

7 MR. PARDY: On the 20th of August.

8 MS EDWARDH: Right. So on the
9 20th of August then. Can we tell when you would
10 have seen it?

11 MR. PARDY: I would have assumed
12 here that I would have -- because I would have
13 seen it probably in close proximity to the date on
14 the message, August the 12th.

15 MS EDWARDH: All right. Let me
16 tell you what troubles me.

17 MR. PARDY: Yes.

18 MS EDWARDH: There is a
19 notification that there is a Thursday morning
20 consular visit with Mr. Arar in that paragraph.

21 MR. PARDY: Yes.

22 MS EDWARDH: It says:

23 "... a meeting with Arar
24 should help us to rebut the
25 recent charges of torture."

1 And I find that troubling,
2 Mr. Pardy, because knowing you, for example, the
3 last thing you would start off with is a mindset
4 that you are rebutting it, but rather to assess
5 carefully whether there is any evidence that would
6 warrant a conclusion one way or the other.

7 But you wouldn't start from the
8 position of rebutting something that you cannot
9 know whether it happened or not.

10 MR. PARDY: Insofar as my view is,
11 no, I would not start from that proposition, no.

12 MS EDWARDH: Right. And it's
13 clear that Mr. Pillarella, at least from this
14 memorandum -- and we will hear from him -- had
15 that mindset, or that's the language that he chose
16 to use?

17 MR. PARDY: Yes, and I would not
18 wish to impute motivation here for Mr. Pillarella.
19 As you have noted, there is going to be a chance
20 to see him.

21 I would read this in the context
22 of everything else that Mr. Pillarella had done
23 over the months there to help Mr. Arar. So my
24 inclination is to be much more charitable than
25 suggested by your question here.

1 MS EDWARDH: Or suggested by the
2 language that Mr. Pillarella --

3 MR. PARDY: Or suggested by the
4 language, exactly, yes.

5 MS EDWARDH: I am drawing it from
6 the language.

7 MR. PARDY: Yes.

8 MS EDWARDH: Because there is a
9 big difference in seeking to rebut something
10 rather than seeking to explore whether it is a
11 possibility that exists.

12 You will agree with that?

13 MR. PARDY: Can you repeat that?
14 There were two turns there.

15 MS EDWARDH: Sorry. There is a
16 difference between seeking to rebut something,
17 showing it is wrong, and seeking to explore
18 whether or not there is a basis, one way or the
19 other, to conclude it's true or false?

20 MR. PARDY: Yes. The words would
21 lead to certain conclusions, yes.

22 MS EDWARDH: I have another
23 question that relates to this.

24 On the final visit we know that
25 Mr. Pillarella approves the consular note, and he

1 does from time to time other consular notes.
2 Mr. Martel signs off, and it says "Approved -
3 Pillarella".

4 But we don't find that, for
5 example, that anyone approves Ms Girvan's notes.
6 When she writes about her visits, she writes from
7 her observations.

8 Why does Mr. Pillarella approve
9 the note in Damascus?

10 MR. PARDY: Again, practice varies
11 according to the location. Ms Girvan in New York
12 did it.

13 When I was overseas, in some
14 situations the ambassador wanted to review
15 anything that I sent back to Ottawa, because at
16 the end of the day it is the responsibility of the
17 ambassador to ensure that what goes out of that
18 embassy is correct in his view because he has the
19 final authority and the final responsibility here.

20 MS EDWARDH: So if he, for
21 example, took umbrage to some statement or
22 conclusion or description of events as set out in
23 Mr. Martel's report, he could direct Mr. Martel to
24 redact or remove it?

25 MR. PARDY: I would not expect

1 that he would try to change any observation or any
2 conclusion that Mr. Martel might have reached as a
3 result of his discussion in the prison with
4 Mr. Arar. I would find that most unusual. That
5 sort of thing does not happen.

6 MS EDWARDH: I just want to go one
7 step further.

8 It's clear Mr. Pillarella's
9 interests are not the same as yours entirely, as
10 you have very carefully described yesterday.
11 Mr. Pillarella stands and holds a number of
12 interests that he promotes as ambassador from
13 Canada. He has an interest, and must acknowledge
14 the role of the RCMP, CSIS, Immigration. All of
15 those interests play into his mandate.

16 Is that a fair statement?

17 MR. PARDY: Yes.

18 MS EDWARDH: And so his concerns
19 may be broader than consular affairs.

20 Is that fair?

21 MR. PARDY: His concerns and
22 interests are broader than consular affairs, but I
23 would come back to the basic principle here that
24 in a situation such as this, the primary interest
25 is the wellbeing of Mr. Arar.

1 I have never in my life
2 experienced a situation where an ambassador abroad
3 would, if you like, affect that basic
4 responsibility in any way.

5 MS EDWARDH: Well, certainly
6 Mr. Pillarella shared your view that any public
7 discussion of torture allegations could have a
8 negative impact?

9 MR. PARDY: Yes -- well, I am
10 sorry.

11 I would not -- because it's not
12 something that I have discussed with
13 Mr. Pillarella, and you will have a chance as to
14 whether his views coincide with mine. The
15 important view was mine, not his.

16 MS EDWARDH: Right. And we will
17 then ask him that question.

18 MR. PARDY: Yes.

19 MS EDWARDH: But certainly you
20 will agree with me that as having an interest in
21 protecting the immigration processes, both to
22 Canada and deportation from Canada to Syria, he
23 would be concerned that an allegation of torture,
24 if it wasn't rebutted, could impair Canada's
25 ability to deport people to Syria?

1 MR. PARDY: I understand Canadian
2 law, and that's an issue that has come up. I
3 think there was a report last week or earlier this
4 week from an international committee that talked
5 about that, to a certain extent.

6 MS EDWARDH: But he would have
7 that concern?

8 MR. PARDY: Oh, yes. Absolutely,
9 yes.

10 MS EDWARDH: And he would also --

11 MR. PARDY: Not in a -- can I just
12 add, not in the negative sense that seems to be
13 suggested here.

14 MS EDWARDH: I am not suggesting
15 that.

16 MR. PARDY: Exactly.

17 MS EDWARDH: But one of his
18 concerns was that public discussions about torture
19 (1) could impair Canada's ability to deport
20 persons to Syria. And so does the existence of
21 torture impair Canada's ability to deport to
22 Syria; right?

23 MR. PARDY: Yes, but I don't think
24 this would devolve down to the level of the
25 ambassador as an important consideration.

1 MS EDWARDH: It's an interest,
2 though. And he has this section that deals with
3 immigration at the embassy. It's one of the
4 interests that Mr. Pillarella would be alive to?

5 MR. PARDY: But the immigration
6 section at the embassy deals only with the
7 movement of people, say, from Syria, or other
8 countries that they had responsibility to, to
9 Canada. It really had nothing to do with the
10 deportation process in Canada.

11 MS EDWARDH: Then let's forget
12 Mr. Pillarella. The Government of Canada has an
13 interest in ensuring that, should it wish to, it
14 can deport persons to Syria. And an allegation of
15 torture, unrebutted, would prevent such
16 deportations, or impair the ability of the country
17 to effect them.

18 MR. PARDY: Well, as you know, the
19 deportation process in Canada is subject to so
20 many influences and constraints as far as Canadian
21 law is concerned. At the end of the day, I think
22 there has even been Supreme Court decisions on
23 this point.

24 So the views of an ambassador on
25 this point I don't think is really germane at all.

1 MS EDWARDH: I am not any more
2 with the ambassador.

3 MR. PARDY: Okay.

4 MS EDWARDH: I am with the
5 proposition -- the Government of Canada has an
6 interest in deporting persons to Syria and that a
7 proven allegation of torture impedes that
8 interest; correct?

9 MR. PARDY: Yes.

10 MS EDWARDH: The Supreme Court of
11 Canada -- you know the cases? It's Suresh.

12 MR. PARDY: I know the cases, yes.
13 I am just trying to fix in my mind whether I was
14 aware of any case where, within the Canadian
15 system, a decision had been made to try for a
16 deportation to Syria.

17 Suresh was -- I am not sure which
18 country involved Suresh.

19 MS EDWARDH: We can come to that.
20 Whenever there are proven practices of torture, it
21 becomes very hard to expel persons to those
22 nations.

23 MR. PARDY: Oh, absolutely. And
24 as you know, members of your profession have been
25 very adept at making sure that it not happen, yes.

1 MS EDWARDH: Thank you, Mr. Pardy.

2 I appreciate that comment.

3 --- Laughter / Rires

4 MS EDWARDH: Let's go on to the
5 other proposition. A proven allegation of torture
6 also could impair bilateral relations.

7 MR. PARDY: Yes, absolutely.

8 MS EDWARDH: We don't have to go
9 beyond that?

10 MR. PARDY: No.

11 MS EDWARDH: A proven allegation
12 of torture can also impair your access to deliver
13 consular services if the Syrians ever saw fit to
14 give it again?

15 MR. PARDY: Absolutely. Yes.

16 MS EDWARDH: And a proven
17 allegation of torture can impair bilateral
18 relations with the United States?

19 MR. PARDY: I wouldn't go --
20 that's a large leap.

21 MS EDWARDH: Yes, that's true.

22 A proven allegation of torture is
23 at least an irritant in an already large and
24 complex bilateral relationship?

25 MR. PARDY: It would loom so small

1 that it would be insignificant in that
2 relationship.

3 MS EDWARDH: That's almost hard to
4 believe.

5 MR. PARDY: No, it really does.

6 I would expand. Apart from the
7 one or two individuals that might have been
8 involved in making a decision within the American
9 system -- but we had already gone over this ground
10 in the sense that, if you want to look at
11 Mr. Ashcroft's public statement that they had
12 sought a diplomatic guarantee with respect to the
13 issue of torture, we knew the value of that.

14 And as you know, there is an
15 extensive debate and a whole set of legal issues
16 under review by the courts in the United States on
17 that.

18 But in terms of Canada's bilateral
19 relationship with the United States, I would not
20 agree with you that this is a --

21 MS EDWARDH: Even an irritant.

22 MR. PARDY: Not even an irritant.

23 MS EDWARDH: Let's put it this
24 way. Given that we are undertaking this activity
25 of looking at the flow of information, can we go

1 this far: that to the extent our friends to the
2 south render or send persons to countries where
3 they are probably going to be the victim of
4 treatment falling below CAT, does that raise any
5 issue about cooperation with those friends?

6 MR. PARDY: Yes, it does, because
7 we have obligations, I think, under the CAT itself
8 that cuts across this kind of an issue.

9 MS EDWARDH: Absolutely.

10 MR. PARDY: Yes.

11 THE COMMISSIONER: Is this a
12 convenient time?

13 MS EDWARDH: It's a perfect time.
14 Thank you very much, Mr. Commissioner.

15 THE COMMISSIONER: We will rise
16 for 15 minutes.

17 THE REGISTRAR: Please stand.

18 --- Upon recessing at 11:43 a.m. /

19 Suspension à 11 h 43

20 --- Upon resuming at 12:05 p.m. /

21 Reprise à 12 h 05

22 THE REGISTRAR: Please be seated.
23 Veuillez vous asseoir.

24 MS EDWARDH: Thank you,
25 Mr. Commissioner. If I could proceed?

1 Mr. Pardy, I can take you to it --
2 but you've looked at it. I just want to talk
3 about the role of the Muslim brotherhood in the
4 history of Syria, as you know about it.

5 MR. PARDY: Mm-hmm.

6 MS EDWARDH: And one of the
7 observations that I understand we can make from
8 the history of Syria is, first of all, there was a
9 state of emergency declared sometime in 1963?

10 MR. PARDY: I think that's when
11 the transition occurred from a successive
12 colonial-type government into something different,
13 yes.

14 MS EDWARDH: Authoritarian
15 government?

16 MR. PARDY: Well, the previous one
17 was authoritarian as well.

18 MS EDWARDH: Okay. So there was
19 some kind of change --

20 MR. PARDY: Yes.

21 MS EDWARDH: -- but there was a
22 state of emergency?

23 MR. PARDY: Yes.

24 MS EDWARDH: And one of the
25 reasons -- maybe that's too simple -- but

1 certainly the powerful role of the security forces
2 in Syria today is in part justified, at least, by
3 the ongoing emergency state that Syria perceives
4 itself as being in? That state of emergency has
5 never abated, nor has it ever been declared to be
6 over?

7 MR. PARDY: Yes. Syria, I
8 think -- and again, I don't want to telescope too
9 much into a few words here -- but Syria sort of
10 emerged as an independent country in the aftermath
11 of the First World War. It was part of the French
12 sphere of influence.

13 After the Second World War, Syria
14 started to emerge as an independent actor, I
15 think, in a more concrete way, but the creation of
16 the State of Israel, of course, just turned
17 everything upside down as far as the Middle East
18 was concerned here.

19 And a lot of the governments, as
20 you know, that are in that part of the world, one
21 can easily characterize as authoritarian regimes,
22 yes.

23 MS EDWARDH: Right. And if the
24 witness could be given Exhibit P-89?

25 This is a document, Mr. Parady,

1 which you may have -- well, you should have had an
2 opportunity to look at it, but its provenance is
3 not in Canada.

4 It is a document that was obtained
5 through FOI in the United States and is a record
6 of a visit to the Syrian Ministry of Foreign
7 Affairs in respect of the Proposed Country Report?

8 MR. PARDY: Yes.

9 MS EDWARDH: You've had a chance
10 to look at it?

11 MR. PARDY: Yes, I have.

12 MS EDWARDH: It's interesting, and
13 it fits very much into what you were saying,
14 because if you look at the overall subject matter,
15 it says:

16 "Subject: Syria. Human
17 rights reform not possible in
18 current environment."

19 (As read)

20 And one of the components of that
21 environment is of course Syria's perceived need to
22 deal with the State of Israel. And the other one,
23 as noted on the top of page 2, is Syria's view
24 that it is the original victim of terrorism. Do
25 you see that?

1 MR. PARDY: Is that paragraph 3 or
2 4?

3 MS EDWARDH: It's paragraph 3, and
4 it's just at the very top of page 2 of this
5 document. It says --

6 MR. PARDY: Yes.

7 MS EDWARDH:

8 "...said Syria is the
9 original victim of terrorism
10 having fought the Muslim
11 brotherhood for many years.
12 And according to... these two
13 factors..." (As read)

14 That being Israel.

15 "...necessitate the
16 continuation of the emergency
17 decree through which the SARG
18 is governed (for no regard
19 for the rule of law) for 40
20 years." (As read)

21 And so certainly the Muslim
22 brotherhood plays large in Syria's history and its
23 justifications for the nature of the regime in
24 place. At least that is reflected in this
25 document, and POPOF is, of course, a public

1 affairs officer with the U.S. embassy?

2 MR. PARDY: Political affairs
3 officer.

4 MS EDWARDH: Political affairs.
5 When I googled it, it was public affairs.

6 Anyway, that observation, sir, is
7 one I'm just going to ask you to comment.

8 Do you agree that the Muslim
9 brotherhood has been used by the Syrians to
10 justify the ongoing nature of the emergency decree
11 and plays a significant role in how they see
12 themselves as victims of terrorism?

13 MR. PARDY: I think if you use
14 1963 as the date here, then I do not believe that
15 the Muslim brotherhood was of much influence at
16 that point.

17 It was a subsequent -- the Muslim
18 brotherhood, as you know, originated in Egypt
19 about 75-80 years ago, and that's where most of
20 its activities -- but then it started to spread to
21 other countries.

22 The key period I think, as far as
23 Syria is concerned, is in the late '70s, early
24 '80s, and the touchstone event, if I can use that,
25 was an attack by people who were assumed to be

1 part of the Muslim brotherhood on cadets attending
2 a military academy, and there was a large number
3 of people that died.

4 In the aftermath of that, in 1982,
5 the Syrian government attacked the town of Hama,
6 which was concerned to be the heart of the Muslim
7 brotherhood, and according to published reports,
8 somewhere between 5,000 and 40,000 people were
9 killed.

10 So that is sort of seen by a lot
11 of observers as being the date at which, in
12 effect, the effect of the Muslim brotherhood in
13 Syrian politics --

14 MS EDWARDH: Ended?

15 MR. PARDY: I wouldn't say ended,
16 but certainly has a serious concern to the
17 stability of the Syrian authority or Syrian
18 government.

19 MS EDWARDH: Right. And it would
20 be fair to say, not only from the experience in
21 that attack on the town, but also thereafter, that
22 the Government of Syria set out and targeted for
23 elimination that organization for many years?

24 MR. PARDY: Yes, and I think the
25 other element, of course, the Ba'athist party,

1 which is the one in Syria, has that -- or used to
2 have as its core a socialist philosophy that did
3 not admit to the possibility that Islamic law
4 could be a significant feature in the public
5 affairs of the country

6 And that, along with the other
7 factors that you mention, I think were important.

8 MS EDWARDH: So we can agree,
9 though, that the -- I think you used the term
10 "convenient label" to describe the allegation that
11 someone in the '90s, or even thereafter, may have
12 been a threat to the security of Syria because
13 they were a member of the Muslim brotherhood, and
14 one of the things you said, that that was often
15 used as a label that permitted political
16 detention.

17 MR. PARDY: Yes, and this relates
18 to a law that was enacted -- I shouldn't say
19 "enacted", but certainly was adopted in some way
20 or another in 1980, the focus of which was
21 membership in the Muslim brotherhood.

22 MS EDWARDH: And am I correct,
23 sir, at least I gathered from a recent report from
24 Amnesty International, you may have had an
25 opportunity to read it, but it remains a capital

1 offence in Syria today to be a member of the
2 Muslim brotherhood?

3 MR. PARDY: Yes.

4 MS EDWARDH: Now, I just want to
5 jump, if I could, and see if I can't go past, it
6 becomes apparent in December of 2002, you are
7 given information as a result of meetings between
8 the ambassador, or Mr. Martel, and General Khalil
9 that currently, in December, and thereafter in
10 January and I think it goes well beyond that into
11 February, that Mr. Arar, after being interrogated,
12 they have decided there is a basis to have
13 concluded that he is a member of the Muslim
14 brotherhood or is associated somehow with the
15 Muslim brotherhood, and that is why they think
16 that he is a person who raises internal security
17 issues for the State of Syria?

18 MR. PARDY: Yes, that was the
19 information provided the ambassador, yes.

20 MS EDWARDH: Now, you know, as I
21 do, that Mr. Arar was born in 1970 and left Syria
22 as a seventeen-year-old?

23 MR. PARDY: Yes, I do know that.

24 MS EDWARDH: So that would be
25 around 1987?

1 MR. PARDY: Yes, that is correct.

2 MS EDWARDH: In 1982 and '83, at
3 the height of the efforts to crush the Muslim
4 brotherhood, Mr. Arar was a twelve- and
5 thirteen-year-old?

6 MR. PARDY: Yes, and as you know,
7 I had concluded that this was highly -- what's the
8 word here? -- suspect information, and I did not
9 take it at face value whatsoever.

10 MS EDWARDH: Right. In fact, you
11 thought it was -- when you call it "suspect
12 information", I take it you thought it was nothing
13 more than a convenient ruse on the part of the
14 Syrians to put a label that justified the
15 detention of Mr. Arar?

16 MR. PARDY: That is correct, yes.

17 MS EDWARDH: Now, one last comment
18 about the Syrian Human Rights Committee, and I'm
19 posing this, really, for the future.

20 When the report came out -- my
21 friend asked you to comment on it, and you said
22 you came with some scepticism to emigre --

23 MR. PARDY: Organizations.

24 MS EDWARDH: Emigre organizations?

25 MR. PARDY: Yes.

1 MS EDWARDH: And emigre
2 organizations are organizations made up of
3 expatriates?

4 MR. PARDY: That is correct, yes.

5 MS EDWARDH: And they generally
6 are non-resident?

7 MR. PARDY: Generally speaking,
8 they find themselves in countries other -- they
9 might have some connection back into their country
10 of citizenship or former citizenship, but
11 generally speaking you refer to an emigre
12 organization as one located outside of the country
13 of interest, yes.

14 MS EDWARDH: Right. But it's fair
15 also to say, and indeed you've described yourself
16 as having quite a different view once you got real
17 details of what was alleged --

18 MR. PARDY: Yes.

19 MS EDWARDH: -- but these
20 organizations are often the only way Syria's human
21 rights problems are brought to the attention of
22 States and nations in the international community?

23 MR. PARDY: That is one possible
24 effect of these organizations, yes.

25 MS EDWARDH: Right. And one of

1 the things I noticed, whether you have scepticism
2 or not, it's certainly the case that the U.S.
3 State Department Country Report with respect to
4 Syria -- and if you could maybe perhaps take a
5 look at it, it's P-27 and P-28. Mr. Registrar, if
6 you could give that to the witness?

7 I just note, and you may have
8 observed, that those reports themselves rely on
9 this very same committee.

10 MR. PARDY: I will --

11 MS EDWARDH: Okay, take a look.

12 MR. PARDY: No, I would say I
13 would take your word for that.

14 MS EDWARDH: Okay. All right. So
15 there's no dispute about that?

16 MR. PARDY: Mm-hmm.

17 --- Pause

18 MS EDWARDH: It's throughout. My
19 friend asked me -- it's page 1, it's page 2. You
20 see the Syrian Human Rights Committee referred to
21 throughout.

22 So, I suppose, while you have some
23 concerns, one of the ways to dispel any
24 concerns -- let's say if someone is in your
25 position and they don't have the broad swath of

1 experience you have, Mr. Pardy, certainly one
2 could pick up the phone and consult with other
3 NGOs that you have good relations with and who you
4 value their views of, to get their opinion about
5 the credibility of an organization?

6 For example, you could pick up the
7 phone and phone Alex Neve of Amnesty International
8 and say "What do you know about this group, and do
9 you credit their views?"

10 MR. PARDY: Yes, I think that did
11 happen after the fact, but only after the letter
12 came which provided much more detail and much more
13 colour in terms of what they were alleging with
14 respect to Mr. Arar, and I think the statement was
15 made by Mr. Neve that this was an organization
16 that Amnesty themselves had some confidence in.

17 MS EDWARDH: Right. And certainly
18 though, for the future, this network of NGOs, like
19 Human Rights Watch and Amnesty International, they
20 are good assessors, often, of whether they would
21 act on or accept allegations from an NGO like, you
22 know, the Syrian --

23 MR. PARDY: I'm still a little
24 sceptical of such organizations because, one, I
25 would want to have some provenance of who they are

1 and who they represent in these kinds of issues,
2 and whether or not they are serving more than
3 one -- something other than a search for truth and
4 justice. I mean, I think this --

5 MS EDWARDH: Right, as some
6 governments sometimes serve more than one end --

7 MR. PARDY: Absolutely.

8 But, again, it's always useful
9 sometimes to be sceptical because you can get
10 dragged down the road sometimes on some of these
11 things.

12 So that's what's always in the
13 back of your mind when you look at these things,
14 yes.

15 MS EDWARDH: One of the things I
16 thought was interesting, and we can come to the
17 2003 report of the Department of State, it was
18 your view, as expressed to Mrs. Arar, or
19 Dr. Mazigh, and her supporters and those working
20 with her that they would be best to obtain counsel
21 for Mr. Arar in Syria who was not a
22 high-profile/human rights lawyer. Is that
23 correct?

24 MR. PARDY: In the context of the
25 developments in August of 2003, yes.

1 MS EDWARDH: Yes. But I found it
2 interesting to see that the lawyer that was
3 eventually sought out and retained is described at
4 page 4 of the country report, and I would take it
5 this is released and it's describing a
6 situation -- it's paragraph 3:

7 "On July 15 the military
8 court dropped all charges
9 against lawyer and SHRC
10 chairman, Haytham Al Maleh."
11 (As read)

12 I'm going to suggest to you you
13 can recognize that name. That was the name of the
14 lawyer that was contacted with a view to having
15 him try and see Mr. Arar. Do you recall that
16 name?

17 MR. PARDY: No, I do not.
18 Do you mean --

19 MS EDWARDH: I assure you,
20 Mr. Pardy, I don't have the page reference, but
21 I'll ask --

22 MR. PARDY: Which one are you
23 referring to here? Was it the lawyer or the SHRC
24 individual?

25 MS EDWARDH: No, I'm suggesting

1 that the lawyer that was contacted to represent
2 Mr. Arar in Syria is also the SHRC Chairman?

3 MR. PARDY: Oh, I see. You say is
4 this one and the same person. Yes.

5 MS EDWARDH: Is that one and the
6 same person.

7 MR. PARDY: Yes.

8 MS EDWARDH: And he is the person
9 who tried to get access to Mr. Arar and was denied
10 access right up to the last minute --

11 MR. PARDY: I'm puzzled by where
12 you see the reference that this person is also
13 chair of SHRC in -- I'm sorry, I can't seem to
14 locate it here.

15 MS EDWARDH: I'm sorry. Let me
16 show you. Page 4 of your document.

17 MR. PARDY: Yes.

18 MS EDWARDH: It's the third
19 paragraph.

20 MR. PARDY: Right here? In
21 September of 2001?

22 MS EDWARDH: No, on July 15.

23 MR. PARDY: Oh, I've got a
24 different piece of paper here.

25 MS EDWARDH: Then maybe you have

1 the other year. You've got -- P-28. You've got
2 the wrong report.

3 MR. PARDY: I have P-27

4 MS EDWARDH: That's frightening.

5 MR. PARDY: Okay, there we go.

6 MS EDWARDH: So it's page 4 --

7 MR. PARDY: Page 4.

8 MS EDWARDH: -- and it's the third
9 paragraph.

10 MR. PARDY: Yes, okay.

11 MS EDWARDH: So there's a
12 reference to the military court in Syria dropping
13 charges against a lawyer?

14 MR. PARDY: Mm-hmm.

15 MS EDWARDH: And the SHRC
16 chairman, Haytham Al Maleh?

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: Okay, and he had been
19 charged with spreading false news, belonging to an
20 international political association, and
21 publishing material that caused sectarian
22 friction. Do you see that? Those are the
23 charges?

24 MR. PARDY: Yes, which is code
25 word for the fact that this was an attack on the

1 minority government of Syria, which everybody
2 agrees -- it's an Al Duwait(ph), what they refer
3 to as an Al Duwait(ph), which is a minority group
4 in Syria.

5 MS EDWARDH: So this is an attack
6 on him as a member of that group?

7 MR. PARDY: When they say that the
8 sectarian friction, they're saying that the group
9 was promoting sectarian division within the
10 country.

11 MS EDWARDH: Right. And I would
12 assume that those charges don't tell us much about
13 the substance of any real wrong-doing on the part
14 of the lawyer who is also the head of the group --

15 MR. PARDY: But it does tell us --
16 it does tell us the sensitivity of the
17 authorities.

18 MS EDWARDH: Oh, I have no doubt
19 that they're sensitive.

20 MR. PARDY: Yes.

21 MS EDWARDH: I'm not sure
22 "sensitive" is the right word, but in any event...

23 MR. PARDY: Yes.

24 MS EDWARDH: Just to confirm, if I
25 could just take you to tab 581 and 540.

1 So turn to 540 first. And you've
2 just left the department, but I can take you back
3 to --

4 MR. PARDY: Just one second. I
5 need the document here.

6 MS EDWARDH: And you may have only
7 had this come clearly to your attention -- or it
8 may not have come to your attention, I'm sorry,
9 Mr. Pardy, but you may have learned this as you
10 read the document thereafter.

11 We have a number of notes, and I
12 suppose the first one that I draw your attention
13 to is 540.

14 MR. PARDY: Mm-hmm.

15 MS EDWARDH: It originated, this
16 CAMANT note, from Myra -- I'm sorry? Oh, 514
17 apparently is the first one.

18 THE COMMISSIONER: 514.

19 MS EDWARDH: Oh, I'm sorry. This
20 does put you in the loop -- 514, tab 514.

21 Thank you very much.

22 "Dr Mazigh..."

23 Do you see 514, at the very
24 bottom?

25 MR. PARDY: Yes, I do.

1 MS EDWARDH:
2 "Dr Mazigh has canvassed
3 various contacts and suggests
4 following two names as
5 possible lawyers for Maher.
6 Her preference is for the
7 first, Mr Emaleh."

8 And then you see, and I think we
9 can agree, this is a version of Canadian
10 misspelling of names --

11 MR. PARDY: Transliterations.

12 MS EDWARDH: Transliterations.

13 MR. PARDY: It's a difficult
14 process, yes.

15 MS EDWARDH: That indeed, Haytham
16 Al Maleh is the lawyer who is to be retained to
17 act for Mr. Arar in Syria?

18 MR. PARDY: That was their
19 preference.

20 MS EDWARDH: Right. And you see
21 that again if you go to tab 540 --

22 MR. PARDY: Yes.

23 MS EDWARDH: -- second line, or
24 second paragraph:

25 "She has decided that she

1 would prefer to engage..."

2 And the name of the lawyer.

3 And then over again -- perhaps
4 we're getting closer to the real name at tab 581.
5 And we're now into September.

6 MR. PARDY: Yes, and I think my
7 views on this issue were reflected, I think,
8 fairly accurately in the minutes of the meeting
9 that I had with Dr. Mazigh on August 18 where we
10 discussed this issue, I thought, in some detail,
11 and I gave her the reasons for my concern in terms
12 of the hiring of a person such as this.

13 MS EDWARDH: Right. And she heard
14 you out and --

15 MR. PARDY: And decided otherwise,
16 yes.

17 MS EDWARDH: And decided
18 otherwise?

19 MR. PARDY: Yes.

20 MS EDWARDH: But certainly your
21 recommendation -- I mean, I suppose, to just
22 explore this a little so we don't leave any
23 misunderstandings, it's my understanding of your
24 recommendation that you are not only trying to
25 urge someone to get counsel who may not have

1 divided loyalties, but you're urging the retaining
2 of counsel who may not be as much a target for the
3 administration?

4 MR. PARDY: Or not so much divided
5 loyalties, but could have other objectives in this
6 process as well, yes.

7 MS EDWARDH: Okay. Certainly in
8 other cases where you and I have been involved,
9 it's been certainly my view that the object of the
10 exercise is to find someone who has the courage to
11 act, who won't disappear?

12 MR. PARDY: Or is not disappeared
13 in the process.

14 MS EDWARDH: Right. That's right.

15 So, for example, if I can just --
16 I know, it's tough to be a lawyer in some places,
17 Mr. Commissioner.

18 MR. PARTY: Yes.

19 MS EDWARDH: So, for example, this
20 same discussion occurred between you and I in
21 respect of Mrs. Kazemi's family --

22 MR. PARDY: Yes, it did, yes, I
23 remember.

24 MS EDWARDH: And I listened to
25 you, I did the same thing and didn't follow the

1 advice of the embassy, but hired someone I thought
2 couldn't disappear --

3 MR. PARDY: Yes. That was a very
4 unique case. She had just --

5 MS EDWARDH: Won the Nobel Peace
6 Prize.

7 MR. PARDY: -- been awarded the
8 Nobel Peace Prize, and I thought that gave her a
9 large measure of protection in that process. So I
10 did not --

11 MS EDWARDH: Right. So the real
12 objective in hiring someone is to try and make
13 sure that those persons who are retained don't put
14 themselves in harm's way to such an extent that
15 they lose their own lives in the course of acting?

16 MR. PARDY: Absolutely, yes.

17 MS EDWARDH: Thank you.

18 We covered the introduction of the
19 Syrian brotherhood into the calculus, and indeed
20 that occurs as early as the beginning of December
21 in 2002, December 12? The first record I could
22 find. Do you want a reference --

23 MR. PARDY: Subject to any
24 other -- I mean, certainly it was -- that may have
25 been the very first specific reference, although

1 I'm not sure, in the notes that Mr. Pillarella
2 prepared after the November 3 or -- I had a
3 telephone conversation with Mr. Pillarella right
4 after he had seen the General on November 3. We
5 had spoken over the phone. And I'm not sure
6 whether we speculated at that point about the
7 Muslim brotherhood at that point.

8 MS EDWARDH: Okay. So it may have
9 occurred --

10 MR. PARDY: But it certainly
11 was -- it didn't surprise me when I saw this
12 specific reference in December, no.

13 MS EDWARDH: Certainly it's
14 specifically on the table that it's Syria's
15 interests that are at stake, no one else's
16 interests that are at stake, and this is an issue
17 of great concern to the Syrian government. That's
18 essentially what you were told?

19 MR. PARDY: That's what we were
20 told, yes.

21 MS EDWARDH: Right.

22 And I want to just go back to your
23 comments, that you requested some assistance from
24 Mr. Arar's family at the beginning of January.

25 MR. PARDY: I wasn't that

1 specific. I said it was in the context of when
2 the first allegations started to emerge about the
3 possibility of a trial, and I think -- my memory
4 was that this was February or March -- it was the
5 first time, and then when it emerged in August, we
6 returned to this issue again, yes.

7 MS EDWARDH: Okay. So my note of
8 your evidence, sir, and that -- you know, I may be
9 wrong or you may have misspoken yourself, was that
10 this matter was raised with Monia and Bassam in
11 January --

12 MR. PARDY: No.

13 MR. CAVALLUZZO: -- and I take it
14 you will agree with me that while the Syrian
15 brotherhood is on the table, there is absolutely
16 no reason to be asking them about 1993?

17 MR. PARDY: No, I did not -- in
18 the first instance, it was not raised with Monia
19 and Bassam. They were together in the August time
20 frame when I raised it. Earlier on, I think it
21 was in a telephone conversation with Dr. Mazigh,
22 yes.

23 MS EDWARDH: Right. And that you
24 now locate in March --

25 MR. PARDY: Somewhere in that time

1 frame, because I was thinking about this issue,
2 the allegations of Afghanistan, and what did this
3 mean? And I was casting about for any information
4 that could be available to us in the event that
5 that was important, yes.

6 MS EDWARDH: Well, certainly by
7 the time -- if we go through the various stages,
8 the allegation about Afghanistan wasn't important
9 to the Syrians, or did not appear to be important
10 to the Syrians.

11 MR. PARDY: Well, when they moved
12 off to the -- at a certain point there they made
13 the allegation of membership in al-Qaeda and you
14 had a match with what the Americans had stated in
15 their exclusion order, and what I found
16 significant was that the Syrians had moved to
17 match their allegations, if you like, with those
18 of the Americans, yes.

19 MS EDWARDH: And certainly the
20 first we know of that is as a result of the
21 meetings that take place when the Members of
22 Parliament are in Syria?

23 MR. PARDY: Again, I would have to
24 refresh my memory as to whether that was the very
25 first suggestion of that.

1 MS EDWARDH: The first record I
2 can find, because there's a lengthy hiatus, and
3 there are no visits for a period of weeks leading
4 up to --

5 MR. PARDY: February.

6 MS EDWARDH: Yes -- leading up to
7 that April visit, and then the briefing comes:
8 "Our investigation is complete, Mr. Arar will
9 stand trial as a member of al-Qaeda."

10 MR. PARDY: That certainly
11 occurred in the April 23 time frame --

12 MS EDWARDH: Well, the record
13 speaks for itself. I don't want to prove a
14 negative because we'll be here till next June,
15 okay.

16 MR. PARDY: No, no, no.

17 MS EDWARDH: And that accords
18 roughly with your recollection?

19 MR. PARDY: Yes. But I think the
20 other thing that sort of touched off in my own
21 mind were the allegations themselves of being in
22 Afghanistan in 1993 and the relevance of that to a
23 consideration of this whole issue.

24 And the allegations about
25 Afghanistan, of course, occurred in November of

1 2002.

2 MS EDWARDH: Right.

3 Now, let's go to your view of this
4 allegation, and I take it -- you said very clearly
5 in answer to Commission counsel's question -- that
6 the suggestion of someone being in Afghanistan in
7 1993 was really not an important element for you?

8 MR. PARDY: Not an important
9 element. What I was suggesting here, that to
10 suggest and to draw a conclusion that presence in
11 Afghanistan in 1993 denoted, say, membership in
12 al-Qaeda, I think. There is a distinction there,
13 I think you will agree with me.

14 MS EDWARDH: Sure. So that's as
15 much a stretch, in fact, as saying that a
16 twelve-and thirteen-year-old is a member of the
17 Muslim brotherhood because, quite frankly,
18 al-Qaeda -- or no.

19 In Afghanistan in 1993, as you
20 pointed out, the Mujaheddin were freedom fighters
21 supported by Western liberal democracies, like the
22 United States?

23 MR. PARDY: Yes, and they were
24 fighting against another group in Afghanistan
25 called the Taliban who had not succeeded at that

1 point, yes.

2 MS EDWARDH: So that's why for you
3 it was not a meaningful element in a step of proof
4 that someone was a member of al-Qaeda?

5 MR. PARDY: No, not at all.

6 MS EDWARDH: Yes. Now, let me
7 just go back.

8 I've looked through your notes, or
9 the CAMANT notes, or the voluminous e-mails
10 between you and Dr. Mazigh, and I cannot find
11 anywhere, Mr. Pardy, any specific reference to,
12 "Can you help me find X, Y, and Z?".

13 MR. PARDY: Not in that period.
14 As I mentioned, I thought it was done in a
15 telephone call with her, and as you know, there
16 were quite a number of telephone calls.

17 I think it does find reflection in
18 August in a written record.

19 MS EDWARDH: Right, and we'll come
20 to that.

21 MR. PARDY: Yes.

22 MS EDWARDH: But certainly at the
23 time you have a recollection of making this
24 request --

25 MR. PARDY: Yes.

1 MS EDWARDH: -- and there are
2 many notes you make of telephone calls. You put
3 them into the CAMANT system.

4 MR. PARDY: Yes.

5 MS EDWARDH: So I'm going to make
6 a couple of suggestions to you: first of all,
7 that that conversation that you had, Mr. Pardy,
8 the first time you recall having it, was in the
9 context of Dr. Mazigh saying, "I want you to help
10 me meet the men who are saying this. I want to
11 meet with the RCMP." And you knew that was not
12 going to be in the cards.

13 MR. PARDY: No.

14 MS EDWARDH: You don't remember
15 that conversation?

16 MR. PARDY: No, I'm saying, that
17 was not in the cards, yes.

18 MS EDWARDH: Yes, that's right.
19 But you recall her wanting to meet with --

20 MR. PARDY: Yes, from the top to
21 the bottom, yes.

22 MS EDWARDH: Yes.

23 MR. PARDY: Yes.

24 MS EDWARDH: And, indeed, the
25 suggestion of trying to gather some assistance was

1 often in the context of Monia saying to you, "Help
2 me meet these men who are my husband's accusers"?

3 MR. PARDY: Yes, and I think by
4 counter to that, on this particular issue, it
5 really had nothing to do with officials of the
6 Government of Canada.

7 This information came from the
8 Syrian authorities. And what I was interested in
9 achieving, and given the fact that the information
10 was ten years old, was whether or not through
11 family records or academic records that there
12 might be some indication that, factually, the
13 allegation was wrong and could be discounted on
14 that basis.

15 MS EDWARDH: Now, I'm going to
16 also suggest that, while this may have been the
17 subject matter of a discussion in the context of
18 her wanting to meet with Canadian policing and
19 intelligence authorities, that there really was --
20 it was not of high priority of yours at this time
21 because, you see, Mr. Pardy, there's no follow-up,
22 and if someone were to say to you, sir, "I'll
23 bring you X" or "You send someone out to look for
24 X", I can tell you, Mr. Pardy, you would have a
25 follow-up memorandum shot out through an e-mail

1 saying, "Have you got it yet? What you have
2 learned?"

3 MR. PARDY: No. I think what you
4 have to remember is that the Syrians were saying
5 that a trial was imminent, and it was raised in
6 that context. And then the issue of an imminent
7 trial in that period of time, of course, just fell
8 by the wayside and I just, you know, as with all
9 other things you just left it lie there.

10 But again, come August, we knew
11 that the Syrian suggestion that there was going to
12 be a trial, that was going to take place within a
13 week, and I was concerned then that if there was
14 any information that we could obtain and put it in
15 play to discount what could have been a central
16 tenet in the Syrian prosecution.

17 MS EDWARDH: Maybe. Maybe not.

18 MR. PARDY: Maybe, yes. I didn't
19 know.

20 But I thought it was very valuable
21 for us to have, and I also felt that it was
22 information, that if the family had something,
23 that they could provide it, yes.

24 MS EDWARDH: From your perspective
25 it's fair to say when these discussions about a

1 trial occurred in April, it was going to be an
2 imminent trial, right? No one gets a lot of --
3 Weren't you told in April by --

4 MR. PARDY: I think it was earlier
5 than April. I thought it was March, I think. But
6 I stand to be corrected again on this one. I
7 mean, we're covering -- in terms of time.

8 But I think it was a little
9 earlier in -- was it in the February visit, or at
10 that time frame? February 18 --

11 MS EDWARDH: Let me check.

12 MR. PARDY: Yes, it's worth
13 checking.

14 MS EDWARDH: Because you may be
15 right.

16 I have a clear sense that it was
17 formally stated in the context of the visits of
18 the Mps when they said, "Our investigation is over
19 and Mr. Arar will stand trial."

20 MR. PARDY: Well, that's -- I
21 mean, let's see if the record is -- what it says.

22 THE COMMISSIONER: What tab?

23 MS EDWARDH: Just give me a
24 moment, Mr. Commissioner.

25 MR. CAVALLUZZO: It's tab 313 and

1 the witness is referring to paragraph 4.

2 MR. PARDY: And what is the date
3 on that?

4 MR. CAVALLUZZO: February 17 and
5 the visit is February 18.

6 MR. PARDY: Give me the tab number
7 again, please?

8 MR. CAVALLUZZO: 313.

9 MR. PARDY: 313.

10 Yes, I think this is the -- sort
11 of the general environment in which we were
12 working, yes.

13 MS EDWARDH: All right. So let's
14 take a look at the information that is provided to
15 you.

16 MR. PARDY: Mm-hmm.

17 MS EDWARDH: First of all, there's
18 the statement -- and if you see anything else that
19 draws you in another direction, point it out --
20 but:

21 "As previously indicated, we
22 had no indication that
23 charges had been laid..."

24 Right?

25 MR. PARDY: As you will know -- or

1 perhaps not, since you're in the common law
2 tradition -- in the civil law tradition, the
3 detailing of charges is part of the adjudication
4 process, and it doesn't sort of necessarily take
5 place in advance of a trial.

6 MS EDWARDH: But they also say
7 that the charges --

8 "There's no indication that
9 charges have been laid... and
10 security services confirmed
11 the fact."

12 MR. PARDY: That's right.

13 MS EDWARDH:

14 "They also indicated that
15 if/when charges will be laid,
16 consular access might cease."

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: And -- it's tab 313,
19 Mr. Baxter.

20 MR. BAXTER: I'm looking for --
21 paragraph 4 refers to specific issues you have
22 raised, and I believe paragraph 4 is in response
23 to something that's been sent from the witness to
24 Mr. Martel. So I apologize for all the flipping
25 of papers.

1 MS EDWARDH: No, no. I thought
2 perhaps you couldn't find your place. I'll let
3 you flip then.

4 --- Laughter / Rires

5 MS EDWARDH: I mean, all I really
6 want to point out, Mr. Arar is still being
7 detained. Then it goes on under c):

8 "Investigation is ongoing and
9 there is no indication as to
10 when it will be completed."

11 So, in February, as I read this
12 note, a trial is not on the horizon, nor is any
13 specific allegation, and it crystallizes on April
14 22 when people are told -- am I missing something?
15 No.

16 It crystallizes on April 22 when
17 people are told the investigation is, in fact,
18 concluded, and there will be a charge that
19 Mr. Arar is a member of al-Qaeda?

20 MR. PARDY: Yes, but you will see
21 from the record, the way I approach dealing with
22 cases such as this, there are certain things that
23 you need to do today in order to take care of
24 today, but there are certain things that you do
25 today in order to plan for the future in the event

1 of what's going to occur.

2 And what touched off in my mind
3 were these comments by Mr. Martel. He was
4 speculating about the possibility of something
5 happening, and what I was concerned with, that we
6 start some of the planning that might be necessary
7 to meet this sort of thing if, as occurred in
8 August, the Syrians suddenly decided, okay, he's
9 in a court tomorrow --

10 MS EDWARDH: Well, indeed, they
11 told you in April he would be in a court within a
12 week.

13 MR. PARDY: But, yes, within --
14 no, well, it was a bit later. In August, they
15 told us within a week he was going to be in trial.

16 MS EDWARDH: In any event, you'll
17 agree with me, will you not, that certainly the
18 conversation that you had with Dr. Mazigh did not
19 take place directly as a result of this visit but,
20 rather, sometime after this visit and before
21 April, there was a conversation, and we don't have
22 a record of it.

23 MR. PARDY: We don't have a record
24 of it, but, again -- and I think what was
25 interesting about the fact is that I think it was

1 at that point that Dr. Mazigh had mentioned to me
2 that she did not know Mr. Arar in 1993, that they
3 had met in early 1994, and she said -- I think
4 even mention was made about the -- that he was
5 living with his mother in Montreal -- I'm not
6 certain of this. But, again, you know. But,
7 again --

8 MS EDWARDH: I don't find in the
9 record the details that I know you know about
10 Mr. Arar, when he met his wife, how she couldn't
11 personally assist you with knowledge of 1993.

12 Can you describe for us where in
13 this record would this history that you clearly
14 had at your fingertips, Mr. Pardy -- why isn't it
15 written down?

16 MR. PARDY: The record is so large
17 here and so frequent with respect to the
18 conversations that I had with Dr. Mazigh through
19 this period -- I don't think there was hardly a
20 day that went by; and if I had to sit down after
21 every one of those conversations and give you the
22 level of detail that you're suggesting here, well,
23 I'm sorry, then I don't think I would have been
24 able to do the job that I was asked to do.

25 MS EDWARDH: Fair enough.

1 MR. PARDY: And, you mean, so in
2 that sense, a lot of this kind -- it goes back to
3 the earlier questions when we were dealing with
4 whether or not you kept notes and this sort of
5 thing.

6 MS EDWARDH: Sure.

7 MR. PARDY: But what I did was --
8 my memory is not bad, even at my advanced age, and
9 I could remember things and I would deal with it.

10 MS EDWARDH: So it's very clear
11 that generally it's fair to say that Bassam and
12 Dr. Mazigh tried to help you?

13 MR. PARDY: In -- well, as far
14 as -- I don't know if she had gone to Bassam in
15 the earlier conversation, but certainly Bassam was
16 present in August when we raised the issue and --
17 and went away and said, "Well, I'll see what we
18 can come up with."

19 MS EDWARDH: I'm going to suggest
20 to you that he was alive to this general request
21 earlier, and one of the things -- you know, we
22 start with, what did he give you? One of the
23 things you wanted early on was a copy of
24 Mr. Arar's Syrian passport. And he brought it,
25 you copied it, and he left with it. But that was

1 to make sure that it was expired -- or I don't
2 know what it was for.

3 MR. PARDY: I must say -- sure,
4 that was with Ms Pastyr-Lupul, because I do not
5 remember that incident at all with respect to the
6 passport, although we were sensitive on this issue
7 of the Syrian passport and the validity and
8 whether or not it had been used in any way in
9 terms of his travels in 2002.

10 MS EDWARDH: Right.

11 MR. PARDY: Yes.

12 MS EDWARDH: That's why it makes
13 logical sense for you to have asked for it. But
14 at the same time, I take it -- I can't find any
15 record of its receipt, nor can I find any record
16 of the request; and I take it, Mr. Pardy, that
17 that doesn't mean it didn't happen, it's just that
18 there's no record and you don't happen to have a
19 memory today.

20 MR. PARDY: Exactly, of that one
21 particular thing. But on this, which I saw as
22 very central, the issue if there was going to be a
23 trial, I saw that particular bit of information
24 about Afghanistan as being particularly important,
25 and the possibility that there could have been

1 either a financial or an academic record that
2 would demonstrate that during the seven and a half
3 months it was alleged that he was in Afghanistan,
4 no, he was in downtown Montreal. That would have
5 been a wonderful thing to have.

6 MS EDWARDH: We know we don't have
7 any other follow-up, even from the August meeting.

8 But let me just ask you: were you
9 aware, or did you make any inquiry of Dr. Mazigh,
10 about the difficulty she had getting transcripts?
11 Did you make any inquiry about that?

12 MR. PARDY: Transcripts of what?

13 MS EDWARDH: Of Mr. Arar's
14 attendance at McGill, because he was not --

15 MR. PARDY: No, I did not know
16 that that was the case, no. I did not and --

17 MS EDWARDH: Were you aware that
18 Dr. Mazigh had tried to get the lawyer in Syria to
19 obtain a power of attorney that would give her
20 access to certain documents, but, of course he
21 never got in.

22 MR. PARDY: Which lawyer is this
23 now?

24 MS EDWARDH: The lawyer in Syria.

25 MR. PARDY: That was appointed

1 back in August?

2 MS EDWARDH: Yes.

3 MR. PARDY: Yes, because, as you
4 know, all of that came together very quickly, and
5 I was gone as of the 30th of August, yes.

6 MS EDWARDH: Right. But he never
7 got in, to your knowledge?

8 MR. PARDY: No. As a matter of
9 fact, I think -- I learned subsequently that the
10 lawyer had great difficulty in obtaining any
11 information about the process in Syria in that
12 latter part of August and September.

13 MS EDWARDH: And certainly then,
14 it's fair to say, that should anyone require the
15 usual formalities with respect to documents, like
16 a power of attorney or a letter from the person
17 who the documents belong to, that Dr. Mazigh
18 couldn't get them?

19 MR. PARDY: Well, I know these are
20 laws that have been put in place in Canada and I
21 know they're very difficult, in terms of academic
22 institutions and financial records, to obtain
23 access to them.

24 MS EDWARDH: And, indeed, if you
25 were to ask someone today, "Would you mind going

1 back a decade to a bank and get the banking
2 records?", two things are obvious: first of all,
3 Mr. Arar knows where his banking records are. Is
4 that correct? That's an assumption --

5 MR. PARDY: I don't know. Ten
6 years ago and he's living in Montreal, he had
7 moved to Ottawa in the meantime, had gone down to
8 the States, you know, we don't have a large trail
9 of these things with us.

10 MS EDWARDH: If anybody knows, he
11 knows.

12 MR. PARDY: Yes, I would think
13 that would be the --

14 MS EDWARDH: But nobody is in a
15 position to ask him which bank he banked at or
16 whether he has the records?

17 MR. PARDY: Yes, but my
18 recollection is that he was -- you mean, this, as
19 I understand it, was quite a close family and they
20 were -- they weren't -- no suggestion of
21 estrangement or anything else.

22 I was working under the assumption
23 that somebody might be able to chip in some pieces
24 of information. That was the only assumption.

25 MS EDWARDH: And do you, from your

1 vast experience, Mr. Pardy, know how long banks
2 keep records? I'm going to suggest it's seven
3 years.

4 MR. PARDY: Is that -- I take your
5 word for that, yes. Academic records are kept a
6 little longer, I think, yes.

7 MS EDWARDH: But then you have to
8 have the power to get them out of the
9 institution --

10 MR. PARDY: The need the power,
11 yes, yes.

12 MS EDWARDH: But I take it that if
13 we look at this record, there is no evidence at
14 all of any follow-up on your part on this issue?

15 MR. PARDY: Yes, because I think
16 the issue then sort of faded to a certain extent
17 and we were trying to do other things, and, you
18 know -- and I just made the assumption that if the
19 family were able to develop or provide
20 information, that that would have been on my desk
21 without me having to prompt them, given the
22 importance of this, yes.

23 MS EDWARDH: Yes. Given the
24 importance, if you had thought that it should --
25 if it hadn't kind of moved off the horizon with

1 rapidly changing events, you would have followed
2 up as well?

3 MR. PARDY: Yes, and I did when
4 things started to really move in August. There is
5 a record that I did follow up, yes.

6 MS EDWARDH: And I just want you
7 to identify for me -- we'll go to the August.
8 This is a note taken in a meeting with Ms Pither.
9 Is that correct?

10 MR. PARDY: No, this is -- my
11 understanding is that -- in that meeting, Bassam
12 Arar was not present. This was another meeting,
13 and it is reflected, as I understand it, in the
14 desk notes of Ms Myra Pastyr-Lupul. I think
15 that's my understanding. But all of this --

16 MS EDWARDH: Can you give us -- or
17 could counsel give us some assistance? I have not
18 seen that note. I am interested, if I could find
19 it or perhaps I could ask --

20 MR. BAXTER: We will -- I believe
21 they're in the process of being redacted in
22 advance of Ms Pastyr-Lupul's testimony. But we
23 will certainly attempt to find the relevant
24 sections and produce them to my friend as soon as
25 we can.

1 I believe I've seen the piece of
2 paper, the one page that the witness is referring
3 to. I don't know, frankly, where it is,
4 Mr. Commissioner, and it may take a bit of time to
5 get it.

6 MS EDWARDH: You're not sure it's
7 an exhibit?

8 MR. BAXTER: It's not an exhibit.
9 --- Laughter / Rires

10 MS EDWARDH: Not surprising I
11 haven't seen it.

12 THE COMMISSIONER: But it will be.

13 MR. BAXTER: The custom is to make
14 it an exhibit when the witness arrives to identify
15 the notes, I believe.

16 THE COMMISSIONER: I see.

17 MS EDWARDH: And so your memory,
18 sir, is that in August, you raised this issue
19 again, and you would have raised it sometime after
20 August 14?

21 MR. PARDY: I think it was -- I'm
22 trying to -- I think it was getting towards the
23 very end when this thing -- I had Mr. Lockyer
24 appointed. He was going to go out. And the
25 family was making a final decision on a lawyer

1 there. And it was in that context of those
2 discussions, and I do explicitly remember that it
3 was a meeting with Dr. Mazigh and her
4 brother-in-law, Bassam.

5 MS EDWARDH: And then you retired
6 on the 31st?

7 MR. PARDY: I should have done it
8 a year earlier.

9 --- Laughter / Rires

10 MS EDWARDH: And might I take from
11 the description you've just given us that
12 Mr. Lockyer would be alive to any assistance he
13 could provide in respect of the subject matter?
14 In other words, if --

15 MR. PARDY: Not necessarily,
16 because, as you know, the purpose of Mr. Lockyer
17 going out in this context was to observe the
18 process, if there was a trial that was going on,
19 and to provide us with information.

20 And given his own background in
21 terms of the vicissitudes of the Canadian judicial
22 system, I thought he was well-placed to provide
23 that information to us in terms of casting a
24 judgment on any judicial process that would take
25 place in Syria.

1 MS EDWARDH: But surely, sir, if
2 you had any information that would assist in
3 Mr. Arar's defence, once you have a sense of what
4 the allegations was, you're going to get it into
5 the hands of someone who can ensure that counsel
6 in Syria can try to defend Mr. Arar?

7 MR. PARDY: And we would have
8 given it direct to the counsel through the
9 embassy, yes.

10 But Mr. Arar -- and I just made
11 reference to Mr. Lockyer -- it was a slightly
12 different role that he was playing. As you know,
13 there were discussions continuously with the
14 lawyer that was appointed, between him and the
15 embassy officials, and that would have been the
16 channel that we would have used. Because in the
17 first instance, we would work cooperatively with
18 that lawyer in any way we could.

19 That's the way we do it.
20 Mr. Lockyer was sort of a -- I don't want to say
21 "supernumerary", but certainly was serving a
22 separate purpose.

23 MS EDWARDH: Did you give the
24 November 3 statement to the lawyer in Syria?

25 MR. PARDY: I do not know

1 whether -- what material was passed by the people
2 in Damascus, whether Mr. Martel or Mr. Pillarella,
3 but I think what we were trying to do, and I think
4 what the lawyer was trying to do after he was
5 appointed -- he was sort of visiting the various
6 offices, trying to find out where the file was,
7 and he was getting the run-around from everybody
8 there. But what was the discussion was, I think
9 Mr. Pillarella or Mr. Martel can certainly provide
10 you with details on that.

11 MS EDWARDH: Fine. But you will
12 agree, Mr. Pardy, as a simple proposition, if one
13 were going to arm defence counsel in Syria and
14 give them the tools to challenge the assertions
15 made under interrogation, in circumstances where
16 they may lack credibility, you needed to give that
17 material to the counsel representing Mr. Arar?

18 MR. PARDY: Absolutely, yes.

19 --- Pause

20 MS EDWARDH: And, in addition, I
21 take it that you would forward to that lawyer any
22 other information you had that could bear upon the
23 involuntariness of the statement in question?

24 MR. PARDY: Yes, that whole
25 process -- by the time I left, I think the

1 discussions -- I am not quite sure if the final
2 decision on retention of the lawyer had been taken
3 by the time I left. I was still arguing against
4 the retention of this kind of lawyer.

5 I still felt that it was
6 unamicable to Mr. Arar's interests to have
7 somebody of this background, and I'm not sure then
8 just where it went after August 30, yes.

9 MS EDWARDH: But, my point is, the
10 commitment is that this man is going to stand
11 trial, even if it's in a court that you don't
12 approve of, your role is to make sure that
13 materials essential to the defence, which you
14 understood related to 1993, would be in the hands
15 of that defence counsel?

16 MR. PARDY: Yes, and I think it
17 was also reflected in the actions of Ms Girvan in
18 New York in dealing with counsel there. It is the
19 same process. That is the standard way that we
20 operate, yes, yes.

21 MS EDWARDH: And so one takes it
22 then, if that document could be put into
23 Mr. Arar's counsel's hands, it might be equally
24 put into this counsel's hands, but I leave that
25 for your consideration, Mr. Commissioner.

1 MR. PARDY: I'm sorry, I've lost
2 the bending of the roses. The document in
3 question? I'm not quite sure.

4 MS EDWARDH: Oh, we're talking
5 about the November 3 --

6 MR. PARDY: Oh, I'm sorry, you are
7 being a bit rhetorical.

8 MS EDWARDH: Yes, I am. I was.
9 My apologies. It's five to one.
10 --- Laughter / Rires

11 MR. PARDY: I looked at the
12 commissioner, and he looked as puzzled as I was.
13 --- Laughter / Rires

14 MS EDWARDH: Let me move to a
15 different area then, and I think we can do this
16 quickly.

17 You were here during Ms Collins'
18 testimony when she was asked a series of questions
19 about what steps -- they're hypotheticals,
20 obviously -- but what steps would she have taken
21 had she believed that it was a realistic
22 possibility or probability that Mr. Arar was going
23 to be deported to Syria.

24 And we need your guidance, to some
25 extent, about the mechanisms that should exist

1 for, first of all, frontline persons. Assuming
2 Ms Collins were to accept as a fact that this was
3 a probability, what should such a consular officer
4 do?

5 MR. PARDY: I think what would
6 happen, it would be referred to me for action,
7 because there is no point then of walking around
8 at the lower reaches of a bureaucracy on an issue
9 of this magnitude.

10 Two things could happen: one is,
11 at a very high level in Washington, possibly the
12 ambassador, he would go in and see a senior person
13 in the Department of State there; and secondly, we
14 would possibly call in the American Ambassador
15 here in Ottawa on that issue.

16 MS EDWARDH: And by calling in the
17 ambassador, the ambassador would be called in to
18 speak with the Minister?

19 MR. PARDY: Yes, it would be at
20 that level. Mr. Cellucci, as you know, given
21 his -- I won't go there, but anyway...

22 That would be the normal thing to
23 do.

24 MS EDWARDH: Right. Assuming he
25 wasn't attending a luncheon meeting?

1 MR. PARDY: Yes, that's correct.

2 MS EDWARDH: Okay. So that would
3 be the high-level steps that would need to be
4 taken to deal with such an extraordinary
5 situation?

6 MR. PARDY: Yes, it would have to
7 be very high in that sense, yes, if that -- but
8 our problem was -- I mean, you'd go in and you
9 would assume, make the assumption, that we had
10 sufficient evidence to justify our concerns, and
11 that's what would be laid on the table, yes.

12 But, again, I'm back to the issue
13 that I discussed on the first day, I think, with
14 Mr. Cavalluzzo here, as to what would be the
15 results of that in the absence of very specific
16 information, and I guess we had conflicting
17 information. I think is not an unreasonable
18 characterization to make of the information we had
19 at that time.

20 MS EDWARDH: But the only direct
21 statements you had -- I don't want to argue about
22 the record. It's an idea of, what would you do if
23 you decided there was evidence that there was a
24 probability this would happened?

25 MR. PARDY: As I say, that's the

1 two channels -- that's, general speaking, the most
2 appropriate way to go. The American Ambassador in
3 town and the Canadian Ambassador in Washington,
4 yes.

5 MS EDWARDH: And we do know that
6 there was no direct contact with the Americans on
7 this issue. No one contacted them between
8 October 3 and 8 on this issue: Is Mr. Arar really
9 going to Syria or are you sending him to Syria?

10 MR. PARDY: No, that is correct,
11 yes.

12 MS EDWARDH: Now, here's my
13 problem, Mr. Pardy. I believe, sir, from your
14 evidence, the conclusion that one would reach is
15 that you were blind-sided by this conduct on the
16 part of the Americans, sending him to Syria?

17 MR. PARDY: I thought their
18 behaviour was duplicitous, yes.

19 MS EDWARDH: And one of the things
20 you thought were the probability -- maybe not
21 "probability". Maybe that's not fair to you.

22 One of the things you were afraid
23 of, knowing the history of this case and knowing
24 what else was happening in the world, that
25 Mr. Arar might find himself in Guantanamo. You

1 mentioned that earlier.

2 MR. PARDY: Yes, I did.

3 But the other scenario that I
4 mentioned in the same context, being a member of
5 al-Qaeda was a criminal offence in the United
6 States, and the possibility that he would be
7 incarcerated until such time as they decided
8 whether they would have a trial.

9 MS EDWARDH: Right. That would,
10 of course, be the civilized way to approach the
11 allegation of involvement in a criminal
12 organization.

13 Did you have any other basis to
14 believe that there was a realistic possibility
15 that he would be shipped out to Guantanamo?

16 MR. PARDY: No, other than the --
17 as you know, this behaviour or this action by the
18 Americans, in terms of shipping people to
19 Guantanamo, which was -- the issue here is it gets
20 back to citizenship; and, as far as I know, there
21 was one example of an American citizen ending up
22 in Guantanamo, but he was quickly removed because
23 the courts -- the legal basis for Guantanamo, if I
24 can use that term, did not support having such a
25 person there.

1 But a person such as Mr. Arar
2 could easily have ended up in a place like
3 Guantanamo.

4 MS EDWARDH: Because, in fact, the
5 population of Guantanamo was not at all confined
6 to persons who were apprehended and detained out
7 of Afghanistan?

8 MR. PARDY: Not at all, no.

9 MS EDWARDH: Right. There were
10 collections of people from various nations placed
11 in Guantanamo on the principle that there might be
12 some actionable intelligence obtained through
13 their detention.

14 MR. PARDY: And the removal of
15 individuals from the field of action, if I can use
16 that term.

17 MS EDWARDH: Incapacitation?

18 MR. PARDY: "Incapacitation" is a
19 good word, yes.

20 MS EDWARDH: Now, if you thought
21 that Mr. Arar was going to Guantanamo, from my
22 perspective as his counsel, Mr. Pardy, it's not
23 much better than Syria. So --

24 MR. PARDY: Yeah, no, I'm sorry.
25 In the context that this came up was that I was

1 being asked by -- what was going through your
2 mind, as I was trying to deal with the situation
3 of Mr. Arar in New York; and I think the question
4 was, "Well, what were the possibilities here?"
5 And there were certain possibilities.

6 My primary conclusion was that --
7 and I think other people that were working on this
8 case -- was that Mr. Arar would be treated
9 somewhat similar to what happened to Mr. Baloch
10 and Mr. Jaffri. That was -- the other
11 possibilities was Guantanamo --

12 MS EDWARDH: That's the most
13 likely probability.

14 MR. PARDY: That's the most likely
15 probability.

16 MS EDWARDH: But certainly on your
17 radar as a risk was Guantanamo?

18 MR. PARDY: Was a possibility,
19 yes, if there was going to be something going on
20 other than retaining him in the continental United
21 States for possible -- further investigation,
22 because the term that was used -- I'm trying to
23 think -- there was people such as this, and it
24 came up in the context of Mr. Baloch and
25 Mr. Jaffri -- was that they were subject to

1 clearance following an investigation by the FBI.

2 MS EDWARDH: Yes, and it's just as
3 easy to remove someone to Guantanamo for such
4 clearance as well.

5 MR. PARDY: Very few people, as I
6 recall, were moved -- again, we're back into
7 this -- were removed from the continental United
8 States to Guantanamo. Most -- I think the vast
9 majority were over.

10 Again, that was an exceptional --
11 it would have been an exceptional development,
12 just as the removal of Mr. Arar to Syria was an
13 exceptional development. Yes.

14 MS EDWARDH: My question, though,
15 is this: Having got it in your mind or it's on
16 your radar screen --

17 MR. PARDY: Mm-hmm.

18 MS EDWARDH: -- why weren't steps
19 taken, such as that you've just described in
20 respect of Syria, why weren't they taken in
21 respect of the prospective removal or possible
22 removal of a Canadian citizen on his way home,
23 travelling on a passport -- why weren't they taken
24 with respect to your concern that he's going to
25 Guantanamo?

1 MR. PARDY: Because, as I just
2 mentioned, the conclusion -- or not the
3 conclusion, that's too strong a word -- but the
4 operational assumption we were making here, that
5 Mr. Arar would remain in American custody in New
6 York for some time to come.

7 MS EDWARDH: And, of course,
8 that -- it's not a criticism, but it's the
9 operational assumption that is premised upon an
10 entire absence of candour and information by
11 American authorities.

12 MR. PARDY: Well, I think during
13 this period, after the 2nd of October, I think
14 there was a fair degree of openness and
15 cooperation from the American authorities during
16 that period.

17 The consular access, the
18 acknowledgment that he was a Canadian citizen, the
19 agreement that a lawyer could be appointed and the
20 lawyer could go visit him -- there were a number
21 of those factors that gave us some measure of
22 confidence that the operational assumption was a
23 reasonable one.

24 MS EDWARDH: But my problem with
25 that -- that's the jail. That's the jail. You

1 know, I mean, the jail lets you in. You said
2 yesterday that you were satisfied that the
3 acknowledgment by MDC authorities was sufficient
4 to constitute notice under the Vienna Convention.
5 Fair enough. That's the jail --

6 MR. PARDY: Followed by word from
7 Washington on October 4.

8 MS EDWARDH: Yes, and I don't
9 think it would have mattered to you if Washington
10 hadn't called you, as long as you had confirmation
11 from MDC?

12 MR. PARDY: Not really, no.

13 MS EDWARDH: Right.

14 And I also think that it's clear
15 that it's the MDC who lets you in. You weren't
16 dealing with INS or you weren't dealing with the
17 Department of Justice, you were dealing with a
18 jail. It doesn't matter how fancy a jail or how
19 tight a jail it is, it's just a jail.

20 MR. PARDY: Yes, but in terms
21 of -- you mean, as you know, our understanding of
22 what went on at MDC, the type of person there, in
23 part supported our operational conclusion that
24 Mr. Arar was going to be in the United States for
25 some time to come.

1 MS EDWARDH: But my point isn't
2 that you drew the wrong conclusion, my point is
3 that you didn't get any information from the INS
4 about the allegations, about the suggestion, about
5 the process.

6 It looked to me like everybody
7 didn't understand what was happening, and perhaps
8 including Mr. Arar's New York lawyer.

9 MR. PARDY: Well, that was the
10 whole point, to get a lawyer into this process as
11 early as possible. And, really, from quite early
12 on, in Ms Girvan's testimony here, not only did we
13 raise this issue with the family, they decided
14 that they would go out through contacts of their
15 own and seek the appointment of Ms Oummih.

16 But on top of that, we were
17 talking to people at the Centre for Constitutional
18 Rights, who had a fair bit of experience in this
19 area, that could advise us on these things. And
20 so it wasn't a static situation in that sense
21 whatsoever.

22 MS EDWARDH: But all I'm really
23 saying, when I talked about the lack of
24 information from the U.S. authorities, while we
25 can agree that MDC, which is just a federal

1 holding facility -- that's all it is --

2 MR. PARDY: For the 9th floor, for
3 a very specific purpose.

4 MS EDWARDH: But it's a big
5 institution.

6 MR. PARDY: It's a big
7 institution, but I think the 9th floor, in terms
8 of part of that institution, was there for a very
9 specific purpose, so that people could be held and
10 investigated by the FBI with respect to any crime
11 that they might have committed in the United
12 States.

13 MS EDWARDH: My point only is
14 that, while you got some cooperation from the
15 prison or the jail, it is obviously clear that
16 through this time period in Mr. Arar's removal,
17 that there was no cooperation, by being forthright
18 and candid about who was holding him, what the
19 nature of the process was, no dealings with the
20 American authorities outside the jail?

21 MR. PARDY: But that is the
22 purpose of the appointment of counsel, is to get
23 into and understand -- I mean, my understanding
24 was that Ms Oummih was retained on the basis that
25 she practised in the area of immigration law in

1 the United States, and that's the purpose.

2 It's to get her involved in the
3 process. She understands that process and knows
4 how to work in that process.

5 MS EDWARDH: But you tried, didn't
6 you, Mr. Pardy? I mean, isn't there --

7 MR. PARDY: Yes.

8 MS EDWARDH: -- ample evidence of
9 senior officials from the Government of Canada
10 trying to get information?

11 MR. PARDY: Oh, absolutely.

12 But I think in terms of -- when
13 you get down to the level of detail that you're
14 suggesting here that might lead us to change our
15 operational assumptions here, what we were looking
16 for was the lawyer to help us out on this process.

17 And I think, as is recorded in one
18 of the chronologies, and certainly was not
19 necessarily evident at the time, but the lawyer,
20 in her advice to Mr. Arar, was exactly the same as
21 ours -- or our understanding, if you like, as to
22 how American law was going to play out here.

23 MS EDWARDH: Okay. Certainly, in
24 addition to the lawyer, you got no help from U.S.
25 authorities that were not prison officials between

1 October 3 to October 8?

2 MR. PARDY: No, but we did not
3 think that those officials that were involved and
4 Ms Girvan was talking to, that they were sort of
5 just images of no consequence.

6 I mean, they were making
7 decisions, and one has to assume that decisions
8 that are made by American officials, in cases such
9 as this, they are not idiosyncratic, they are
10 coming based on some consultation within their
11 system.

12 And what gave us some measure of
13 confidence here was the conclusion by American
14 officials that Mr. Arar was a Canadian, he was
15 travelling on a Canadian passport, they
16 acknowledged all of this through consular access,
17 and the right to have access to counsel.

18 MS EDWARDH: And that's why you
19 considered their conduct duplicitous?

20 MR. PARDY: No. Following all of
21 this, in terms of what they did with respect to
22 the deportation -- or the exclusion to Syria, yes.

23 MS EDWARDH: Well, I think I
24 pursued that area with you, and we're not going to
25 go any further.

1 I wonder what your views are,
2 Mr. Commissioner --

3 THE COMMISSIONER: We'll take a
4 lunch break. We've gone a bit over, so we'll go
5 to -- 2:20, we'll resume.

6 THE REGISTRAR: Please stand.

7 --- Upon recessing at 1:11 p.m. /

8 Suspension à 13 h 11

9 --- Upon resuming at 2:27 p.m. /

10 Reprise à 14 h 27

11 THE REGISTRAR: Please be seated.

12 Veuillez vous asseoir.

13 MS EDWARDH: Good afternoon,

14 Mr. Commissioner.

15 THE COMMISSIONER: Good afternoon.

16 MS EDWARDH: Good afternoon,

17 Mr. Pardy.

18 Let me just move on to another
19 area and try and link them.

20 I think it's fair to say from what
21 you have said that your working assumption with
22 respect to the early stages of Mr. Arar's
23 detention in Syria is that he was the victim of
24 ill-treatment.

25 I want to now turn to what I

1 consider a link in an important area -- that's a
2 fair statement?

3 MR. PARDY: Yes.

4 MS EDWARDH: -- which is the
5 sharing of information. And I want to first ask
6 you about the sharing of this kind of working
7 assumption.

8 Would Mr. Martel, who of course
9 you would have known I am sure as a colleague over
10 a number of years, would he be alive to the
11 working assumption that you approached this case
12 on?

13 For example, would you have had an
14 opportunity to talk to him and reflect on his
15 observations and reflect on the public record, and
16 share this view that it was obvious or clear or
17 likely that Mr. Arar was the victim of treatment
18 that fell below the standard set in CAT early on?

19 MR. PARDY: I can't recall that I
20 had any direct conversations with Mr. Martel. It
21 would have had to have been by telephone.

22 But certainly I had conversations
23 with the ambassador, and in talking to the
24 ambassador, quite literally you are talking to
25 everyone in the embassy.

1 But I think the tenor of the
2 questions, the written questions, that went out to
3 the embassy, I think, in terms of the -- I can't
4 remember the first set or the second set.
5 Certainly one of the elements in that was just
6 exactly this point.

7 MS EDWARDH: The change in
8 demeanour and --

9 MR. PARDY: That sort of thing,
10 and that was the underlying reasons for asking
11 these questions, yes.

12 MS EDWARDH: And would it be fair
13 for us to assume then that -- I don't want to talk
14 about this code. It's like lawyers speaking to
15 lawyers. When you ask those kinds of questions,
16 it's clear to the recipient that you are looking
17 for information about those kinds of issues, about
18 ill-treatment?

19 MR. PARDY: Oh, absolutely.

20 MS EDWARDH: I don't want to leave
21 it just at the implied level.

22 Were you saying, sir, that
23 Ambassador Pillarella would have had an
24 understanding that, from your perspective, given
25 your extensive knowledge, that was your view?

1 MR. PARDY: Yes, I think that
2 would be a fair assumption to make, yes.

3 MS EDWARDH: He would have known
4 that?

5 MR. PARDY: Yes.

6 MS EDWARDH: You are all involved
7 in a pretty close circle of providing consular
8 services to Mr. Arar. Now I want to talk about up
9 the chain of authority.

10 There are other people above you,
11 and while you may have been alive to these issues
12 in October, in November, I have not seen any
13 document, Mr. Pardy, that clearly expresses your
14 concerns about this issue to your superiors, right
15 on up into the Minister's office.

16 But would it be clear from your
17 briefings -- and I know you spoke to all these
18 people in addition to providing written
19 information.

20 Would they have been aware of the
21 working assumption you had about Mr. Arar's
22 treatment in October and November of 2002?

23 MR. PARDY: Yes, I think both
24 horizontally and vertically that that was the
25 case.

1 I would just explain to you that,
2 like in New York, I had a dual reporting
3 relationship. Ms McCallion, who ostensibly was my
4 theoretical boss, every time we had a major case
5 involving a country, like this case, then I went
6 over to the political side. And it wasn't so much
7 as the boss but the people on the Middle East side
8 of things, Mr. Sinclair was there as the Director
9 General and Mr. McNee was the ADM. And that's the
10 route that we would go upstairs on this kind of an
11 issue. It wouldn't go up the other route at all.

12 MS EDWARDH: And the other route
13 would be?

14 MR. PARDY: Through Ms McCallion,
15 although her name shows up occasionally on the
16 thing, but it would be on the other side.

17 The people on the political side
18 were certainly as familiar as I was in terms of
19 what kind of conditions might prevail in a country
20 like Syria.

21 MS EDWARDH: Right. And I
22 appreciate that they would be aware in general.
23 But it's important in a sense to know that you
24 had, from your own experience and from your
25 talking to the ambassador and talking to

1 Mr. Martel, you had formed a view that allowed you
2 to draw certain conclusions or tentative
3 conclusions in this time period of
4 October-November.

5 MR. PARDY: Yes, and I think --

6 MS EDWARDH: They would have known
7 that?

8 MR. PARDY: Yes, I think these
9 views were shared, that that was a good solid
10 working assumption that one made in dealing with
11 cases such as this.

12 I should point out, as well, we
13 had another very prominent case going that I was
14 dealing with the same group of people on in
15 another country in the region, yes.

16 MS EDWARDH: Right. And I think
17 we all know what that case was.

18 Let me just ask, because I always
19 get lost in these organizational charts -- I can't
20 figure out what's up and what's down.

21 We know that Mr. Livermore held a
22 senior position. He was the director of what,
23 intelligence and security?

24 MR. PARDY: Director General.

25 MS EDWARDH: Director General. So

1 he was, in a sense, on a line with you?

2 MR. PARDY: Yes, roughly.

3 MS EDWARDH: So when you say
4 "horizontally and vertically", would it be your
5 view that, in light of Mr. Livermore and
6 Mr. Solomon's involvement in this case, they too
7 would have been alive to the working assumptions
8 you had?

9 MR. PARDY: Yes.

10 MS EDWARDH: Thank you.

11 I don't mean to rehash old areas,
12 but let's take a look at some of these issues in
13 the context of information-sharing within the
14 department.

15 Mr. Cavalluzzo raised with you the
16 statements set out in the information provided to
17 Canadian citizens or indeed landed immigrants,
18 that their communications were confidential. I
19 don't have to go back over that.

20 You said it needed updating, as I
21 recall your answer.

22 MR. PARDY: Yes, in light of
23 experiences on some of these high-profile-type
24 cases involving terrorism and national security,
25 yes.

1 MS EDWARDH: So I take it there
2 needs to be some clear communication to persons
3 that there are exceptions to the principles of
4 confidentiality. That's really what you are
5 saying. They need to be told that.

6 MR. PARDY: I think we just made
7 specific -- we just said the Privacy Act, and I
8 think in these circumstances perhaps what would go
9 on under the authority of the Privacy Act there
10 are provisions for the sharing of information in
11 the following circumstances, yes.

12 MS EDWARDH: Right. Because what
13 it says is it's protected by the Privacy Act,
14 which at least to an ordinary reader would convey
15 that there was a non-sharing.

16 MR. PARDY: Yes, I think perhaps
17 too much shorthand was used in that sense.

18 But certainly I would come back,
19 fall back upon the fact that this was really an
20 exceptional case. And I think exceptional cases,
21 of course, always lead to changes in terms of
22 operational procedures and the information one
23 provides to clients.

24 MS EDWARDH: Right. You have said
25 three things I want to explore.

1 Are the RCMP and CSIS clients of
2 the Department of Foreign Affairs?

3 MR. PARDY: No.

4 MS EDWARDH: Okay.

5 MR. PARDY: Except in one -- no, I
6 am sorry. I would amplify that.

7 In the sense that when they are
8 operating in an overseas capacity, then quite
9 clearly the Department of Foreign Affairs has a
10 role to play in terms of what they are doing
11 overseas, yes.

12 MS EDWARDH: Okay. And we have
13 heard about the hierarchy and the responsibilities
14 of the ambassador in respect of either CSIS
15 operatives or the RCMP that could be operating in
16 the country. In other words, in theory they are
17 supposed to report to the ambassador who is
18 largely a person who has knowledge and, I suppose,
19 some direction.

20 MR. PARDY: I think it's more than
21 theory. I think the practice has been that that
22 is the case.

23 MS EDWARDH: All right. So the
24 client you were referring to is the person
25 receiving consular services, in your answer?

1 MR. PARDY: Yes.

2 MS EDWARDH: We will come to this.
3 What is troubling is that if in
4 fact the -- and we will come to Mr. Livermore's
5 phraseology -- the promise of confidence to
6 persons facing charges, or detained without
7 charge, could readily be, not by any rule that
8 said that criminal intelligence or security
9 interests could result in disclosure.

10 MR. PARDY: I don't think that's a
11 fair interpretation of Mr. Livermore's testimony.
12 I listened to it very carefully, and I know there
13 were a number of subtleties that were there.

14 What Mr. Livermore was talking
15 about when he was talking about the sharing of
16 information was information for which he had
17 responsibility. That did not include consular
18 information. These were not decisions for him to
19 make, and I think he made that clear, I think, on
20 the last morning of his testimony.

21 MS EDWARDH: Well, we are going to
22 come to that in a little bit more detail, because
23 I think it's very important for the Commissioner
24 to understand.

25 My associate will kick me if I

1 forget to come back to that specifically, because
2 I had thought you had merged the two, i.e.,
3 information received by the ambassador from Syrian
4 Military Intelligence and information received by
5 the ambassador through the consular process.

6 We will come to try to separate
7 them out then.

8 MR. PARDY: Yes.

9 MS EDWARDH: But I want to start
10 out with something you said, because I would just
11 like to have you review it with me. I am going to
12 put to you it doesn't get you there.

13 It is tab 30, Mr. Pardy.

14 It is clear, if you look at tab
15 30, the purpose of the conversation recorded by
16 Ms Girvan allows us two things, gets you two
17 places.

18 Ms Girvan is quite properly making
19 a record which discloses that she has informed
20 Mr. Arar of the provisions with respect to
21 confidentiality and is seeking his consent to the
22 release of certain information.

23 Is that fair?

24 MR. PARDY: The first sentence in
25 the first paragraph, yes.

1 MS EDWARDH: Yes. So we do know
2 that the promise of confidentiality was held out
3 to him and he was asked to give consent to the
4 release of information; fair enough?

5 MR. PARDY: Yes.

6 MS EDWARDH: Now, the list of
7 persons Mr. Arar gives consent to are his brother,
8 his mother-in-law, his wife, and anyone who could
9 help him, including his company, Mathworks.

10 I am going to suggest to you that
11 when you look fairly at that consent, that it is
12 clearly a list of persons that are close to
13 Mr. Arar?

14 MR. PARDY: The first part, yes.
15 The first part of the construction there, yes.

16 MS EDWARDH: Well, embedded in the
17 construction, anyone who could help, including the
18 company, Mathworks, that employs him, still forms
19 a circle of persons who he knows and who have
20 worked with him or with whom he is in a
21 relationship with.

22 MR. PARDY: I took the words to
23 mean, as I explained when this came up with
24 Mr. Cavalluzzo, was that this was a -- the words I
25 took at face value, "anyone who would help him".

1 And the fact they included Mathworks in this
2 construction suggested to me that Mr. Arar himself
3 was possibly thinking about that maybe something
4 happened in the United States that gave rise to
5 his detention by the American authorities.

6 I mean, it's an interpretation of
7 the words, and I interpret them and acted
8 accordingly.

9 MS EDWARDH: I want to say, sir,
10 that I find it troubling, because clearly if I
11 tell you that you can speak to my mother and
12 father and spouse and child and the men and women
13 I work with, it is a circle of people with whom I
14 have personal dealings.

15 We can agree with that?

16 MR. PARDY: But if you use the
17 words "anyone who can help me", then in effect I
18 would take those words at face value and act
19 accordingly.

20 MS EDWARDH: The trouble with that
21 is I asked Ms Girvan the question about whether
22 she thought that these notes that she made of
23 Mr. Arar's consular visits were shared -- whether
24 she knew they were going to be shared.

25 MR. PARDY: Yes, I think I can

1 remember the exchange, yes.

2 MS EDWARDH: And she said she was
3 unaware of any such sharing.

4 MR. PARDY: Mm-hmm.

5 MS EDWARDH: So certainly you will
6 agree with me that it was not within her
7 contemplation when she made these notes that the
8 sharing or the consent extended to third party
9 agencies who had no personal dealings with
10 Mr. Arar.

11 She didn't think she was asking
12 that question?

13 MR. PARDY: But I think the issue
14 that was facing me, sitting in Ottawa and
15 attempting to provide assistance to Mr. Arar, was
16 to make a decision as to who the people might be
17 that could provide assistance to him.

18 And that's why it came to the
19 conclusion that I did.

20 But I would come back as well
21 here, and it's important to realize that in the
22 Privacy Act itself, in addition to being a
23 specific grant, if you like, of permission, as
24 contained in this message, there is also the
25 general grant of permission that the information

1 can be used for which it has been collected.

2 MS EDWARDH: Or that you can make
3 the decision on a calculus of benefit and harm.

4 MR. PARDY: Yes.

5 MS EDWARDH: Which you referred to
6 yesterday.

7 MR. PARDY: Yes.

8 MS EDWARDH: And I was going to
9 say to you, Mr. Pardy, that I think it is clear
10 that Mrs. Girvan did not have in mind, when she
11 wrote this down -- forget what you were
12 thinking -- when she wrote this down, it is clear
13 that the consent did not extend beyond a circle of
14 persons who had personal dealings with Arar.

15 That's what she meant.

16 MR. PARDY: But I think that I --

17 MS EDWARDH: We will come to the
18 calculus.

19 MR. PARDY: I can't impute to
20 Ms Girvan. I think it was an area not totally
21 explored in the detail that you are suggesting
22 right now.

23 MS EDWARDH: Certainly there is no
24 evidence that any discussion occurred with Maher
25 Arar that the information would go beyond the

1 circle of persons who knew him. That's not
2 discussed. There is nothing to suggest it was
3 discussed.

4 MR. PARDY: No, but I think there
5 is implicit -- and I am not saying I would use the
6 expression that implicit in what he said there,
7 there was a plea to the Canadian authorities to do
8 whatever they could to help him out of this very
9 difficult situation.

10 MS EDWARDH: Well, what I am
11 struggling with is the Privacy Act has different
12 branches which give you different authority.

13 MR. PARDY: Yes.

14 MS EDWARDH: There are a number of
15 them and I am going to come to them, Mr. Pardy.

16 But the first fundamental
17 principle is you can give confidential information
18 with a person's consent. That's the first
19 principle; right?

20 MR. PARDY: No. The first
21 principle is that you can use the information for
22 the purpose with which it was collected.

23 I think that is -- again, we may
24 be talking of a hierarchy here, but certainly in
25 terms of my reading of the Privacy Act is that

1 they are almost co-equal in use.

2 MS EDWARDH: We don't have to
3 argue --

4 MR. PARDY: Okay.

5 MS EDWARDH: -- very much here.

6 It says:

7 "Personal information under
8 the control of a government
9 institution shall not,
10 without the consent of the
11 individual to whom it
12 relates, be used by the
13 institution except ..."

14 So the fundamental overriding
15 principle, I am going to suggest to you, is really
16 it must be used in accordance with the statutory
17 regime, unless you have consent?

18 MR. PARDY: You are the lawyer. I
19 will accept your interpretation of this.

20 MS EDWARDH: Thank you.

21 MR. PARDY: But, again, in
22 operational terms, in terms of the way you would
23 operate, I didn't see this as a hierarchy.

24 MS EDWARDH: That's fair enough.

25 MR. PARDY: In the way that you

1 constructed it now.

2 MS EDWARDH: I want to put to you,
3 and I think you will be sensitive to this,
4 Mr. Pardy -- and we can go to other provisions of
5 this Act that may or may not authorize the release
6 of information.

7 MR. PARDY: Mm-hmm.

8 MS EDWARDH: But the consent given
9 here could not realistically be understood as
10 informed consent, in the sense that Mr. Arar knew
11 he was consenting to the release of information to
12 policing and intelligence authorities. He didn't
13 know any of the risks or benefits.

14 All he knew was that there would
15 be a confidence maintained unless he permitted
16 people within his inner circle to get access to
17 information. There is no informed consent.

18 MR. PARDY: Well, as you know,
19 informed consent has been the subject of great
20 debate within the Canadian courts.

21 But what I took it to mean was
22 that Mr. Arar, who found himself in a very
23 difficult situation, was appealing to the Canadian
24 government, through the consular services, to do
25 what they could to assist him out of this

1 particular set of circumstances.

2 And we took that to mean -- or I
3 should say I took that to mean that I could share
4 information as I deemed appropriate to help
5 Mr. Arar.

6 MS EDWARDH: So even though
7 Mr. Arar was alone, without the benefit of
8 counsel, held incognito for several days by the
9 American authorities in a secure, isolated
10 position, even though it's not told to him who
11 these other entities are, I take it, sir, it's
12 your view that this is a consent that you could
13 actually act on under the Privacy Act?

14 MR. PARDY: Yes. The question
15 would not have been put to him otherwise -- and I
16 should say that consent being given in these
17 circumstances is not a unique one in terms of
18 Mr. Arar. It's a set of conditions that we found
19 quite often in terms of the work that we were
20 doing.

21 MS EDWARDH: But you didn't use
22 those consents to transmit the information to the
23 Mounties and CSIS because you have told --

24 MR. PARDY: I am sorry?

25 MS EDWARDH: The conditions in

1 which you found Mr. Arar, even if they are not
2 terribly unusual, you have told the Commissioner
3 that the transmission of information to the
4 Mounties and to CSIS was unusual; it wasn't a
5 common event.

6 MR. PARDY: Oh, absolutely not.

7 MS EDWARDH: Right.

8 MR. PARDY: To that extent
9 Mr. Arar's case was not common.

10 MS EDWARDH: Would you have
11 obtained any legal advice from the legal
12 department, or from the Privacy Commissioner, as
13 to whether the consent you had obtained, based on
14 this representation, justified the release or was
15 a real consent that made release possible?

16 MR. PARDY: No, I would not go
17 to -- certainly one of the lawyers that was
18 involved with us, or a person that was involved
19 with us was a lawyer on these matters.

20 I would not go to the Privacy
21 Commissioner unless I clearly felt that there were
22 unusual circumstances about sharing information
23 which I thought was going to be helpful to
24 Mr. Arar.

25 MS EDWARDH: Right. And there

1 were unusual circumstances in this case.

2 MR. PARDY: The consent that we
3 were given was not different than the consent we
4 get in many cases.

5 MS EDWARDH: Okay.

6 MR. PARDY: People who find
7 themselves in prison, they are looking for
8 assistance here, and they are not going to make a
9 deeply convoluted decision with regards to the
10 use.

11 It would have been nice if, say,
12 following the October 3rd visit, if we had the
13 opportunity to go back to Mr. Arar and go over
14 this in some detail or were able to do this
15 following his removal to Syria. It would have
16 been very nice to have been able to go back and
17 explain to him exactly what we were doing, but the
18 circumstances were such that that was not
19 possible.

20 But at the same time we still had
21 the responsibility to try to help Mr. Arar, and we
22 made decisions based on that set of circumstances.

23 MS EDWARDH: Certainly, Mr. Pardy,
24 you will agree that no one who might reasonably be
25 regarded as having Mr. Arar's interests in their

1 heart, such as his spouse, was ever asked whether
2 or not she had any concerns with sharing
3 information with CSIS and with the RCMP?

4 MR. PARDY: But I think his family
5 members, in terms of their retention of
6 Mr. Edelson early on in the process, and
7 Dr. Mazigh's efforts to try to speak with the
8 people on that side of the Canadian government I
9 think speaks to the fact that there was that
10 realization that they could have been a source of
11 help to Mr. Arar in his circumstances.

12 MS EDWARDH: You did not, though,
13 ask Mr. Edelson, nor did you ask Dr. Mazigh, what
14 view she had of the sharing of information with
15 CSIS and the RCMP?

16 MR. PARDY: No, I did not.

17 MS EDWARDH: Mr. Livermore
18 testified that after 9/11 there was a
19 recalibration of the need to share information,
20 and the information that fell within -- and I will
21 read you the pages, if you would like to hear
22 them. But information was liable to be shared if
23 it fell within the category of criminal
24 intelligence or national security, and it would be
25 liable to be shared to the appropriate

1 authorities.

2 And then he referred to the
3 existence of 20 to 40 cases of detainees in that
4 category.

5 Do you recall that evidence?

6 MR. PARDY: But again I come back
7 to his subsequent testimony in this area where he
8 was quite categorical when he referred to these
9 matters. He did not have responsibility nor
10 control over information, consular information,
11 with respect to those 20 or 40 cases. That
12 responsibility remained with me.

13 MS EDWARDH: Okay.

14 MR. PARDY: And so any sharing of
15 information that could be broadly categorized as
16 consular, then it was my responsibility to make
17 that decision.

18 MS EDWARDH: All right. So let's
19 deal with that.

20 MR. PARDY: Yes.

21 MS EDWARDH: So when Ambassador
22 Pillarella meets Syrian Military Intelligence,
23 converses with them, assesses where the state of
24 the investigation is, what the allegations are, is
25 he doing that as an adjunct to the provision of

1 consular services?

2 MR. PARDY: He is doing it -- as I
3 explained yesterday, he has at least two
4 responsibilities in this area. One of them is the
5 consular responsibility, and the second one then
6 is his responsibility as the Canadian ambassador,
7 who has the responsibility to report back to his
8 government information that relates to the
9 security of Canada.

10 MS EDWARDH: Right. And that
11 would go to CSIS and to the RCMP?

12 MR. PARDY: No, it would go to the
13 ISI, and then they would make a decision in that
14 second category as to whether or not that
15 information would go directly to CSIS or the RCMP.

16 MS EDWARDH: Right. So then
17 Mr. Pillarella wears the two hats in all of those
18 interactions with the Syrian Military Intelligence
19 persons that he interacts with?

20 MR. PARDY: Yes.

21 MS EDWARDH: Mr. Pillarella
22 sometimes -- no, Mr. Martel sometimes goes to meet
23 with Mr. Arar, and we have seen the dissemination
24 of consular materials.

25 It is your evidence, Mr. Pardy,

1 that in those cases you have a specific
2 recollection of approving the dissemination of
3 consular materials, notes of consular interviews?

4 MR. PARDY: Yes. The reports that
5 we are talking about here, if you like, and for
6 shorthand we can refer to them, the eight reports
7 prepared by Mr. Martel of his visits.

8 MS EDWARDH: Yes.

9 MR. PARDY: And then we had the
10 ninth one in terms of visit by the MPs.

11 MS EDWARDH: Yes.

12 MR. PARDY: I would regard those
13 almost as -- these were exclusive. The eight
14 reports by Mr. Martel, in particular, were
15 exclusive consular information.

16 MS EDWARDH: Yes.

17 MR. PARDY: And there was, I can
18 remember -- I mean, if you ask me for the date and
19 time when they came up, that I remember that
20 Mr. Solomon -- and this was the arrangement we had
21 with Mr. Solomon. He would approach me and say or
22 he would make the suggestion that perhaps this
23 could be useful. I would look at those reports
24 and do the assessment of benefit and harm/injury,
25 and then gave him, in a limited number of cases,

1 permission to share with the RCMP and CSIS.

2 MS EDWARDH: So the RCMP got three
3 of them on that basis -- by the way, how would
4 Mr. Solomon know about them?

5 MR. PARDY: Because, in effect,
6 the incoming reports were copied to ISI, as you
7 can see in many cases. They came back to Ottawa,
8 not in the consular system, necessarily, but
9 through the regular departmental e-mail or the C4
10 system.

11 MS EDWARDH: So while there was,
12 in your sense, an understanding that Mr. Solomon
13 would discuss the matter with you, he as a matter
14 of course got the consular reports?

15 MR. PARDY: Yes, because I think
16 ISI had other responsibilities in this area that
17 were not directly related to sharing that
18 information with the RCMP and CSIS. They had a
19 departmental responsibility in these areas as
20 well.

21 MS EDWARDH: Right. What would
22 have been, if you can help us, the departmental
23 responsibility of ISI?

24 MR. PARDY: The departmental
25 responsibility was to provide the Minister and the

1 senior management of the department with
2 information about the activities of Canadians
3 overseas that could affect the security of Canada
4 or the security of other countries in which Canada
5 had relations.

6 MS EDWARDH: So that would mean,
7 from ISI's perspective, they might consider the
8 matter and determine that, not only material
9 received from Syrian Military Intelligence given
10 to the ambassador should be sent to CSIS or RCMP,
11 they could, as well, look at the consular reports
12 they got and, assuming they are working within the
13 protocol, touch base with you, get your views, and
14 then hand those over. Or they could, on their
15 own, send them upward?

16 MR. PARDY: Yes, but there would
17 be consultation with me in terms of -- if there
18 was consular information reported upwards to --
19 but again you are talking about the readership
20 upstairs, of course, is the same readership that I
21 am going to in terms of when I send a memo to the
22 Foreign Minister or to the Deputy Minister or to
23 anybody else above. It is the same readership.

24 As you can see from the file here,
25 there was a sharing of tasks to a certain extent.

1 But the sharing of information
2 outside of the department is a different issue
3 entirely than that.

4 MS EDWARDH: Well, ISI sent
5 information outside the department with --

6 MR. PARDY: In these three
7 specific instances that are reflected in the
8 files, yes.

9 MS EDWARDH: Well, with respect,
10 sir, it is a minimum of four specific incidences
11 because there were three, according to you,
12 consular reports sent to the RCMP: October 22nd,
13 April 22nd, and August 14th. And with respect to
14 CSIS, there was a January 7th and again an April
15 22nd.

16 MR. PARDY: I am not familiar with
17 the January 7th.

18 What I had seen and all I was
19 aware of were the three reports: the October 23,
20 April 23 --

21 MS EDWARDH: If you could,
22 Mr. Pardy, either I misspoke myself, or I didn't
23 understand it.

24 MR. CAVALLUZZO: No, there is some
25 confusion which I might clarify if I have a minute

1 to speak to government counsel?

2 THE COMMISSIONER: Okay. Do you
3 want a break?

4 MR. CAVALLUZZO: No.

5 --- Pause

6 MR. CAVALLUZZO: Commissioner,
7 this is an area where there are some NSC concerns,
8 and if Mr. Pardy is going to return, if my friend
9 has not finished her cross-examination by the end
10 of the day and there is a possibility he may be
11 returning either Tuesday or Thursday of next week,
12 hopefully by that time we will have a clear
13 direction in respect of the documents we are
14 talking about. We are discussing that with
15 government counsel.

16 MS EDWARDH: Mr. Commissioner, I
17 had made these notes of the remarks made by
18 Mr. Cavalluzzo in examination-in-chief, so I
19 thought the matter was without doubt not a
20 problem.

21 So let's deal with the RCMP then.

22 You do concede that we have three
23 consular visits, October 22nd, April 22nd, and
24 August the 14th, but on your then approval were
25 provided to ISI for distribution to the RCMP and

1 to CSIS?

2 MR. PARDY: I gave permission to
3 ISI to share, yes.

4 MS EDWARDH: And it's also clear
5 that there was other information provided by
6 Syrian Military Intelligence to Mr. Pillarella on
7 November 3rd, and Mr. Martel came home with some
8 information on his -- you are looking very
9 troubled, Mr. Pardy.

10 You don't know what I am talking
11 about?

12 MR. PARDY: No, I don't. Your
13 reference to Mr. Martel coming home with certain
14 information.

15 MS EDWARDH: So in the documents
16 that you have reviewed, you have not seen anything
17 that indicates that certain information was
18 brought home after Mr. Arar was released?

19 MR. PARDY: No. As you know I
20 was --

21 MS EDWARDH: You are gone?

22 MR. PARDY: I am gone.

23 MS EDWARDH: And there is nothing
24 you have seen in your review of the record that
25 tells you that.

1 MR. PARDY: I think I have gone
2 through the record. I have seen the public
3 release of documents here. I know that I have
4 seen reference in the -- I had the disc and I
5 reviewed everything that was there.

6 There was reference to the
7 question of whether or not there was a report from
8 the Syrian authorities that was supposed to come
9 to the Government of Canada following Mr. Arar's
10 release.

11 MS EDWARDH: All right. Well, we
12 will --

13 MR. PARDY: But I have not seen
14 any of the material. I have just seen references
15 to it.

16 MS EDWARDH: We will hear from
17 Mr. Martel, but I would like you to assume as a
18 fact that he brought some documents or materials
19 home with him when he accompanied Mr. Arar; and
20 furthermore, that there were then efforts to
21 obtain a further file, a "completer" file, upon
22 Mr. Arar's return by Mr. Martel and others,
23 perhaps the ambassador -- I can't precisely
24 remember.

25 But that continues.

1 MR. PARDY: Mm-hmm.

2 MS EDWARDH: Now, I take it that
3 whole chain, of obtaining information from Syrian
4 Military Intelligence to the ambassador, to the
5 head of consular affairs -- and the embassy,
6 really, right? Mr. Martel, he is the consul. I
7 mean, he provides the services, right, consular
8 services?

9 MR. PARDY: I am not quite sure
10 whether you are telescoping too much here, but
11 anyway ...

12 Can I answer the premise of your
13 question, the first part?

14 MS EDWARDH: Let's try it. If I
15 can't ask it, you answer it.

16 MR. PARDY: This might explain.

17 If we refer to the November 3rd
18 visit, a meeting between Mr. Martel and the
19 General, they discussed in effect information that
20 the General said that they had obtained and that
21 Mr. Pillarella, being the astute one rather than
22 just committing this to memory, asked for a piece
23 of paper, which was delivered to him within a few
24 days.

25 Then that is what I know as being

1 the only written piece of paper that was supplied
2 during this whole process by Syrian Military
3 Intelligence to the Government of Canada.

4 MS EDWARDH: All right. But I am
5 just trying to understand the channels of
6 authority in which it was shared.

7 I would take it that
8 Mr. Pillarella did not have to seek your consent
9 to the provision of that information outside of
10 consular services?

11 MR. PARDY: No, not at all.

12 MS EDWARDH: He did that as a
13 matter of his own prerogative in wearing a number
14 of hats that he wears?

15 MR. PARDY: No, it wasn't Mr. --
16 and I think I mentioned this in previous
17 testimony. It wasn't Mr. Pillarella's
18 responsibility to make a decision on the sharing
19 of that information. His responsibility was to
20 get it back to the Department of Foreign Affairs,
21 and in this case to ISI, and then they made the
22 decision as to whether it was going to be
23 disseminated further within the Government of
24 Canada.

25 MS EDWARDH: Fine. And the

1 person, of course, we are talking about is
2 Mr. Livermore?

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

4 MS EDWARDH: He wears that
5 responsibility?

6 MR. PARDY: Yes, he does.

7 MS EDWARDH: So let's start for a
8 moment with the issue of the consular information
9 that you consented to be shared.

10 MR. PARDY: Yes.

11 MS EDWARDH: And I want to know
12 that when you approved that ISI forwarded on to
13 the RCMP or to CSIS, that you were aware, when you
14 did that, given your experience, that they could
15 choose to send it where they wanted if they saw
16 fit in accordance with their own mandate?

17 MR. PARDY: No. My understanding
18 in this area is that when the Department of
19 Foreign Affairs provides information to the RCMP
20 or CSIS, that information cannot move beyond those
21 organizations without the permission of the
22 Department of Foreign Affairs.

23 MS EDWARDH: Now, we have heard of
24 such things as caveats.

25 MR. PARDY: Exactly.

1 MS EDWARDH: And indeed it is my
2 understanding that the sharing of information that
3 is subject to caveats and control usually carries
4 with it some kind of description on the very
5 document -- there is an expression of this
6 qualification right on the document, so there can
7 be no doubt.

8 MR. PARDY: No ambiguity, right.

9 MS EDWARDH: No ambiguity,
10 correct? And you are familiar with those?

11 MR. PARDY: Yes. I probably
12 invented the system.

13 MS EDWARDH: And indeed if I look
14 at the faxes -- we can look at them, if you care
15 to. But if we look at the faxes where you
16 provided the information or consented to its
17 provision to the RCMP, there are no caveats
18 written on those documents. There is nothing that
19 suggests that there is any control on the use of
20 that information?

21 Would you like to look at them?

22 MR. PARDY: I take your word for
23 that. I think I have seen one or two of the
24 covering pages --

25 MS EDWARDH: No, I --

1 MR. PARDY: I am not disputing
2 your assertion here whatsoever. All I am saying
3 is that the responsibility of ISI would have been
4 to ensure, either in a general sense, or in the
5 way that you suggest, that the documents are
6 stamped, that they are caveated in an appropriate
7 way.

8 MS EDWARDH: I got the sense from
9 Mr. Livermore that post-9/11 caveats were down in
10 the sense that, as he said it -- let me just find
11 his language -- "that after 9/11 this kind of
12 information was liable to be shared".

13 In other words, the presumption
14 was in favour of sharing.

15 MR. PARDY: But in the aftermath
16 of 9/11, the government did not repeal the Privacy
17 Act. It did other things, mind you, and it made a
18 number of policy statements, that both within
19 government and between governments every effort
20 should be made in effect to share appropriate
21 information to deal with the threat as it was seen
22 by the Canadian government, and other governments
23 for that matter.

24 MS EDWARDH: I take it, sir, then,
25 you are not aware of any either general or

1 specific caveat or control placed on these
2 particular documents that Mr. Livermore forwarded?

3 MR. PARDY: At a minimum, I made
4 the assumption that there was a general caveat in
5 place for all information going from the
6 department that was, if I can use the term,
7 information that was owned by the Department of
8 Foreign Affairs in its various manifestations and
9 went outside. That information was protected by
10 caveat, yes.

11 MS EDWARDH: And I am going to say
12 to you certainly that there is nothing that I can
13 recall in the MOU governing sharing of information
14 between the Mounties that would impose a general
15 obligation of the kind that you are saying; that
16 you, at best, are saying that there is a control
17 through the Privacy Act?

18 MR. PARDY: No, I can't remember
19 what MOU you are referring to here.

20 MS EDWARDH: Okay. Maybe I am
21 mistaken.

22 Is there an MOU that governs the
23 sharing of information, or was there in 2002,
24 between the Department of Foreign Affairs and the
25 RCMP?

1 MR. PARDY: No. The only MOU that
2 has been in place between the Department of
3 Foreign Affairs and the RCMP is the MOU with
4 respect to the foreign operations of the RCMP, if
5 you like, and the role there.

6 MS EDWARDH: I misunderstand.

7 MR. PARDY: And the sharing of
8 information, I think, is governed by -- I am
9 trying to think of whether or not there are
10 Treasury Board regulations, which would be the
11 source of such caveats, if you like, in terms of
12 the sharing of information.

13 But again, I would have to refresh
14 my memory on that to be more specific.

15 MS EDWARDH: Well, it would
16 appear, though, at least from the record we have,
17 that there is nothing that controls, expressly
18 either on the face of the document or through any
19 agreement, the use and dissemination of this kind
20 of information?

21 MR. PARDY: Apart from that
22 general understanding out there that the owners of
23 the information have to be consulted before there
24 is further dissemination outside of a given
25 channel.

1 MS EDWARDH: Right. And of course
2 if the RCMP have been given it, if they are using
3 it for a consistent use, that would be
4 appropriate?

5 I mean, the consent to give it to
6 the Mounties would in fact be a consistent use
7 consent, would it not?

8 In other words, they could provide
9 it to the Metropolitan Toronto Police or to the
10 OPP?

11 MR. PARDY: I am not quite sure
12 how you would define consistent use. Your
13 examples that you gave would not fall within my
14 understanding of what they could do with the
15 information.

16 MS EDWARDH: Okay. So you would
17 be surprised to learn then if the RCMP shared the
18 information with anyone else without your
19 permission.

20 MR. PARDY: I would be very
21 surprised, yes.

22 MS EDWARDH: And I take it one of
23 the things we should do is to go through the
24 specific things you chose to share with the RCMP
25 and have you identify, sir -- and maybe we should

1 start with the October visit.

2 THE COMMISSIONER: What tab is
3 that?

4 MS EDWARDH: I was going to
5 actually go through the -- I am sorry,
6 Mr. Commissioner, I have P-93, 94, and 95.

7 Thank you, T-131? Or T-130?
8 It's T-130, I think.

9 And we know that that was sent to
10 the RCMP.

11 And that's P-93. Thank you,
12 Mr. Baxter.

13 THE COMMISSIONER: P-93?

14 MS EDWARDH: Yes, the fax to the
15 RCMP.

16 THE COMMISSIONER: Yes.

17 MS EDWARDH: I suggest to you,
18 sir, that this fax was sent on October the -- I am
19 sorry, November the 4th, 2002.

20 That would appear to be the case?

21 MR. PARDY: I am sorry.

22 MS EDWARDH: It's P-93.

23 MR. PARDY: I have P-93. Is that
24 correct?

25 MS EDWARDH: Yes. That was the

1 first.

2 MR. PARDY: Yes.

3 MS EDWARDH: It was forwarded to
4 the RCMP on November the 4th, 2002; correct?

5 I am confident your French is
6 better than mine.

7 --- Laughter / Rires

8 MR. PARDY: Oh, yes, I see, on the
9 4th of November, 2002, at the top of page 2 of the
10 fax, yes.

11 MS EDWARDH: Yes. There is that
12 and the front facsimile, the front page, it has
13 that date on it too?

14 MR. PARDY: Oh, yes. Now I see
15 it, yes.

16 MS EDWARDH: So this would have
17 been sent the same day as the products of
18 Mr. Arar's interrogation in Syria arrived in
19 Canada.

20 MR. PARDY: You are talking the --
21 Ambassador Pillarella's conversation with the
22 General, yes. That occurred on the 3rd.

23 MS EDWARDH: Yes.

24 MR. PARDY: I am assuming that
25 your dates are correct, that that information then

1 came back in a written format on the 4th. Or did
2 Mr. Pillarella bring it back with him direct?

3 I am not sure what the sequence of
4 events was. I was in Beruit at this point.

5 MS EDWARDH: It had to be
6 translated.

7 MR. PARDY: Yes.

8 MS EDWARDH: But this all happens
9 within a couple of days of one another?

10 MR. PARDY: Yes. There was the --
11 the reporting message of Mr. Martel's visit was
12 dated the 23rd and then it appears to have been
13 transmitted on the 4th, yes.

14 MS EDWARDH: Sir, in light of the
15 nature of what is being shared, can I ask whether
16 any record is made of your consent to distribute
17 this consular information to the RCMP?

18 MR. PARDY: Not on my part. It
19 would be whether or not ISI kept a record of this
20 information in terms of the movement of documents
21 through its system.

22 MS EDWARDH: So logically, having
23 obtained your approval, which was a prerequisite
24 for distribution --

25 MR. PARDY: That's right.

1 MS EDWARDH: -- you would expect
2 the record to be kept there?

3 MR. PARDY: Yes, they have a
4 special registry for their material and I don't
5 know what happens in that sense within their
6 system any more. It used to be there was a fairly
7 tight record kept of information that went out of
8 the department, yes.

9 MS EDWARDH: Can I ask the
10 question, because I think it bears on the purpose
11 of the distribution of the information, and I
12 believe it's on the record -- no, I will wait
13 until I get to another visit; thank you very much.

14 I was going to ask the question of
15 whether the material had been provided to CSIS,
16 but --

17 THE COMMISSIONER: Can I just ask,
18 though, even on the RCMP, Ms Edwardh, just looking
19 at it, it says "Description: Task 42" on the
20 front, the first fax.

21 MS EDWARDH: Yes.

22 THE COMMISSIONER: That's the fax,
23 the one that is in French that goes from DFAIT to
24 somewhere where it's blanked out at the RCMP.

25 Is that right?

1 MR. PARDY: Yes, I assume so, yes.

2 THE COMMISSIONER: Do you know
3 what "Task 42" means?

4 MR. PARDY: No, I don't --

5 MS McISAAC: Excuse me, sir. I
6 think that's an internal RCMP, from "A" Division
7 to "C" Division.

8 THE COMMISSIONER: That's the next
9 page. I read the next page from "A" Division to
10 "C" Division.

11 MS McISAAC: Task 42, remember
12 when they enter material into their document
13 management database, they have various tasks?

14 THE COMMISSIONER: Right.

15 MS McISAAC: And I think task 42
16 relates to the RCMP's document management
17 database.

18 THE COMMISSIONER: What we don't
19 have here then is -- am I right? -- we don't have
20 the fax which accompanies it going from DFAIT,
21 presumably to "A" Division, because "A" Division
22 sent it to "C" Division.

23 Tut we don't have the DFAIT fax.
24 Is that right?

25 MR. PARDY: That would appear to

1 be the case.

2 THE COMMISSIONER: That's what I
3 wasn't clear on.

4 MS EDWARDH: Thank you,
5 Mr. Commissioner. It's an important observation.

6 THE COMMISSIONER: Is there a fax?

7 MR. CAVALLUZZO: There is.

8 --- Off microphone / Sans microphone

9 MR. PARDY: That's the standard
10 Department of Foreign Affairs fax covering sheet.

11 MR. CAVALLUZZO: There doesn't
12 appear to be a DFAIT fax for the previous --

13 THE COMMISSIONER: For the
14 consular, the notes the consulate made. That
15 appears to relate to the last page.

16 MR. PARDY: That's right. There
17 are two pages in that fax.

18 THE COMMISSIONER: What we don't
19 have then -- sorry to interrupt.

20 MS EDWARDH: No, that's fine.

21 THE COMMISSIONER: What we don't
22 have is a fax sheet accompanying the notes of the
23 consular meeting.

24 MR. PARDY: This is all I have
25 seen is this, yes.

1 THE COMMISSIONER: I don't know if
2 anything turns on that.

3 MR. CAVALLUZZO: There is an
4 answer to that in the in camera evidence.

5 THE COMMISSIONER: Which I should
6 have known about.

7 MS EDWARDH: Well, I take it that
8 it's no surprise to anyone that the liaison
9 officer from time to time, in fact quite
10 regularly, attended at A-OCANADA and chatted with
11 the officers involved in the investigation.

12 You were aware of that?

13 MR. PARDY: No, I was not.

14 MS EDWARDH: And if the liaison
15 officer was providing consular information, would
16 you have expected Mr. Solomon as well to come to
17 you, or come to whoever was standing in if you
18 happened to be out of town, and say, "Can I
19 provide this information?"

20 MR. PARDY: Yes if it was, I
21 guess, a written format because you will recall as
22 well that we had meetings with the RCMP and CSIS
23 where we sat down trying to work out whether or
24 not we could get a consensus within the Government
25 of Canada here. And within those meetings

1 certainly there was a sharing of information. I
2 was present for those.

3 MS EDWARDH: I am not talking
4 about when you were present or supervising.

5 MR. PARDY: Yes.

6 MS EDWARDH: I am talking about
7 the sharing of information, whether verbal or in
8 writing. And in either case if it comes from
9 consular information, it can only be properly
10 shared with your authority.

11 MR. PARDY: Yes, and in all cases
12 it related to written information.

13 MS EDWARDH: I am sorry, I am not
14 quite sure.

15 So you could transmit it otherwise
16 than written without your approval?

17 MR. PARDY: No, no, I am saying
18 that coming to me, there was a specific document
19 under consideration, and my approval related to
20 that document in terms of whether or not it could
21 go beyond the Department of Foreign Affairs.

22 MS EDWARDH: And what if I just
23 wanted to transmit, if I was someone working and I
24 just wanted to transmit some information to the
25 Mounties so that they were aware of it, but it

1 derived from a consular note and I don't want to
2 give them the note because it isn't necessary. I
3 just want to tell them I have the information and
4 give them a heads up.

5 Now, do they have to come to you
6 for that authority if it comes from a consular
7 note or from information?

8 MR. PARDY: I would expect so.
9 That being the case, and it's clearly consular
10 information, I would expect to be consulted on
11 that, yes.

12 MS EDWARDH: Is it your position,
13 Mr. Pardy, that each of the documents that you
14 knew you were sharing -- and we will come to
15 others -- and there are only three for the RCMP.
16 And I take it you are not aware of any other
17 sharing from consular information?

18 MR. PARDY: Well, in preparation
19 for my testimony, I was only told about the three
20 that I am aware of, yes.

21 MS EDWARDH: I am not so much
22 interested in what you were told as what you did.

23 MR. PARDY: Well, again, you are
24 back here -- I mean, in terms of the way this
25 procedure worked, I am assuming here, when I gave

1 permission, there was a consequential action.

2 MS EDWARDH: Right.

3 MR. PARDY: That's what reflected,
4 as I understand the documentary files.

5 MS EDWARDH: And you have conveyed
6 to the Commissioner the very clear impression -- I
7 want to confirm it with you -- that you would only
8 share information piece by piece, document by
9 document. You wouldn't have given a general
10 authority to Dan Livermore to say, you know, this
11 could be a very serious case; share as you see
12 fit?

13 MR. PARDY: No, I did not.

14 MS EDWARDH: And you would never
15 say that?

16 MR. PARDY: No. And I think
17 Mr. Livermore's testimony on that point, I think,
18 is clear, particularly his testimony on the final
19 morning.

20 MS EDWARDH: I am puzzled because
21 it's clear to me that other consular material was
22 shared.

23 I am going to start with tab 31
24 and I am going to see if you can help us
25 understand whose decision it was, where you were

1 at the time, and whether you were subsequently
2 informed of sharing.

3 Sir, if you look at tab 31 and tab
4 32, can we agree -- and if I can just find the
5 line -- that one of the things that Mrs. Girvan
6 does is she obtains from Mr. Arar details of what
7 the FBI were interested in?

8 Can you agree with that in
9 general?

10 MR. PARDY: I am sorry, we are
11 back now to tab...?

12 MS EDWARDH: Tabs 31 and 32.

13 MR. PARDY: Yes.

14 MS EDWARDH: Right? What
15 Mrs. Girvan is doing is she is getting from
16 Mr. Arar the gist of what the FBI wanted to know
17 from him, as best as she could get it down?

18 MR. PARDY: Yes.

19 MS EDWARDH: And at tab 32 -- and
20 this is the second of these kind of notes that
21 came out of this consular visit.

22 Let me just read you the first
23 sentence:

24 "Mr. Arar has been trying to
25 understand why they would

1 have arrested him. He says
2 that they kept asking about a
3 man called Abdullah, who
4 lives in Ottawa and is also
5 of Syrian origin."

6 Do you see that?

7 MR. PARDY: Yes.

8 MS EDWARDH: So Mrs. Girvan has
9 obtained from him important information about what
10 the police in the United States or the security
11 services in the United States want.

12 Now, you will agree with me -- and
13 it's a comment I just want to draw your attention
14 to. When Mrs. Girvan is making these notes with a
15 voluble and distraught Mr. Arar, she doesn't think
16 she is a police officer writing a confession down,
17 does she?

18 MR. PARDY: No, not at all.

19 MS EDWARDH: So when we jump then
20 to tab 61 in this volume, we have a document.

21 Can you just tell us something
22 about -- just a minute.

23 This is a document from
24 Mr. Livermore?

25 MR. PARDY: Yes, it is.

1 MS EDWARDH: Oh, yes, yes. I am
2 sorry, I have to take you to a blank, but I am
3 going to fill it in.

4 If we go down to the third
5 paragraph, this is Mr. Livermore. Who is he
6 talking to?

7 MR. PARDY: I am sorry, which --

8 MS EDWARDH: This is a letter or
9 an e-mail.

10 MR. PARDY: We are on tab 61?

11 MS EDWARDH: Yes, 61.

12 MR. PARDY: Yes.

13 MS EDWARDH: Signed by Daniel
14 Livermore, Director General, Security and
15 Intelligence Bureau.

16 MR. PARDY: Yes.

17 MS EDWARDH: Going to ...?

18 MR. PARDY: This is going to
19 Damascus, the Head of Mission in Damascus.

20 MS EDWARDH: Right. And it's
21 copied to yourself, but also to Mr. Solomon?

22 MR. PARDY: Yes.

23 MS EDWARDH: To yourself?

24 MR. PARDY: GMR, the political
25 division.

1 MS EDWARDH: Yes, okay.

2 MR. PARDY: Yes.

3 MS EDWARDH: Let's go to the third
4 paragraph.

5 "On 26 or 27 September he
6 arrived in the airport using
7 his Canadian passport and was
8 detained and transferred to
9 the high security section of
10 the Metropolitan Detention
11 Center in Brooklyn..."

12 Well, that is clearly information
13 from Mrs. Girvan; correct?

14 MR. PARDY: Yes.

15 MS EDWARDH: It goes on:

16 "... where he was questioned.
17 Some of the questions dealt
18 with his relationship
19 with..."

20 And I am going to fill it in:
21 "Abdullah", because he is the only one that
22 Ms Girvan mentions.

23 "DFAIT was granted consular
24 access..."

25 So now you have this consular

1 information on October 10th going from
2 Mr. Livermore; correct?

3 So he has obviously had access to
4 it.

5 MR. PARDY: Yes.

6 MS EDWARDH: Did you consent to
7 him having access to the consular information from
8 the October 3rd visit?

9 MR. PARDY: I think on the direct
10 examination this point came up. I was in
11 Washington at this point, and I spoke -- and I
12 think it's Ms Harris that has spoken to him. I
13 don't know why he did this particular message, but
14 for reasons -- probably good reasons -- he did
15 this message and she did the one to Amman, Jordan,
16 which is a match of this one.

17 The issue here for us -- and I had
18 already spoken to -- when I was in Washington, I
19 had called Mr. Heatherington and we were enlisting
20 the assistance of the ISI division to try to find
21 out where Mr. Arar was located. I think it was in
22 that sense there was an exchange of information
23 with them.

24 They used this information for the
25 very specific purpose here of trying to find out

1 where Mr. Arar was.

2 MS EDWARDH: Well finding -- my
3 problem is noting what the interrogation is about,
4 who is named in the interrogation has nothing to
5 do with locating Mr. Arar. Nothing.

6 MR. PARDY: In the sense that
7 there was -- I am not quite sure. There was an
8 issue of names here as well, in terms of what name
9 was being used here, and I think there is another
10 message --

11 MS EDWARDH: That was about
12 Mr. Arar's name, though, surely.

13 MR. PARDY: Yes. But again, in
14 terms of Abdullah here, we were trying to figure
15 out just what we were dealing with. We had very
16 little information that was of any specificity to
17 us, and we were casting about here with the
18 fundamental consular responsibility of trying to
19 find out where Mr. Arar was.

20 I don't think any of us were
21 prepared, in effect, to cut the salami so thin as
22 to leave out a piece of information that might
23 have been germane to other people.

24 MS EDWARDH: Well, you left out
25 the name of Nisam. The reason it's so important

1 is that everyone knows in the intelligence world,
2 if they want to flip open their file here really
3 quickly, that this is Abdullah Almalki. And it is
4 only his name that is being disseminated.

5 MR. PARDY: But again, is that
6 the -- is it completely Abdullah Almalki
7 underneath the tab here, underneath the deletion?
8 I am not sure.

9 MS EDWARDH: By my calculation of
10 the number of letters you could fit in the page,
11 it is.

12 MR. PARDY: I take advice on that.

13 MS EDWARDH: But I don't think
14 it's a privacy issue, and I think it's wrong,
15 because it's relevant to the -- it's relevant to
16 an issue before you, Mr. Commissioner, about how
17 information was moved and whether there was
18 authority to move it, and indeed whether or not it
19 was moving within proper channels for proper
20 purposes.

21 So I would ask for confirmation
22 that Abdullah Almalki's name or Abdullah's name is
23 set out, again, duplicating the consular note of
24 October 3rd in tabs 61 and 82.

25 THE COMMISSIONER: Is it correct

1 that this is a privacy claim rather than an NSC
2 claim?

3 MS McISAAC: I think it originally
4 was both, Mr. Commissioner; not an NSC claim so
5 much as the investigative interest claim, but the
6 investigative interest to the A-OCANADA
7 investigation seems to have become quite public.

8 But it was still intended to be,
9 at least in part, a privacy issue. That seems to
10 have gone by the way as well.

11 But I am not prepared to confirm
12 what is under there until I actually see the
13 document, though my colleague points out that if
14 you look at the note at 63, the name Abdullah is
15 there and it's the last name.

16 --- Laughter / Rires

17 THE COMMISSIONER: It seems clear
18 from the other documents what it is.

19 MS EDWARDH: Well, I think it's
20 important because I am going to proceed on the
21 basis that if tab 63 has the last name, or the
22 first name, or the repetition of Abdullah, then
23 it's quite clear that what is being transmitted is
24 the proceeds of the consular interview.

25 THE COMMISSIONER: I take your

1 point.

2 Carry on with the line of
3 questioning.

4 MS EDWARDH: And I want to just
5 establish this: It is quite clear that the RCMP
6 had an expectation that they would know about
7 consular access.

8 Would you agree with that?

9 MR. PARDY: They would know that a
10 standard feature of the way we operated was to get
11 to see the individual. That's fundamental to our
12 work, yes.

13 MS EDWARDH: And they would expect
14 that they would know that you had done this, that
15 you had access --

16 MR. PARDY: No, I don't think one
17 follows the other.

18 MS EDWARDH: Then can you explain
19 to me why Deputy Commissioner Loepky seems so out
20 of joint when he doesn't know, or says he doesn't
21 know, about the October 3rd visit?

22 Let me take you two tabs, if you
23 could: tabs 547 and 548 where Deputy Commissioner
24 Loepky makes his complaint and Mr. Solomon from
25 ISI responds.

1 --- Pause

2 MS EDWARDH: At page 2 of tab 548,
3 paragraph 7, there is a complaint by, I think, the
4 Deputy Commissioner, and this is a complaint that
5 is dated September 8th, 2003, so it's almost a
6 year after these events.

7 It says:

8 "Loeppky complained that the
9 RCMP had learned only two
10 weeks ago that while he was
11 in detention in New York in
12 September/October 2002, a
13 consular official from our
14 Consulate General had visited
15 Arar in the Metropolitan
16 Detention Center in Brooklyn
17 where he was being held, and
18 during that consular
19 interview Arar had told the
20 consul that he expected to be
21 deported to Syria. Loeppky
22 said that DFAIT had not said
23 publicly that we had made a
24 consular visit to Arar in New
25 York and he asserted that it

1 would have been helpful if
2 the RCMP had known this
3 earlier so they could have
4 briefed their Minister."

5 So Mr. Solomon responds, and you
6 will find that at 547.

7 Oh, I am sorry, it's Mr. Saunders.
8 And he is writing through ISD? Do you see that at
9 the top?

10 MR. PARDY: Yes, to Mr. Wright as
11 well.

12 MS EDWARDH: And Mr. Saunders is
13 with ISI?

14 MR. PARDY: Yes, he is.

15 MS EDWARDH: So I misspoke when I
16 attributed this to Mr. Solomon, but it is the same
17 branch of the unit.

18 So starting at the top:

19 "At the meeting between MJW
20 and Deputy Commissioner
21 Loepky on September 5, the
22 latter asserted that the RCMP
23 had not known until two weeks
24 ago that a consular official
25 had visited Arar while he was

1 in detention in New York,
2 prior to his deportation to
3 Syria, and that during that
4 visit Arar had indicated that
5 he expected to be deported to
6 Syria."

7 Then going down to point 3:

8 "As for Loepky's assertion
9 that the RCMP only learned
10 about this consular visit
11 some two weeks ago, the facts
12 strongly indicate otherwise.
13 We shared most of the
14 information we had on this
15 case with our RCMP Liaison
16 Officer who passed it on to
17 his headquarters. We also
18 met with a group of RCMP and
19 CSIS officers on October 21
20 to discuss the case."

21 So this is obviously a separate
22 meeting than the one you had on the 18th.

23 MR. PARDY: Sixteenth.

24 MS EDWARDH: On the 16th.

25 So this is a second meeting they

1 have.

2 MR. PARDY: Mm-hmm.

3 MS EDWARDH: Were you aware of
4 such a meeting?

5 MR. PARDY: At this point I am not
6 sure whether the -- normally I would have been at
7 that meeting, but I can't recall specifically.

8 I very much remember the meeting
9 on the 16th because in effect I dictated questions
10 to Superintendent Pilgrim, which he then responded
11 to on October the 18th.

12 I knew that there was more -- I
13 think my recollection is that there was more than
14 one, but that was nothing more than to seek
15 amplification on some of the answers that were
16 provided by Superintendent Pilgrim in his October
17 18th letter.

18 MS EDWARDH: Certainly the way I
19 read this memorandum from Mr. Saunders, it is a
20 statement that the RCMP needn't feel out of joint
21 about knowing about the first consular visit
22 because indeed they knew about it and most of the
23 information on the case had been shared by the
24 Department of Foreign Affairs?

25 MR. PARDY: Well, the fact that we

1 made a consular visit in New York was in every
2 newspaper that commented on this case.

3 This was a piece of information
4 that was used in the public domain almost
5 immediately.

6 MS EDWARDH: Well, it's not so
7 much, sir, the suggestion that they knew about a
8 consular visit, or they needed to know; it's the
9 contents of the consular visit that go beyond just
10 the statement about going to Syria, "being told by
11 the INS that he was going to go out to Syria".

12 But the question that this gives
13 rise to is a different kind of access to the
14 content of consular communications, and indeed
15 your view that the only ones the Mounties ever got
16 was the first one. That's clearly not the case?

17 MR. PARDY: No, and if you read
18 the sentence here, this is a memo from the
19 Security and Intelligence Division, Mr. Saunders.
20 He is saying "we shared most of the information we
21 had on this case", and that does not, in my mind,
22 read that they were sharing information that
23 belonged to the consular bureau.

24 MS EDWARDH: But the very
25 information that is of concern to them is

1 information that comes from the consular note.

2 It is that Mr. Arar said he was
3 going to Syria, or he had concerns about it
4 because the INS had told him.

5 MR. PARDY: But in this context
6 here, this was all public information. The Syrian
7 issue, I mean, this was public. It was all out
8 there. There was nothing confidential about this
9 one way or the other.

10 It was in the press almost
11 immediately, the Syrian issue. Is it The New York
12 Times article on October the 12th, I think might
13 have made reference to that fact.

14 MS EDWARDH: Even if -- I just
15 want to put it to you. Even if there is
16 information in the public domain, it doesn't
17 change the confidential character of the record
18 made of the consular visit. It doesn't become
19 something that goes into the public domain without
20 regard to the Privacy Act.

21 MR. PARDY: Yes. But when you
22 come down here, we had a series of press lines at
23 that point. And as you know, in the press lines
24 these were things that were developed for use by
25 the Minister and by our press office to respond to

1 inquiries from the media.

2 And basically in terms of our
3 response to those inquiries, there was, if you
4 want, a deprivatization of that information.

5 MS EDWARDH: But you are not
6 allowed to deprivatize it just because it is in
7 the media.

8 MR. PARDY: No. But what we were
9 doing is that in order to respond to issues in the
10 media, we needed to be able to -- you mean did we
11 say, the media called up. "Where is he? We don't
12 know. We are not going to tell you."

13 No. Basically, there is a
14 reasonable expectation that we will respond to
15 reasonable questions from the media, and the whole
16 issue of questions and answers is geared to that
17 basis.

18 Cases that are in the public
19 domain, here the issue -- and maybe the Privacy
20 Commissioner might have some views on this. But
21 certainly it was our practice that we would
22 respond to questions from the media and provide
23 them with facts about the case that we obtained as
24 a result of consular visits.

25 MS EDWARDH: Certainly the one

1 thing I didn't see in any of the media lines --
2 and maybe you can make a note and look for this --
3 at this time, or much thereafter, and in the first
4 chronologies, was a matter that Mr. Cavalluzzo
5 pointed out to you.

6 I am not sure that anyone has ever
7 stood up and said, "Mr. Arar told us that the INS
8 was going to send or deport me to Syria."

9 I don't think that's there. I am
10 sorry, Mr. Pardy. We know he went there.

11 MR. PARDY: Sorry?

12 MS EDWARDH: We know he went
13 there.

14 MR. PARDY: But I think if you go
15 back -- I would need to check the media record
16 that's out there. I mean, the family were aware
17 of this because they were the original source of
18 this information, because it was said by Mr. Arar
19 to his mother, I think it was, in that first
20 telephone call --

21 MS EDWARDH: Mother-in-law.

22 MR. PARDY: -- and essentially
23 that information was out and I -- again, I stand
24 to be corrected, but my understanding was that
25 that point was in the media quite early on.

1 MS EDWARDH: Right.

2 But you will agree with me, any
3 fact stated in the media does not, merely by its
4 existence in the media, relieve you of your duty
5 under the Privacy Act?

6 MR. PARDY: I would have to take
7 counsel on that particular issue --

8 MS EDWARDH: Particularly when
9 Mr. Arar didn't put it there.

10 MR. PARDY: Or his family might
11 have put it there?

12 I mean, again, I would take issue
13 with all of this -- when you're dealing with
14 high-profile cases here like this, in effect,
15 there is an expectation that the government will
16 respond to questions from the media, and our whole
17 question-and-answer procedure is geared upon that
18 fact, that the Minister can stand up, either in
19 public or in the House, and respond to legitimate
20 questions.

21 MS EDWARDH: Okay. I want to draw
22 your attention, if I could, to one other exchange.
23 You'll see it in the Garvie report. Exhibit P-19.

24 Thank you very much,
25 Mr. Registrar.

1 And I will start with page 25.

2 --- Pause

3 MS EDWARDH: Page 25. And I want
4 to read you an exchange and have you comment on
5 it.

6 MR. PARDY: Page 25?

7 MS EDWARDH: That's correct.

8 MR. PARDY: Mm-hmm?

9 MS EDWARDH: Mr. Parady, midway
10 through the page, and it's under the heading
11 02/10/08. Do you see that? 9:45 hours?

12 MR. PARDY: Yes.

13 MS EDWARDH:

14 "Insp. Roy was updated by A-0
15 Canada..."

16 And, of course, Inspector Roy is
17 the DFAIT liaison officer?

18 MR. PARDY: The RCMP liaison
19 officer in DFAIT.

20 MS EDWARDH: In DFAIT?

21 MR. PARDY: Yes.

22 MS EDWARDH: But he sits, as we
23 understand it, literally next door to
24 Mr. Livermore.

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

1 MS EDWARDH:
2 "...was updated by A-O Canada
3 investigators about ARAR's
4 situation as they knew it at
5 the time. Insp. Roy told the
6 investigators he was unaware
7 of ARAR's imminent
8 deportation to Canada,
9 however he stated that he
10 knew that ARAR was still in
11 custody and that there was a
12 possibility that ARAR would
13 be sent to Syria. Insp. Roy
14 is only able to confirm that
15 the information that he
16 received most likely came
17 from a DFAIT colleague.
18 Insp. Perron commented in his
19 report that is discussed
20 later, that Insp. Roy had
21 obtained the information
22 having read a consular visit
23 card that documented ARAR's
24 fear of being deported to
25 Syria."

1 Okay. So now we have, on
2 October 8 -- we certainly get the impression that
3 sometime prior to October 8, because it's 9:45 in
4 the morning --

5 MR. PARDY: Mm-hmm.

6 MS EDWARDH: -- that Inspector
7 Roy, the RCMP liaison officer, had had access to
8 some consular record of the communication between
9 Mrs. Girvan and Mr. Arar. That's the only
10 explanation for that entry.

11 MR. PARDY: But, again, I think
12 you've got to put this in the context of what we
13 were trying to do on the 10th of October, early in
14 the morning. We were still trying to establish
15 what had happened to Mr. Arar --

16 MS EDWARDH: It's not the 10th,
17 sir. It's the 8th. 9:45 on the 8th -- you don't
18 even know he's gone.

19 MR. PARDY: Even on the 8th of
20 October, he went missing -- I guess we found out
21 later that day, and I don't know about what he
22 means by a consular visit card.

23 I must say that they did not have
24 access, of course, to our consular records, and
25 when he says a consular visit card, I find that

1 troubling.

2 What I find equally troublesome is
3 the information Inspector Roy told the
4 investigators that he was unaware of Arar's
5 imminent deportation to Canada.

6 MS EDWARDH: Why does that bother
7 you?

8 MR. PARDY: Well, I don't
9 understand the context, because on October 8,
10 there was no suggestion of Mr. Arar's imminent
11 deportation to Canada --

12 MS EDWARDH: Not that you knew.

13 MR. PARDY: That I knew or that --
14 what we had learnt on the 3rd, and I guess
15 Ms Girvan spoke to the lawyer a little later that
16 day, I think, when the confusion then arose as to
17 Mr. Arar's location, yes.

18 MS EDWARDH: And for someone to
19 know, in the early morning of October 8, that
20 there was a possibility that Mr. Arar, one, would
21 be sent to Syria and that he had a fear of being
22 deported to Syria, one could only have got that by
23 having access to the actual description of the
24 consular visit. Will you agree with that as a
25 principle?

1 MR. PARDY: That, in effect,
2 information was shared with him. But again I come
3 back to the --

4 MS EDWARDH: Can we just establish
5 first that the information was shared?

6 MR. PARDY: If I take
7 Superintendent Garvie's report here as being
8 accurate, yes, okay.

9 MS EDWARDH: Okay. Now, feel free
10 to make your comment.

11 MR. PARDY: And my comment is
12 that, on the 8th of October, we were still trying
13 to establish what we were dealing with here.

14 Ms Girvan had been in to see him
15 on the 3rd. He had provided us certain
16 information. We had conversations with family
17 members who reported earlier that there was this
18 fear that the deportation was going to be to
19 Syria.

20 We were then working with his
21 lawyer. And sort of using Mr. Arar's own words
22 here, on the October 3 visit, to Ms Girvan, he was
23 puzzled what this was all about.

24 Now, I mean, we were casting about
25 to try to come to some understandings ourselves as

1 to what this was all about.

2 Why did the Americans detain him
3 in the way that they did, what their future
4 intentions were likely to be.

5 MS EDWARDH: I take it, sir, you
6 have no recollection of giving --

7 MR. CAVALLUZZO: I don't like to
8 interrupt my friend, but just to be fair to the
9 witness, it was put to the witness that the only
10 way this information could have come about is the
11 transfer of the consular visit of October 3.

12 There's also a CAMANT note of
13 October 1 wherein Mr. Arar's brother had phoned
14 DFAIT saying that he had learned that his brother
15 was threatened to be deported to Syria.

16 So it's not just the consular
17 visit in which that threat is declared, but it is
18 also the October 1 CAMANT note -- I can get you
19 the exhibit number -- but to be fair to the
20 witness, he should know that.

21 MR. PARDY: Thank you.

22 MS EDWARDH: And that's fair
23 enough.

24 Thank you, Mr. Cavalluzzo.

25 But my problem still remains the

1 same. This is not information -- if you were to
2 look at the telephone call from a family member
3 about a problem and couple it with the October 3
4 visit, you would expect to give permission in
5 order to have that information go into ISI and
6 then on to the Mounties?

7 MR. PARDY: Yes. What troubles me
8 about all of this is there's no acknowledgment of
9 what we are trying to do here.

10 And what we are trying to do is
11 establish what's happening to Mr. Arar, and that
12 information was not available -- you mean, in our
13 domain.

14 MS EDWARDH: Mm-hmm.

15 MR. PARDY: There was a need here
16 to go outside of our domain to see whether others
17 within the system might have some information that
18 would be helpful to us so that we could help
19 Mr. Arar.

20 And I think to divorce the issue
21 of information-sharing from what we were trying to
22 do, our consular purpose here, I think distorts
23 the record.

24 MS EDWARDH: Okay. It may distort
25 the record from your perspective, but the

1 difficulty is, as I read the record -- and I want
2 to take you to one other point. When your
3 Inspector Roy, who is the RCMP liaison officer,
4 can't get back and forth to A-OCANADA fast enough
5 on the 7th -- and let's take a look at that. It's
6 page 16. And this is -- I'm sorry, the 2nd,
7 October 2.

8 And it would appear that you have
9 the outline of what is alleged against Mr. Arar.
10 Don't be misled by the date, because that comes
11 from a document that has its source on the 3rd.
12 But I am interested in the notation under 4:45.
13 So:

14 "Insp. Richard Roy, RCMP
15 Liaison Officer, attended
16 A-O Canada and met with..."

17 Obviously, two people.

18 "Insp. Roy asked if they were
19 aware of Maher ARAR's exact
20 location. Insp. Roy was
21 informed that they had last
22 heard that ARAR was in New
23 York, and he was to be
24 returned to the country he
25 had flown from, Zurich,

1 Switzerland."

2 Now, it doesn't appear to me that
3 the Mounties do anything. Right?

4 MR. PARDY: I don't know. But I
5 do not accept the premise that you're saying --
6 that you're suggesting that the dates may be wrong
7 on this.

8 MS EDWARDH: Well, let me stop
9 you. To be fair, on the 2nd of October, the RCMP
10 did not know, 24 hours before Mrs. Girvan knew,
11 what the allegations were alleging Mr. Arar was
12 inadmissible. That's all my point is.

13 MR. PARDY: No, but I think in Ms
14 Girvan's report, Mr. Arar told Ms Girvan that he
15 was given this paper, that Ms Girvan quotes from
16 on the 3rd, he was given this paper at least on
17 October 2.

18 MS EDWARDH: Yes, he does say
19 that.

20 MR. PARDY: Yes.

21 MS EDWARDH: So is it your
22 understanding -- I'm sorry. I have been perhaps
23 mistaken.

24 I assumed there was an error,
25 because that would entail the inference that when

1 Mr. Arar received the document on the 2nd,
2 information was transmitted back to the RCMP as
3 well, and I believe my friend pointed to the
4 source documents which were -- yes, why don't you
5 help us?

6 MS McISAAC: My recollection is
7 that the explanation I gave is that -- Inspector
8 Garvie, of course, is writing his report well
9 after the fact.

10 MS EDWARDH: Yes.

11 MS McISAAC: And he is
12 reconstructing the sequence of events. The source
13 for his statement, that Mr. Arar received the
14 notice on the 2nd, is after-the-fact interviewing
15 Ms Girvan or receiving written responses from
16 Ms Girvan.

17 So I don't think we can possibly
18 draw the conclusion that the RCMP knew that this
19 had happened on the 2nd or the 3rd; rather, that
20 in reconstructing the sequence of events,
21 Inspector Garvie is simply putting it into the
22 sequence of events on that date.

23 THE COMMISSIONER: That didn't
24 come through Inspector Roy. That came as a result
25 of Superintendent Garvie's interview with

1 Ms Girvan.

2 MR. PARDY: May I comment as well
3 on that point?

4 I was also interviewed by
5 Superintendent Garvie, and I provided him with a
6 copy of the complete removal order with this kind
7 of information there.

8 So I'm not sure whether I can
9 accept the premise of a question here because I
10 don't have the information, quite literally.

11 But you're making an assumption
12 here that this is something that happened within
13 the consular mandate, if you like, and I'm not
14 willing to accept that as a conclusion.

15 MS EDWARDH: So, if I could then,
16 we can't exclude then the fact that if Mr. Arar
17 received this from the INS on October 2, so did
18 the RCMP? That's left open.

19 MR. PARDY: You take the dates as
20 given by Superintendent Garvie.

21 He was a -- what's the word
22 here? -- I mean, he was looking at a lot more
23 information than certainly was available to
24 either -- that was available to me and certainly
25 available to me today.

1 MS EDWARDH: Right.

2 THE COMMISSIONER: Is this good
3 time for the afternoon break?

4 MS EDWARDH: Yes.

5 THE COMMISSIONER: How are we
6 doing time-wise?

7 I'm just looking ahead as to
8 what -- we can sit until about 5:25 today, but no
9 later.

10 Do you know how much longer you'll
11 be, Ms Edwardh?

12 MS EDWARDH: Mr. Commissioner, I
13 received a set of documents that relate to
14 questions from the intervenors that I have been
15 asked to pose to the witness.

16 THE COMMISSIONER: Right.

17 MS EDWARDH: Some of them I will
18 have wound in my cross-examination.

19 THE COMMISSIONER: Yes, from your
20 own, yes.

21 MS EDWARDH: Yes. Others, I have
22 not. And, quite frankly, it will take me some
23 time to --

24 THE COMMISSIONER: Sure.

25 MS EDWARDH: -- to pose these

1 questions to Mr. Pardy and have him, you know,
2 have an opportunity to consider the answers.

3 So I think I will need an hour for
4 these questions, an hour and 15 minutes.

5 And I might also ask one other
6 indulgence. I'm not feeling well, and if we could
7 just cut it a little early, I would be very
8 grateful.

9 THE COMMISSIONER: Sure,
10 absolutely. I have the intervenors' questions.
11 How much longer would you be on your
12 cross-examination?

13 MS EDWARDH: An hour and 20
14 minutes, an hour and a half?

15 THE COMMISSIONER: So we're
16 probably talking, really, a maximum of three
17 hours?

18 MS EDWARDH: I will make it a
19 maximum -- yes.

20 Thank you very much.

21 THE COMMISSIONER: If we could do
22 that?

23 Mr. Baxter, at this point, I know
24 you haven't heard all of the cross-examination,
25 but how long do you think you'll be?

1 MR. BAXTER: Likely 45 minutes to
2 an hour.

3 THE COMMISSIONER: Okay. And
4 that's it. What are the alternatives for next
5 week?

6 MR. CAVALLUZZO: The most feasible
7 alternative will be Thursday, June 2. There is
8 also a possibility that Mr. Manley, on Tuesday,
9 May 31, may be less than one day.

10 But in light of the time we're
11 looking at, it looks like June 2 is the more
12 feasible date.

13 THE COMMISSIONER: Okay. Is there
14 any reason we can't do it on June 2?

15 MR. CAVALLUZZO: Let me discuss it
16 with counsel during the break. There may be a
17 problem with that.

18 THE COMMISSIONER: Do you want to
19 carry on at all this afternoon?

20 MS EDWARDH: I would be pleased to
21 carry on till -- yes, I'll carry on.

22 THE COMMISSIONER: Well, if you
23 feel up to it. You just let me know when you want
24 to wind it down.

25 Okay. We'll take 15 minutes then.

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THE REGISTRAR: Please stand.

--- Off-the-record discussion /
Discussion officieuse
--- Whereupon the hearing adjourned at 3:53 p.m.,
to resume on Monday, May 30, 2005, at
10:00 a.m. / L'audience est ajournée à
15 h 53, pour reprendre le lundi 30 mai 2005
à 10 h 00



Lynda Johansson,
C.S.R., R.P.R.

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abated 3917:5	3859:6 3884:4	actionable 3970:12	3940:2,8 3941:22	airy 3892:15
Abdullah 4029:3	3897:25 3898:9	actions 3831:13	3941:25 3942:6	ajournée 4060:6
4031:21 4033:14	3902:25 3913:12	3851:17 3964:17	3942:11,19,24	Al 3929:10 3931:16
4034:3,6,22	3930:9,10	activities 3920:20	3954:24 3955:3	3932:2,3 3934:16
4035:14,22	3949:16 3955:20	4005:2	3970:7	Alex 3927:7
Abdullah's	3956:23 3973:17	activity 3914:24	afoul 3875:20	alive 3874:16
4034:22	3978:16,17	actor 3917:14	afraid 3863:6	3877:9,10 3883:8
ability 3909:25	3996:16 4031:24	actual 4049:23	3875:17 3968:22	3911:4 3953:20
3910:19,21	4032:3,7 4036:7	add 3889:3	aftermath 3917:10	3961:12 3980:10
3911:16	4036:15 4041:13	3910:12	3921:4 4014:15	3982:11 3985:7
able 3876:5,13,24	4048:7,24	addition 3837:8	afternoon 3979:13	allegation 3857:17
3885:22 3952:24	4049:23	3963:20 3977:24	3979:15,16	3909:23 3911:14
3957:23 3958:19	accompanied	3982:18 3992:22	4057:3 4059:19	3912:7 3913:5,11
3999:14,16	4009:19	additional 3879:12	after-the-fact	3913:17,22
4043:10 4047:14	accompanies	addressees 3901:19	4055:14	3922:10 3940:8
abroad 3909:2	4022:20	adept 3912:25	age 3847:14 3953:8	3940:13 3942:4
absence 3967:15	accompanying	adjourned 4060:4	agencies 3992:9	3945:13 3950:13
3973:10	4023:22	adjudication	agitation 3853:9	3969:11
absolute 3847:15	accords 3856:25	3949:3	ago 3920:19 3957:6	allegations 3842:14
3872:17	3941:17	adjunct 4001:25	4037:10 4038:24	3897:8 3909:7
absolutely 3851:3	accurate 4050:8	ADM 3983:9	4039:11	3927:21 3939:2
3854:22 3874:18	accurately 3935:8	administration	agree 3829:18	3940:2,17
3886:6 3888:25	accusers 3945:2	3936:3	3844:12,23	3941:21,24
3890:9 3895:10	achieving 3945:9	admit 3922:3	3845:18 3846:4	3962:4 3975:4
3910:8 3912:23	acknowledge	adopted 3922:19	3847:18 3848:23	4001:24 4054:11
3913:7,15 3915:9	3859:21 3864:10	advance 3949:5	3851:1 3854:7	alleged 3925:17
3928:7 3937:16	3908:13	3959:22	3868:25 3871:10	3955:3 4053:9
3939:15 3963:18	acknowledged	advanced 3953:8	3877:1 3880:19	allegedly 3836:22
3977:11 3981:19	3860:3 3978:16	advantage 3846:21	3882:11 3895:12	alleging 3927:13
3998:6 4058:10	acknowledgment	advice 3847:11	3895:19 3906:12	4054:11
abuse 3856:23	3856:17 3973:18	3937:1 3977:20	3909:20 3914:20	allowed 3878:8
3860:2 3861:17	3974:3 4052:8	3998:11 4034:12	3920:8 3922:8	3984:1 4043:6
3878:21 3880:20	act 3927:21	advise 3829:21	3934:9 3939:14	allowing 3846:7
3881:14,25	3934:17 3936:11	3975:19	3942:13 3951:17	3889:19
3885:25 3895:2,9	3986:7,9,13	advised 3833:4	3963:12 3975:25	allows 3989:16
3896:4,4,13	3991:18 3992:22	3844:16	3991:15 3992:6	Almalki 4034:3,6
abused 3880:3	3994:11,25	affairs 3901:5,12	3999:24 4028:4,8	Almalki's 4034:22
abuses 3856:19	3996:5 3997:13	3908:19,22	4029:12 4036:8	alternative 4059:7
academic 3945:11	3997:13 4014:17	3918:7 3920:1,2,4	4045:2 4049:24	alternatives 4059:4
3955:1 3956:21	4015:17 4042:20	3920:5 3922:5	agreement 3973:19	al-Qaeda 3940:13
3958:5	4045:5	3987:2,9 4010:5	4016:19	3941:9 3942:12
academy 3921:2	acted 3830:23	4011:20 4012:19	agrees 3932:2	3942:18 3943:4
accept 3927:21	3834:16 3991:7	4012:22 4015:8	Ah 3861:4	3950:19 3969:5
3966:2 3995:19	acting 3937:15	4015:24 4016:3	ahead 4057:7	ambassador
4054:5 4056:9,14	action 3840:11	4023:10 4025:21	AIDWIC 3843:18	3834:5 3840:21
access 3832:5	3848:8 3851:6	4040:24	3844:16 3846:5	3841:18 3842:16
3839:19 3857:18	3854:13 3966:6	affect 3909:3	aim 3869:23	3899:20 3907:14
	3969:17 3970:15	4005:3	Airlines 3837:21	3907:17 3908:12
	4027:1	Afghanistan	airport 4031:6	3909:2 3910:25

3911:24 3912:2	4005:23	3907:5	3968:25 3970:1	3859:16 3881:6
3923:8,19	anymore 3887:10	approving 4003:2	3970:21 3971:3,8	3881:21 3899:9
3966:12,14,17,17	anyway 3855:7	April 3884:16	3972:12 3973:5	3965:15 3975:19
3968:2,3 3980:23	3920:6 3966:21	3898:1,10 3941:7	3974:24 3977:20	3976:25 3978:24
3980:24 3981:23	4010:11	3941:11 3947:1,3	3978:14 3980:17	3979:19 3980:1
3983:25 3987:14	Apart 3914:6	3947:5 3950:13	3982:8 3989:20	3993:20 4001:7
3987:17 3989:3,5	4016:21	3950:16 3951:11	3990:7,13 3991:2	4002:4 4004:16
4001:21 4002:6	apologies 3965:9	3951:21 4006:13	3992:10,15	4007:7 4012:18
4005:10 4009:23	apologize 3949:24	4006:14,20	3993:14,25	areas 3829:12
4010:4 4019:21	apparent 3923:6	4007:23	3996:10,22	3879:6 3985:11
ambiguity 4013:8,9	apparently	Arabic 3834:14	3997:5,7,18	4004:19
ameliorate 3885:5	3836:21 3933:17	3871:25	3998:1,24	argue 3856:14
America 3836:11	appealing 3996:23	Arar 3830:5,12	3999:13,21	3967:21 3995:3
American 3837:21	appear 3940:9	3835:17 3836:23	4000:11 4002:23	arguing 3964:3
3914:8 3966:14	4016:16 4018:20	3837:18 3838:3	4008:18 4009:19	arm 3963:13
3968:2 3969:21	4022:25 4023:12	3841:13 3845:18	4028:6,16,24	arms 3882:10
3973:5,11,15	4053:8 4054:2	3851:7,16,18	4029:15 4032:21	3883:13
3976:20 3977:22	appeared 3864:2	3852:11 3854:13	4033:1,5,19	arose 3853:14
3978:8,13 3991:5	3883:2 3890:24	3856:9 3861:1,6	4037:15,19,24	4049:16
3997:9	appears 3835:11	3861:22 3863:20	4038:25 4039:4	arrangement
Americans 3940:14	3856:22 3878:14	3864:3,10,14	4042:2 4044:7,18	3903:12 4003:20
3940:18 3968:6	3883:21 4020:12	3871:14,25	4045:9 4047:10	arrested 3857:9
3968:16 3969:18	4023:15	3872:4,8 3874:5	4047:12 4048:9	4029:1
4051:2	appointed 3955:25	3875:4,8 3876:24	4048:15 4049:20	arrive 3848:10
Amin's 3869:5	3960:24 3962:14	3877:8 3878:2,11	4052:11,19	arrived 3837:10
Amman 4032:15	3963:5 3973:19	3878:20 3879:1	4053:9,22	3853:4 4019:18
Amnesty 3860:14	appointment	3882:7 3883:21	4054:11,14	4031:6
3922:24 3927:7	3975:15 3976:22	3884:18,20	4055:1,13	arrives 3960:14
3927:16,19	appreciate 3913:2	3886:12 3887:15	4056:16	arriving 3853:10
amount 3845:5	3983:22	3889:23 3890:4	Arar's 3837:3	article 3849:20
3860:1 3888:20	apprehended	3890:20 3891:3	3840:25 3847:19	3897:14 4042:12
ample 3977:8	3970:6	3891:12,21	3848:15 3883:13	Ashcroft's 3914:11
amplification	approach 3840:23	3893:17,22	3897:3 3938:24	asked 3834:11,12
4040:15	3846:18,25	3894:10 3896:3	3953:24 3955:13	3835:13 3865:15
amplify 3987:6	3950:21 3969:10	3896:16 3897:25	3962:3 3964:6,23	3866:15 3867:4
answer 3829:20,21	4003:21	3898:12 3904:20	3975:8 3976:16	3891:12 3924:21
3859:20 3865:19	approached	3904:23 3905:23	3979:22 3982:21	3926:19 3952:24
3867:6 3875:25	3980:11	3908:4,25	3991:23 3998:9	3954:13 3965:18
3876:5,7,14	appropriate 3968:2	3923:11,21	3999:25 4009:9	3971:1 3990:3
3878:12 3942:5	3997:4 4000:25	3924:4,15	4009:22 4019:18	3991:21 4000:1
3985:21 3987:25	4014:6,20 4017:4	3927:14 3928:18	4033:12 4047:3,7	4010:22 4053:18
4010:12,15	approval 4007:24	3928:21 3929:15	4047:23 4049:4	4057:15
4024:4	4020:23 4025:16	3930:2,9 3934:17	4049:10,17	asking 3834:20
answered 3839:1	4025:19	3941:8 3947:19	4050:21 4051:13	3854:7 3865:13
3865:17	approve 3907:8	3950:6,19 3952:2	4053:19	3891:16 3939:16
answers 4040:15	3964:12	3952:10 3957:3	area 3829:16	3981:10 3992:11
4043:16 4058:2	approved 3907:2	3959:12 3962:6	3830:1 3831:3	4029:2
anybody 3832:1	4012:12	3962:10 3963:17	3832:10,24	asseoir 3829:6
3894:11 3957:10	approves 3906:25	3965:22 3968:8	3838:7 3840:11	3915:23 3979:12

asserted 4037:25 4038:22	attach 3874:1	3975:24 3976:20	3925:9 3928:13	4058:23 4059:1
assertion 4014:2 4039:8	attack 3920:25 3921:21 3931:25 3932:5	3977:25 3991:5 3994:7 3996:12 3997:9 4001:1 4009:8	3933:2 3938:22 3943:7 3953:2 3956:1 3957:1 3967:12 3969:20 3972:6 3985:19 3986:18,19 3989:1 3992:20 3999:13,16 4001:6 4002:7 4004:7 4011:20 4020:1,2 4026:24 4028:11 4044:15 4050:3 4053:4 4055:2	Bay 3874:20 Ba'athist 3921:25 bear 3841:22 3963:22 bears 4021:10 beating 3870:9 beatings 3868:13 beginning 3851:18 3855:2 3863:6 3896:1 3937:20 3938:24 begins 3864:11,23 behalf 3890:20 3903:16 behave 3879:6 behaviour 3968:18 3969:17 believe 3834:24 3867:3 3871:1 3914:4 3920:14 3949:22 3959:20 3960:1,15 3968:13 3969:14 4021:12 4055:3 believed 3965:21 belong 3956:17 belonged 4041:23 belonging 3931:19 bending 3965:2 beneficial 3847:1 benefit 3993:3 3997:7 4003:24 benefits 3996:13 Beruit 4020:4 best 3841:9 3844:19 3877:7 3877:25 3891:7 3928:20 4015:16 4028:17 better 3838:15 3970:23 4019:6 beyond 3913:9 3923:10 3993:13 3993:25 4012:20 4025:21 4041:9 big 3873:6 3906:9 3976:4,6 bilateral 3913:6,17
assess 3878:16,20 3882:6 3883:3 3905:4	attempted 3921:5	authority 3907:19 3921:17 3982:9 3986:9 3994:12 4011:6 4025:10 4026:6 4027:10 4034:18	3967:12 3969:20 3972:6 3985:19 3986:18,19 3989:1 3992:20 3999:13,16 4001:6 4002:7 4004:7 4011:20 4020:1,2 4026:24 4028:11 4044:15 4050:3 4053:4 4055:2	
assesses 4001:23	attempting 3992:15	authorize 3996:5	background 3961:20 3964:7	
assessment 4003:24	attempts 3896:15	available 3831:25 3848:7,10 3888:20 3903:3 3940:4 4052:12 4056:23,24,25	backs 3866:2 bad 3894:14 3953:8 Baloch 3971:9,24 bank 3957:1,15 banked 3957:15 banking 3957:1,3 banks 3958:1 bars 3867:21 base 4005:13 based 3846:23 3850:10 3861:10 3978:10 3998:13 3999:22 basement 3867:1 basic 3908:23 3909:3 basically 4043:2,13 basis 3886:2 3906:18 3923:12 3945:14 3969:13 3969:23 3976:24 4004:3 4035:21 4043:17 Bassam 3939:10,19 3953:11,14,15 3959:11 3961:4 Baxter 3875:17 3876:3,8 3901:25 3949:19,20 3959:20 3960:8 3960:13 4018:12	
assessors 3927:20	attended 4024:10 4053:15	avoid 3866:19	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assist 3851:16,18 3902:1 3952:11 3962:2 3996:25	attending 3921:1 3966:25	await 3843:23	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assistance 3890:16 3938:23 3944:25 3959:17 3961:12 3992:15,17 3999:8 4032:20	attention 3833:17 3902:15,17 3925:21 3933:7,8 3933:12 4029:13 4045:22	awaiting 3844:5	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
associate 3988:25	attitude 3830:3	awarded 3937:7	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
associated 3923:14	attorney 3955:19 3956:16	aware 3834:4 3837:1 3842:14 3852:16 3858:3 3912:14 3955:9 3955:17 3982:20 3983:22 4006:19 4012:13 4014:25 4024:12 4025:25 4026:16,20 4040:3 4044:16 4053:19	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
association 3931:20	attributed 4038:16	awareness 3830:16	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assume 3846:18 3892:22 3932:12 3967:9 3978:7 3981:13 4009:17 4022:1	attuned 3886:10	A-O 4046:14 4047:2 4053:16	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assumed 3904:11 3920:25 4054:24	August 3842:13 3858:12 3862:4 3883:14 3884:22 3899:3,21 3900:8 3904:7,9,14 3928:25 3935:9 3939:5,19 3943:18 3946:10 3951:8,14 3953:16 3955:7 3956:1,5,12 3959:4,7 3960:18 3960:20 3964:8 4006:13 4007:24	A-OCANADA 4024:10 4035:6 4053:4	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assuming 3966:1 3966:24 4005:12 4019:24 4026:25	auspices 3870:17	a.m 3829:3 3915:18 4060:6	back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assumption 3874:9 3881:2 3957:4,22 3957:24 3958:18 3967:9 3973:4,9 3973:22 3979:21 3980:7,11 3982:2 3982:21 3984:10 4015:4 4056:11	authoritarian 3916:14,17 3917:21		back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assumptions 3880:10 3977:15 3985:7	authorities 3836:18 3859:8 3889:8 3890:18 3896:15 3932:17 3945:8 3945:19 3973:11 3973:15 3974:3		back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assurances 3843:22			back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
assure 3929:19			back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
astray 3862:11			back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	
astute 4010:21			back 3839:11 3843:11 3851:14 3869:17 3870:3 3886:7 3890:3,7 3897:5,22 3903:20,24 3907:15 3908:23	

3913:24 3914:18	bringing 3852:11	3943:15 3966:14	3839:12,14	3968:23 3971:8
bit 3845:11 3877:7	British 3880:11,15	4044:20 4052:2	3841:14 3843:13	3980:11 3982:25
3951:14 3954:23	broad 3903:2	called 3848:17	3845:1,6,23	3983:4,5 3984:13
3960:4 3965:7	3926:25	3942:25 3966:17	3846:2 3847:21	3984:17 3985:6
3975:18 3979:4	broader 3908:19	3974:10 4029:3	3848:8,8,12	3986:20 3987:22
3988:22	3908:22	4032:19 4043:11	3850:20 3910:1	3998:9 3999:1
black 3869:19	broadly 4001:15	calling 3966:16	3911:20 3912:14	4011:21 4018:20
blank 4030:2	Brooklyn 4031:11	calls 3943:16	3934:9 3945:18	4023:1 4025:8
blanked 4021:24	4037:16	3944:2	3961:21 3968:3	4026:9 4027:11
blankets 3868:4	brother 3990:7	calm 3852:2	3972:22 3973:18	4039:15,20
blind-sided	4051:13,14	CAMANT 3831:3	3978:14,15	4040:23 4041:2
3968:15	brotherhood	3831:6,9,16	3985:17 3994:7	4041:16,21
blocks 3853:13,17	3916:3 3919:11	3902:3,7,12,23	3996:20,23	4043:23
board 3844:16	3919:22 3920:9	3903:4,9,15,25	4000:8 4002:6	cases 3842:7
4016:10	3920:15,18	3904:5 3933:16	4014:22 4031:7	3854:3 3863:11
body 3845:23	3921:1,7,12	3943:9 3944:3	Canadians 3838:21	3886:8 3903:1
3851:20 3869:23	3922:13,21	4051:12,18	3843:10 3857:19	3912:11,12
3877:19 3878:3	3923:2,14,15	camera 3829:23	4005:2	3936:8 3950:22
book 3832:14	3924:4 3937:19	4024:4	candid 3856:17	3978:8 3984:11
books 3881:12	3938:7 3939:15	campaign 3842:25	3871:15 3976:18	3985:24 3986:20
border 3831:1	3942:17	3844:14,19	candour 3973:10	3999:4 4001:3,11
born 3923:21	brothers 3865:16	3847:18	canvassed 3934:2	4003:1,25 4004:7
boss 3983:4,7	brother-in-law	Canada 3830:4,15	capacity 3987:8	4025:11 4043:18
Boston 3838:7	3961:4	3835:2,23 3836:6	capital 3922:25	4045:14
bother 4049:6	brought 3874:7,12	3838:13,22	captivity 3857:4	casting 3940:3
bottle 3868:5	3892:4 3925:21	3840:6,11,14	3895:8	3961:23 4033:17
bottles 3868:5	3953:24 4008:18	3841:1,15 3845:5	card 4047:23	4050:24
bottom 3835:13	4009:18	3846:14 3852:3	4048:22,25	CAT 3915:4,7
3933:24 3944:21	bruises 3877:18	3852:21 3853:5	cards 3944:12,17	3980:18
bottomed 3838:14	bureau 3901:12	3853:11,15	care 3888:9	categorical 4001:8
bottoming 3838:15	4030:15 4041:23	3857:9 3864:19	3950:23 4013:14	categorized
branch 3859:15,23	bureaucracy	3890:18 3892:15	carefully 3845:11	4001:15
4038:17	3966:8	3892:18 3908:13	3903:18 3905:5	category 4000:23
branches 3994:12	buried 3845:1	3909:22,22	3908:10 3988:12	4001:4 4002:14
break 3852:18	business 3831:20	3911:9,10,12,19	carried 3842:24	cats 3867:24
3860:25 3979:4	3833:18 3836:7	3912:5,11 3918:3	3869:10	3868:1
4007:3 4057:3		3945:6 3956:20	carries 4013:3	caused 3931:21
4059:16	C	3977:9 4002:9	carry 4036:2	Cavalluzzo 3829:8
breaking 3866:2	c 3950:7 4022:7,10	4005:3,4 4009:9	4059:19,21,21	3829:10,16
brief 3829:12	4022:22	4011:3,24	case 3831:16	3831:2 3832:23
briefed 4038:4	cabinet 3850:17	4019:19 4024:25	3832:2 3842:7,12	3833:3,9 3834:8
briefing 3941:7	cable 3869:19,20	4046:15 4047:2,8	3843:12,17	3838:25 3839:3,6
briefings 3982:17	3869:20	4049:5,11	3844:15 3845:6	3843:7 3847:17
bring 3831:24	cadets 3921:1	4053:16	3845:17,18,21	3860:13 3871:11
3833:17 3844:19	calculation 4034:9	Canada's 3900:19	3846:5,9,12,24,25	3872:20 3939:13
3851:6,9 3854:13	calculus 3937:19	3900:25 3909:24	3855:7 3864:21	3947:25 3948:4,8
3857:15 3869:17	3993:3,18	3910:19,21	3880:10 3903:2	3967:14 3985:15
3886:2 3945:23	call 3830:3 3849:4	3914:18	3912:14 3926:2	3990:24 4006:24
4020:2	3851:12 3924:11	Canadian 3838:18	3937:4 3955:16	4007:4,6,18

4023:7,11 4024:3	3866:6 3869:6	4016:25	4000:11	3987:1
4044:4 4051:7,24	3872:16 3877:24	channels 3968:1	citizen 3839:14	close 3847:25
4059:6,15	3878:18 3881:22	4011:5 4034:19	3843:14 3845:1	3876:19,24
Cavalluzzo's	3882:19 3887:13	character 4042:17	3850:3 3969:21	3904:13 3957:19
3851:5	3889:7 3896:11	characteristic	3972:22 3973:18	3982:7 3990:12
caveat 4015:1,4,10	3899:4 3909:5,19	3871:17	citizens 3841:15	closed 3867:7
caveated 4014:6	3917:1 3919:21	characterization	3843:2 3847:20	closer 3935:4
caveats 4012:24	3921:16 3922:19	3967:18	3985:17	clothes 3877:20
4013:3,17 4014:9	3926:2 3927:1,17	characterize	citizenship 3925:10	clothing 3894:2
4016:11	3935:20 3936:7,9	3917:21	3925:10 3969:20	code 3830:9
cease 3949:16	3937:24 3938:10	charge 3857:18	City 3835:17	3931:24 3981:14
ceiling 3867:19,22	3938:13 3940:6	3950:18 3988:7	3837:3	coherent 3832:1
cell 3866:24	3940:19 3941:10	charged 3931:19	civil 3949:2	coincide 3909:14
3867:18 3868:3	3943:22 3951:17	charges 3904:25	civilized 3969:10	Col 3834:16
3892:11	3953:15 3956:13	3929:8 3931:13	claim 4035:1,2,4,5	colleague 3980:9
Cellucci 3966:20	3959:23 3962:21	3931:23 3932:12	claimed 3858:4	4035:13 4047:17
Center 4031:11	3963:9 3971:16	3948:23 3949:3,7	clamour 3851:16	collected 3993:1
4037:16	3977:18,23	3949:9,15 3988:6	3852:13 3853:6	3994:22
central 3946:15	3980:22 3981:5	charitable 3905:24	3855:24	collections 3970:10
3954:22	3983:18 3986:18	charts 3984:19	clamouring 3846:6	Collins 3874:20
Centre 3975:17	3992:5 3993:23	chatted 4024:10	clarify 4006:25	3965:17 3966:2
certain 3848:11,12	3994:24 3998:17	check 3858:11	clear 3864:15	Colonel 3865:15
3849:18 3857:14	3999:23 4015:12	3896:10 3947:11	3871:13 3878:11	colonial 3880:12
3872:8 3879:4	4025:1 4040:18	4044:15	3879:21 3890:10	colonial-type
3880:9 3882:4,24	4043:21,25	checking 3947:13	3895:9 3897:23	3916:12
3885:22 3890:10	4048:2 4056:23	child 3991:12	3905:13 3908:8	colour 3927:13
3891:3 3894:19	4056:24	children 3835:19	3947:16 3953:10	come 3839:11
3901:5 3906:21	cetera 3898:15	3841:14 3895:6	3974:14 3976:15	3857:10 3877:22
3910:5 3940:12	chain 3982:9	chip 3957:23	3980:16 3981:16	3881:8 3890:2
3950:22,24	4010:3	choose 4012:15	3982:16 3986:2	3902:14,17
3952:6 3955:20	chair 3865:12,20	chose 3905:15	3988:19 3989:14	3903:6,6 3908:23
3958:16 3971:5	3866:1,8,13	4017:24	3993:9,12	3910:2 3912:19
3984:2 3989:22	3870:6 3930:13	chronologies	4007:12 4008:4	3928:16 3933:7,8
4005:25 4008:13	chairman 3929:10	3977:18 4044:4	4023:3 4027:6,18	3943:19 3946:10
4008:17 4050:15	3930:2 3931:16	chronology	4027:21 4035:17	3953:18 3973:6
certainly 3830:23	challenge 3863:23	3841:24	4035:23 4036:5	3974:25 3986:18
3834:4 3838:14	3963:14	circle 3982:7	clearance 3972:1,4	3988:2,4,22
3839:13,18	chance 3858:11	3990:19 3991:13	clearly 3837:13,21	3989:1,6 3992:20
3840:13,17	3905:19 3909:13	3993:13 3994:1	3854:17 3901:4	3993:17 3994:15
3843:4,7,12	3918:9	3996:16	3933:7 3942:4	4001:6 4009:8
3845:24 3846:10	chances 3835:3	circumstances	3952:13 3982:13	4024:16,17
3847:13,18	change 3849:12	3850:12 3871:18	3987:9 3990:12	4026:5,14
3848:21 3850:15	3886:22 3908:1	3877:1 3886:5	3991:10 3998:21	4042:22 4050:2
3850:23,25	3916:19 3977:14	3888:21 3892:6	4026:9 4031:12	4050:25 4051:10
3851:7 3852:16	3981:7 4042:17	3894:20 3895:4	4041:16	4055:24
3852:23 3853:12	changes 3886:12	3963:15 3986:8	clerk 3832:25	comes 3941:7
3853:24 3860:2	3986:21	3986:11 3997:1	client 3830:22	4025:8 4026:6
3860:25 3861:6	changing 3959:1	3997:17 3998:22	3882:21 3987:24	4042:1 4053:10
3863:15 3865:25	channel 3962:16	3999:1,18,22	clients 3986:23	comfort 3891:11

coming 3901:25 3978:10 4008:13 4025:18	4057:24 4058:9 4058:15,21 4059:3,13,18,22	concede 3854:24 4007:22	conclusions 3848:11 3881:9 3882:25 3889:10 3906:21 3984:2,3	connection 3925:9
commencing 3829:2	Commissioner's 3840:19	conceivably 3848:10	conclusive 3859:6	connotation 3845:23
comment 3831:12 3845:6,12 3861:21 3913:2 3920:7 3924:17 3924:21 4029:13 4046:4 4050:10 4050:11 4056:2	commitment 3964:10	concentration 3896:14	concrete 3917:15	consensus 3851:10 3852:19,25 3853:4,10 4024:24
commented 4041:2 4047:18	committed 3976:11	concept 3839:24 3840:6	condition 3893:20 3896:16	consent 3989:21 3990:3,7,11 3992:8 3993:13 3994:18 3995:10 3995:17 3996:8 3996:10,17,19 3997:12,16 3998:13,15 3999:2,3 4011:8 4017:5,7 4020:16 4032:6
comments 3870:25 3938:23 3951:3	committee 3897:2 3897:9 3910:4 3924:18 3926:9 3926:20	concern 3842:15 3850:19 3852:23 3853:14 3854:12 3860:12 3876:19 3878:25 3880:3 3883:9 3884:1 3894:17 3910:7 3921:16 3935:11 3938:17 3972:24 4041:25	conditions 3856:24 3870:16 3876:22 3877:4,4 3880:13 3880:20 3881:3,5 3881:15 3882:23 3885:5 3892:10 3892:18 3894:12 3895:1,12 3900:21,21 3983:19 3997:18 3997:25	consented 4012:9 4013:16
Commission 3832:15 3841:24 3848:9 3851:15 3862:20 3891:8 3942:5	committing 4010:22	concerned 3830:18 3831:24 3843:1 3846:13 3847:20 3847:22 3853:25 3897:7 3898:18 3899:1 3909:23 3911:21 3917:18 3920:23 3921:6 3946:13 3951:5	conduct 3848:11 3968:15 3978:19	consenting 3996:11
commissioner 3829:7,11,17 3833:8,11,18 3839:5,10 3862:13,16,17 3873:18 3875:22 3876:4,9 3892:24 3915:11,14,15,25 3933:18 3936:17 3947:22,24 3960:4,12,16 3964:25 3965:12 3979:2,3,14,15 3988:23 3998:2 3998:12,21 4007:2,6,16 4018:2,6,13,16 4021:17,22 4022:2,8,14,18 4023:2,5,6,13,18 4023:21 4024:1,5 4027:6 4034:16 4034:25 4035:4 4035:17,25 4036:19,23 4037:4 4038:20 4043:20 4055:23 4057:2,5,12,16,19	common 3869:3 3949:1 3998:5,9	concerns 3829:19 3852:4,4 3908:18 3908:21 3910:18 3926:23,24 3967:10 3982:14 4000:2 4007:7 4042:3	confession 3873:2 4029:16	consents 3997:22
Commissioner's 3832:15 3841:24 3848:9 3851:15 3862:20 3891:8 3942:5	Commons 3849:14	conclude 3887:13 3906:19	confidence 3927:16 3973:22 3978:13 3988:5 3996:15	consequence 3838:24 3978:5
communication 3885:21 3986:2 4048:8	communications 3985:18 4041:14	concluded 3849:15 3923:13 3924:7 3950:18	confident 4019:5	consequential 4027:1
communications 3985:18 4041:14	community 3881:8 3881:21 3925:22	conclusion 3859:10 3861:10 3877:3 3880:6 3887:19 3891:6 3905:6 3907:22 3908:2 3942:10 3968:14 3971:6 3973:2,3 3974:23 3975:2 3978:13 3992:19 4055:18 4056:14	confidential 3985:18 3994:17 4042:8,17	consider 3980:1 4005:7 4058:2
company 3838:6 3990:9,18	complaint 4037:8 4037:3,4		confidentiality 3829:25 3844:18 3986:4 3989:21 3990:2	considerable 3883:22 3893:19
compared 3863:3	Complaints 3848:9		confined 3970:5	consideration 3910:25 3941:23 3964:25 4025:19
complained 4037:8	complete 3839:4 3895:3 3941:8 4056:6		confinement 3856:24 3870:17 3880:22 3892:10	considered 3978:19
complaint 4036:24 4037:3,4	completed 3950:10		confirm 3932:24 4027:7 4035:11 4047:14	consistent 3832:3 3861:7,23 3863:10,15,19 3870:19 3871:1,2 3881:24 4017:3,6 4017:12
Complaints 3848:9	completely 3879:8 4034:6		confirmation 3872:16 3974:10 4034:21	constantly 3870:4
complete 3839:4 3895:3 3941:8 4056:6	completer 4009:21		confirmed 3861:7 3949:10	constitute 3974:4
complex 3913:24	complex 3913:24 3888:17		conflicting 3967:16	Constitutional 3975:17
compliant 3879:9 3888:17	component 3856:11		confusion 4006:25 4049:16	constraints 3911:20
components 3918:20	components 3918:20			construct 3839:16
compport 3880:21	compromise 3842:9			constructed 3996:1
computer 3836:4	computer 3836:4			construction

3990:15,17	4048:8,22,24,25	control 3858:18	3924:16 3925:4	3944:6 4020:9
3991:2	4049:24 4051:11	3871:21 3872:4	3928:23 3957:4	4052:3
consul 4010:6	4051:16 4052:22	3877:4 3995:8	3959:9 3967:1	courage 3936:10
4037:20	4056:13	4001:10 4013:3	3968:10 4012:3	course 3832:3
consular 3831:20	consulate 4023:14	4013:19 4015:1	4013:10 4018:24	3833:25 3835:16
3832:4 3833:5,11	4037:14	4015:16	4019:4,25	3846:3 3872:2
3833:16 3838:19	consult 3927:2	controls 4016:17	4031:13 4032:2	3891:1 3901:16
3840:4,23	consultation	convenient 3915:12	4034:25 4046:7	3917:16 3918:21
3842:17,23	3978:10 4005:17	3922:10 3924:13	4046:25	3919:25 3921:25
3858:8 3861:21	consulted 4016:23	Convention	corrected 3947:6	3937:15 3941:25
3871:9,17 3872:8	4026:10	3880:23 3881:17	4044:24	3946:7 3955:20
3873:21 3874:2	contact 3895:7	3881:19 3883:11	COSMOS 3831:6	3969:10 3973:7
3880:1 3882:3	3968:6	3974:4	3831:15 3832:7	3980:8 3986:21
3884:4,9 3885:16	contacted 3929:14	conversation	costly 3837:22	4004:14 4005:20
3887:6 3888:1	3930:1 3968:7	3834:5 3885:20	counsel 3829:18	4012:1 4017:1
3889:17 3890:15	contacts 3934:3	3938:3 3939:21	3833:4 3841:24	4046:16 4048:24
3891:11 3892:4	3975:14	3944:7,15	3862:20 3928:20	4055:8
3893:3,12 3895:8	contained 3992:24	3951:18,21	3935:25 3936:2	court 3857:16,18
3896:24 3901:12	contemplation	3953:15 3989:15	3959:17 3962:5,8	3911:22 3912:10
3904:20 3906:25	3992:7	4019:21	3963:13,17	3929:8 3931:12
3907:1 3908:19	content 4041:14	conversations	3964:15,18	3951:9,11
3908:22 3913:13	contents 4041:9	3837:6 3885:6	3970:22 3976:22	3964:11
3949:16 3966:3	context 3837:24	3952:18,21	3978:17 3997:8	courts 3914:16
3973:17 3978:16	3896:25 3898:25	3980:20,22	4007:1,15 4045:7	3969:23 3996:20
3982:7 3987:25	3905:21 3928:24	4050:16	4059:16	cover 3841:22
3988:17 3989:5	3939:1 3944:9	converses 4001:23	counsel's 3942:5	coverage 3846:9
3991:23 3996:24	3945:1,17 3946:6	convey 3986:14	3964:23,24	covered 3882:11
4001:10,16	3947:17 3961:1	conveyed 3891:3	counter 3853:3	3883:19 3937:18
4002:1,5,24	3961:17 3969:4	4027:5	3945:4	covering 3947:7
4003:3,3,15	3970:25 3971:24	conveying 3888:23	counter-intuitive	4013:24 4023:10
4004:8,14	3985:13 4042:5	conveys 3879:22	3843:10	co-equal 3995:1
4005:11,18	4048:12 4049:9	convoluted 3999:9	countries 3854:2	create 3849:1
4006:12 4007:23	continental	cooperation 3915:5	3874:11 3880:18	creation 3917:15
4010:5,7 4011:10	3971:20 3972:7	3973:15 3976:14	3911:8 3915:2	credibility 3927:5
4012:8 4020:17	contingent 3843:23	3976:17	3920:21 3925:8	3963:16
4023:14,23	continuation	cooperatively	4005:4	credit 3927:9
4024:15 4025:9	3919:16	3962:17	country 3840:2,3	crime 3976:10
4026:1,6,9,17	continue 3834:20	copied 3901:6,13	3857:6 3877:5	criminal 3830:8
4027:21 4028:21	3869:18	3903:9 3953:25	3900:19 3911:16	3857:10,17
4031:23,25	continued 3829:15	4004:6 4030:21	3912:18 3917:10	3969:5,11 3988:8
4032:7 4033:18	3834:13 3841:1	copy 3901:20	3918:7 3922:5	4000:23
4034:23 4035:24	3891:13 3896:2	3953:23 4056:6	3925:9,12 3926:3	criticism 3973:8
4036:7 4037:13	continues 4009:25	core 3922:2	3929:4 3932:10	cross-examination
4037:18,24	continuous	corner 3865:21	3983:5,19	4007:9 4057:18
4038:24 4039:10	3854:12	correct 3833:9	3984:15 3987:16	4058:12,24
4040:21 4041:1,8	continuously	3858:1 3864:17	4053:24	cruel 3880:23
4041:9,14,23	3962:13	3887:11 3899:23	couple 3854:7	3881:15
4042:1,18	contributing	3907:18 3912:8	3859:20 3860:24	crush 3924:3
4043:24 4047:22	3849:7	3922:22 3924:1	3873:25 3903:13	Crusoe 3895:22

cryptic 3832:16	4020:12 4037:5	3935:15,17	denotes 3894:19	description
crystallizes	dates 4019:25	3951:8 3967:23	denounce 3840:12	3907:22 3961:11
3950:13,16	4054:6 4056:19	3969:7 3975:13	denounced 3840:15	4013:4 4021:19
CSIS 3852:4	dating 3834:13	decision 3834:24	department 3864:7	4049:23
3855:21,22	day 3832:19	3846:23 3849:3	3901:4 3926:3	desire 3877:6
3908:14 3987:1	3837:10 3862:21	3851:9 3852:14	3928:17 3933:2	desk 3832:14
3987:14 3997:23	3863:4 3868:11	3854:9,15	3966:13 3974:17	3875:10 3900:12
3998:4 4000:3,15	3868:13 3907:16	3912:15 3914:8	3985:14 3987:2,9	3900:15,22
4002:11,15	3911:21 3952:20	3960:25 3964:2	3998:12 4005:1	3958:20 3959:14
4004:1,18	3967:13 4007:10	3992:16 3993:3	4006:2,5 4011:20	destroying 3831:8
4005:10 4006:14	4019:17 4048:21	3999:9 4001:17	4012:18,22	destruction
4008:1 4012:13	4049:16 4059:9	4002:13 4011:18	4015:6,7,24	3832:20
4012:20 4021:15	days 3853:18	4011:22 4027:25	4016:2 4021:8	detail 3841:23
4024:22 4039:19	3868:10,17	decisions 3911:22	4023:10 4025:21	3927:12 3935:10
curious 3882:2	3880:12 3886:24	3978:7,7 3988:18	4040:24	3952:22 3977:13
current 3863:3	3896:6 3903:13	3999:22	departmental	3988:22 3993:21
3918:18	3997:8 4010:24	declared 3916:9	4004:9,19,22,24	3999:14
currently 3923:9	4020:9	3917:5 4051:17	deport 3909:25	detailing 3949:3
curriculum 3831:4	deal 3838:21	decree 3919:17	3910:19,21	details 3925:17
3843:13 3869:4	3918:22 3953:9	3920:10	3911:14 4044:8	3952:9 3963:10
custody 3973:5	3967:4 3971:2	deemed 3997:4	deportation	4028:6
4047:11	4001:19 4007:21	deep 3841:15	3909:22 3911:10	detain 4051:2
custom 3960:13	4014:21	3867:11	3911:19 3912:16	detained 3857:9
cut 3855:5,10,13	dealing 3869:4	deeply 3999:9	3978:22 4039:2	3875:5 3950:7
3903:15 4033:21	3903:10 3950:21	defence 3962:3	4047:8 4049:5,11	3970:6 3988:6
4058:7	3953:3 3964:18	3963:13 3964:13	4050:18	4031:8
cuts 3915:8	3974:16,16,17	3964:15	deportations	detainee 3858:19
Cyr 3902:4	3984:10,14	defend 3962:6	3911:16	3859:4 3871:22
3903:12 3904:1	4033:15 4045:13	deference 3846:7	deported 3965:23	3876:18
C.S.R 4060:25	4050:13	define 4017:12	4037:21 4039:5	detainees 3856:22
C4 4004:9	dealings 3976:19	degrading 3856:23	4047:24 4049:22	3857:15,15
	3991:14 3992:9	3880:24 3881:15	4051:15	3894:1 4001:3
	3993:14	degree 3973:14	deporting 3912:6	detaining 3872:4
D	deals 3886:7	delayed 3853:9	deprivatization	detention 3835:17
daily 3886:2	3911:2,6	deletion 4034:7	4043:4	3836:23 3837:3
Damascus 3859:15	dealt 3854:4	deliver 3913:12	deprivatize 4043:6	3857:23 3860:15
3907:9 3963:2	3866:7 4031:17	delivered 3844:7	Deputy 4005:22	3861:25 3863:17
4030:19,19	death 3845:21,22	4010:23	4036:19,23	3870:17,20
Dan 4027:10	3845:25	delivery 3842:17	4037:4 4038:20	3880:4 3893:20
Daniel 4030:13	debate 3914:15	3842:22	derived 4026:1	3895:12 3896:3
dark 3892:12	3996:20	demeanour 3981:8	describe 3882:22	3922:16 3924:15
data 3902:7	decade 3957:1	democracies	3900:7 3922:10	3970:13 3979:23
database 3902:24	December 3830:9	3942:21	3952:12	3991:5 4031:10
4022:13,17	3884:11 3923:6,9	democratic	described 3853:18	4037:11,16
date 3904:5,13	3937:20,21	3880:18	3858:3 3861:22	4039:1
3920:14 3921:11	3938:12	demonstrate	3880:1 3908:10	deterioration
3948:2 4003:18	decent 3894:2	3955:2	3925:15 3929:3	3895:14
4019:13 4053:10	decided 3852:25	denied 3930:9	3972:19	determination
4055:22 4059:12	3923:12 3934:25	denoted 3942:11	describing 3929:5	3845:21 3847:3,4
dated 3835:11				

determine 4005:8	directly 3951:19	dispute 3926:15	4014:5 4015:2	dressed 3882:8,8
develop 3958:19	4002:15 4004:17	disputing 4014:1	4020:20 4026:13	3883:16,17
developed 4042:24	director 3983:8	disseminated	4035:18 4055:4	drew 3890:4
development	3984:22,24,25	4011:23 4034:4	4057:13	3975:2
3831:15 3832:7	4030:14	dissemination	doing 3852:7	drop 3884:13
3972:11,13	disagree 3875:14	4002:23 4003:2	3854:6 3885:2	dropped 3929:8
developments	3884:7	4016:19,24	3890:19 3891:15	dropping 3931:12
3928:25	disappear 3936:11	distance 3875:9,11	3902:8 3987:10	dual 3839:19
devolve 3910:24	3937:2	3875:13 3877:16	3997:20 3999:17	3840:1 3983:2
DFAIT 4021:23	disappeared	3877:17 3885:20	4001:25 4002:2	dumps 3902:7,18
4022:20,23	3872:24 3936:12	distinction 3942:12	4028:15 4043:9	duplicating
4023:12 4031:23	disc 4009:4	distort 4052:24	4057:6	4034:23
4037:22 4046:17	discloses 3989:19	distorts 4052:22	domain 3855:25	duplicitous
4046:19,20	disclosure 3988:9	distraught 4029:15	4041:4 4042:16	3968:18 3978:19
4047:17 4051:14	discount 3901:21	distribute 4020:16	4042:19 4043:19	duties 3857:14
diary 3832:14	3946:15	distribution	4052:13,16	dutifully 3892:3
dictated 4040:9	discounted 3945:13	4007:25 4020:24	dominant 3839:17	duty 4045:4
died 3921:3	discreetly 3878:2	4021:11	3839:24	Duwait(ph) 3932:2
difference 3906:9	discretion 3832:11	divided 3936:1,4	domination	3932:3
3906:16	discuss 3829:12	division 3857:24	3871:21	débuté 3829:3
different 3846:17	4004:13 4039:20	3900:13 3932:9	domination/cont...	
3860:19 3869:11	4059:15	4022:6,7,9,10,21	3889:16	E
3916:12 3925:16	discussed 3835:2	4022:21,22	door 3867:2,7,13	earlier 3837:11,17
3930:24 3962:12	3844:15 3879:7	4030:25 4032:20	3867:14 4046:23	3850:9 3853:5,11
3965:15 3994:11	3909:12 3935:10	4041:19	doubt 3852:8	3858:12,16
3994:12 3999:3	3967:13 3994:2,3	divorce 4052:20	3854:14 3932:18	3861:23 3889:17
4006:2 4041:13	4010:19 4047:19	document 3842:2	4007:19 4013:7	3891:17 3902:23
differing 3860:18	discussing 3893:19	3917:25 3918:4	downstairs	3910:3 3939:20
difficult 3878:15	4007:14	3919:5,25	3866:25	3947:4,9 3953:3
3880:6 3883:3	discussion 3829:17	3930:16 3933:5	downtown 3955:4	3953:15,21
3885:11 3934:13	3830:15 3831:7	3933:10 3964:22	Dr 3838:11	3961:8 3969:1
3956:21 3994:9	3836:8 3837:17	3965:2 3982:13	3928:19 3933:22	4038:3 4050:17
3996:23	3838:5 3842:5,8	4013:5,6 4016:18	3934:2 3935:9	early 3838:9
difficulty 3847:8	3842:16 3875:10	4022:12,16	3939:21 3943:10	3840:9 3864:16
3872:9,9 3955:10	3883:20,24	4025:18,20	3944:9 3951:18	3877:25 3896:5
3956:10 4053:1	3908:3 3909:7	4027:8,9 4029:20	3952:1,18	3896:16 3920:23
diplomacy 3842:9	3936:20 3945:17	4029:23 4035:13	3953:12 3955:9	3937:20 3952:3
3844:14 3846:8	3963:8 3993:24	4053:11 4055:1	3955:18 3956:17	3953:23 3975:11
3847:12	4060:2,3	documentary	3961:3 4000:7,13	3975:11 3979:22
diplomatic 3914:12	discussions	4027:4	dragged 3928:10	3980:18 4000:6
direct 3907:23	3837:12,13	documented	draw 3877:2	4044:25 4048:13
3962:8 3967:20	3852:17 3880:18	4047:23	3880:5 3887:12	4049:19 4058:7
3968:6 3980:20	3910:18 3946:25	documenting	3887:19 3933:12	easily 3917:21
4020:2 4032:9	3961:2 3962:13	3897:3	3942:10 3984:2	3970:2
direction 3832:9	3964:1	documents 3848:3	4029:13 4045:21	East 3863:12
3948:19 3987:19	dishes 3868:4	3955:20 3956:15	4055:18	3917:17 3983:7
4007:13	disoriented	3956:17 4007:13	drawing 3906:5	easy 3972:3
directions 3879:2	3887:10,16	4008:15 4009:3	draws 3948:19	economic 3900:20
3879:12	dispel 3926:23	4009:18 4013:18	dress 3882:18	Edelson 4000:6,13

Edwardh 3839:7,9	3893:9,11,14	3939:7,23 3940:6	3990:1,6,16	4041:24 4042:14
3839:16 3840:17	3894:21 3895:3	3940:19 3941:1,6	3991:9,20 3992:2	4043:5,25
3841:6,11,20	3895:11,19,23	3941:12,17	3992:5 3993:2,5,8	4044:12,21
3842:11,20	3896:20 3897:16	3942:2,14 3943:2	3993:17,23	4045:1,8,21
3843:6,11,16,21	3897:21 3898:5	3943:6,19,22	3994:10,14	4046:3,7,9,13,20
3844:3,9,12,23	3898:11,17	3944:1,5,14,18,22	3995:2,5,20,24	4046:22 4047:1
3845:8,16 3846:3	3899:4,8,18	3944:24 3945:15	3996:2,8 3997:6	4048:6,16 4049:6
3846:16 3847:9	3900:1,4,6,14,24	3946:17,24	3997:21,25	4049:12,18
3847:15,16,25	3901:6,9,14,16,22	3947:11,14,23	3998:7,10,25	4050:4,9 4051:5
3848:13,21,23	3902:16,20	3948:13,17	3999:5,23	4051:22 4052:14
3849:6,19 3850:1	3903:17 3904:4,8	3949:6,13,18	4000:12,17	4052:24 4054:8
3850:4,13,25	3904:15,18,22	3950:1,5 3951:10	4001:13,18,21	4054:18,21
3851:4,21,25	3905:12 3906:1,5	3951:16 3952:8	4002:10,16,21	4055:10 4056:15
3852:22 3853:12	3906:8,15,22	3952:25 3953:6	4003:8,11,16	4057:1,4,11,12,17
3854:5,22,24	3907:20 3908:6	3953:10,19	4004:2,11,21	4057:21,25
3855:6,9,14,20,23	3908:18 3909:5	3954:10,12	4005:6 4006:4,9	4058:13,18
3856:2,10,13,16	3909:16,19	3955:6,13,17,24	4006:21 4007:16	4059:20
3856:21 3857:7	3910:6,10,14,17	3956:2,6,13,24	4008:4,15,21,23	effect 3840:8
3857:13,22	3911:1,11 3912:1	3957:10,14,25	4009:11,16	3854:19 3895:2
3858:2,14,23	3912:4,10,19	3958:7,12,23	4010:2,14 4011:4	3911:17 3921:12
3859:1,12,19	3913:1,4,8,11,16	3959:6,16 3960:6	4011:12,25	3921:12 3925:24
3860:6,11,20,23	3913:21 3914:3	3960:10,17	4012:4,7,11,23	3991:17 4004:5
3861:12,20	3914:21,23	3961:5,10 3962:1	4013:1,9,13,25	4010:19 4014:20
3862:3,7,10,14,17	3915:9,13,24	3962:23 3963:11	4014:8,24	4033:21 4040:9
3863:1,13,22	3916:6,14,18,21	3963:20 3964:9	4015:11,20	4045:14 4050:1
3864:13,20	3916:24 3917:23	3964:21 3965:4,8	4016:6,15 4017:1	effective 3842:24
3865:7 3866:9	3918:9,12 3919:3	3965:14 3966:16	4017:16,22	3873:9
3869:9 3870:22	3919:7 3920:4	3966:24 3967:2	4018:4,14,17,22	efficacy 3842:9
3871:7,20 3872:2	3921:14,19	3967:20 3968:5	4018:25 4019:3	effort 4014:19
3872:7,19 3873:6	3922:8,22 3923:4	3968:12,19	4019:11,16,23	efforts 3830:12
3873:13,15,19	3923:20,24	3969:9 3970:4,9	4020:5,8,14,22	3881:10 3924:3
3874:15,19,24	3924:2,10,17,24	3970:17,20	4021:1,9,18,21	4000:7 4009:20
3875:2,7,18	3925:1,5,14,19,25	3971:12,16	4023:4,20 4024:7	Egypt 3858:9,21,24
3876:16 3877:9	3926:11,14,18	3972:2,14,18	4024:14 4025:3,6	3920:18
3877:12,24	3927:17 3928:5	3973:7,24 3974:8	4025:13,22	eight 3864:22
3878:7,10,14,18	3928:15 3929:1	3974:13 3975:1	4026:12,21	4003:6,13
3878:23 3879:8	3929:19,25	3975:22 3976:4	4027:2,5,14,20	either 3835:11
3879:14,18,20,25	3930:5,8,15,18,22	3976:13 3977:5,8	4028:12,14,19	3836:10 3883:16
3880:17 3881:12	3930:25 3931:4,6	3977:23 3978:18	4029:8,19 4030:1	3892:12 3955:1
3881:22 3882:10	3931:8,11,15,18	3978:23 3979:13	4030:8,11,13,17	3987:14 4006:22
3882:16 3883:7	3932:5,11,18,21	3979:16 3980:4	4030:20,23	4007:11 4014:4
3883:18 3886:4,9	3932:24 3933:6	3981:7,12,20	4031:1,3,15	4014:25 4016:18
3886:15 3887:1,4	3933:15,19	3982:3,6 3983:12	4032:6 4033:2,11	4025:8 4045:18
3887:12,22,25	3934:1,12,15,20	3983:21 3984:6	4033:24 4034:9	4056:24
3888:5,8,12,15,22	3934:23 3935:13	3984:16,25	4034:13 4035:19	EI 3858:3,8,17
3889:1,12 3890:2	3935:17,20	3985:3,10 3986:1	4036:4,13,18	electric 3869:19
3890:9 3891:10	3936:7,14,19,24	3986:12,24	4037:2 4038:12	3870:6
3891:24 3892:2,8	3937:5,11,17	3987:4,12,23	4038:15 4039:24	element 3838:23
3892:14,19,23	3938:8,13,21	3988:2,21 3989:9	4040:3,18 4041:6	3846:11 3894:13

3896:17 3901:3
3921:25 3942:7,9
3943:3
elements 3900:18
3981:5
elicit 3829:20
elimination
3921:23
else's 3938:15
Emaleh 3934:7
embassy 3907:18
3911:3,6 3920:1
3937:1 3962:9,15
3980:25 3981:3
4010:5
embedded 3990:16
emerge 3917:14
3939:2
emerged 3917:10
3939:5
emergency 3916:9
3916:22 3917:3,4
3919:16 3920:10
emigre 3924:22,24
3925:1,11
emphasize 3838:18
employs 3990:18
enacted 3922:18,19
encouragement
3885:4
encouraging
3889:10
ended 3845:14
3921:14,15
3970:2
engage 3935:1
enlisting 4032:19
ensure 3829:21
3907:17 3962:5
4014:4
ensuring 3911:13
entail 4054:25
enter 4022:12
entire 3973:10
entirely 3832:21
3908:9 4006:3
entities 3852:2
3997:11
entry 4048:10

environment
3918:18,21
3948:11
equally 3889:9
3964:23 4049:2
equation 3886:3
error 4054:24
essential 3964:13
essentially 3832:17
3840:1 3841:12
3938:18 4044:22
est 4060:6
establish 3846:17
3877:15 4036:5
4048:14 4050:4
4050:13 4052:11
established
3877:16
estrangement
3957:21
et 3898:15
Europe 3836:11
evening 3864:25
3865:2
event 3849:11,18
3849:19,23,23
3881:14 3920:24
3932:22 3940:4
3950:25 3951:16
3998:5
events 3848:19
3907:22 3959:1
4020:4 4037:6
4055:12,20,22
eventually 3929:3
everybody 3932:1
3963:7 3975:6
evidence 3831:7
3843:24 3844:7
3853:13 3855:10
3859:6,17
3875:23 3905:5
3939:8 3958:13
3967:10,23
3968:14 3977:8
3993:24 4001:5
4002:25 4024:4
evident 3869:7
3877:7 3977:19

evolution 3830:3
evolved 3839:17
exact 3851:13
4053:19
exactly 3867:8
3878:9,22 3879:6
3886:8 3894:23
3902:11 3906:4
3910:16 3954:20
3977:20 3981:6
3999:17 4012:25
examination
3829:15 3839:8
4032:10
examination-in-c...
4007:18
example 3872:19
3883:21 3884:11
3888:1 3905:2
3907:5,21 3927:6
3936:15,19
3969:21 3980:13
examples 4017:13
exceptional
3972:10,11,13
3986:20,20
exceptions 3986:3
exchange 3871:15
3992:1 4032:22
4045:22 4046:4
exclude 4056:16
exclusion 3940:15
3978:22
exclusive 3854:16
3856:7 4003:13
4003:15
excuse 3870:23
4022:5
executed 3845:9
exercise 3936:10
exhibit 3888:1
3917:24 3960:7,8
3960:14 4045:23
4051:19
exist 3965:25
existence 3910:20
4001:3 4045:4
exists 3857:6
3901:5 3906:11

expand 3914:6
expatriates 3925:3
expect 3852:24
3877:6 3892:16
3907:25 4021:1
4026:8,10
4036:13 4052:4
expectation 4036:6
4043:14 4045:15
expected 3841:15
4024:16 4037:20
4039:5
expel 3912:21
experience 3850:24
3854:3 3875:25
3886:3 3921:20
3927:1 3958:1
3975:18 3983:24
4012:14
experienced
3837:23 3871:4
3909:2
experiences
3863:11 3985:23
expert 3836:5
expired 3954:1
explain 3902:19
3983:1 3999:17
4010:16 4036:18
explained 3902:23
3990:23 4002:3
explains 3890:13
explanation
4048:10 4055:7
explicitly 3961:2
explore 3906:10,17
3935:22 3986:25
explored 3993:21
expressed 3848:4
3853:14 3854:12
3928:18
expresses 3982:13
expression 3852:23
3871:12 3994:6
4013:5
expressly 4016:17
extend 3993:13
extended 3841:13
3992:8

extensive 3914:15
3981:25
extensively
3835:10
extent 3845:17
3910:5 3915:1
3937:14 3958:16
3965:25 3998:8
4005:25
extraordinary
3967:4
extremely 3848:16
eye-balling
3876:19
e-mail 3900:4
3903:6,11
3945:25 4004:9
4030:9
e-mails 3902:18
3943:9

F

face 3841:9
3857:18 3924:9
3990:25 3991:18
4016:18
face-to-face
3837:11
facilities 3892:15
facility 3976:1
facing 3831:17
3988:6 3992:14
facsimile 4019:12
fact 3845:24
3846:3,6,12
3847:19,25
3857:22 3890:5,6
3904:2 3924:10
3927:11 3931:25
3942:15 3945:9
3949:11 3950:17
3951:25 3956:9
3966:2 3970:4
3986:19 3988:4
3991:1 4000:9
4009:18 4017:6
4024:9 4040:25
4042:13 4045:3
4045:18 4055:9

4056:16	3843:17 3846:12	figure 3984:20	3884:21 3887:5,7	follow-up 3945:21
factor 3840:10	3895:5 3936:21	4033:14	3887:15 3900:4	3945:25 3955:7
3851:8 3854:14	3938:24 3945:11	file 3845:20	3916:8 3917:11	3958:14
3854:17,25	3946:22 3957:19	3851:15 3903:11	3933:1,12,17	food 3894:4
3855:2,5	3958:19 3960:25	3903:19 3904:2,5	3934:7 3937:21	foot 3867:20
factors 3841:2	3975:13 4000:4	3963:6 4005:24	3937:25 3939:2,5	forces 3917:1
3919:13 3922:7	4044:16 4045:10	4009:21,21	3939:18 3940:20	foreign 3847:11
3973:21	4050:16 4052:2	4034:2	3940:25 3941:1	3854:1 3901:5
facts 4039:11	fancy 3974:18	files 4006:8 4027:4	3944:6,8 3948:17	3918:6 3987:2,9
4043:23	far 3911:20 3915:1	fill 4030:3 4031:20	3957:2 3962:17	4005:22 4011:20
factually 3945:12	3917:17 3920:22	final 3839:4	3966:1 3967:13	4012:19,22
faded 3958:16	3953:13 3969:20	3906:24 3907:19	3980:5 3981:4	4015:8,24 4016:3
fail 3864:22	fare 3857:23	3907:19 3960:25	3989:24,25	4016:4 4023:10
failed 3881:11	fast 4053:4	3964:1 4027:18	3990:14,15	4025:21 4040:24
fair 3841:20 3842:6	father 3835:25	Finally 3832:24	3994:16,18,20	forge 3852:25
3845:3,5,11	3991:12	financial 3955:1	4010:13 4019:1	forget 3911:11
3856:2,4 3861:12	favour 4014:14	3956:22	4021:20 4028:22	3989:1 3993:11
3871:23 3872:10	fax 4018:14,18	find 3850:17	4035:22 4040:21	forgive 3859:2
3873:15 3874:25	4019:10 4021:20	3851:13 3857:3	4041:16 4044:3	forgot 3902:12
3884:10 3886:9	4021:22 4022:20	3862:3 3864:5	4044:19 4050:5	form 3868:25
3887:13 3891:17	4022:23 4023:6	3874:11 3886:15	firsthand 3892:18	3895:2 3903:24
3897:21 3898:3	4023:10,12,17,22	3888:2 3899:13	fit 3913:13 4012:16	formalities 3956:15
3908:16,20	faxes 4013:14,15	3899:14 3901:11	4027:12 4034:10	formally 3947:17
3921:20 3925:14	FBI 3972:1	3901:22 3905:1	fits 3918:13	format 4020:1
3946:25 3952:25	3976:10 4028:7	3907:4 3908:4	five 3884:8 3965:9	4024:21
3953:11 3956:14	4028:16	3925:8 3936:10	fix 3912:13	formed 3984:1
3968:21 3973:14	fear 4047:24	3937:22 3941:2	flag 3872:22	former 3851:12
3974:5 3975:18	4049:21 4050:18	3943:10,12,17	3873:7	3925:10
3979:20 3980:2	feasible 4059:6,12	3950:2 3952:8	flip 3896:20 3950:3	forms 3990:18
3981:12 3982:2	feature 3922:4	3954:14,15	4034:2	forth 4053:4
3988:11 3989:23	4036:10	3959:18,23	flipping 3949:24	forthright 3976:17
3990:4 3995:24	February 3923:11	3963:6 3968:25	floor 3976:2,7	forward 3846:8
4051:8,19,22	3939:4 3941:5	3991:10 3999:6	flow 3914:25	3851:10 3897:8
4054:9	3947:9,10 3948:4	4014:10 4028:4	flown 4053:25	3963:21
fairly 3845:11	3948:5 3950:11	4032:20,25	flying 3837:19	forwarded 4012:12
3935:8 3990:11	federal 3975:25	4033:19 4038:6	focus 3894:5	4015:2 4019:3
4021:6	feel 4040:20 4050:9	4048:25 4049:2	3898:5 3922:20	fought 3919:10
fall 3849:9 3900:22	4059:23	finding 4033:2	FOI 3918:5	found 3840:6,9
3986:19 4017:13	feeling 4058:6	fine 3876:3	follow 3845:10	3843:14 3850:14
falling 3915:4	feet 3867:10,11,12	3963:11 4011:25	3849:9 3864:21	3853:24 3889:9
falls 3883:10	3867:20 3870:10	4023:20	3936:25 3959:5	3889:15 3929:1
3884:2	3875:14	fingertips 3952:14	followed 3832:22	3940:15 3996:22
false 3906:19	fell 3946:7 3980:18	finished 4007:9	3959:1 3974:6	3997:18 3998:1
3931:19	4000:20,23	first 3829:16	following 3834:11	4048:20
familiar 3897:17	felt 3946:21 3964:5	3836:2 3837:1	3934:4 3972:1	four 3864:12
3983:18 4006:16	3998:21	3840:3,23	3978:20 3986:11	3866:20 4006:10
4013:10	field 3970:15	3862:21 3863:4	3999:12,15	fourth 3888:1
family 3835:1	fighters 3942:20	3872:22 3874:2,4	4009:9	frame 3897:8
3838:10,12	fighting 3942:24	3881:23 3883:14	follows 4036:17	3939:20 3940:1

3941:11 3947:10
frankly 3888:11
 3942:17 3960:3
 4057:22
free 3871:15
 3878:12 4050:9
freedom 3942:20
French 3917:11
 4019:5 4021:23
frequent 3952:17
frequently 3880:22
friction 3931:22
 3932:8
friend 3872:20
 3924:21 3926:19
 3959:24 4007:8
 4051:8 4055:3
friends 3915:1,5
frightening 3931:4
front 4019:12,12
 4021:20
frontline 3966:1
full 3830:24 3882:8
fully 3876:25
function 3882:2
 3900:16,17
fundamental
 3994:16 3995:14
 4033:18 4036:11
fundamentally
 3900:25
funny 3893:15
further 3829:9
 3863:14 3908:7
 3971:21 3978:25
 4009:21 4011:23
 4016:24
furthermore
 4009:20
future 3842:21,22
 3924:19 3927:18
 3950:25 4051:3

G

gaps 3903:14
GARFIELD
 3829:14
Garvie 4045:23
 4055:8,21 4056:5

4056:20
Garvie's 4050:7
 4055:25
gather 3944:25
gathered 3922:23
geared 4043:16
 4045:17
general 3842:5
 3923:8 3938:4
 3948:11 3953:20
 3968:1 3983:9,22
 3984:24,25
 3992:25 4010:19
 4010:20 4014:4
 4014:25 4015:4
 4015:14 4016:22
 4019:22 4027:9
 4028:9 4030:14
 4037:14
generally 3842:23
 3854:1 3857:10
 3925:5,7,11
 3953:11
General's 3834:5
germane 3911:25
 4033:23
getting 3839:22
 3874:21,22,25
 3890:5 3891:14
 3899:22 3935:4
 3955:10 3960:22
 3963:7 4028:15
get-go 3851:23
Girvan 3831:8
 3832:22 3835:9
 3836:22 3837:2,6
 3837:10 3907:11
 3964:17 3978:4
 3989:16,18
 3991:21 3993:10
 3993:20 4028:5
 4028:15 4029:8
 4029:14 4031:13
 4031:22 4048:9
 4049:15 4050:14
 4050:22 4054:10
 4054:14,15
 4055:15,16
 4056:1

Girvan's 3838:5
 3907:5 3975:12
 4054:14
gist 4028:16
give 3832:18,25
 3833:19 3875:23
 3886:18 3889:20
 3899:13 3913:14
 3926:6 3947:23
 3948:6 3952:21
 3953:22 3955:19
 3959:16,17
 3962:23 3963:14
 3963:16 3990:3
 3994:12,17
 4017:5 4026:2,4
 4052:4
given 3835:22
 3836:21 3847:23
 3850:13 3857:6
 3858:8 3870:15
 3877:5 3878:18
 3879:2 3894:2
 3899:1 3901:18
 3903:7 3914:24
 3917:24 3923:7
 3945:9 3958:21
 3958:23 3961:11
 3961:20 3962:8
 3966:20 3981:24
 3996:8 3997:16
 3999:3 4005:9
 4012:14 4016:24
 4017:2 4027:9
 4054:15,16
 4056:20
gives 3829:22
 3990:7 4041:12
giving 3857:14
 3886:11 4051:6
GMR 4030:24
go 3840:18 3846:8
 3848:2 3851:14
 3852:3,5 3871:9
 3874:19 3887:25
 3890:6,7 3894:7
 3897:22 3899:22
 3900:18 3903:12
 3903:20 3908:6

3913:4,8,19
 3914:25 3923:5
 3931:5 3934:21
 3938:22 3940:7
 3942:3 3943:7
 3959:7 3960:24
 3966:12,21
 3967:8 3968:2
 3973:20 3975:14
 3978:25 3979:4
 3983:10,11
 3985:19 3986:8
 3993:25 3996:4
 3998:16,20
 3999:13,13,16
 4002:11,12,15
 4017:23 4018:5
 4025:21 4030:4
 4031:3 4041:9,11
 4044:14 4052:5
 4052:16
god 3901:19
God's 3835:5
goes 3870:14
 3897:5,9 3900:6,9
 3907:17 3923:10
 3950:7 3953:2
 4002:22 4021:23
 4031:15 4042:19
going 3829:20
 3830:6 3833:13
 3838:2 3841:23
 3845:8 3846:14
 3847:1,7 3850:4
 3851:19 3853:9
 3864:13 3869:5
 3875:12,23
 3881:23 3882:6
 3891:2 3894:20
 3894:24 3896:10
 3897:24,24
 3899:2 3904:1
 3905:19 3915:3
 3920:7 3929:12
 3944:5,12
 3945:15 3946:11
 3946:12 3947:1
 3951:1,15
 3953:19 3954:22

3956:25 3958:2
 3960:24 3961:17
 3961:18 3962:4
 3963:13 3964:10
 3965:22 3968:9
 3970:21 3971:1
 3971:19,19
 3972:24 3974:24
 3977:22 3978:24
 3984:13 3988:21
 3989:11 3990:10
 3991:24 3993:8
 3994:15 3995:15
 3998:23 3999:8
 4005:21 4007:8
 4011:22 4015:5
 4015:11 4018:4
 4021:14 4022:20
 4027:23,24
 4030:3,17,18
 4031:20 4032:1
 4035:20 4039:7
 4041:10,11
 4042:3 4043:12
 4044:8 4050:18
good 3829:7
 3873:20 3877:7
 3927:3,20
 3970:19 3979:13
 3979:15,16
 3984:9 4032:14
 4057:2
googled 3920:5
governed 3919:18
 4016:8
governing 4015:13
government
 3829:18 3830:16
 3830:18,23,24
 3843:22 3844:8
 3847:5,6,11
 3849:1,4,8,12,15
 3850:16 3851:8
 3852:3,21 3853:5
 3853:11,15,20,25
 3854:10 3855:12
 3855:17 3856:8
 3857:25 3911:12
 3912:5 3916:12

3916:15 3921:5
 3921:18,22
 3932:1 3938:17
 3945:6 3977:9
 3995:8 3996:24
 4000:8 4002:8
 4007:1,15 4009:9
 4011:3,23
 4014:16,19,22
 4024:24 4045:15
governments
 3854:1 3917:19
 3928:6 4014:19
 4014:22
government's
 3850:9
governs 4015:22
Graeme 3900:9
grant 3898:8
 3992:23,25
granted 4031:23
grateful 4058:8
grave 3845:2
 3867:8,9 3868:11
grave-like 3892:11
great 3850:19
 3903:21 3938:17
 3956:10 3996:19
ground 3914:9
group 3848:4
 3884:17 3927:8
 3932:3,6,8,14
 3942:24 3984:14
 4039:18
Guantanamo
 3968:25 3969:15
 3969:19,22,23
 3970:3,5,11,21
 3971:11,17
 3972:3,8,25
guarantee 3914:12
guards 3866:23
 3885:6 3889:21
guess 3838:15
 3850:13 3862:21
 3870:11 3967:16
 4024:21 4048:20
 4049:14
guidance 3965:24

guys 3898:18

H

h 3829:4 3915:19
 3915:21 3979:8
 3979:10 4060:7,8
half 3955:2
 4058:14
Hama 3921:5
hand 4005:14
hands 3962:5
 3964:14,23,24
handwriting
 3897:18
happen 3878:8
 3908:5 3912:25
 3927:11 3954:17
 3954:18 3966:6
 3966:10
happened 3861:5
 3878:4,6 3896:8
 3905:9 3967:24
 3971:9 3991:4
 4024:18 4048:15
 4055:19 4056:12
happening 3951:5
 3968:24 3975:7
 4052:11
happens 3850:22
 4020:8 4021:5
hard 3912:21
 3914:3
harm 3993:3
harm's 3937:14
harm/injury
 4003:24
Harris 4032:12
harsh 3880:12,13
hats 4002:17
 4011:14
Haytham 3929:10
 3931:16 3934:15
head 3932:14
 4010:5 4030:19
heading 4046:10
headquarters
 3831:20 4039:17
heads 4026:4
health 3863:3

3895:14
healthy 3878:15
 3883:2
hear 3866:16
 3868:18,24
 3869:16 3875:23
 3905:14 4000:21
 4009:16
heard 3935:13
 3987:13 4012:23
 4053:22 4058:24
hearing 4060:4
heart 3921:6
 4000:1
Heatherington
 4032:19
height 3924:3
held 3859:10,13,14
 3859:15 3861:8
 3861:15,15
 3894:10 3898:21
 3976:9 3984:21
 3990:2 3997:8
 4037:17
hell 3869:7
help 3847:7,10
 3902:20 3904:24
 3905:23 3943:12
 3944:9 3945:1
 3953:12 3977:16
 3977:24 3990:9
 3990:17,25
 3991:17 3994:8
 3997:4 3999:21
 4000:11 4004:22
 4027:24 4052:18
 4055:5
helpful 3846:14
 3876:10 3883:11
 3998:23 4038:1
 4052:18
HENRY 3829:14
Hezbollah 3830:7
 3830:10,14,21
hiatus 3941:2
Hiep 3843:25
 3844:1 3845:25
 3846:15
hierarchy 3987:13

3994:24 3995:23
high 3867:12
 3945:20 3966:11
 3967:7 4031:9
highly 3848:15
 3850:21 3924:7
high-level 3967:3
high-profile 3903:1
 4045:14
high-profile-type
 3985:23
high-profile/hum...
 3928:22
high-tech 3838:14
hips 3870:3
hired 3937:1
hiring 3935:12
 3937:12
history 3916:4,8
 3919:22 3952:13
 3968:23
hit 3869:22,25
hold 3895:7
holding 3859:24
 3976:1,18
holds 3908:11
home 3835:22
 3850:1 3851:7
 3852:11 3854:13
 3863:20 3972:22
 4008:7,13,18
 4009:19
hope 3834:17
 3841:21
hoped 3890:21
hopefully 4007:12
horizon 3950:12
 3958:25
horizontally
 3982:24 3985:4
hospital 3894:7
hotel 3894:8
hour 4058:3,4,13
 4058:14 4059:2
hours 3866:20
 3869:14 3873:1
 4046:11 4054:10
 4058:17
House 3849:14

4045:19
human 3856:19
 3859:22 3868:22
 3870:16 3895:7
 3897:1,9 3900:21
 3918:16 3924:18
 3925:20 3926:20
 3927:19
humanize 3885:9
humorous 3893:1
husband's 3945:2
hypothesis 3898:19
hypotheticals
 3965:19

I

idea 3857:17
 3874:24 3967:22
ideal 3876:21
 3877:1
identify 3959:7
 3960:14 4017:25
Idi 3869:5
idiosyncratic
 3978:9
if/when 3949:15
ill 3835:25
illness 3838:12
ill-treatment
 3979:24 3981:18
images 3978:5
immediately
 4041:5 4042:11
immigrants
 3985:17
immigration
 3908:14 3909:21
 3911:3,5 3976:25
imminent 3946:5,6
 3947:2 4047:7
 4049:5,10
impact 3830:11
 3854:10 3909:8
impair 3842:17
 3909:24 3910:19
 3910:21 3911:16
 3913:6,12,17
impedes 3912:7
implementer

3831:11	including 3975:8	3884:25 3885:21	4032:22,24	3905:10
implementing	3990:9,17	3888:20 3891:3	4033:16,22	Insp 4046:14
3831:5	incognito 3898:21	3898:24 3899:2	4034:17 4039:14	4047:5,13,18,20
implicit 3994:5,6	3997:8	3903:3,5 3914:25	4040:23 4041:3	4053:14,18,20
implied 3981:21	incoming 4004:6	3923:7,19 3924:8	4041:20,22,25	Inspector 4046:16
implies 3883:18	incommunicado	3924:12 3940:3	4042:1,6,16	4048:6 4049:3
importance	3859:24 3860:15	3945:7,9 3946:14	4043:4 4044:18	4053:3 4055:7,21
3958:22,24	3861:8,15,25	3946:22 3948:14	4044:23 4047:15	4055:24
important 3854:10	3863:17	3954:23 3956:11	4047:21 4049:3	instance 3832:13
3854:19 3857:8	inconsistent 3866:6	3957:24 3958:20	4050:2,5,16	3939:18 3962:17
3860:24 3861:1	independent	3961:19,23	4051:10 4052:1,5	instances 4006:7
3871:24 3882:12	3851:18 3917:10	3962:2 3963:22	4052:12,17	instantly 3874:16
3882:22 3909:15	3917:14	3967:16,17,18	4055:2 4056:7,10	institution 3958:9
3910:25 3922:7	indicate 3837:5	3973:10 3975:3	4056:23	3976:5,7,8 3995:9
3940:5,8,9 3942:7	3902:6 4039:12	3975:24 3977:10	information-shar...	3995:13
3942:8 3954:24	indicated 3863:5	3980:5 3981:17	3985:13 4052:21	institutions
3980:1 3983:23	3890:20 3948:21	3982:19 3985:16	informed 3989:19	3853:20 3855:12
3988:23 3992:21	3949:14 4039:4	3986:10,22	3996:10,17,19	3855:16 3956:22
4023:5 4029:9	indicates 4008:17	3988:16,16,18	4028:2 4053:21	instruct 3840:21,25
4033:25 4035:20	indication 3945:12	3989:3,4,22	infrequent 3850:17	instructed 3879:3
impose 4015:14	3948:22 3949:8	3990:4 3992:25	infrequently	instruction
impossible 3878:20	3950:9	3993:25 3994:17	3857:5	3886:18 3888:19
impression 4027:6	indications	3994:21 3995:7	inhuman 3881:16	instructions
4048:2	3872:12 3878:24	3996:6,11,17	initial 3861:24	3841:18 3886:11
imprisonment	individual 3832:11	3997:4,22 3998:3	3870:20 3871:4	instrumental
3880:13,14	3847:2 3884:14	3998:22 4000:3	3881:25	3831:5
3885:5	3885:1,3,16	4000:14,19,20,22	initially 3829:13	intelligence
improbable	3929:24 3995:11	4001:10,10,15	3830:1	3856:22 3857:4
3848:16	4036:11	4002:8,15	initiating 3849:23	3857:24 3858:19
improvement	individuals 3832:5	4003:15 4004:18	inner 3996:16	3859:4,13,23
3887:17,23	3914:7 3970:15	4005:2,18 4006:1	innocence 3844:3	3861:16 3870:18
impute 3905:18	indulgence 4058:6	4006:5 4008:5,8	innocent 3844:10	3945:19 3970:12
3993:19	industry 3838:14	4008:14,17	Innocently 3892:23	3984:23 3988:8
inadmissible	inevitably 3895:13	4010:3,19 4011:9	inquiries 4043:1,3	3989:4 3996:12
4054:12	inference 4054:25	4011:19 4012:8	inquiry 3848:5,17	4000:24 4001:22
Incapacitation	influence 3917:12	4012:19,20	3848:25 3849:1,5	4002:18 4005:9
3970:17,18	3920:15	4013:2,16,20	3849:11,16,24	4008:6 4010:4
incarcerated	influences 3911:20	4014:12,21	3850:7,11	4011:3 4030:15
3885:10 3969:7	information	4015:5,7,9,13,23	3898:22 3899:5	4034:1 4041:19
incarceration	3829:22,23,24	4016:8,12,20,23	3955:9,11	intended 4035:8
3874:13	3831:9,18,25	4017:15,18	INS 3974:16	intense 3868:14,15
inches 3869:21	3832:4,5 3833:20	4019:25 4020:17	3975:3 4041:11	intensive 3859:25
incidences 4006:10	3834:2 3836:20	4020:20 4021:7	4042:4 4044:7	3861:23 3863:8
incident 3954:5	3837:2,16 3838:1	4021:11 4024:15	4056:17	intention 3860:21
inclination 3905:24	3841:8,23	4024:19 4025:1,7	inside 3868:10	intentions 4051:4
include 3900:20	3857:14 3858:8	4025:9,12,24	insignificant	interactions
3988:17	3859:7 3861:11	4026:3,7,10,17	3914:1	4002:18
included 3859:23	3872:17 3879:12	4027:8 4029:9	insofar 3830:17	interacts 4002:19
3991:1	3882:5,6 3883:5	4031:12 4032:1,7	3832:8 3853:24	interest 3864:7

3909:20 3911:1	intervene 3840:4	4004:16,23	3985:12 4043:9	4021:2,7 4029:2
3911:13 3912:6,8	intervened 3848:20	4006:4 4007:25	i.e 3989:2	key 3831:11
3925:13 4035:5,6	intervenors	4008:3 4011:21		3833:23 3847:3
interested 3851:25	4057:14 4058:10	4012:12 4014:3	J	3920:22
3889:21 3945:8	interview 3878:19	4020:19 4032:20	Jaffri 3971:10,25	Khalil 3923:8
3959:18 4026:22	3882:23 4035:24	4036:25 4038:13	jail 3973:25,25	kick 3988:25
4028:7 4053:12	4037:19 4055:25	4052:5	3974:1,5,18,18,19	kill 3877:7
interesting 3875:8	interviewed 4056:4	ISI's 4005:7	3974:19 3976:15	killed 3921:9
3890:4 3892:25	interviewing	Islamic 3922:3	3976:20	kind 3837:24
3918:12 3928:16	4055:14	isolated 3894:25	January 3893:3,11	3871:3,14 3883:4
3929:2 3951:25	interviews 4003:3	3997:9	3923:10 3938:24	3883:12 3896:19
interestingly	introduction	isolation 3894:10	3939:11 4006:14	3915:8 3916:19
3887:4	3937:18	3894:16 3895:1	4006:17	3953:2 3958:25
interests 3901:1	invented 4013:12	3895:13,16	jeudi 3829:3	3964:4 3980:6
3908:9,12,15,22	investigated	Israel 3831:1	job 3952:24	3983:10,19
3911:4 3938:15	3976:10	3917:16 3918:22	Johansson 4060:24	4013:4 4014:11
3938:16 3964:6	investigation	3919:14	joint 4036:20	4015:15 4016:19
3988:9 3999:25	3834:3 3861:22	issue 3830:14	4040:20	4028:20 4041:13
internal 3923:16	3863:7 3941:8	3837:18 3839:11	Jordan 4032:15	4056:6
4022:6	3947:18 3950:8	3839:20,22	jot 3838:20	kinds 3832:20
international	3950:17 3971:21	3844:13 3849:10	judgment 3847:12	3871:18 3874:12
3839:23 3860:14	3972:1 4001:24	3853:8 3854:20	3961:24	3876:23 3877:22
3881:2,6,8,16,21	4024:11 4035:7	3859:18 3898:7	judicial 3961:21,24	3882:14,20
3910:4 3922:24	investigative	3910:2 3914:13	Juliet 3849:20	3883:25 3884:24
3925:22 3927:7	4035:5,6	3915:5,8 3935:7	July 3858:13	3894:12 3928:1
3927:19 3931:20	investigators	3935:10 3938:16	3929:7 3930:22	3981:15,17
interpret 3991:7	4047:3,6 4049:4	3939:6 3940:1	jump 3923:5	knew 3841:12
interpretation	involuntariness	3941:23 3945:4	4029:19	3853:17 3858:2
3853:3 3854:21	3963:23	3946:6 3953:16	June 3835:11	3861:13 3914:13
3891:9 3893:6	involve 3866:2	3954:6,22	3941:14 4059:7	3944:11 3946:10
3988:11 3991:6	involved 3832:1	3958:14,16	4059:11,14	3991:24 3994:1
3995:19	3844:17 3847:2	3960:18 3966:8	justice 3928:4	3996:10,14
interpreter	3852:15 3874:9	3966:15 3967:12	3974:17	4026:14 4040:12
3834:17	3903:2 3912:18	3968:7,8 3969:19	justifications	4040:22 4041:7
interrogated	3914:8 3936:8	3975:13 3982:14	3919:23	4047:4,10
3923:11	3977:2 3978:3	3983:11 3992:13	justified 3917:2	4049:12,13
interrogation	3982:6 3998:18	4006:2 4012:8	3924:14 3998:14	4054:10 4055:18
3859:25 3860:1	3998:18 4024:11	4032:17 4033:8	justify 3920:10	know 3834:22
3861:18,25	involvement	4034:14,16	3967:10	3837:8,16 3838:9
3863:17 3869:18	3843:13 3969:11	4035:9 4042:7,11		3839:21,22
3871:5 3873:10	3985:6	4043:16,19	K	3841:7 3846:24
3881:25 3963:15	involving 3983:5	4045:7,12	Kazemi's 3936:21	3848:19 3859:14
4019:18 4033:3,4	3985:24	4052:20	keep 3894:25	3866:12 3870:19
Interrogations	iron 3867:21	issues 3842:8	3958:2	3874:4,20
3869:10	irrelevant 3839:18	3847:22 3853:7	keeping 3832:8	3875:13,24
Interrogators	irritant 3913:23	3868:23 3881:7	kept 3832:11	3876:1,2,6 3881:4
3870:4	3914:21,22	3914:15 3923:17	3867:5 3890:22	3882:7 3883:1
interrupt 4023:19	ISD 4038:8	3928:1 3949:21	3893:24 3953:4	3889:22 3895:1
4051:8	ISI 4002:13 4004:6	3981:17 3982:11	3958:5 4020:19	3898:9,12

3903:19 3905:9	3956:7 3981:25	3932:14 3934:16	3969:23 3998:11	3980:1
3906:24 3911:18	3987:18	3935:2 3936:16	3998:11	list 3830:8 3990:6
3912:11,12,24	known 3980:9	3955:18,22,24	legitimate 4045:19	3990:12
3914:14 3916:4	3982:3 3984:6	3956:10 3960:25	lengthy 3941:2	listened 3936:24
3917:20 3920:18	4024:6 4038:2,23	3962:14,18,24	letter 3852:5	3988:12
3923:20,23	knows 3957:3,10	3963:4,21 3964:2	3853:1 3854:9	listing 3830:7,10,14
3924:6 3927:8,22	3957:11 3977:3	3964:4 3973:19	3897:2 3927:11	literally 3980:24
3936:16 3939:8	3990:19 4034:1	3973:20 3975:8	3956:16 4030:8	4046:23 4056:10
3940:20 3943:15		3975:10 3977:16	4040:17	literature 3895:17
3946:8,19	L	3977:19,24	letters 3834:14,21	little 3840:18
3948:25 3952:2,6	label 3922:10,15	3995:18 3998:19	4034:10	3850:15 3858:15
3952:9,9 3953:14	3924:14	4049:15 4050:21	letting 3868:23	3867:23 3877:7
3953:21 3954:2	lack 3852:19	lawyers 3934:5	let's 3864:15	3927:23 3935:22
3955:6,15 3956:4	3963:16 3975:23	3981:14,15	3873:19 3897:21	3947:8 3958:6
3956:19,21	laid 3854:20	3998:17	3899:8 3901:20	3988:22 4033:16
3957:5,8 3958:1	3948:23 3949:9	le 3829:3 4060:7	3911:11 3913:4	4049:15 4058:7
3958:18 3960:3	3949:15 3967:11	lead 3875:18	3914:23 3926:24	live 3894:7
3961:16 3962:12	landed 3985:17	3906:21 3977:14	3942:3 3947:21	Livermore 3984:21
3962:25 3966:20	language 3876:17	3986:21	3948:13 3985:12	3985:5 3988:14
3968:5 3969:17	3880:1 3905:15	leading 3854:8	4001:18 4007:21	4000:17 4012:2
3969:20 3974:1	3906:2,4,6	3941:3,6	4010:14 4012:7	4014:9 4015:2
3974:21 3982:17	4014:11	League 3839:25	4031:3 4053:5	4027:10 4029:24
3983:23 3984:17	large 3831:14	leap 3913:20	level 3852:21	4030:5,14 4032:2
3984:21 3988:12	3841:22 3843:20	learn 4017:17	3853:8,10	4046:24
3990:1 3996:13	3881:7 3903:5	learned 3844:25	3910:24 3952:22	Livermore's
3996:18 4004:4	3913:20,23	3865:14 3866:13	3966:11,20	3988:4,11
4008:10,19	3919:22 3921:2	3892:9 3933:9	3977:13 3981:21	4027:17
4009:3 4010:25	3937:9 3952:16	3946:2 3956:9	liable 4000:22,25	lives 3838:22
4012:11 4018:9	3957:8	4037:9 4039:9	4014:12	3937:15 4029:4
4021:5 4022:2	largely 3987:18	4051:14	liaison 4024:8,14	living 3840:2
4024:1 4027:10	larger 3903:14	learnt 4049:14	4039:15 4046:17	3852:15 3952:5
4028:16 4032:13	lasted 3866:20	leave 3844:14	4046:18 4048:7	3957:6
4036:6,9,14,20,21	late 3920:23	3899:8 3935:22	4053:3,15	locate 3930:14
4041:8 4042:23	Laughter 3892:21	3964:24 3981:20	liberal 3880:18	3939:24
4043:12 4044:10	3913:3 3950:4	4033:22	3942:21	located 3838:18
4044:12 4048:18	3960:9 3961:9	leaves 3861:3	lie 3946:9	3839:12 3856:9
4048:21 4049:19	3965:10,13	Lebanon 3830:21	life 3909:1	3859:8 3925:12
4051:20 4054:4	4019:7 4035:16	3830:25	light 3867:9,15,23	4032:21
4054:10 4057:10	Laura 3902:4	led 3841:24 3849:3	3868:9 3985:5,22	locating 4033:5
4058:1,23	law 3839:23 3848:8	3849:11,24	4020:14 4059:10	location 3853:17
4059:23	3857:6,10 3910:2	3854:14 3880:7	limited 4003:25	3874:12 3907:11
knowing 3876:16	3911:21 3919:19	3889:10	limiting 3840:10	4049:17 4053:20
3905:2 3968:23	3922:3,18 3949:1	left 3832:10	line 3839:4 3862:23	Lockyer 3960:23
3968:23 4040:21	3949:2 3976:25	3865:17 3893:17	3934:23 3985:1	3961:12,16
knowledge 3858:20	3977:22	3923:21 3933:2	4028:5 4036:2	3962:11,20
3861:2,24	laws 3956:20	3946:9 3953:25	lines 3864:22	Loeppky 4036:19
3868:22 3870:15	lawyer 3928:22	3963:25 3964:3	3890:22 4042:22	4036:24 4037:8
3877:25 3890:23	3929:2,9,14,23	4033:24 4056:18	4042:23 4044:1	4037:21 4038:21
3892:18 3952:11	3930:1 3931:13	legal 3914:15	link 3979:19	Loeppky's 4039:8

logical 3954:13	3921:10 3947:2	3831:17 4005:1	4009:18	3953:1 3954:17
logically 4020:22	3953:2 4056:22	4022:13,16	Mathworks	3957:18 3967:8
long 3851:15	loud 3846:6	mandate 3908:15	3836:14 3838:6	3974:1,21
3867:4 3877:21	loudly 3847:21	4012:16 4056:13	3990:9,18 3991:1	3976:23 3977:6
3958:1 3974:10	love 3894:8	manifestations	matter 3838:20	3978:6 3985:11
4058:25	lower 3853:10	3854:20 4015:8	3839:18 3840:16	3990:23 3991:6
longer 3958:6	3870:3 3966:8	Manley 4059:8	3844:15 3847:6	3996:21 3997:2,3
4057:10 4058:11	loyalties 3936:1,5	March 3939:4,24	3851:10 3852:23	4003:18 4005:6
look 3836:10	lucky 3870:11	3947:5	3884:9 3898:22	4010:7 4017:5
3849:13 3851:14	lunch 3979:4	mark 3842:1	3918:14 3939:10	4026:24 4042:7
3860:6 3873:19	luncheon 3966:25	marks 3877:18	3945:17 3956:8	4043:10 4044:16
3884:8 3885:18	lundi 4060:7	Martel 3833:25	3961:13 3974:18	4045:12 4050:24
3887:2 3890:12	lying 3873:13	3834:7 3840:22	4004:13,13	4052:12 4056:22
3897:24 3902:12	Lynda 4060:24	3842:15 3871:14	4005:8 4007:19	meaning 3874:10
3914:10 3918:2	L'audience 3829:3	3874:5 3875:3,15	4011:13 4014:23	meaningful 3943:3
3918:10,14	4060:6	3875:22 3876:1	4044:4	means 3832:17
3926:5,11		3877:15 3878:1	mattered 3974:9	4022:3 4048:22
3928:13 3945:23	M	3878:10 3879:1	matters 3850:19	meant 3832:17
3948:14 3958:13	Maati 3858:4,8,17	3879:20 3882:4	3998:19 4001:9	3855:13 3891:9
3985:12 3989:14	Madam 3843:25	3883:1,13	maximum 4058:16	3993:15
3990:11 4003:23	3845:24 3846:15	3884:17,23	4058:19	measure 3831:15
4005:11 4013:13	magazine 3892:3	3885:22,23	Mazigh 3838:11	3885:4 3937:9
4013:14,15,21	magazines 3889:20	3887:2,14,20	3928:19 3933:22	3973:21 3978:12
4028:3 4035:14	3891:14	3888:23 3889:5	3934:2 3935:9	mechanism 3848:7
4044:2 4052:2	magnitude 3966:9	3890:10,22	3939:21 3943:10	3848:7
4053:5	Maher 3934:5	3891:1,2,7,16,21	3944:9 3951:18	mechanisms
looked 3867:2	3993:24 4053:19	3897:5,15,24	3952:1,18	3871:22,25
3894:15 3916:2	Maher's 3886:22	3898:12,17	3953:12 3955:9	3965:25
3943:8 3965:11	mai 3829:4 4060:7	3907:2,23 3908:2	3955:18 3956:17	media 3846:2
3965:12 3975:6	main 3849:3	3923:8 3949:24	3961:3 4000:13	3847:17,20
looking 3836:1	maintained	3951:3 3963:2,9	Mazigh's 4000:7	3851:2 4043:1,7
3850:16 3862:23	3996:15	3980:8,20 3984:1	McCallion 3983:3	4043:10,11,15,22
3882:20 3883:5	maintenance	4002:22 4003:7	3983:14	4044:1,15,25
3884:5 3897:10	3901:1	4003:14 4008:7	McGill 3955:14	4045:3,4,16
3898:1,14 3900:1	Majed 3834:16	4008:13 4009:17	McIntyre 3900:9	medical 3895:17
3914:25 3949:20	major 3881:20	4009:22 4010:6	McISAAC 4022:5	meet 3944:10,11,19
3977:15 3981:16	3983:4	4010:18	4022:11,15	3945:2,18 3951:7
3999:7 4008:8	majority 3972:9	Martel's 3899:5	4035:3 4055:6,11	4002:22
4021:18 4056:22	making 3912:25	3907:23 4020:11	McNee 3983:9	meeting 3848:14
4057:7 4059:11	3914:8 3943:23	match 3940:14,17	MDC 3974:3,11,15	3874:5 3893:16
looks 4059:11	3960:25 3973:4	4032:16	3974:22 3975:25	3898:6 3904:23
loom 3913:25	3978:6 3989:18	material 3904:3	mean 3838:20	3935:8 3955:7
loop 3933:20	4029:14 4056:11	3931:21 3963:1	3842:21 3845:21	3959:8,11,12
lose 3883:22	Maleh 3929:10	3963:17 4005:8	3872:15 3876:22	3961:3 3966:25
3937:15	3931:16 3934:16	4009:14 4021:4	3880:8 3885:25	4010:18 4023:23
loss 3884:12	man 3865:14	4021:15 4022:12	3894:24 3928:4	4038:19 4039:22
lost 3965:1 3984:19	3879:21 3964:10	4027:21	3929:18 3935:21	4039:25 4040:4,7
lot 3831:18	4029:3	materials 3964:13	3937:24 3940:3	4040:8
3879:22 3917:19	management	4002:24 4003:3	3947:7,21 3950:5	meetings 3874:13

3923:7 3940:21
4024:22,25
meets 4001:22
member 3922:13
3923:1,13 3932:6
3941:9 3942:16
3943:4 3950:19
3969:4 4052:2
members 3846:12
3847:20 3849:14
3850:17 3853:15
3912:24 3940:21
4000:5 4050:17
membership
3922:21 3940:13
3942:11
memo 3901:9,13
4005:21 4041:18
memorandum
3835:11 3905:14
3945:25 4040:19
memory 3939:3
3940:24 3953:8
3954:19 3960:17
4010:22 4016:14
men 3865:3,8,12
3871:12 3944:10
3945:2 3991:12
mental 3895:14
mention 3922:7
3952:4
mentioned 3838:6
3841:4,5 3885:8
3898:23 3943:14
3952:1 3969:1,4
3973:2 4011:16
mentions 4031:22
merely 4045:3
merged 3989:2
message 3834:19
3901:19 3904:14
3992:24 4020:11
4032:13,15
4033:10
met 3837:8 3952:3
3952:10 4039:18
4053:16
metal 3865:20
3866:1,8 3867:12

3867:16 3870:5
Metropolitan
4017:9 4031:10
4037:15
microphone 4023:8
4023:8
Middle 3863:11
3917:17 3983:7
midway 4046:9
mid-August 3858:3
military 3856:22
3857:24 3858:19
3859:4,13,23
3861:16 3870:18
3921:2 3929:7
3931:12 3989:4
4001:22 4002:18
4005:9 4008:6
4010:4 4011:2
Millhaven 3874:20
mind 3837:22
3840:19 3849:12
3856:1,6 3878:2
3880:8,9 3885:13
3897:10,23
3912:13 3928:13
3941:21 3951:2
3956:25 3971:2
3972:15 3993:10
4014:17 4041:21
mindset 3905:3,15
mine 3893:6
3909:14,15
4019:6
minimum 3880:21
3881:13 4006:10
4015:3
Minister 3850:18
3851:12 3852:6,9
3852:14,24
3966:18 4004:25
4005:22,22
4038:4 4042:25
4045:18
ministerial 3852:20
3852:20
ministers 3850:18
Minister's 3851:9
3853:16 3854:8

3854:15 3855:15
3855:18 3982:15
Ministry 3918:6
minority 3932:1,3
minute 3930:10
4006:25 4029:22
minutes 3848:14
3915:16 3935:8
4058:4,14 4059:1
4059:25
mislead 3860:21
misled 4053:10
missed 3869:24
missing 3882:2
3950:14 4048:20
Mission 4030:19
misspelling
3934:10
misspoke 4006:22
4038:15
misspoken 3939:9
mistake 3846:20
mistaken 4015:21
4054:23
misunderstand
3851:22 4016:6
misunderstandin...
3935:23
mixed 3893:25
3894:22
mixing 3894:18
MJW 4038:19
Mm-hmm 3875:16
3878:17 3882:9
3887:3 3901:8
3916:5 3926:16
3931:14,17
3933:14 3948:16
3949:17 3972:17
3992:4 3996:7
4010:1 4040:2
4046:8 4048:5
4052:14
modern 3880:17
module 3831:16
moment 3833:20
3899:10,13
3947:24 4012:8
Monday 4060:5

Monia 3939:10,18
3945:1
month 3864:18
months 3835:21
3852:13 3854:8
3868:9 3883:22
3898:20,20,20
3905:23 3955:3
Montreal 3952:5
3955:4 3957:6
moral 3890:16
morning 3829:7,13
3844:25 3866:23
3904:19 3988:20
4027:19 4048:4
4048:14 4049:19
mother 3952:5
3991:11 4044:19
mother-in-law
3990:8 4044:21
motivation 3905:18
MOU 4015:13,19
4015:22 4016:1,3
Mounties 3997:23
3998:4 4015:14
4017:6 4025:25
4041:15 4052:6
4054:3
moustached
3871:12
move 3851:10
3895:23 3959:4
3965:14 3979:18
4012:20 4034:18
moved 3835:20
3940:11,16
3957:7 3958:25
3972:6 4034:17
movement 3911:7
4020:20
moving 3846:25
4034:19
Mps 3947:18
4003:10
Mujaheddin
3942:20
Muslim 3916:3
3919:10,21
3920:8,15,17

3921:1,6,12
3922:13,21
3923:2,13,15
3924:3 3938:7
3942:17
Myra 3933:16
3959:14

N

name 3929:13,13
3929:16 3935:2,4
3983:15 4033:8
4033:12,25
4034:4,22,22
4035:14,15,21,22
named 4033:4
names 3934:4,10
4033:8
narrow 3854:6,21
3874:10 3881:4
3891:7
nation 3842:25
national 3829:19
3829:24 3839:20
3840:2 3985:24
4000:24
nationality 3839:17
3839:25 3840:3,3
nations 3839:25
3912:22 3925:22
3970:10
nature 3919:23
3920:10 3976:19
4020:15
nearer 3835:24
necessarily 3856:7
3894:13 3949:4
3961:15 3977:19
4004:8
necessary 3850:12
3894:3 3951:6
4026:2
necessitate 3919:15
need 3836:10
3848:3 3852:18
3862:2 3876:12
3881:8 3885:17
3885:23 3903:19
3918:21 3933:5

3950:23 3958:10
 3965:24 3967:3
 3986:5 4000:19
 4044:15 4052:15
 4058:3
needed 3963:16
 3985:20 4041:8
 4043:10
needn't 4040:20
needs 3986:2
negative 3909:8
 3910:12 3941:14
negatively 3853:23
 3854:1
neighbouring
 3830:21
network 3927:18
Neve 3864:1
 3927:7,15
never 3832:9
 3838:21 3892:2,6
 3909:1 3917:5
 3955:21 3956:6
 4027:14
new 3829:9,11
 3835:17 3836:23
 3837:3 3897:13
 3907:11 3964:18
 3971:3 3973:5
 3975:8 3983:2
 4037:11,24
 4039:1 4041:1
 4042:11 4053:22
news 3890:11
 3931:19
newspaper 3892:3
 4041:2
newspapers
 3889:20 3890:3,5
NGO 3927:21
NGOs 3927:3,18
Nguyen 3844:1
 3846:15
nice 3884:25
 3999:11,16
night 3868:8
 3873:8
ninth 4003:10
Nisam 4033:25

Nobel 3937:5,8
non-resident
 3925:6
non-sharing
 3986:15
normal 3832:21
 3896:17 3966:22
normally 4040:6
North 3836:11
notation 3883:19
 4053:12
note 3831:6
 3840:18 3852:24
 3869:3 3875:4
 3880:2 3882:3
 3887:6 3897:15
 3902:3 3904:2
 3906:25 3907:9
 3926:7 3933:16
 3939:7 3950:12
 3959:8,18 4026:1
 4026:2,7 4034:23
 4035:14 4042:1
 4044:2 4051:12
 4051:18
noted 3836:20
 3886:13 3887:17
 3889:5 3905:19
 3918:23
notes 3831:3,8
 3832:9,16,21
 3837:4 3838:5
 3841:5 3845:20
 3864:6 3871:9
 3873:21 3882:15
 3883:5,21 3907:1
 3907:5 3933:11
 3938:1 3943:8,9
 3944:2 3953:4
 3959:14 3960:15
 3991:22 3992:7
 4003:3 4007:17
 4023:14,22
 4028:20 4029:14
notice 3876:5
 3884:13 3974:4
 4055:14
noticed 3926:1
notification

3904:19
noting 4033:3
November 3833:12
 3864:16,17
 3891:22 3938:2,4
 3941:25 3962:24
 3965:5 3982:12
 3982:22 4008:7
 4010:17 4018:19
 4019:4,9
NSC 4007:7 4035:1
 4035:4
number 3837:5,11
 3842:12 3843:17
 3854:3 3885:2
 3886:19 3893:8
 3900:6 3901:7
 3902:10 3903:1
 3908:11 3921:2
 3933:11 3943:16
 3948:6 3973:20
 3980:10 3988:13
 3994:14 4003:25
 4011:13 4014:18
 4034:10 4051:19

O

object 3844:9
 3936:9
objective 3844:4
 3851:23 3937:12
objectives 3840:22
 3936:5
obligation 4015:15
obligations 3915:7
observation 3857:8
 3875:3,8 3882:12
 3883:8 3884:19
 3908:1 3920:6
 4023:5
observations
 3873:25 3885:22
 3907:7 3916:7
 3980:15
observe 3885:14
 3961:17
observed 3885:14
 3896:18 3926:8
observers 3921:11

obtain 3834:1
 3928:20 3946:14
 3955:19 3956:22
 4009:21
obtained 3918:4
 3970:12 3998:11
 3998:13 4010:20
 4020:23 4029:9
 4043:23 4047:21
obtaining 3956:10
 4010:3
obtains 4028:6
obvious 3873:22
 3957:2 3980:16
obviously 3897:5
 3902:14 3965:20
 3976:15 4032:3
 4039:21 4053:17
occasion 3891:17
occasionally
 3983:15
occasions 3842:12
 3879:11
occur 3951:1
occurred 3849:11
 3849:18 3916:11
 3936:20 3938:9
 3941:11,25
 3947:1 3951:7
 3993:24 4019:22
occurs 3937:20
October 3836:22
 3837:7,9 3861:5
 3865:3 3873:5
 3874:3 3879:18
 3879:19 3886:12
 3887:20 3968:8
 3973:13 3974:7
 3978:1,1 3982:12
 3982:22 3999:12
 4006:12,19
 4007:23 4018:1
 4018:18 4032:1,8
 4034:24 4036:21
 4039:19 4040:11
 4040:16 4042:12
 4048:2,3,13,20
 4049:9,19
 4050:12,22

4051:11,13,18
 4052:3 4053:7
 4054:9,17
 4056:17
October-Novem...
 3984:4
odd 3850:14
offence 3923:1
 3969:5
office 3853:16
 3855:16,18
 3874:7 3982:15
 4042:25
officer 3885:16
 3900:12,15,23
 3920:1,3 3966:3
 4024:9,15
 4029:16 4039:16
 4046:17,19
 4048:7 4053:3,15
officers 3843:23
 3844:6 3857:13
 4024:11 4039:19
offices 3850:2
 3963:6
official 3895:8
 4037:13 4038:24
officials 3848:12
 3852:17 3884:4
 3885:6 3888:6
 3892:4 3893:18
 3945:5 3962:15
 3977:9,25 3978:3
 3978:8,14
officieuse 4060:3
Off-the-record
 4060:2
Oh 3839:2 3841:3
 3845:10 3850:8
 3850:20 3851:3
 3855:1 3862:5
 3873:4 3875:1
 3893:10 3895:10
 3901:19 3902:10
 3910:8 3912:23
 3930:3,23
 3932:18 3933:16
 3933:19 3965:4,6
 3977:11 3981:19

3998:6 4019:8,14 4030:1 4038:7 okay 3831:2 3834:8 3839:2 3855:8 3900:3 3902:5 3912:3 3916:18 3926:11,14 3931:5,10,18 3936:7 3938:8 3939:7 3941:15 3951:8 3967:2 3977:23 3987:4 3987:12 3995:4 3999:5 4001:13 4007:2 4015:20 4017:16 4031:1 4045:21 4048:1 4050:8,9 4052:24 4059:3,13,25 old 3945:10 3985:11 once 3881:1 3889:5 3893:17 3925:16 3962:3 ones 3872:20 4041:15 ongoing 3898:2 3917:3 3920:10 3950:8 Ontario 3829:1,1 open 3880:8,9 3891:20 4034:2 4056:18 opened 3867:1 opening 3867:13 3867:19 3868:2 openness 3973:14 operate 3964:20 3995:23 operated 4036:10 operates 3901:18 operating 3855:24 3987:8,15 operational 3973:4 3973:9,22 3974:23 3977:15 3986:22 3995:22 operations 4016:4 operatives 3987:15	opinion 3875:19 3927:4 OPP 4017:10 opportunities 3836:7 opportunity 3918:2 3922:25 3980:14 3999:13 4058:2 opted 3846:7 order 3940:15 3950:23,25 4043:9 4052:5 4056:6 ordinary 3986:14 organization 3830:8 3844:22 3921:23 3925:12 3927:5,15 3969:12 organizational 3984:19 organizations 3846:5 3856:7 3857:5,23 3924:23,24 3925:2,2,20,24 3927:24 4012:21 origin 4029:5 original 3903:24 3918:24 3919:9 4044:17 originally 4035:3 originated 3920:18 3933:15 ostensibly 3983:3 Ottawa 3829:1,1 3837:7 3850:3 3886:7 3907:15 3957:7 3966:15 3992:14 4004:7 4029:4 Oummih 3975:15 3976:24 outline 4053:9 outside 3850:16 3857:5 3867:16 3903:3 3925:12 3976:20 4006:2,5 4011:9 4015:9	4016:24 4052:16 overall 3918:14 overcharacterizing 3845:4 overriding 3995:14 overseas 3831:22 3907:13 3987:8 3987:11 4005:3 overstated 3891:19 overstep 3842:1 overview 3900:18 owned 4015:7 owners 4016:22 O'Neill 3849:21	3949:21,22 3989:25 4030:5 4031:4 4037:3 Pardy 3829:13,14 3830:2,13 3831:14 3833:19 3833:23 3837:4 3839:2,14,15,21 3841:3,7,17,21 3842:10,19 3843:3,9,15,19 3844:1,5,11,21 3845:3,10,19 3846:11,22 3847:14,24 3848:6,18,22 3849:2,8,22 3850:2,8,14,20 3851:3,11,21,24 3852:12 3853:2 3853:19 3854:6 3854:18,23 3855:1,8,11,19,22 3856:1,4,12,14,15 3856:20 3857:2,8 3857:12,21 3858:1,10,21,25 3859:5,17 3860:4 3860:8,17,20,22 3861:9,13,19 3862:1,5,9,20,25 3863:9,21,24 3864:12,18 3865:6 3866:4 3868:25 3869:2 3870:21,22 3871:6,16 3872:1 3872:6,11 3873:4 3873:11,14,22 3874:8,18,22 3875:1,6,16,19 3876:12,15,17,21 3877:10,13,20 3878:5,9,13,17,22 3879:5,10,16,19 3879:24 3880:5 3880:25 3881:19 3882:9,13,17 3883:17 3884:6	3886:6,14,25 3887:3,11,18,24 3888:4,7,10,14,18 3888:25 3889:3 3889:14,18 3890:8 3891:5,18 3892:1,5,13,17,22 3893:7,10,13 3894:9,11,23 3895:10,16,21 3896:9 3897:13 3897:19 3898:4,7 3898:16,23 3899:7,12,16,24 3900:3,5,11,17 3901:3,8,10,15,17 3901:20,24 3902:1,5,19,22 3903:22 3904:7 3904:11,17,21 3905:2,10,17 3906:3,7,13,20 3907:10,25 3908:17,21 3909:9,18 3910:1 3910:8,11,16,23 3911:5,18 3912:3 3912:9,12,23 3913:1,7,10,15,19 3913:25 3914:5 3914:22 3915:6 3915:10 3916:1,5 3916:10,16,20,23 3917:7,25 3918:8 3918:11 3919:1,6 3920:2,13 3921:15,24 3922:17 3923:3 3923:18,23 3924:1,6,16,23,25 3925:4,7,18,23 3926:10,12,16 3927:1,10,23 3928:7,24 3929:17,20,22 3930:3,7,11,17,20 3930:23 3931:3,5 3931:7,10,14,17 3931:24 3932:7
P				
page 3835:13 3864:11,23 3899:15,24 3900:2 3902:13 3918:23 3919:4 3926:19,19 3929:4,20 3930:16 3931:6,7 3960:2 4019:9,12 4022:9,9 4023:15 4034:10 4037:2 4046:1,3,6,10 4053:6 pages 3899:17 4000:21 4013:24 4023:17 Palestine 3859:15 palms 3869:24 pants 3882:8 paper 3930:24 3960:2 4010:23 4011:1 4054:15 4054:16 papers 3949:25 paragraph 3833:14 3833:24 3834:9 3835:13 3862:19 3862:21 3887:8 3890:13 3893:15 3893:15 3904:20 3919:1,3 3929:6 3930:19 3931:9 3934:24 3948:1				

3932:15,20,23	3981:19 3982:1,5	4030:7,10,12,16	3842:18 3856:21	perceives 3917:3
3933:4,9,14,25	3982:13,23	4030:18,22,24	3954:24 4027:18	perfect 3915:13
3934:11,13,18,22	3983:14 3984:5,8	4031:2,14 4032:5	4045:8	period 3836:17
3935:6,15,19	3984:24 3985:2,9	4032:9 4033:6,13	party 3921:25	3850:5 3857:16
3936:4,12,22	3985:22 3986:6	4034:5,12 4036:9	3936:18 3992:8	3861:24 3871:5
3937:3,7,16,23	3986:16 3987:3,5	4036:16 4038:10	pass 3883:22	3872:24 3889:4
3938:10,19,25	3987:20 3988:1	4038:14 4039:23	3889:20	3896:2,21
3939:12,17,25	3988:10 3989:8	4040:2,5,25	passed 3885:21	3920:22 3941:3
3940:11,23	3989:13,24	4041:17 4042:5	3897:2 3963:1	3943:13 3946:7
3941:5,10,16,19	3990:5,14,22	4042:21 4043:8	4039:16	3952:19 3973:13
3942:8,23 3943:5	3991:16,25	4044:10,11,14,22	passport 3953:24	3973:16 3976:16
3943:11,13,21,25	3992:4,13 3993:4	4045:6,10 4046:6	3954:6,7 3972:23	3984:3
3944:4,7,13,16,20	3993:7,9,16,19	4046:8,9,12,18,21	3978:15 4031:7	periods 3859:25
3944:23 3945:3	3994:4,13,15,20	4046:25 4048:5	paste 3903:15	3870:20
3945:21,24	3995:4,18,21,25	4048:11,19	Pastyr-Lupul	permission
3946:3,18 3947:4	3996:4,7,18	4049:8,13 4050:1	3954:4 3959:14	3992:23,25
3947:12,20	3997:14,24	4050:6,11	Pastyr-Lupul's	4004:1 4008:2
3948:2,6,9,16,25	3998:6,8,16	4051:21 4052:7	3959:22	4012:21 4017:19
3949:12,17	3999:2,6,23	4052:15 4054:4	Pause 3833:2,22	4027:1 4052:4
3950:20 3951:13	4000:4,16 4001:6	4054:13,20	3926:17 3963:19	permitted 3871:14
3951:23 3952:14	4001:14,20	4056:2,19 4058:1	4007:5 4037:1	3890:17 3922:15
3952:16 3953:1,7	4002:2,12,20,25	Parliament	4046:2	3996:15
3953:13 3954:3	4003:4,9,12,17	3850:17 3853:15	Peace 3937:5,8	Perron 4047:18
3954:11,16,20	4004:5,15,24	3940:22	peed 3868:1	person 3839:14
3955:12,15,22,25	4005:16 4006:6	part 3838:1 3847:4	penalty 3845:21,22	3847:7 3876:18
3956:3,8,19	4006:16,22	3884:14,17	people 3832:8,11	3883:9 3885:10
3957:5,12,17	4007:8 4008:2,9	3885:8 3889:24	3832:22 3834:3	3887:16 3900:14
3958:1,4,10,15	4008:12,19,22	3889:25 3903:5	3843:17 3857:3	3923:16 3930:4,6
3959:3,10	4009:1,13 4010:1	3917:2,11,20	3859:24 3866:15	3930:8,12
3960:21 3961:7	4010:9,16	3921:1 3924:13	3868:23 3879:25	3935:12 3956:16
3961:15 3962:7	4011:11,15	3932:13 3949:3	3880:2 3884:20	3966:12 3969:25
3962:25 3963:12	4012:3,6,10,17,25	3956:12 3958:14	3894:22 3895:6	3970:1 3974:22
3963:18,24	4013:8,11,22	3968:16 3974:23	3896:18 3900:7	3987:18,24
3964:16 3965:1,6	4014:1,15 4015:3	3976:8 3990:14	3902:25 3903:1	3998:18 4012:1
3965:11 3966:5	4015:18 4016:1,7	3990:15 4010:13	3909:25 3911:7	personal 3832:9
3966:19 3967:1,6	4016:21 4017:11	4020:18 4035:9	3920:25 3921:3,8	3991:14 3992:9
3967:25 3968:10	4017:20 4018:21	particular 3831:16	3950:14,17	3993:14 3995:7
3968:13,17	4018:23 4019:2,8	3832:2 3833:13	3963:1 3969:18	personally 3952:11
3969:2,16 3970:8	4019:14,20,24	3835:10,12	3970:10 3971:7	persons 3864:7
3970:14,18,22,24	4020:7,10,18,25	3845:23 3859:18	3971:23 3972:5	3872:3 3901:7
3971:14,18	4021:3 4022:1,4	3862:19 3891:6	3975:17 3976:9	3910:20 3911:14
3972:5,17 3973:1	4022:25 4023:9	3895:18 3945:4	3982:10,18	3912:6,21 3915:2
3973:12 3974:6	4023:16,24	3954:21,23	3983:7,17	3937:13 3966:1
3974:12,20	4024:13,20	3997:1 4003:14	3984:14 3991:13	3970:6 3986:2
3975:9 3976:2,6	4025:5,11,17	4015:2 4032:13	3992:16 3996:16	3988:6 3990:7,12
3976:21 3977:6,7	4026:8,13,18,23	4045:7	3999:6 4000:8	3990:19 3993:14
3977:11 3978:2	4027:3,13,16	particularly	4033:23 4053:17	3994:1 4002:19
3978:20 3979:17	4028:10,13,18	3830:25 3831:19	people's 3866:2	person's 3994:18
3980:3,19 3981:9	4029:7,18,25	3837:15 3842:13	perceived 3918:21	perspective 3861:6

3863:18 3946:24 3970:22 3981:24 4005:7 4052:25 philosophy 3922:2 phone 3927:2,7,7 3938:5 phoned 4051:13 phraseology 3988:5 physical 3878:21 3880:20 3881:14 3896:4 3898:14 pick 3927:2,6 piece 3837:16 3867:16 3903:8 3930:24 3960:1 4010:22 4011:1 4027:8,8 4033:22 4041:3 pieces 3957:23 Pilgrim 4040:10,16 Pillarella 3834:5 3841:19 3899:19 3905:13,18,22 3906:2,25 3907:3 3907:8 3908:11 3909:6,13 3911:4 3911:12 3938:1,3 3963:2,9 3981:23 4001:22 4002:17 4002:21 4008:6 4010:21 4011:8 4020:2 Pillarella's 3908:8 4011:17 4019:21 Pither 3959:8 place 3844:6 3858:17 3867:5 3872:15 3874:13 3874:14,17 3882:24 3885:25 3894:17 3896:5 3919:24 3940:21 3946:12 3949:5 3950:2 3951:19 3956:20 3961:25 3970:2 4015:5 4016:2 placed 3851:7	3875:10 3970:10 4015:1 places 3936:16 3989:17 plan 3950:25 planning 3951:6 play 3857:11 3877:22 3885:11 3908:15 3946:15 3977:22 3987:10 played 3843:20 playing 3962:12 plays 3919:22 3920:11 plea 3994:7 pleasant 3872:15 please 3829:5 3833:21 3859:2 3876:14 3915:17 3915:22 3948:7 3979:6,11 4060:1 pleased 4059:20 point 3830:6 3837:23 3840:19 3845:16 3847:9 3865:20 3884:19 3889:4 3891:6 3895:18 3898:8 3901:5 3911:23 3911:25 3920:16 3938:6,7 3940:12 3943:1 3948:19 3950:6 3952:1 3964:9 3966:7 3975:1,2,10 3976:13 3981:6 3984:12 4020:4 4027:17 4032:10 4032:11 4036:1 4039:7 4040:5 4042:23 4044:25 4053:2 4054:12 4056:3 4058:23 pointed 3872:21 3942:20 4044:5 4055:3 points 3831:22 3837:12,18,20,23 4035:13	police 3843:20,23 3844:7 3848:9 3857:13 4017:9 4029:10,16 policing 3945:18 3996:12 policy 3853:8 4014:18 politic 3845:24 3851:20 political 3850:21 3900:12,15,20 3920:2,4 3922:15 3931:20 3983:6 3983:17 4030:24 politician 3854:17 politics 3921:13 POPOF 3919:25 population 3970:5 portion 3864:9 pose 4057:15,25 posing 3924:19 position 3846:23 3878:1 3891:8 3905:8 3926:25 3957:15 3984:22 3997:10 4026:12 positive 3835:5 3844:20 3894:13 positively 3853:22 possibilities 3971:4 3971:5,11 possibility 3845:22 3901:21 3906:11 3922:3 3939:3 3951:4 3954:25 3965:22 3969:6 3969:14 3971:18 4007:10 4047:12 4049:20 4059:8 possible 3838:13 3853:4 3895:24 3918:17 3925:23 3934:5 3971:21 3972:21 3975:11 3998:15 3999:19 possibly 3841:10 3853:10 3894:19 3966:11,14	3991:3 4055:17 posted 3902:7 3903:25 3904:6 posting 3902:3 post-9/11 4014:9 pounds 3884:13,13 3884:14 pour 4060:7 power 3955:19 3956:16 3958:8 3958:10 powerful 3917:1 practice 3832:22 3859:24 3869:7 3903:17 3907:10 3987:21 4043:21 practices 3912:20 practised 3976:25 precisely 4009:23 prefer 3935:1 preference 3934:6 3934:19 premise 4010:12 4054:5 4056:9 premised 3973:9 preoccupations 3903:7 preparation 4026:18 prepared 3846:4,8 3861:4 3938:2 4003:7 4033:21 4035:11 prerequisite 4020:23 prerogative 4011:13 presence 3942:10 present 3898:2 3953:16 3959:12 4025:2,4 presentation 3887:15 presentation/de... 3886:23 press 3845:7,12 3847:23 3890:24 3891:4,12,13 4042:10,22,23,25	pressing 3839:19 pressure 3848:25 3850:6,10 3851:6 3853:21 3854:2 3898:8 pressures 3851:19 presumably 4022:21 presumption 4014:13 pretty 3832:10 3895:8 3982:7 prevail 3871:19 3983:19 prevent 3911:15 previous 3850:10 3916:16 4011:16 4023:12 previously 3829:14 3835:21 3948:21 primary 3908:24 3971:6 Prime 3850:18 3851:9,12 3852:6 3852:9,14,24 3853:16 3854:8 3854:15 3855:15 3855:17 principal 3851:1 principle 3908:23 3970:11 3994:17 3994:19,21 3995:15 4049:25 principles 3986:3 prior 3852:14 4039:2 4048:3 priority 3945:20 prison 3874:5,9 3881:3,5 3908:3 3976:15 3977:25 3999:7 prisoner 3874:11 prisoners 3868:19 3869:13 3870:8 3894:18 3895:5 privacy 3844:18 3986:7,9,13 3992:22 3994:11 3994:25 3997:13
--	---	---	--	--

3998:12,20
 4014:16 4015:17
 4034:14 4035:1,9
 4042:20 4043:19
 4045:5
private 3844:14
 3876:25
Prize 3937:6,8
probability
 3965:22 3966:3
 3967:24 3968:20
 3968:21 3971:13
 3971:15
probable 3861:14
 3861:16
probably 3833:24
 3837:22 3850:22
 3859:14 3904:13
 3915:3 4013:11
 4032:14 4058:16
problem 3831:17
 3967:8 3968:13
 3973:24 4007:20
 4033:3 4051:25
 4052:3 4059:17
problems 3925:21
procedure 4026:25
 4045:17
procedures
 3986:22
proceed 3915:25
 4035:20
proceeds 4035:24
process 3829:9,11
 3861:18 3885:9
 3896:16 3911:10
 3911:19 3934:14
 3936:6,13 3937:9
 3949:4 3956:11
 3959:21 3961:18
 3961:24 3963:25
 3964:19 3975:5
 3975:10 3976:19
 3977:3,3,4,16
 3989:5 4000:6
 4011:2
processes 3909:21
produce 3895:13
 3959:24

products 4019:17
profession 3912:24
profound 3880:2
program 3881:25
progress 3894:19
progression 3834:2
prohibits 3880:23
prolonged 3895:13
prominent 3984:13
promise 3988:5
 3990:2
promotes 3908:12
promoting 3851:2
 3900:25 3932:9
prompt 3958:21
proof 3943:3
proper 4034:19,19
properly 3878:16
 3989:18 4025:9
proposal 3852:10
Proposed 3918:7
proposition 3852:8
 3905:11 3912:5
 3913:5 3963:12
propriety 3831:8
prosecution
 3946:16
prospective
 3972:21
prospects 3830:4
 3836:4
protect 3832:4
 3847:5
protected 3829:24
 3986:13 4015:9
protecting 3909:21
protection 3937:9
protocol 3884:3
 4005:13
prove 3941:13
proven 3912:7,20
 3913:5,11,16,22
provenance 3918:2
 3927:25
provide 3838:19
 3840:4 3882:21
 3882:24 3890:15
 3891:8 3946:23
 3958:19 3961:13

3961:19,22
 3963:9 3992:15
 3992:17 4004:25
 4017:8 4024:19
 4043:22
provided 3894:3
 3923:19 3927:12
 3948:14 3985:16
 4007:25 4008:5
 4013:16 4021:15
 4040:16 4050:15
 4056:5
provides 3986:23
 4010:7 4012:19
providing 3885:3
 3982:7,18
 4024:15
provision 4001:25
 4011:9 4013:17
provisions 3857:10
 3986:10 3989:20
 3996:4
proximity 3904:13
psychological
 3869:1
psychology
 3889:25
public 3842:8,16
 3842:25 3844:14
 3844:19 3845:6
 3847:22 3848:5
 3848:16,24,25
 3849:4,11,16
 3850:6,7,11,19
 3851:16 3852:11
 3852:12,22
 3853:6,8,14,21
 3854:2,12
 3855:24,25
 3856:18,25
 3859:22 3863:16
 3864:3,4,16
 3865:24 3871:2
 3890:23 3909:6
 3910:18 3914:11
 3919:25 3920:5
 3922:4 3980:15
 4009:2 4035:7
 4041:4 4042:6,7

4042:16,19
 4043:18 4045:19
publication
 3849:20
publicity 3846:14
 3847:1
publicly 3843:5
 3849:14 4037:23
published 3921:7
publishing 3931:21
puppet 3879:2
purpose 3890:13
 3961:16 3962:22
 3976:3,9,22
 3977:1 3989:15
 3994:22 4021:10
 4032:25 4052:22
purposes 4034:20
pursue 3851:23
pursued 3978:24
purview 3857:4
 3900:22
pushed 3879:11
put 3838:15 3841:9
 3847:17 3848:25
 3863:23 3865:11
 3867:6 3869:14
 3870:12 3876:18
 3897:8 3903:11
 3914:23 3924:14
 3933:20 3937:13
 3944:2 3946:14
 3956:20 3964:22
 3964:24 3989:12
 3996:2 3997:15
 4042:15 4045:9
 4045:11 4048:12
 4051:9
putting 3852:7
 4055:21
puzzle 3902:22
puzzled 3930:11
 3965:12 4027:20
 4050:23
P-19 4045:23
P-27 3926:5 3931:3
P-28 3926:5 3931:1
P-89 3917:24
P-93 4018:6,11,13

4018:22,23
p.m 3915:20
 3979:7,9 4060:4

Q

qualification
 4013:6
question 3833:14
 3833:15 3834:9
 3836:25 3839:1
 3847:16 3854:5
 3869:13 3875:18
 3876:14 3878:15
 3881:5 3905:25
 3906:23 3909:17
 3942:5 3963:23
 3965:3 3971:3
 3972:14 3991:21
 3992:12 3997:14
 4009:7 4010:13
 4021:10,14
 4041:12 4056:9
questioned 3835:10
 3862:22 3863:2
 4031:16
questioning 3831:3
 4036:3
questions 3829:9
 3839:4 3845:14
 3859:21 3865:13
 3865:18 3876:6
 3878:12 3953:3
 3965:18 3981:2,2
 3981:11,15
 4031:17 4040:9
 4043:15,16,22
 4045:16,20
 4057:14 4058:1,4
 4058:10
question-and-ans...
 4045:17
quickly 3865:19
 3895:24 3956:4
 3965:16 3969:22
 4034:3
quiet 3842:9
 3846:19,20,25
 3847:12
quieter 3845:17

quite 3854:6 3860:8 3871:12 3874:11 3878:11 3880:10 3888:11 3896:16 3901:4 3902:14 3903:2 3925:16 3942:17 3943:16 3957:19 3964:1 3965:3 3975:11 3980:24 3987:8 3989:18 3997:19 4001:8 4010:9 4017:11 4024:9 4025:14 4033:7 4035:7,23 4036:5 4044:25 4056:10 4057:22	4021:18,24 4022:6 4024:22 4026:15 4036:5 4037:9 4038:2,22 4039:9,15,18 4040:20 4046:18 4048:7 4053:3,14 4054:9 4055:2,18 4056:18 RCMP's 4022:16 reach 3861:10 3968:14 reached 3908:2 reaches 3966:8 reaction 3851:2 3855:12 3856:8 reactive 3850:21 3850:23 read 3835:14 3872:13,14,18 3881:12 3886:4 3892:11 3895:21 3905:21 3918:19 3919:13,20 3922:25 3929:11 3933:10 3950:11 4000:21 4022:9 4028:22 4040:19 4041:17,22 4046:4 4047:22 4053:1 reader 3986:14 readership 4005:19 4005:20,23 readily 3988:7 reading 3834:10 3864:22 3873:21 3873:23 3876:17 3889:22 3994:25 ready 3899:22 real 3884:1 3888:10 3897:8 3925:16 3932:13 3935:4 3937:11 3998:15 realistic 3965:21 3969:14 realistically 3996:9 realization 4000:10	realize 3992:21 really 3846:16 3854:6,11 3857:24 3876:18 3877:14 3883:8 3885:17 3888:15 3911:9,25 3914:5 3924:19 3942:7 3945:5,19 3950:5 3959:4 3968:8 3974:12 3975:11 3975:22 3986:4 3986:19 3995:15 4010:6 4034:2 4058:16 reason 3837:19 3849:3,7 3939:16 4033:25 4059:14 reasonable 3857:16 3859:9 3861:10 3887:19 3973:23 4043:14,15 reasonably 3999:24 reasons 3838:11 3848:24 3851:13 3916:25 3935:11 3981:10 4032:14 4032:14 rebut 3904:24 3906:9,16 rebutted 3909:24 rebutting 3905:4,8 recalibration 4000:19 recall 3833:10 3835:9 3838:4 3860:4 3864:1 3866:2,5 3873:3 3901:10 3929:15 3944:8,19 3972:6 3980:19 3985:21 4001:5 4015:13 4024:21 4040:7 receipt 3954:15 received 3858:7 3898:24 3989:3,4 4005:9 4047:16 4055:1,13	4056:17 4057:13 receiving 3893:22 3987:25 4055:15 recessing 3915:18 3979:7 recipient 3981:16 recognition 3839:24 recognize 3897:19 3929:13 recollection 3837:14 3941:18 3943:23 3957:18 4003:2 4040:13 4051:6 4055:6 recommendation 3844:22 3935:21 3935:24 reconstructing 4055:12,20 record 3851:17 3856:18 3857:1 3858:11 3859:22 3860:5,7,9,18 3863:16,23 3864:15 3865:25 3870:16 3871:21 3872:18 3883:12 3896:10 3901:23 3902:10,11 3918:5 3937:21 3941:1,12 3943:18 3947:21 3950:21 3951:22 3951:23 3952:9 3952:13,16 3954:15,15,18 3955:1 3958:13 3959:5 3967:22 3980:15 3989:19 4008:24 4009:2 4016:16 4020:16 4020:19 4021:2,7 4021:12 4042:17 4044:15 4048:8 4052:23,25 4053:1 recorded 3838:4 3977:17 3989:15	records 3945:11,11 3956:22 3957:2,3 3957:16 3958:2,5 4048:24 red 3870:1 3872:22 3873:6 3881:23 redact 3907:24 redacted 3959:21 refer 3882:14 3925:11 3932:2 4003:6 4010:17 reference 3842:1 3865:25 3899:19 3929:20 3930:12 3931:12 3937:22 3937:25 3938:12 3943:11 3962:11 4008:13 4009:4,6 4042:13 references 3866:3 4009:14 referred 3891:22 3926:20 3966:6 3993:5 4001:2,8 referring 3899:25 3929:23 3948:1 3960:2 3987:24 4015:19 refers 3949:21 reflect 3980:14,15 reflected 3834:6 3841:18 3919:24 3935:7 3959:13 3964:17 4006:7 4027:3 reflection 3943:17 reform 3918:17 refresh 3940:24 4016:13 regard 3919:18 4003:12 4042:20 regarded 3999:25 regards 3999:9 regime 3919:23 3995:17 regimes 3917:21 region 3984:15 Registrar 3829:5 3915:17,22
quotes 4054:15 quoting 3860:9				
R				
radar 3971:17 3972:16 raise 3915:4 3975:13 raised 3847:21 3939:10,18,20 3946:5 3949:22 3953:16 3960:18 3960:19 3985:15 raises 3876:19 3923:16 rapid 3873:9 rapidly 3959:1 rats 3867:25 RCMP 3852:4 3855:20 3908:14 3944:11 3987:1 3987:15 4000:3 4000:15 4002:11 4002:15 4004:1,2 4004:18 4005:10 4006:12 4007:21 4007:25 4012:13 4012:19 4013:17 4015:25 4016:3,4 4017:2,17,24 4018:10,15 4019:4 4020:17				

3926:5 3979:6,11 4045:25 4060:1 registry 4021:4 regular 4004:9 regularly 4024:10 regulations 4016:10 rehash 3985:11 relate 4023:15 4057:13 related 3964:14 4004:17 4025:12 4025:19 relates 3829:17,22 3830:2,7 3831:3 3834:9 3874:2 3896:23 3906:23 3922:17 3995:12 4002:8 4022:16 relating 3829:23 3833:14 relation 3842:21 3900:19 relations 3900:12 3900:15 3913:6 3913:18 3927:3 4005:5 relationship 3901:2 3913:24 3914:2 3914:19 3983:3 3990:21 4031:18 relaxation 3889:7 3889:13 release 3989:22 3990:4 3996:5,11 3998:14,15 4009:3,10 released 3830:12 3834:18 3890:21 3929:5 4008:18 releasing 3830:5 relevance 3839:13 3941:22 relevant 3959:23 4034:15,15 relieve 4045:4 rely 3885:1 3926:8 remain 3973:5 remained 4001:12	remains 3922:25 4051:25 remarks 4007:17 remember 3837:21 3879:11 3936:23 3944:14 3946:4 3953:9 3954:5 3961:2 3981:4 3992:1 4003:18 4003:19 4009:24 4015:18 4022:11 4040:8 remind 3860:13 reminded 3862:2 reminders 3832:18 removal 3970:14 3972:12,21,22 3976:16 3999:15 4056:6 remove 3907:24 3972:3 removed 3969:22 3972:7 render 3915:2 repeal 4014:16 repeat 3906:13 repetition 4035:22 report 3833:17 3860:14 3861:21 3881:23 3887:19 3897:2,15,20 3907:23 3910:3 3918:7 3922:23 3924:20 3926:3 3928:17 3929:4 3931:2 3987:17 4002:7 4009:7 4045:23 4047:19 4050:7 4054:14 4055:8 reported 4005:18 4050:17 reporting 3983:2 4020:11 reports 3865:24 3872:8,13 3882:20 3921:7 3926:8 4003:4,6 4003:14,23	4004:6,14 4005:11 4006:12 4006:19 reprendre 4060:7 represent 3928:1 3930:1 representation 3998:14 representing 3963:17 Reprise 3915:21 3979:10 request 3943:24 3953:20 3954:16 requested 3834:15 3938:23 require 3956:14 required 3879:2 residence 3839:20 residency 3841:1 resigned 3879:22 resonated 3846:1 respect 3830:4 3838:13 3840:22 3848:11 3859:22 3875:19 3881:3 3889:9,13 3914:12 3918:7 3926:3 3927:14 3936:21 3952:17 3954:5 3956:15 3961:13 3972:20 3972:21,24 3976:10 3978:21 3979:22 3987:14 3989:20 4001:11 4006:9,13 4007:13 4016:4 respond 3850:18 3850:19 3853:21 3853:22,23 3854:1 4042:25 4043:9,14,22 4045:16,19 responded 4040:10 responds 4036:25 4038:5 response 3830:11 3834:7 3850:9	3854:19 3949:22 4043:3 responses 4055:15 responsibilities 3987:13 4002:4 4004:16 responsibility 3838:19 3907:16 3907:19 3909:4 3911:8 3988:17 3999:21 4001:9 4001:12,16 4002:5,6,7 4004:19,23,25 4011:18,19 4012:5 4014:3 4033:18 restrain 3870:8 restrict 3832:5 3888:19 3902:24 restricted 3902:24 result 3829:9,10 3844:20 3886:3 3908:3 3923:7 3940:20 3951:19 3988:9 4043:24 4055:24 results 3967:15 resume 3979:5 4060:5 resuming 3915:20 3979:9 retained 3929:3 3934:16 3937:13 3976:24 retaining 3936:1 3971:20 retention 3964:2,4 4000:5 retired 3961:5 return 3841:16 3871:2 4007:8 4009:22 returned 3837:7 3848:1 3863:20 3864:11,19 3939:6 4053:24 returning 3835:1 4007:11	review 3833:20 3843:24 3845:19 3848:8 3903:18 3907:14 3914:16 3989:11 4008:24 reviewed 3903:20 3903:23 4008:16 4009:5 re-united 3835:6 rhetorical 3965:7 RI 3880:15 Richard 4053:14 right 3837:6 3839:19 3840:4 3841:11 3842:11 3851:17 3855:1 3855:14 3858:23 3859:19 3863:22 3874:7 3875:5 3883:7 3889:1 3890:2 3897:16 3898:11 3904:8 3904:15 3905:12 3909:16 3910:22 3917:23 3921:19 3924:10 3925:14 3925:25 3926:14 3927:17 3928:5 3930:10,20 3932:11,22 3934:20 3935:13 3936:14,14 3937:11 3938:3 3938:21 3939:23 3942:2 3943:19 3944:18 3947:2 3947:15 3948:13 3948:24 3949:12 3954:10 3956:6 3966:24 3969:9 3970:9 3974:13 3978:17 3982:14 3983:21 3984:16 3986:12,24 3987:23 3993:22 3994:19 3998:7 3998:25 4001:18 4002:10,16 4004:21 4009:11
---	---	---	--	--

4010:6,7 4011:4 4013:6,8 4017:1 4020:25 4021:25 4022:14,19,24 4023:16 4027:2 4028:14 4030:20 4045:1 4054:3 4057:1,16 rights 3856:19 3859:22 3868:23 3870:16 3897:1,9 3900:21 3918:17 3924:18 3925:21 3926:20 3927:19 3928:22 3975:18 rigidity 3889:8 rigorous 3880:14 Rires 3892:21 3913:3 3950:4 3960:9 3961:9 3965:10,13 4019:7 4035:16 rise 3915:15 3991:4 4041:13 risk 3861:14,17 3971:17 risks 3996:13 road 3853:13 3928:10 Robinson 3895:22 role 3830:20 3843:20 3885:11 3908:14 3916:3 3917:1 3920:11 3962:12 3964:12 3987:10 4016:5 room 3865:4,9 3869:15 3893:18 3893:25 3894:6,8 rooms 3869:11 roots 3841:15 roses 3965:2 roughly 3941:18 3985:2 route 3983:10,11 3983:12 Roy 4046:14,16 4047:5,13,20 4048:7 4049:3	4053:3,14,18,20 4055:24 rule 3857:6 3919:19 3988:7 run 3831:19 running 3875:20 run-around 3963:7 ruse 3924:13 R.P.R 4060:25 <hr/> S <hr/> salami 4033:21 Sans 4023:8 SARG 3919:17 sat 3875:8 4024:23 satisfied 3974:2 Saunders 4038:7 4038:12 4040:19 4041:19 saw 3831:4 3837:25 3867:3 3884:23 3887:15 3889:16 3892:2 3913:13 3938:11 3954:21 3954:23 4012:15 saying 3837:22 3853:1 3854:11 3854:16 3855:4 3861:22 3889:14 3894:21 3896:6 3897:4 3918:13 3932:8 3942:15 3944:9,10,16 3945:1 3946:1,4 3975:23 3981:22 3986:5 3994:5 4014:2 4015:15 4015:16 4025:17 4041:20 4051:14 4054:5 says 3863:1 3872:5 3887:5 3901:19 3904:22 3907:2 3918:15 3919:5 3947:21 3986:13 3995:6 4021:19 4029:1 4036:20 4037:7 4048:25 scared 3865:10	scattered 3831:18 scenario 3969:3 scene 3845:4 sceptical 3927:24 3928:9 scepticism 3924:22 3926:1 screaming 3868:20 3868:20 3869:16 screen 3972:16 script 3873:12 se 3830:20 search 3842:3 3849:24 3850:1 3850:11 3928:3 seated 3829:5 3915:22 3979:11 second 3831:2 3839:1 3840:2 3862:23 3868:16 3891:25 3917:13 3933:4 3934:23 3934:24 3981:4 4002:5,14 4028:20 4039:25 secondly 3966:13 secretary 3902:1 3904:6 sectarian 3931:21 3932:8,9 section 3911:2,6 4031:9 sections 3959:24 secure 3997:9 security 3829:19 3829:24 3917:1 3922:12 3923:16 3949:10 3984:23 3985:24 3988:8 4000:24 4002:9 4005:3,4 4029:10 4030:14 4031:9 4041:19 see 3832:15 3836:6 3842:11 3857:9 3862:24 3864:8 3865:1,5 3871:20 3872:7 3873:21 3874:16 3875:4	3876:23 3877:18 3878:3,24 3883:13 3884:18 3886:9,21 3894:13 3895:4,5 3895:5 3898:1 3903:14 3905:20 3918:25 3920:11 3923:5 3926:20 3929:2,15 3930:3 3930:12 3931:22 3933:23 3934:8 3934:20 3945:21 3947:21 3948:18 3950:20 3953:17 3960:16 3966:12 3995:23 4004:7 4005:24 4019:8 4019:14 4027:11 4027:24 4029:6 4035:12 4036:11 4038:8 4044:1 4045:23 4046:11 4050:14 4052:16 seeing 3877:8 3884:20 seek 3975:15 4011:8 4040:14 seeking 3906:9,10 3906:16,17 3989:21 seen 3830:22 3860:9 3897:1 3901:7 3902:6 3904:10,13 3921:10 3938:4 3959:18 3960:1 3960:11 3982:12 4002:23 4006:18 4008:16,24 4009:2,4,13,14 4013:23 4014:21 4023:25 sees 3879:21 send 3887:2 3915:2 3945:23 4005:15 4005:21 4012:15 4044:8 sending 3834:19,21	3968:9,16 senior 3966:12 3977:9 3984:22 4005:1 sense 3872:17 3884:8 3910:12 3914:10 3947:16 3953:2 3954:13 3962:3 3967:7 3975:20 3983:23 3985:1 3986:17 3987:7 3996:10 4004:12 4014:4,8 4014:10 4021:5 4032:22 4033:6 sensitive 3932:19 3932:22 3954:6 3996:3 sensitivity 3830:17 3830:19 3932:16 sent 3834:12 3899:19 3900:8 3907:15 3949:23 4005:10 4006:4 4006:12 4018:9 4018:18 4019:17 4022:22 4047:13 4049:21 sentence 3846:1 3872:13 3989:24 4028:23 4041:18 sentenced 3845:25 separate 3893:25 3894:6,8 3962:22 3989:6 4039:21 September 3930:21 3935:5 3956:12 4031:5 4037:5 4038:21 September/Octo... 4037:12 sequence 4020:3 4055:12,20,22 series 3965:18 4042:22 serious 3885:25 3895:14 3896:13 3896:13 3921:16 4027:11
--	--	---	--	---

serve 3928:6	4015:23 4016:7	simply 3845:16	4004:12 4024:16	4000:7 4007:1
service 3831:22	4016:12 4025:1,7	4055:21	4030:21 4036:24	speaking 3925:7,11
3840:5	4026:14,17	Sinclair 3983:8	4038:5,16	3968:1 3981:14
services 3838:20	4028:2 4041:22	single 3892:3	Solomon's 3985:6	speaks 3941:13
3842:17,22,23	sheet 4023:10,22	sir 3844:13 3850:5	somebody 3957:23	4000:9
3913:13 3949:10	shipped 3969:15	3853:14 3854:11	3964:7	special 3893:23
3982:8 3987:25	shipping 3969:18	3861:21 3878:25	somewhat 3875:20	3894:12,14
3996:24 4002:1	shocks 3870:7	3920:6 3922:23	3971:9	4021:4
4010:7,8 4011:10	short 3877:21	3939:8 3945:22	soon 3834:18	specific 3834:9
4029:11	shorthand 3986:17	3960:18 3962:1	3890:21 3959:24	3879:7 3900:19
serving 3928:2	4003:6	3968:13 3981:22	sore 3870:1	3937:25 3938:12
3962:21	shortly 3848:1	3991:9 3997:11	sorry 3862:14	3939:1 3943:11
sessions 3866:1	shot 3945:25	4006:10 4014:24	3888:2 3890:7	3949:21 3950:13
set 3898:19	show 3844:10	4017:25 4018:18	3891:21 3893:7	3967:15 3976:3,9
3907:22 3914:15	3888:9 3930:16	4020:14 4022:5	3897:14 3902:11	3986:7 3992:23
3921:22 3980:18	showing 3878:2	4028:3 4041:7	3902:12 3906:15	4003:1 4006:7,10
3981:4,4 3985:16	3906:17	4048:17 4051:5	3909:10 3930:13	4015:1 4016:14
3997:1,18	shows 3983:15	sit 3952:20 4057:8	3930:15 3933:8	4017:24 4025:18
3999:22 4034:23	SHRC 3898:24	sits 4046:22	3933:16,19	4032:25
4057:13	3929:9,23 3930:2	sitting 3875:9,15	3952:23 3965:1,6	specifically
seven 3867:11	3930:13 3931:15	3992:14	3970:24 3987:6	3840:25 3860:13
3955:2 3958:2	shredded 3869:20	situation 3838:12	3997:24 4018:5	3860:15 3884:5
seventeen-year-old	shy 3860:17	3845:15 3849:17	4018:19,21	3887:1 3938:14
3923:22	side 3983:6,7,16,17	3850:10 3880:7	4023:19 4025:13	3989:1 4040:7
shady 3892:10	4000:8	3885:9 3908:24	4028:10 4030:2,7	specificity 3899:1
shallow 3845:1	sign 3874:4	3909:2 3929:6	4038:7 4044:10	4033:16
share 3851:5	signals 3881:23	3967:5 3971:2	4044:11 4053:6	speculated 3938:6
3878:25 3980:16	signatory 3840:7	3975:20 3994:9	4054:22	speculating 3951:4
3997:3 4000:19	Signed 4030:13	3996:23 4047:4	sort 3872:14	spent 3868:9
4004:1 4008:3	significance 3874:1	situations 3866:7	3908:5 3917:9	3869:4 3893:18
4014:20 4017:24	3893:2	3871:18 3873:12	3921:10 3941:20	sphere 3917:12
4027:8,11	significant 3837:25	3876:22 3885:12	3948:10 3949:4	spoke 3834:14
shared 3909:6	3847:23 3849:7	3885:15 3907:14	3951:7 3953:4	3864:10 3982:17
3984:9 3991:23	3850:6 3851:8	six 3864:12	3958:16 3962:20	4032:11 4049:15
3991:24 4000:22	3852:10 3856:18	3867:11 3886:24	3963:5 3978:4	spoken 3843:4
4000:25 4011:6	3896:4 3920:11	Sixteenth 4039:23	3981:9 4050:21	3938:5 4032:12
4012:9 4014:12	3922:4 3940:16	skipped 3833:6	sorts 3895:17	4032:18
4017:17 4020:15	significantly	sleeves 3877:21,21	3914:12	spouse 3991:12
4025:10 4027:22	3880:3	sliding 3867:17	3929:3	4000:1
4039:13 4040:23	signs 3852:9	slightly 3962:11	soul 3899:10	spread 3920:20
4041:20 4050:2,5	3872:8 3898:2,14	slipped 3833:5	source 4000:10	spreading 3931:19
sharing 3980:5,6	3898:14 3907:2	small 3867:13,18	4016:11 4044:17	stability 3921:17
3986:10 3988:15	silence 3845:5	3913:25	4053:11 4055:4	stage 3852:1
3992:3,8 3998:22	3846:7	social 3900:20	4055:12	stages 3882:1
4000:2,14	silent 3844:25	socialist 3922:2	south 3915:2	3940:7 3979:22
4001:14 4004:17	similar 3971:9	sole 3870:10	southern 3830:25	stake 3938:15,16
4005:25 4006:1	simple 3852:8	solid 3984:9	space 3884:16	stamped 4014:6
4011:18 4013:2	3903:8 3916:25	Solomon 4003:20	speak 3871:25	stand 3888:6,13,14
4014:14 4015:13	3963:12	4003:21 4004:4	3966:18 3991:11	3915:17 3941:9

3947:6,19	3918:5 3925:22	successive 3916:11	3974:23	swaths 3841:23
3964:10 3979:6	3942:22 3957:8	sudden 3902:18	supporters 3847:19	Switzerland 4054:1
4044:23 4045:18	3969:6 3971:21	suddenly 3951:8	3848:15 3928:19	SWORN 3829:14
4060:1	3972:8 3974:24	suffer 3861:17	suppose 3841:25	Syria 3830:19,20
standard 3857:23	3976:12 3977:1	sufficient 3967:10	3926:22 3933:12	3830:23 3842:18
3873:11 3964:19	3991:4 4029:10	3974:3	3935:21 3987:18	3853:25 3856:8
3980:18 4023:9	4029:11	sufficiently 3852:2	supposed 3987:17	3856:19 3859:1,3
4036:10	static 3975:20	suggest 3845:9	4009:8	3859:8 3861:8,15
standards 3880:21	statutory 3995:16	3850:4 3853:20	Supreme 3911:22	3865:17 3866:1
3881:2,6,13,17	stay 3841:13	3860:19 3875:12	3912:10	3900:12 3909:22
3883:10	step 3881:20	3891:2 3896:12	sure 3842:2 3849:2	3909:25 3910:20
standing 4024:17	3908:7 3943:3	3929:12 3942:10	3855:6 3864:6	3910:22 3911:7
stands 3908:11	steps 3965:19,20	3945:16 3953:19	3872:19 3876:12	3911:14 3912:6
start 3833:3	3967:3 3972:18	3958:2 3990:10	3877:17 3882:18	3912:16 3916:4,8
3864:14 3905:3,7	sticking 3849:17	3994:2 3995:15	3889:23 3892:8	3917:2,3,7,9,13
3905:11 3951:6	stone 3843:8	4014:5 4018:17	3893:5 3894:9	3918:16 3919:8
3953:22 3989:9	stood 4044:7	suggested 3872:14	3902:20 3912:17	3920:23 3921:22
4012:7 4018:1	stop 3842:2	3905:25 3906:1,3	3912:25 3932:21	3922:1,12 3923:1
4027:23 4046:1	3865:23 3868:21	3910:13 3991:2	3937:13 3938:1,5	3923:17,21
started 3865:13	4054:8	suggesting 3847:10	3942:14 3953:6	3926:4 3928:21
3868:13 3884:15	straightforward	3851:22 3902:9	3954:1,3 3960:6	3930:2 3931:12
3917:14 3920:20	3831:21	3910:14 3929:25	3964:1,7,12	3932:1,4 3934:17
3939:2 3959:4	stress 3840:25	3942:9 3952:22	3965:3 3980:9	3940:22 3955:18
starting 4038:18	stretch 3942:15	3977:14 3993:21	4010:9 4017:11	3955:24 3956:11
state 3916:9,22	strong 3889:7	4054:6	4020:3 4025:14	3961:25 3962:6
3917:3,4,16	3973:3	suggestion 3888:5	4033:7 4034:8	3962:24 3963:13
3918:22 3923:17	strongly 4039:12	3940:25 3942:6	4040:6 4044:6	3965:23 3968:9,9
3926:3 3928:17	struck 3870:2	3944:25 3946:11	4056:8 4057:24	3968:16 3970:23
3966:13 4001:23	structure 3878:19	3957:20 3975:4	4058:9	3972:12,20
stated 3895:25	struggling 3994:11	4003:22 4041:7	surely 3962:1	3978:22 3979:23
3940:14 3947:17	subject 3880:11	4049:10	4033:12	3983:20 3999:15
4045:3 4047:9	3883:2 3884:2	suggestions 3944:6	Suresh 3912:11,17	4019:18 4037:21
statement 3856:3,5	3898:22 3911:19	suggests 3934:3	3912:18	4039:3,6 4041:10
3864:3,4,16	3918:14,16	4013:19	surprise 3851:5,6	4041:11 4042:3
3891:23 3907:21	3937:23 3945:17	summarize	3864:5 3870:19	4044:8 4047:13
3908:16 3914:11	3961:13 3971:25	3895:24 3896:25	3888:11 3891:24	4047:25 4049:21
3927:14 3948:18	3996:19 4013:3	Superintendent	3892:9,12	4049:22 4050:19
3962:24 3963:23	subjects 3903:11	4040:10,16	3938:11 4024:8	4051:15
3980:2 4040:20	submissive 3879:21	4050:7 4055:25	surprised 3892:6	Syrian 3830:11,17
4041:10 4055:13	subsequent	4056:5,20	4017:17,21	3830:24 3854:10
statements 3849:9	3882:15 3920:17	superiors 3982:14	surprising 3901:11	3857:25 3858:19
3849:13 3863:19	4001:7	supernumerary	3960:10	3859:4,8,13,22
3863:24 3871:2	subsequently	3962:21	surrounds 3889:25	3861:15 3870:18
3967:21 3985:16	3956:9 4028:1	supervising 4025:4	suspect 3924:8,11	3888:6 3889:8,21
4014:18	substance 3932:13	supplied 4011:1	Suspension	3890:17 3896:15
states 3836:16	substantial	support 3830:24	3915:19 3979:8	3897:1 3918:6
3837:20 3840:1	3861:14	3852:11 3890:16	suspicious 3885:24	3921:5,13,17,17
3861:3 3913:18	subtleties 3988:13	3969:24	suspicious 3836:19	3924:18 3926:20
3914:16,19	succeeded 3942:25	supported 3942:21	swath 3926:25	3927:22 3937:19

3938:17 3939:14
 3945:8 3946:11
 3946:16 3953:24
 3954:7 3989:3
 4001:22 4002:18
 4005:9 4008:6
 4009:8 4010:3
 4011:2 4029:5
 4042:6,11
Syrians 3830:4
 3834:3,15 3858:5
 3873:1,7 3879:3
 3898:8 3913:13
 3920:9 3924:14
 3940:9,10,16
 3946:4 3951:8
Syria's 3918:21,23
 3919:22 3925:20
 3938:14
system 3831:6,6,10
 3831:12,19
 3832:7 3850:21
 3901:18 3912:15
 3914:9 3944:3
 3961:22 3978:11
 4004:8,10
 4013:12 4020:21
 4021:6 4052:17
systems 3850:23

T

tab 3833:7,8
 3835:8 3862:4,13
 3862:16 3863:25
 3873:18,19,24
 3886:16 3887:7
 3888:2 3890:6
 3893:3,7 3896:22
 3897:12,15,22
 3899:11,14
 3932:25 3933:20
 3934:21 3935:4
 3947:22,25
 3948:6 3949:18
 3989:13,14
 4018:2 4027:23
 4028:3,3,11,19
 4029:20 4030:10
 4034:7 4035:21

4037:2
table 3938:14
 3939:15 3967:11
tabs 4028:12
 4034:24 4036:22
 4036:23
tactic 3869:12
take 3843:11
 3844:6 3858:7
 3859:12 3864:9
 3866:4,24
 3870:15 3889:13
 3891:13 3896:22
 3916:1 3924:9,12
 3926:4,11,13
 3929:4 3932:25
 3933:2 3939:13
 3940:21 3942:4
 3946:12 3948:14
 3949:4 3950:23
 3951:19 3954:14
 3954:16 3958:4
 3958:12 3960:4
 3961:10,24
 3963:21 3979:3
 3985:12 3986:1
 3991:18 3997:11
 4010:2 4011:7
 4013:22 4014:24
 4017:22 4024:7
 4026:16 4030:2
 4034:12 4035:25
 4036:22 4045:6
 4045:12 4050:6
 4051:5 4053:2,5
 4056:19 4057:22
 4059:25
taken 3834:25
 3851:17 3862:10
 3868:12 3874:6
 3885:25 3888:9
 3959:8 3964:2
 3965:20 3967:4
 3972:19,20,23
takes 3845:22
 3964:21
Taliban 3942:25
talk 3876:24
 3916:2 3980:14

3981:13 3982:8
talked 3836:12
 3858:6,24
 3860:15 3910:4
 3975:23
talking 3834:4
 3838:10 3855:15
 3855:16 3858:21
 3877:11 3885:3
 3965:4 3975:17
 3978:4 3980:23
 3980:24 3983:25
 3983:25 3988:14
 3988:15 3994:24
 4003:5 4005:19
 4007:14 4008:10
 4012:1 4019:20
 4025:3,6 4030:6
 4058:16
target 3936:2
targeted 3921:22
task 4021:19
 4022:3,11,15
tasked 3900:25
tasks 4005:25
 4022:13
technique 3868:23
 3869:3
techniques 3860:1
telephone 3837:5
 3938:3 3939:21
 3943:15,16
 3944:2 3980:21
 4044:20 4052:2
telescope 3917:8
telescoping
 4010:10
tell 3873:25 3876:8
 3885:24 3888:15
 3891:1 3904:5,9
 3904:16 3932:12
 3932:15,16
 3945:24 3991:11
 4026:3 4029:21
 4043:12
telling 3873:7
 3890:10
tells 3878:10
 3879:1 3887:7

4008:25
ten 3864:22 3868:9
 3868:10 3884:13
 3884:13 3899:16
 3945:10 3957:5
tenet 3946:16
tenor 3981:1
tentative 3984:2
term 3880:15
 3896:12 3922:9
 3969:24 3970:16
 3971:22 4015:6
terms 3830:11
 3832:14 3838:10
 3838:19 3845:14
 3849:10 3850:23
 3885:3 3894:16
 3894:20 3896:18
 3914:18 3927:13
 3935:11 3947:7
 3954:9 3956:21
 3961:21,23
 3969:18 3974:20
 3976:7 3977:12
 3978:21 3981:3
 3983:18 3986:21
 3987:10 3994:25
 3995:22,22
 3997:17,19
 4000:5 4003:10
 4005:17,21
 4016:11 4020:20
 4025:20 4026:24
 4033:8,14 4043:2
terrible 3846:19
terribly 3998:2
terrified 3866:17
terrorism 3918:24
 3919:9 3920:12
 3985:24
terrorist 3830:8
testified 4000:18
testimony 3862:21
 3863:14 3895:25
 3959:22 3965:18
 3975:12 3988:11
 3988:20 4001:7
 4011:17 4026:19
 4027:17,18

thank 3832:23
 3834:18 3838:25
 3839:5,9 3856:16
 3860:20 3866:9
 3870:22 3871:7
 3876:15 3913:1
 3915:14,24
 3933:21 3937:17
 3985:10 3995:20
 4018:7,11
 4021:13 4023:4
 4045:24 4051:21
 4051:24 4058:20
theoretical 3983:4
theory 3869:7
 3987:16,21
Thi 3844:1 3845:24
 3846:15
thick 3869:21
thin 4033:21
thing 3833:24
 3871:4 3872:3
 3875:3 3876:4
 3893:1 3896:19
 3905:3 3908:5
 3936:25 3941:20
 3951:7 3953:5
 3954:21 3955:5
 3960:23 3966:22
 3981:9 3983:16
 4044:1
things 3831:23
 3832:6 3838:7,8
 3845:11 3860:24
 3867:17 3873:21
 3874:15 3876:23
 3876:25 3877:17
 3877:22 3879:4
 3880:7 3882:1,5
 3882:14 3883:25
 3884:5,6 3885:2
 3890:4,11
 3894:24 3897:6
 3922:14 3926:1
 3928:11,13,15
 3946:9 3950:22
 3950:24 3953:9
 3953:21,23
 3957:2,9 3958:17

3959:4 3966:10	3956:9 3957:12	thirteen-year-old	3940:7 3941:11	3856:24 3860:2
3968:19,22	3958:6,15	3924:5 3942:16	3943:23 3944:8	3860:16 3861:17
3975:19 3983:8	3959:14 3960:21	thought 3858:15	3945:20 3946:7	3866:1,14,19
3986:25 3989:16	3960:22 3963:3,3	3924:11,12	3947:7,10	3869:1 3870:9
4012:24 4014:17	3963:8,25	3928:16 3935:10	3954:14 3960:4	3880:23 3881:18
4017:23,24	3964:16 3965:15	3937:1,8 3943:14	3963:25 3964:3	3881:20 3883:11
4028:5 4042:24	3966:5 3967:13	3946:20 3947:5	3967:19 3969:7	3885:25 3897:4
think 3830:16	3967:17 3971:3,7	3950:1 3958:24	3973:6 3974:25	3898:2 3904:25
3832:15 3833:23	3971:23 3972:8	3961:22 3968:17	3976:16 3977:19	3909:7,23
3834:1 3837:9,20	3973:12,13	3968:20 3970:20	3983:4 3984:3	3910:18,21
3838:4 3841:4	3974:9,14 3976:7	3989:2 3991:22	3999:20 4003:19	3911:15 3912:7
3845:3 3846:1	3977:12,17	3998:23 4007:19	4007:12 4024:9,9	3912:20 3913:5
3848:4 3849:23	3978:3,23	threat 3870:13	4028:1 4044:3	3913:12,17,22
3851:11 3852:16	3979:20 3981:1,3	3922:12 4014:21	4047:5 4057:3,23	3914:13
3853:7 3854:9,18	3982:1,23 3984:5	4051:17	4059:10	tortured 3858:4
3854:19 3855:7	3984:8,16 3986:6	threatened 3870:5	times 3866:10	3866:18 3868:19
3857:7 3858:10	3986:8,16,20	4051:15	3897:14 4042:12	3868:24 3898:13
3858:12,12	3987:20,21	threats 3866:22	time-wise 4057:6	3898:21 3899:6
3859:9 3860:18	3988:10,19,19,23	three 3829:11	tire 3870:6,7,12	torture/whatever
3861:9 3862:1	3991:25 3992:11	3865:3,8 3867:10	today 3848:25	3896:5
3863:9 3871:11	3992:13 3993:9	3869:4 3870:1	3917:2 3923:1	totally 3883:18
3872:12 3873:17	3993:16,20	3872:12 3986:25	3950:23,24,25	3993:20
3873:20 3874:8	3994:4,23 3996:3	4004:2 4006:6,11	3954:19 3956:25	touch 3876:24
3881:1,7 3882:14	4000:4,9 4004:15	4006:19 4007:22	4056:25 4057:8	4005:13
3882:19 3883:4	4009:1 4011:16	4026:15,19	told 3835:15,18	touched 3941:20
3883:25 3884:7,9	4013:23 4016:8,9	4058:16	3848:13 3872:25	3951:2
3884:10 3885:1	4018:8 4021:10	Thursday 3829:2	3876:1 3877:15	touchstone 3920:24
3885:17 3886:7	4022:6,15	3904:19 4007:11	3888:12 3938:18	tough 3936:16
3886:17 3887:18	4027:16,17	4059:7	3938:20 3947:3	town 3921:5,21
3889:5 3891:8,22	4029:15 4032:9	tight 3974:19	3950:14,17	3968:3 4024:18
3891:23 3895:17	4032:12,21	4021:7	3951:11,15	tradition 3949:2,2
3896:9 3900:11	4033:9,20	till 3941:14	3986:5 3997:10	tragic 3844:24
3910:3,23	4034:13,14	4059:21	3997:23 3998:2	tragically 3843:14
3911:21,25	4035:3,19	time 3830:15	4026:19,22	trail 3957:8
3915:7 3916:10	4036:16 4037:3	3837:2 3838:1	4037:19 4041:10	transcribed 3864:4
3917:8,15	4040:13 4042:12	3840:14 3842:25	4042:4 4044:7	3864:8
3920:13,22	4044:9,14,19	3848:1 3852:9,9	4047:5 4049:3	transcripts
3921:24 3922:7,9	4048:11 4049:16	3857:16 3861:3,4	4054:14	3955:10,12
3923:10,15	4052:20,22	3865:11 3867:25	tomorrow 3951:9	transfer 4051:11
3927:10,14	4054:13 4055:17	3868:1 3872:14	tools 3963:14	transferred 4031:8
3928:4 3934:8	4058:3,25	3872:25 3880:4	top 3899:21	transition 3916:11
3935:6,7 3939:3	thinking 3940:1	3883:14 3884:21	3902:12 3918:23	translate 3893:2
3939:20 3941:19	3991:3 3993:12	3886:11 3887:5	3919:4 3944:20	3894:9
3942:12,13	third 3832:24	3893:19 3896:2	3975:16 4019:9	translated 4020:6
3943:17 3945:3	3833:5,11,16	3896:21 3897:8	4038:9,18	Transliterations
3946:3 3947:4,5,8	3856:10,12	3898:25 3900:13	Toronto 3843:19	3934:11,12
3948:10 3951:24	3868:17 3930:18	3903:8 3907:1,1	3843:24 3844:7	transmission
3951:25 3952:3	3931:8 3992:8	3915:12,13	4017:9	3998:3
3952:19,23	4030:4 4031:3	3939:5,19,25	torture 3842:14	transmit 3997:22

4025:15,23,24
transmitted
 4020:13 4035:23
 4055:2
travelled 3836:15
travelling 3972:23
 3978:15
travels 3954:9
Treasury 4016:10
treated 3971:8
treatment 3880:24
 3883:10 3884:2
 3893:23 3915:4
 3980:17 3982:22
treaty 3840:1,7,12
 3840:15,16
trial 3857:19
 3939:3 3941:9
 3946:5,7,12
 3947:1,2,19
 3949:5 3950:12
 3951:15 3954:23
 3961:18 3964:11
 3969:8
tried 3833:25
 3930:9 3953:12
 3955:18 3977:5
trouble 3991:20
troubled 3899:11
 3899:12 4008:9
troubles 3904:16
 4052:7
troublesome
 4049:2
troubling 3899:9
 3905:1 3988:3
 3991:10 4049:1
true 3906:19
 3913:21
truth 3873:8
 3928:3
try 3831:24 3841:9
 3882:21,24
 3885:9 3895:24
 3908:1 3912:15
 3929:15 3937:12
 3962:6 3979:19
 3989:6 3999:21
 4000:7 4010:14

4032:20 4050:25
trying 3846:17
 3847:5,10
 3856:13 3877:14
 3885:4,15,17
 3896:11,14
 3912:13 3935:24
 3944:25 3958:17
 3960:22 3963:3,4
 3963:6 3971:2,22
 3977:10 4011:5
 4016:9 4024:23
 4028:24 4032:25
 4033:14,18
 4048:13,14
 4050:12 4052:9
 4052:10,21
Tuesday 4007:11
 4059:8
Tunis 3835:4
 3838:10
Tunisia 3835:20
 3836:2 3841:13
turn 3835:4
 3863:25 3870:23
 3873:16,24
 3887:5 3897:11
 3933:1 3979:25
turned 3917:16
turns 3906:14
 4024:2
Tut 4022:23
twelve 3924:4
twelve-and
 3942:16
twice 3889:5
two 3844:6 3853:18
 3867:20 3868:3,4
 3868:4 3869:13
 3869:21 3872:12
 3879:11 3893:18
 3906:14 3914:7
 3919:12 3934:4
 3957:2 3966:10
 3968:1 3989:2,16
 3989:16 4002:3
 4002:17 4013:23
 4023:17 4036:22
 4037:9 4038:23

4039:11 4053:17
twofold 3837:1
type 3974:22
typical 3833:15
 3881:24
T-shirt 3883:15
T-130 4018:7,8
T-131 4018:7

U

Uganda 3869:5,6
umbrage 3907:21
unamicable 3964:6
unaware 3992:3
 4047:6 4049:4
unclear 3902:17
underlying
 3981:10
underneath 4034:7
 4034:7
understand 3910:1
 3916:7 3957:19
 3959:13 3975:7
 3976:23 3988:24
 4006:23 4011:5
 4027:4,25
 4028:25 4046:23
 4049:9
understanding
 3838:2 3839:23
 3840:14 3856:25
 3857:2 3863:16
 3871:3 3896:1,7
 3935:23 3959:11
 3959:15 3974:21
 3976:23 3977:21
 3981:24 4004:12
 4012:17 4013:2
 4016:22 4017:14
 4044:24 4054:22
understandings
 4050:25
understands
 3977:3
understood
 3887:14 3888:23
 3964:14 3996:9
undertaking
 3914:24

unfamiliar 3857:19
unfortunately
 3884:16
unique 3937:4
 3997:17
unit 4038:17
united 3836:16
 3837:19 3849:10
 3861:3 3913:18
 3914:16,19
 3918:5 3942:22
 3969:5 3971:20
 3972:7 3974:24
 3976:11 3977:1
 3991:4 4029:10
 4029:11
unreasonable
 3850:15 3967:17
unrebutted
 3911:15
unusual 3833:16
 3908:4 3998:2,4
 3998:22 3999:1
updated 4046:14
 4047:2
updating 3985:20
uplifted 3831:9
upside 3917:17
upstairs 3868:12
 3983:10 4005:20
upward 4005:15
upwards 3831:21
 4005:18
urge 3935:25
urging 3936:1
urinating 3868:7
use 3837:18,22
 3865:22,25
 3866:7,11
 3869:12 3873:12
 3880:16 3889:6
 3896:12 3905:16
 3920:13,24
 3969:24 3970:15
 3991:16 3994:5
 3994:21 3995:1
 3997:21 3999:10
 4013:19 4015:6
 4016:19 4017:3,6

4017:12 4042:24
useful 3873:17
 3928:8 4003:23
uses 3894:12
usual 3833:18
 3956:15
usually 3846:6
 4013:3
utter 3894:10
 3895:4
utterly 3888:16
U.S 3836:14 3920:1
 3926:2 3975:24
 3977:24

V

validity 3954:7
valuable 3946:20
value 3914:13
 3924:9 3927:4
 3990:25 3991:18
values 3901:1
varies 3853:22
 3907:10
variety 3903:7
various 3852:2
 3871:22 3934:3
 3940:7 3963:5
 3970:10 4015:8
 4022:13
vast 3868:22
 3958:1 3972:8
vehicle 3848:9
vehicles 3851:2
verbal 4025:7
version 3934:9
vertically 3982:24
 3985:4
Veillez 3829:6
 3915:23 3979:12
vicissitudes
 3961:21
victim 3878:21
 3883:9 3897:4
 3915:3 3918:24
 3919:9 3979:23
 3980:17
victims 3920:12
Vienna 3974:4

Vietnam 3843:14
 3843:22 3844:8
 3845:2 3847:5
view 3842:6,23
 3848:2,3,6,18
 3850:14 3855:13
 3905:10 3907:18
 3909:6,15
 3918:23 3925:16
 3928:18 3929:14
 3936:9 3942:3
 3980:16 3981:25
 3984:1 3985:5
 3997:12 4000:14
 4041:15
views 3843:3
 3909:14 3911:24
 3927:4,9 3935:7
 3979:1 3984:9
 4005:13 4043:20
violate 3880:22
violence 3866:21
visit 3833:5,6,11,16
 3834:1 3862:2,6
 3873:4 3874:3
 3884:17 3885:19
 3886:17 3887:6,7
 3890:14 3891:11
 3893:3,12
 3896:24 3897:1,6
 3899:23 3904:20
 3906:24 3918:6
 3941:7 3947:9
 3948:5 3951:19
 3951:20 3973:20
 3999:12 4003:10
 4010:18 4018:1
 4020:11 4021:13
 4028:21 4032:8
 4036:21 4037:24
 4039:4,10
 4040:21 4041:1,8
 4041:9 4042:18
 4047:22 4048:22
 4048:25 4049:24
 4050:22 4051:11
 4051:17 4052:4
visited 3836:23
 3863:4 4037:14

4038:25
visiting 3963:5
visits 3840:23,24
 3844:6,10 3858:9
 3871:13,17
 3877:25 3883:6
 3884:9,15 3889:4
 3889:9,13,17
 3890:1 3907:6
 3941:3 3947:17
 3991:23 4003:7
 4007:23 4043:24
vitae 3831:4
 3843:13 3869:4
voices 3847:21
voluble 4029:15
volume 3833:4
 3835:8 3888:3,3
 3890:7 3893:4
 4029:20
Volumes 3832:25
voluminous 3943:9
vouch 3892:19
vous 3829:6
 3915:23 3979:12
vulnerable 3856:23

W

wait 3845:13
 4021:12
waiting 3869:15
Waldman 3864:2
walking 3966:7
want 3829:12
 3833:25 3842:1
 3845:19 3856:16
 3860:24 3864:9
 3864:21 3865:22
 3866:11,17
 3871:10 3872:4
 3873:16 3878:24
 3888:19 3889:6
 3893:5 3896:12
 3908:6 3914:10
 3916:2 3917:8
 3923:4 3927:25
 3937:22 3938:22
 3941:13 3944:9
 3944:10 3950:6

3959:6 3962:20
 3967:21 3979:25
 3980:5 3981:13
 3981:20 3982:8
 3986:25 3989:9
 3991:9 3996:2
 4007:3 4012:11
 4026:1,3 4027:7
 4029:11,13
 4034:2 4036:4
 4042:15 4043:4
 4045:21 4046:3
 4053:1 4059:18
 4059:23
wanted 3835:24
 3866:16 3882:7
 3894:25 3907:14
 3953:23 4012:15
 4025:23,24
 4028:16
wanting 3854:12
 3944:19 3945:18
wants 3898:12
War 3917:11,13
warmly 3883:16,17
warrant 3905:6
warranted 3849:16
warrants 3849:24
 3850:11
Washington
 3837:9,15
 3966:11 3968:3
 3974:7,9 4032:11
 4032:18
wasn't 3830:19
 3844:5 3845:9
 3856:6 3909:24
 3938:25 3940:8
 3966:25 3975:20
 3983:6 3998:4
 4011:15,17
 4023:3
Watch 3927:19
water 3868:6
 3894:4
waters 3852:1
watery 3845:1
way 3832:1
 3834:22 3836:6

3838:15 3840:8
 3844:19 3853:21
 3859:18 3863:23
 3880:1,21
 3893:21 3901:18
 3902:2 3905:6
 3906:18 3909:4
 3914:24 3917:15
 3922:19 3925:20
 3937:14 3950:21
 3954:8 3962:18
 3962:19 3964:19
 3968:2 3969:10
 3972:22 3995:22
 3995:25 4004:3
 4014:5,7 4026:24
 4035:10 4036:10
 4040:18 4042:9
 4051:3,10
ways 3833:24
 3846:18 3855:5
 3855:10,13
 3926:23
wayside 3946:8
wearing 3883:15
 4011:13
wears 4002:17
 4011:14 4012:4
week 3834:6
 3868:14,16
 3910:3,4 3946:13
 3951:12,15
 4007:11 4059:5
weeks 3870:1
 3884:9 3941:3
 4037:10 4038:23
 4039:11
weight 3883:23
 3884:12
wellbeing 3843:1
 3895:15 3908:25
well-lit 3892:15
well-placed
 3961:22
went 3832:6
 3863:10,14
 3866:25 3884:18
 3893:21 3898:6
 3952:20 3953:17

3964:8 3974:22
 3981:2 3983:5
 4015:9 4021:7
 4044:10,12
 4048:20
weren't 3853:16
 3947:3 3957:20
 3972:18,20,23
 3974:15,16
Western 3942:21
we'll 3941:14
 3943:19 3959:7
 3979:3,4,5
 4059:25
we're 3935:4,5
 3947:7 3965:4
 3972:6 3978:24
 4058:15 4059:10
We've 3979:4
whatsoever
 3838:24 3859:7
 3924:9 3975:21
 4014:2
whereabouts
 3834:23
wide 3867:10
widely 3853:22
wife 3834:12
 3835:19,23
 3836:9 3841:14
 3847:19 3895:6
 3897:3 3952:10
 3990:8
willing 3889:19
 4056:14
wind 4059:24
wisdom 3843:7
wise 3834:25
wish 3905:18
 3911:13
wished 3845:12
witness 3829:21
 3836:21 3875:24
 3876:5 3917:24
 3926:6 3948:1
 3949:23 3960:2
 3960:14 4051:9,9
 4051:20 4057:15
woke 3844:24

women 3991:12
Won 3937:5
wonder 3831:11
 3832:25 3875:17
 3979:1
wondered 3836:17
wonderful 3955:5
word 3866:4
 3874:10 3889:7
 3894:12 3924:8
 3926:13 3931:25
 3932:22 3958:5
 3970:19 3973:3
 3974:6 4013:22
 4056:21
words 3864:10
 3879:3 3882:22
 3906:20 3917:9
 3961:14 3987:16
 3990:22,24
 3991:7,17,18
 4014:13 4017:8
 4050:21
work 3836:2,12,13
 3838:13 3840:10
 3841:8 3846:20
 3847:7 3962:17
 3977:4 3991:13
 3997:19 4024:23
 4036:12
worked 3838:7
 3843:16 3990:20
 4026:25
working 3835:3
 3846:1 3886:1
 3898:19 3928:19
 3948:12 3957:22
 3971:7 3979:21
 3980:6,11
 3982:21 3984:10
 3985:7 4005:12
 4025:23 4050:20
works 3846:19
 3847:13
world 3850:23
 3917:11,13,20
 3968:24 4034:1
worried 3881:16,17
worst 3868:18

worth 3947:12
wouldn't 3830:22
 3875:14 3878:7
 3891:24 3892:8
 3892:12 3905:7
 3913:19 3921:15
 3983:11 4027:9
wound 4057:18
Wright 4038:10
wrists 3869:25
write 3852:25
 3854:9
writes 3907:6,6
writing 3843:4
 4025:8 4029:16
 4038:8 4055:8
written 3843:8
 3849:20 3897:14
 3943:18 3952:15
 3981:2 3982:18
 4011:1 4013:18
 4020:1 4024:21
 4025:12,16
 4055:15
wrong 3874:10
 3906:17 3931:2
 3939:9 3945:13
 3975:2 4034:14
 4054:6
wrong-doing
 3857:17 3932:13
wrote 3993:11,12

X

X 3943:12 3945:23
 3945:24

Y

Y 3943:12
Yeah 3970:24
year 3931:1 3961:8
 4037:6
years 3854:4
 3869:4,6 3896:18
 3919:11,20
 3920:19 3921:23
 3945:10 3957:6
 3958:3 3980:10
yesterday 3856:17

3858:6 3859:21
 3860:10,23
 3863:14 3875:21
 3885:8 3908:10
 3974:2 3993:6
 4002:3
York 3835:17
 3836:24 3837:3
 3897:13 3907:11
 3964:18 3971:3
 3973:6 3975:8
 3983:2 4037:11
 4037:25 4039:1
 4041:1 4042:11
 4053:23

Z

Z 3943:12
Zurich 4053:25

À

à 3829:4 3915:19
 3915:21 3979:8
 3979:10 4060:6,8

0

00 4060:8
02/10/08 4046:11
05 3915:21

1

1 3835:13 3899:24
 3900:2 3910:19
 3926:19 4051:13
 4051:18
1:00 3866:22
1:11 3979:7
10 3829:4,4
 3875:14 3884:9
 4060:8
10th 4032:1
 4048:13,16
10:00 4060:6
10:10 3829:3
11 3915:19 3979:8
11:43 3915:18
12 3875:14 3915:21
 3937:21
12th 3833:12

3899:22 3900:8
 3904:14 4042:12
12:05 3915:20
13 3979:8
130 3873:20,24
131 3873:19
14 3960:20 3979:10
14th 3883:14
 4006:13 4007:24
145 3886:17
147 3886:16 3887:7
15 3884:14 3915:16
 3929:7 3930:22
 4058:4 4059:25
 4060:7
15th 3830:9
16 4053:6
16th 4039:24
 4040:9
17 3948:4
18 3935:9 3947:10
 3948:5
18th 4039:22
 4040:11,17
192 3833:7,8
 3890:7
1930 3839:25
 3840:7
1963 3916:9
 3920:14
1970 3923:21
1975 3869:5
1978 3869:6
1980 3922:20
1982 3921:4 3924:2
1987 3923:25
1993 3939:16
 3941:22 3942:7
 3942:11,19
 3952:2,11
 3964:14
1994 3952:3

2

2 3832:25 3833:4
 3886:19 3918:23
 3919:4 3926:19
 4019:9 4037:2
 4053:7 4054:17

4056:17 4059:7
 4059:11,14
2nd 3973:13
 4053:6 4054:9
 4055:1,14,19
2:20 3979:5
2:27 3979:9
20 3902:18 4001:3
 4001:11 4058:13
20th 3904:7,9
200 3831:21
2001 3930:21
2002 3830:9
 3833:12 3836:22
 3874:3 3923:6
 3937:21 3942:1
 3954:9 3982:22
 4015:23 4018:19
 4019:4,9 4037:12
2003 3842:13
 3849:9 3864:17
 3893:11 3899:3
 3899:22 3900:8
 3928:17,25
 4037:5
2004 3835:12
 3836:21
2005 3829:2,4
 4060:5,7
21 4039:19
21st 3861:5
214 3862:13
22 3950:14,16
22nd 3887:23
 4006:12,13,15
 4007:23,23
229 3862:4,15,16
 3862:18 3888:2
23 3941:11 4006:19
 4006:20
23rd 3873:5 3874:3
 3884:17 4020:12
24 3873:1 4054:10
25 4046:1,3,6
26 3829:2,4 4031:5
267 3893:3
27 3979:10 4031:5
276 3893:9,10
29th 3886:11

3887:20,23

3

3 3888:3 3890:13
 3893:4 3919:1,3
 3929:6 3938:2,4
 3962:24 3965:5
 3968:8 3978:1
 4039:7 4050:22
 4051:11 4052:3
3rd 3836:22 3837:7
 3999:12 4008:7
 4010:17 4019:22
 4032:8 4034:24
 4036:21 4049:14
 4050:15 4053:11
 4054:16 4055:19
3:53 4060:4
30 3964:8 3989:13
 3989:15 4060:5,7
30th 3956:5
31 4027:23 4028:3
 4028:12 4059:9
31st 3961:6
313 3947:25 3948:8
 3948:9 3949:18
32 4028:4,12,19

4

4 3833:14 3834:9
 3864:11,23
 3919:2 3929:4
 3930:16 3931:6,7
 3948:1 3949:21
 3949:22 3974:7
4th 3864:17
 3891:22 4018:19
 4019:4,9 4020:1
 4020:13
4:45 4053:12
40 3919:19 4001:3
 4001:11
40,000 3921:8
42 4021:19 4022:3
 4022:11,15
43 3915:19
45 4059:1

5

5 3833:24 3887:8

4038:21

5th 3835:12**5,000** 3921:8**5:25** 4057:8**502** 3899:11**507** 3897:15,22**508** 3896:23

3897:12,13,15,16

514 3933:16,18,20

3933:20,23

53 4060:7**540** 3932:25 3933:1

3933:13 3934:21

547 4036:23 4038:6**548** 4036:23 4037:2**581** 3932:25 3935:4

6

6 3864:11**6th** 3835:12**6:00** 3864:24

3865:2

61 4029:20 4030:10

4030:11 4034:24

63 4035:14,21**693** 3863:25

7

7 3862:19 4037:3**7th** 3893:3,11

4006:14,17

4053:5

70s 3920:23**75-80** 3920:19

8

8 3968:8 3978:1

4048:2,3 4049:9

4049:19

8th 4037:5 4048:17

4048:17,19

4050:12

80s 3920:24**808** 3835:8**82** 4034:24**83** 3924:2

9

9 3833:1 3893:15**9th** 3837:9 3865:3

3976:2,7

9/11 4000:18

4014:11,16

9:45 4046:11

4048:3,17

90s 3840:9 3922:11**94** 4018:6**95** 4018:6