

**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 vendredi 17 juin 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Friday, June 17, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Friday, June 17, 2005

3 at 9:00 a.m. / L'audience débute le vendredi

4 17 juin 2005 à 9 h 00

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 MR. DAVID: Good morning,

8 Commissioner.

9 THE COMMISSIONER: Good morning.

10 MR. DAVID: It is my pleasure to

11 introduce you to Mr. James Lockyer, who will be

12 testifying this morning.

13 THE COMMISSIONER: Good morning,

14 Mr. Lockyer.

15 MR. DAVID: Mr. Lockyer, as you

16 probably know, is a reputed counsel in Toronto and

17 had a role in the Arar file. I'm not sure it was

18 a major role, but still he was directly involved.

19 It is in that sense that he will be testifying

20 this morning.

21 So if we could affirm or swear

22 Mr. Lockyer?

23 THE COMMISSIONER: Would you

24 prefer to be sworn or affirmed?

25 MR. LOCKYER: Swear is fine.

1 SWORN: JAMES WILLIAM INGRAM LOCKYER

2 THE COMMISSIONER: Your full name?

3 MR. LOCKYER: James William Ingram
4 Lockyer.

5 MS EDWARDH: I wonder if I could
6 assist at this moment, Mr. Commissioner, and
7 indicate for the record that Mr. Maher Arar waives
8 any solicitor-client privilege that may attach to
9 any communications with Mr. Lockyer.

10 THE COMMISSIONER: Thank you
11 very much.

12 MR. DAVID: I would like to file
13 Mr. Lockyer's CV.

14 THE COMMISSIONER: Exhibit P-157.

15 MR. DAVID: Thank you. Exhibit
16 P-157.

17 EXHIBIT NO. P-157:

18 Cuurriculum vitae of James
19 Lockyer

20 THE COMMISSIONER: Thank you.

21 MR. DAVID: Mr. Lockyer, thank you
22 for providing such a detailed CV. I will just be
23 referring you to a few key extracts.

24 EXAMINATION

25 MR. DAVID: First of all, you are

1 a member of the Bar of Ontario since 1977?

2 MR. LOCKYER: Yes.

3 MR. DAVID: You graduated from an
4 LLB program from the University of Nottingham in
5 England?

6 MR. LOCKYER: Yes.

7 MR. DAVID: On the first page
8 of your CV we see a number of awards you have
9 received. You have an Honorary Doctorate of Laws
10 from Assumption University which was bestowed on
11 you in 2004.

12 MR. LOCKYER: Correct.

13 MR. DAVID: You are also the
14 recipient of the G. Arthur Martin Criminal Justice
15 Award from the Ontario Criminal Lawyers'
16 Association in 2004.

17 You also received from the
18 John Howard Society an award for distinguished
19 humanitarian service in February of this year,
20 and you are about to receive another Honorary
21 Doctorate of Laws from the Law Society of Upper
22 Canada this year.

23 On page 2 I just wish to highlight
24 to the Commissioner the fact that from the years
25 1974 to 1977 you were the Secretary of Amnesty

1 International, the Canadian Branch.

2 On page 3, that in 1993 and to
3 this day that you are a Director, and you were
4 Founding Director of the Association in Defence of
5 the Wrongly Convicted.

6 MR. LOCKYER: I think I was
7 Secretary of Amnesty for two years, not three.

8 MR. DAVID: All right. I bring
9 you to page 7 of your CV, and I note that in June
10 of 2003 you were speaker at a Foreign Affairs
11 Department Conference entitled "The 25th
12 Anniversary of the Transfer of Offenders Program"
13 in Ottawa.

14 MR. LOCKYER: Yes.

15 MR. DAVID: You had been invited
16 by the Department of Foreign Affairs to give this
17 conference?

18 MR. LOCKYER: Yes. To give the
19 conference, no. To be a speaker at.

20 MR. DAVID: To be a speaker, I'm
21 sorry.

22 MR. LOCKYER: Yes.

23 MR. DAVID: To be a speaker.

24 On page 8 we see that you have
25 been intimately involved in various cases in

1 Canada that concern wrongful conviction cases, and
2 I note the case of Guy Paul Morin and David
3 Milgaard as being perhaps the most renowned of
4 those cases.

5 I bring you to page 11 of your CV.
6 Perhaps you could provide us with some detail as
7 to these cases, because you have entitled this
8 category of client for which you have acted as
9 "Cases of Canadians Abroad Sentenced to Death for
10 whom I have Campaigned". I note the names of
11 Stanley Faulder, Nguyen Hiep, as well as Mrs. Tran
12 Cam, Mr. William Sampson. I believe on this list
13 should also be added the name of Ken Charron?

14 MR. LOCKYER: Ken Charron wasn't
15 sentenced to death. He was serving a 40-year
16 sentence in Missouri for rape.

17 MR. DAVID: Very briefly,
18 Mr. Lockyer, could you just describe your
19 involvement in each of those four cases?

20 MR. LOCKYER: Well, I first became
21 involved with the Consular Affairs Department
22 through the Faulder case. I was approached by his
23 lawyer, Sandra Babcock, at a conference in Chicago
24 in 1998. I hadn't been aware of his case at all
25 until then and she told me it was a man from

1 Alberta who had been on death row in Texas for
2 more than 20 years and would we help, our
3 organization.

4 The conference I was at was a
5 wrongful conviction conference in Chicago. So we
6 in fact agreed to do that immediately. That is
7 how I came to know Gar Pardy in particular, the
8 Head of Consular Affairs, and worked through him.
9 He was already on the case, had been long before I
10 was involved.

11 MR. DAVID: In your best estimate,
12 when would you have met Mr. Pardy for the first
13 time? I'm talking about years.

14 MR. LOCKYER: I would have met
15 him, I would think, in 2000. I probably met him
16 as a result of the Nguyen Tran case. I don't
17 think I met as such over Stanley Faulder's case.
18 We spent a lot of time on the phone together. Our
19 organization, in fact, sent three delegations to
20 Texas to try and save Mr. Faulder's -- or try to
21 play a role in saving his life. Let's not
22 exaggerate what we can do, especially in Texas.

23 In fact, one of our delegations
24 was a Bloc MP, Daniel Turp, who went with one of
25 our directors. They were there, in fact, when he

1 was executed.

2 So we tried to save Mr. Faulder --
3 or tried to be involved in saving his life insofar
4 as we could. We were unsuccessful.

5 The Nguyen Hiep, Tran Cam
6 cases, very sad cases of two ladies, one sentenced
7 to death and actually executed ultimately by
8 firing squad, and once sentenced to life. We
9 called them grandmother-mother. And we got quite
10 involved in that.

11 It was a difficult case because we
12 were always worried about publicity could do harm
13 to the case. The Vietnamese government might more
14 likely carry through the death penalty if there
15 was publicity in Canada. So we were working
16 behind the scenes as best we could.

17 Oddly, but interestingly enough,
18 with the Toronto Heroin Squad. There were two
19 officers of the Toronto Heroin Squad who got very
20 involved in the case and came with myself, Rubin
21 Carter and Diane Martin -- who died just late last
22 year -- to meet the Vietnamese Ambassador in
23 Ottawa. The five of us tried to convince him that
24 these two ladies were likely innocent because the
25 Toronto Heroin Squad had good reason to think they

1 were as well.

2 That is why we got involved
3 particularly in that case, as well as the death
4 sentence side of it as well.

5 The Sampson case, I met the
6 Ambassador to Saudi Arabia in Ottawa.

7 Gar Pardy would organize these
8 things. He would introduce us. He would brief me
9 on the cases and I would in turn brief others who
10 would go with me. He would introduce us both in
11 writing and verbally, and then we would debrief
12 him after any meeting we may have had with an
13 Ambassador or anything else we had done.

14 The Charron case was a case that I
15 took to Foreign Affairs, rather than they already
16 had it. He was in the 17th year of a 40-year --
17 am I talking too much?

18 MR. DAVID: No, it's fine.

19 --- Laughter / Rires

20 MR. LOCKYER: I'm sorry. He was
21 in the 17th year of a 40-year sentence for rape in
22 Missouri. Barry Scheck, who is a lawyer, one of
23 the people who runs the Innocence Project in New
24 York, called me in 2002 and asked me for help.

25 He told me about Mr. Charron. I

1 knew nothing about him. He was a Canadian who had
2 been in prison for all this time and for seven
3 years they had been trying to get exhibits
4 released for the purposes of post-conviction
5 DNA testing. It was a curtain that was known to
6 have semen on it and they wanted the curtain
7 released for DNA testing because Mr. Charron was
8 claiming innocence.

9 They had been through any
10 number of court processes and they always won in
11 court, but the State of Missouri always appealed,
12 and it had been going on for seven years and using
13 up resources on the part of the Innocence Project.
14 There were four or five other cases that were
15 following it in St. Louis. So it was an important
16 case in Missouri.

17 He asked me what we could do as an
18 organization. So we did two things. Primarily we
19 got a fair bit of media in Canada about it. We
20 got it on the CBC National as the second story,
21 which turned out to be not quite as good as we had
22 thought because the first story the night they did
23 was Jean Chrétien's resignation. So 28 minutes of
24 the half hour of news was Jean Chrétien. We got
25 the last two minutes.

1 MR. DAVID: We have suffered from
2 the same shadow, Mr. Lockyer --
3 --- Laughter / Rires

4 MR. DAVID: -- in terms of my
5 colleagues in Quebec.

6 MR. LOCKYER: That's right,
7 of course.

8 But I also called Mr. Pardy and
9 asked him for help, and what he did is was he got
10 the Canadian Consulate in Chicago involved, which
11 is apparently the consulate for which Missouri is
12 in its --

13 MR. DAVID: Jurisdiction?

14 MR. LOCKYER: -- jurisdiction,
15 right.

16 And the Consul General -- it may
17 be the wrong title, whatever, the top man,
18 whatever he is by title -- wrote to the Missouri
19 Attorney General a pretty strong letter saying:
20 We are writing on behalf of a Canadian citizen
21 and we think what is going on is unacceptable and
22 we think you should release the exhibits for DNA
23 testing.

24 About a month into this, I then
25 called the prosecutor, by the name of Jennifer

1 Joyce, to give her my position, and she said she
2 would call me back in a couple of weeks. She did
3 and she asked me if I would put my money where my
4 mouth was, to use her words, and I said yes. She
5 said, "All right, send us \$3,000 U.S. and we will
6 do the DNA testing." I said, "Fine, I will put
7 the cheque in the mail tomorrow." Then I put the
8 phone down and picked the phone up and called
9 Mr. Pardy and said "Send me \$3,000 U.S. to pay me
10 back", which they did, and unfortunately the DNA
11 testing established that Mr. Charron was where he
12 should be.

13 So it was a great success,
14 except for the end result was not, you know,
15 what I suppose we would have hoped for, but
16 that's what it was.

17 But that case perhaps showed
18 better than anything how that kind of cooperation
19 could achieve things. Barry Scheck and the
20 Innocence Project was tearing out their hair
21 because of this case, and other cases then
22 followed behind it in the same jurisdiction,
23 in Missouri.

24 MR. DAVID: In terms of perhaps
25 what the Commissioner would be interested in, it

1 clearly establishes that you had a good working
2 relationship with Mr. Pardy over a number of years
3 in the cases of various Canadians detained abroad?

4 MR. LOCKYER: Yes, I did. And to
5 a lesser extent with his department. I dealt much
6 more with him than officials in his department,
7 but from time to time I deal directly with
8 officials in his department as well.

9 MR. DAVID: So over these four or
10 five years where you have had direct collaboration
11 with Mr. Pardy in terms of phone communications
12 and meetings and just generally dealing with the
13 man, could you give us your assessment of how he
14 performs his duties as he is called upon to
15 deliver them for the Government of Canada?

16 MR. LOCKYER: I don't like to be
17 an advertisement for Gar Pardy, but I am a bit.
18 I'm glad he's not here.

19 --- Laughter / Rires

20 MR. LOCKYER: I mean, I think the
21 first thing is that I always felt that he was
22 quite -- felt quite personal about these cases.
23 He felt the emotions of the situations. I think
24 we cried over Madam Nguyen Hiep when she was
25 executed. We were both extraordinarily upset.

1 Likewise over Stanley Faulder.
2 We never alleged that Stanley Faulder didn't
3 commit the crime either, it was more -- you just
4 get to know these people, even though you don't
5 meet them, and you feel for them. And he had
6 that human empathy and that is such a good
7 starting point.

8 From there, he dealt with me as an
9 equal. He gave me a lot of information on the
10 quiet, so to speak, and trusted me as much as I
11 trusted him, and would respond to requests from me
12 overnight. We worked -- I think we worked very
13 well together.

14 I mean, Madam Nguyen was executed.
15 I don't think that was his fault, in fact I know
16 it wasn't.

17 The same with Stanley Faulder. I
18 mean, we tried, and he tried. Stanley Faulder
19 probably he put more work into than any other
20 cases actually. And funds, a lot of funds went
21 into his case from the Canadian government trying
22 to save his life.

23 MR. DAVID: So dedication to his
24 work is certainly one of his qualities?

25 MR. LOCKYER: Definitely, yes.

1 Yes, really.

2 MR. DAVID: Mr. Lockyer, I would
3 like to now bring you perhaps more directly to our
4 case, and that is the case of Mr. Arar.

5 MR. LOCKYER: Right.

6 MR. DAVID: I have had the
7 opportunity of meeting with you, and I understand
8 we can break down basically your involvement into
9 two different phases, two different time periods.

10 The first being perhaps
11 approximately in the month of July of 2003, and
12 then your involvement in the case in what I would
13 call Phase 2, and that is in August, where DFAIT
14 then reapproached you to ask you for your active
15 participation.

16 So if you could just tell us
17 about Phase 1, what occurred, what you did and
18 what you offered?

19 MR. LOCKYER: Well, I was working
20 with Mr. Pardy in the summer of that year, as I
21 recall. I think Mr. Sampson was still in jail in
22 Saudi Arabia, as I recall, so we were regularly
23 talking anyway. I was the front man, so to speak,
24 for aid work, our organization, in most of these
25 cases, not all of them, but most of them.

1 We were also working on another
2 case of a man who has always wanted his identity
3 kept out of the media who had been imprisoned in
4 Saudi Arabia and tortured. That had got out. It
5 was out by this time but we were working on that
6 case as well, and I raised the Arar case as being
7 just a natural part of the kind of work that we
8 were trying to do.

9 We were talking about what aid we
10 might be able to do. I wasn't sure there was a
11 whole lot we could do because Arar was already
12 very much in the media eye with a lot of support
13 in much of the media, so I thought I may be a bit
14 of a Johnny-come-lately who probably couldn't
15 provide much help of any sort. But I was
16 certainly prepared to talk to Mr. Pardy about the
17 kinds of things we could do, meet the Syrian
18 Ambassador, try and get visas to go to Syria, that
19 kind of thing, which we tried to do in the
20 Vietnamese case as well but they had refused us
21 visas.

22 We were in the middle of
23 discussing this, and then in August Mr. Pardy
24 suggested that perhaps I might be interested in
25 being an observer on behalf of DFAIT at Mr. Arar's

1 trial, if there were to be a trial.

2 MR. DAVID: So when you offered
3 AIDWC's -- your association's -- services to
4 assist in whatever way you could Mr. Pardy's
5 efforts and the Government of Canada's efforts to
6 bring Mr. Arar back to Canada, your knowledge of
7 the Arar fact line was based on media reporting?

8 MR. LOCKYER: Until I started
9 talking to Mr. Pardy. I had talked to Mr. Pardy
10 about his case in previous months, but I frankly
11 hadn't had the time really, or the resources, to
12 take on another case.

13 So it wasn't until July I started
14 saying, you know, we think we should try and do
15 something, if there is anything you think we can
16 do that is helpful.

17 MR. DAVID: I would like to orient
18 you to Mr. Pardy's personal notes. They are
19 extracts from his diary. That would be
20 Exhibit P-88.

21 MR. LOCKYER: Thank you.

22 MR. DAVID: If you go to tab 1,
23 page 31 you will see there is an entry. It is the
24 third box. It is on Saturday, August 16th.

25 MR. LOCKYER: Yes.

1 MR. DAVID: Where it says "Not
2 relevant," it is your name.

3 MR. LOCKYER: Okay.

4 MR. DAVID: So it was
5 simply removed for privacy concerns. It is
6 "Lockyer". So he is referring to a phone
7 conversation with you.

8 MR. LOCKYER: Yes.

9 MR. DAVID: With the following
10 annotations:

11 "Damascus

12 Most willing.

13 Winnipeg, Aug 25/03

14 Has (passport)."

15 Now, does that in any way
16 correspond to any memory that you may have of a
17 conversation with Mr. Pardy on this date?

18 MR. LOCKYER: Yes, it does. I
19 have just looked at my diary for August 25th. I
20 had to speak at a conference in Winnipeg that day.

21 Clearly I was saying, ideally I
22 don't go then, but if I had to I would have.

23 MR. DAVID: So is it essentially
24 on this phone call that Mr. Pardy seeks your
25 collaboration?

1 MR. LOCKYER: It would certainly
2 seem so, yes. I don't remember it being on a
3 Saturday, but it could well have been. We had
4 each other's home phone numbers.

5 MR. DAVID: What role was he
6 requesting of you?

7 MR. LOCKYER: To be an observer on
8 behalf of DFAIT at the trial of Mr. Arar, if and
9 when it took place. I do know at that time
10 Mr. Pardy was saying that rumours were rife that a
11 trial could take place very soon.

12 MR. DAVID: If we could now go to
13 the DFAIT documents, and if you could go to
14 tab 516. That would be in volume 6.

15 This is for the record,
16 Mr. Lockyer. You are not directly concerned in
17 these documents in the sense that they are not
18 addressed to you, but they do refer to the facts.

19 MR. LOCKYER: Could you tell me
20 again what number?

21 MR. DAVID: It would be tab 516.

22 I bring you to the third
23 paragraph, which says the following:

24 "The Embassy has now
25 learned..."

1 This is dated August 16th, so it
2 is the same date that Mr. Pardy and you spoke.

3 MR. LOCKYER: Indeed.

4 MR. DAVID:

5 "The Embassy has now learned
6 that developments have
7 recently taken place in this
8 case and has been informed by
9 competent Syrian authorities
10 that Maher Arar will face
11 trial before the Syrian civil
12 Court within one week. In
13 view of those developments
14 the Government of Canada
15 would wish to have the
16 presence of a Canadian
17 Official who would come from
18 Canada and whose presence
19 would be to act as observer
20 during the trial. It is also
21 the wish of Mrs. Monia
22 Mazigh, wife of Maher Arar,
23 to be present during the
24 trial. The Government of
25 Canada supports this request.

1 The Embassy is therefore
2 seeking the Foreign
3 Ministry's assistance for the
4 issuance of the necessary
5 Syrian visas and would be
6 grateful if it could so
7 instruct the Syrian Embassy
8 in Ottawa."

9 So clearly as of this date you
10 accepted also the request that was being made of
11 you by Mr. Pardy on behalf --

12 It refers here that the mandate
13 seems to be representing the Government of Canada,
14 as opposed to your reference to DFAIT.

15 What was your understanding of the
16 mandate of who you would be representing?

17 MR. LOCKYER: You know, frankly, I
18 didn't put my mind to it. It wasn't important to
19 me. I was an observer for government. That is
20 how I looked at it.

21 MR. DAVID: I'm sorry.

22 Again for the record I bring you
23 to tab 517. It is an entry for the very next day
24 and the second paragraph refers to the fact that:

25 "The Embassy has the honour

1 to inform the Ministry of
2 Foreign Affairs that the name
3 of the observer the Canadian
4 government wishes to attend
5 Mr. Maher Arar's trial is
6 James Lockyer."

7 So it is just a furtherance in
8 terms of official correspondence between the
9 Government of Syria and the Government of Canada?

10 MR. LOCKYER: Right.

11 MR. DAVID: On August 19th, again
12 for the record, you sent your visa application to
13 Mr. Pardy?

14 MR. LOCKYER: I did.

15 MR. DAVID: Okay. I bring you
16 now to tab 531, where the Department of Foreign
17 Affairs is making a formal written offer
18 concerning your involvement in this trip to Syria.
19 You are referred to as the official advisor to
20 DFAIT, or as an official advisor to DFAIT. You
21 will see that that is in the very first sentence.

22 MR. LOCKYER: Okay. This is the
23 letter I would have seen. Yes.

24 MR. DAVID: This is the letter
25 that you would have received. It is dated

1 August 25th.

2 MR. LOCKYER: Right.

3 MR. DAVID: Then, for the
4 record you go to the second page of that letter,
5 and on August 29th you have accepted the offer as
6 drafted in the letter, and this you signed on
7 August 29, 2003.

8 MR. LOCKYER: Right.

9 MR. DAVID: Just by way of
10 reminding you, Mr. Pardy retires and is replaced
11 by Mr. Konrad Sigurdson on August 31st.

12 MR. LOCKYER: That was also a part
13 of the reason for keeping this moving, I remember,
14 to do it before Mr. Pardy's retirement.

15 MR. DAVID: I bring you now to
16 tab 563 in the same volume, and that is an entry
17 for September 12, 2003. Again, you are not
18 directly involved but it is just to explain the
19 chain of events.

20 We see that Myra Pastyr-Lupul
21 is seeking a follow-up from Syria on whether they
22 are approving the observer status. You will see
23 that there is action to Damascus through the
24 Canadian Embassy. It is the very last paragraph,
25 wherein it is said:

1 "...would you ask if this
2 request has been considered
3 by the (Ministry of Foreign
4 Affairs) of Syria yet..."

5 MR. LOCKYER: I'm sorry, I'm not
6 with you. What tab are you in?

7 MR. DAVID: I'm sorry. Tab 563.

8 MR. LOCKYER: Yes.

9 MR. DAVID: It is the very last
10 paragraph. It says "Action DMCUS."

11 MR. LOCKYER: Yes.

12 "Kerry asked for an
13 update..."?

14 MR. DAVID: Yes. The second
15 sentence says:

16 "If possible, and when
17 appropriate, would you ask if
18 this request has been
19 considered by the (Ministry
20 of Foreign Affairs) (of
21 Syria) yet, as we would like
22 to prepare Mr. Lockyer for
23 this process, obtain his
24 visa, etc. Thanks."

25 So we see that the issue is still

1 live in September?

2 MR. LOCKYER: Mm-hmm.

3 MR. DAVID: I bring you now to
4 tab 566 for an entry on September 16th. Again,
5 the Department of Foreign Affairs in this document
6 is seeking your input on dealing with difficult
7 consular cases.

8 There are a series of messages
9 here, and I bring you to the very top message on
10 the first page of this tab, and it says the
11 following:

12 "On Sept. 16,
13 JPD/Sigurdson..."

14 So it is essentially
15 Mr. Sigurdson.

16 "...and I spoke with James
17 Lockyer by telephone about
18 this case. We advised that
19 while we do not have any new
20 information for him, we would
21 like to meet with him and
22 other interested persons in
23 the field of human rights
24 action to discuss the
25 limitations of Canadian

1 diplomacy in a case like this
2 one, and to propose solutions
3 for Canadian foreign policy
4 approaches to Consular cases
5 that do not fit into our
6 conventional services. Such
7 a meeting will take place in
8 late October."

9 Do you recall this approach from
10 Mr. Sigurdson in this regard?

11 MR. LOCKYER: I remember that the
12 phone call -- I think it may have been initiated
13 by me, but I do remember the phone call, yes. It
14 was sort of my first meeting or the first time I
15 talked to Mr. Sigurdson, so I wanted to try and
16 develop a rapport with him, if I could, that
17 matched the one I had with Mr. Pardy.

18 MR. DAVID: What did you
19 understand of this initiative from the Department
20 of Foreign Affairs in seeking expert advice?

21 MR. LOCKYER: Well, I don't want
22 to -- I'm not sure I call myself an expert, but I
23 was certainly -- you know, I would have loved to
24 have talked to them about how to deal with these
25 type of cases, yes, and had been doing that with

1 Mr. Pardy for several years by this time.

2 MR. DAVID: To your understanding,
3 was this an initiative from the Department of
4 Foreign Affairs or was it, again, something that
5 was being suggested by you?

6 MR. LOCKYER: Hmm. I don't
7 remember. I don't remember if it was me or them
8 who came up with the idea. They have written it
9 as if they did, and they may well have.

10 MR. DAVID: Okay.

11 MR. LOCKYER: I can't contradict
12 it, certainly.

13 MR. DAVID: I bring you now to an
14 entry for the next date, on September 17th, and
15 that would be tab 565.

16 MR. LOCKYER: I'm going backwards?

17 MR. DAVID: Yes.

18 MR. LOCKYER: Okay.

19 MR. DAVID: It is simply an
20 annotation that there is still no Syrian response
21 to the request --

22 MR. LOCKYER: Right.

23 MR. DAVID: -- for your
24 observer status.

25 Then we go to an entry or to

1 an event on October 2nd. That, Mr. Lockyer, I
2 remind you, is the date that Mr. Pardy's
3 retirement party occurred.

4 MR. LOCKYER: Yes.

5 MR. DAVID: So if you could just
6 tell us about the unfolding of events that day.

7 You came to Ottawa, I understand,
8 on October 2nd?

9 MR. LOCKYER: Mr. Pardy had -- I'm
10 not sure he had invited me to his retirement
11 party, the organizers had invited me to his
12 retirement party and indeed I was to speak at it,
13 and did. It was held in the Foreign Affairs
14 building.

15 I killed two birds with one
16 stone, so to speak, it was agreed that I would
17 meet with Mr. Sigurdson while I was there in
18 Ottawa before going down to the retirement party,
19 which I remember, I think, was in the basement of
20 the building. So I met with him.

21 I recall at least four other
22 people with him. I think it was some of -- I'm
23 not even sure if it was all of, I don't remember,
24 the people who worked the various sectors of the
25 world within the department. We talked and they

1 were basically asking me to do most of the
2 talking. I, in the process, was asking them
3 questions about Mr. Arar's case, where it was
4 going and giving them my views on what I thought
5 should be done that wasn't necessarily being done.

6 MR. DAVID: Could you share with
7 us what you suggested to the department?

8 MR. LOCKYER: Well, I certainly
9 knew from Mr. Pardy what the Canadian government
10 had done through various means. It had sent two
11 MPs over there to see him. I knew that the Prime
12 Minister had written, I believe two letters to, I
13 suppose his counterpart, the President of Syria.
14 I knew that a Senator had been over there -- is
15 that right -- as I recall.

16 MR. DAVID: That is right.

17 MR. LOCKYER: I knew that Minister
18 Graham had spoken to his counterpart at the U.N.
19 in New York. I recall knowing that as well.

20 I just felt that, you know, that
21 wasn't enough, that it just needed more. I felt
22 the same in the Vietnamese case. The Prime
23 Minister had written then as well to the President
24 of the Socialist Republic of Vietnam, but I just
25 felt that wasn't good enough. I just thought it

1 required much more effort from the top in these
2 cases, because you are much more likely to get the
3 attention of the authorities.

4 MR. DAVID: So essentially more
5 political involvement?

6 MR. LOCKYER: Especially because I
7 was hearing from Mr. Pardy, he was making it quite
8 clear to me that there wasn't unanimity on this
9 case, that there were real problems within the
10 Solicitor General's Office and the agencies that
11 he supervises, if that is the right word, who
12 didn't seem particularly keen on getting Mr. Arar
13 back to Canada.

14 MR. DAVID: So this was being
15 expressed to you by Mr. Pardy?

16 MR. LOCKYER: It was.

17 MR. DAVID: Not by Mr. Sigurdson?

18 MR. LOCKYER: No, definitely -- I
19 never developed that kind of rapport with
20 Mr. Sigurdson. Indeed, you are talking about my
21 first meeting with him, we are in the middle of
22 talking about. The first time I met him was that
23 day. Indeed, the only time I have ever met him
24 was that day.

25 MR. DAVID: Did you make any other

1 suggestions, Mr. Lockyer?

2 MR. LOCKYER: Well, I guess one
3 tends to focus on oneself.

4 I saw me getting to Syria for
5 the potential trial of Mr. Arar as being an
6 important development in the process. I wanted
7 them to push that a bit harder because I didn't
8 have a visa at this point. They hadn't obtained
9 it. They were taking on that task and they hadn't
10 obtained one.

11 MR. DAVID: That is right.

12 MR. LOCKYER: I was wondering if
13 it might help if I met the Ambassador to show I
14 didn't have horns, that kind of idea.

15 MR. DAVID: So this would have
16 been the third suggestion you would have made?

17 MR. LOCKYER: Yes.

18 MR. DAVID: Meeting the
19 Ambassador, you have testified already that you
20 had done so on other cases. Was it in that same
21 light that you were making that recommendation?

22 MR. LOCKYER: Well, I thought it
23 was a way of showing I didn't have horns and that
24 might help me get a visa through the Ambassador.
25 Certainly the meetings I had had with the

1 Vietnamese Ambassador and the Saudi Ambassador had
2 been very pleasant. I'm not sure "pleasant" is
3 the right word. The Vietnamese Ambassador wasn't
4 pleasant. He actually got quite tearful during
5 the interview for personal reasons, but I felt
6 they were use -- I left them feeling that they had
7 been good, put it that way.

8 I know there were four things and
9 I can't remember what the fourth thing is that I
10 talked about with him.

11 MR. DAVID: If I could maybe
12 prompt your memory?

13 MR. LOCKYER: Please.

14 THE COMMISSIONER: Go ahead, lead
15 the witness.

16 --- Laughter / Rires

17 MR. DAVID: It has to do with the
18 RCMP and media and leaks?

19 MR. LOCKYER: Oh, yes, yes.

20 Because there were these leaks
21 coming out through media that really were taking
22 the side of the RCMP and trying to present
23 Mr. Arar, at least from my perspective, as being
24 sort of an al-Qaeda individual. They were clearly
25 leaks for a purpose, to blacken his reputation and

1 his name, and I thought -- in the context of the
2 humanitarian situation Mr. Arar was in, I thought
3 the leaks and the media reports of the leaks were
4 outrageous, actually.

5 I mean, I thought -- my view is
6 that that kind of media, which places the life of
7 someone in danger, or the security of someone in
8 danger, is really quite irresponsible. That is my
9 personal view.

10 MR. DAVID: Was there any
11 acquiescence or response given to you by those
12 that were speaking to you in terms of your
13 suggestions?

14 MR. LOCKYER: It was a perfectly
15 pleasant meeting. Did I leave there feeling -- it
16 was difficult.

17 I didn't know Mr. Sigurdson. It
18 was hard to know how he was reacting to me. I
19 wasn't sure whether to be impressed or surprised
20 or thinking it odd that all the others were in
21 there, because that had never happened with
22 Mr. Pardy. When I met Mr. Pardy it was either
23 alone or with one or two of his people.

24 I thought they might be giving my
25 views an importance that my views didn't warrant,

1 to be perfectly honest with you. I thought it was
2 a bit odd that they had so many of them in there,
3 but that is just a thought.

4 MR. DAVID: Thereafter was the
5 party. That was a meeting that occurred before
6 Mr. Pardy's party?

7 MR. LOCKYER: Yes. Then I went
8 down and gave my little speech, and I met Joe
9 Clark for the first time in my life.

10 --- Laughter / Rires

11 MR. DAVID: After the party,
12 Mr. Lockyer, I understand that you met Monia
13 Mazigh. If you could just describe that meeting
14 and the circumstances in which it occurred?

15 MR. LOCKYER: Well, I had been
16 speaking to her on the phone by this time. I was
17 a little cautious about it because of this sort of
18 new role I suddenly had of being an observer,
19 where you want to try and appear impartial.
20 Although, frankly, I didn't feel impartial in my
21 bones, but I wanted to present myself as that as
22 best I could, which is why I agreed with Mr. Pardy
23 that AIDWC would immediately cease to be doing
24 anything active in Mr. Arar's case once he asked
25 me to be the observer.

1 But I wanted to meet Monia, if
2 only because I thought maybe I could make her feel
3 a little bit better, that there was someone else
4 who was -- because I knew there had been others
5 way before me who were helping her. I just
6 thought another face might make her feel better.

7 So I went to her home, her
8 apartment, where she lived, her and her mother. I
9 spent about an hour there. I thought she was a
10 fabulous lady.

11 I was encouraging her to come to
12 Syria with me, if we could get visas, and she was
13 very apprehensive of going there. She was really
14 quite scared, quite scared of going there, and
15 wanted me to get an assurance through Syria that
16 nothing would happen to her. I said I thought
17 that was pretty unlikely we would get it. I said
18 in my own view, for what it was worth, I thought
19 she would be quite safe there, especially if we
20 kept together, but I couldn't guarantee anything,
21 and we sort of left it in the open on that.

22 MR. DAVID: Her fears were what?

23 MR. LOCKYER: Well, I could
24 imagine that the Syrian government would not have
25 been very keen on some of the things she had been

1 saying in the media about them, and the
2 allegations that she had been making on behalf of
3 her husband. Syria is not a country that
4 necessarily sits down and chats these things out
5 with you nicely.

6 MR. DAVID: We come next,
7 Mr. Lockyer, to the date, the infamous date of
8 October 5, 2003, and Myra Pastyr-Lupul gives you a
9 phone call?

10 MR. LOCKYER: That was a great
11 day, yes.

12 MR. DAVID: If you could tell us
13 about that phone call?

14 MR. LOCKYER: Well, she phoned me
15 at home. I would put it around 5 o'clock. I
16 can't remember if it was already out in the media
17 by this time or not. I got a feeling it had come
18 out in the media earlier in the day. I had been
19 out all day, but I do know the first I found out
20 about it was the phone call. I think it was in
21 this phone call that she related to me essentially
22 what she understood had happened.

23 Do you want me to go through that?

24 MR. DAVID: Yes, please.

25 MR. LOCKYER: That Maher had

1 been -- Mr. Arar had had a trial in the police
2 station, that it had lasted for all of half an
3 hour, that at the conclusion of the trial the
4 Ambassador, or the consul -- I think the
5 Ambassador, had been called in to the police
6 station. He had been come and he had been told
7 that Mr. Arar was free to go. The Ambassador had
8 taken him straight to the Embassy.

9 I have a distinct memory of her
10 telling me that he met the Ambassador's wife. I,
11 for some reason, just remember that.

12 They got him out of the country on
13 the next plane. And not a word was said to anyone
14 until he was out of Syrian airspace on the way to
15 Paris, as I recall.

16 MR. DAVID: So did you understand
17 that Myra Pastyr-Lupul was calling you before
18 Monia was advised that Maher had been released?

19 MR. LOCKYER: No, I don't think
20 so, but I don't know. I would be surprised if
21 she -- I would hope not. I would hope Monia was
22 first on the list. I'm sure she was. I can't
23 believe I would be advised before her.

24 MR. DAVID: If we could file a
25 letter that Myra Pastyr-Lupul wrote you on

1 October 15th. That would be P-158.

2 EXHIBIT NO. P-158: Letter
3 dated October 15 to
4 Mr. Lockyer from Myra
5 Pastyr-Lupul

6 MR. DAVID: It is more for the
7 record than anything else, but simply in this
8 letter Myra -- and I begin at the second
9 sentence -- says:

10 "We will be sure to let you
11 know about the..."

12 First of all, she is returning to
13 you, basically, your passport and pictures.

14 MR. LOCKYER: Yes.

15 MR. DAVID: And says that:

16 "We will be sure to let you
17 know about the consultative
18 process on consular policy as
19 it unfolds. I believe that
20 Konrad Sigurdson will be
21 looking for your views on how
22 we can do things better in
23 the future. I will advise
24 when a date is set for such a
25 meeting. In the meantime, it

1 was a real pleasure to meet
2 with you in Ottawa on
3 October 2 and we really
4 appreciated your insight
5 about the Arar and Sampson
6 cases." (As read)

7 Was the idea of the consultative
8 policy consultation ever pursued?

9 MR. LOCKYER: No. That, in
10 effect, I think is my last contact with Consular
11 Affairs since that date. I don't think I have had
12 any dealings with them at all.

13 I have certainly had dealings --
14 certainly spoke with Mr. Pardy since then,
15 several -- many times. We have met and talked
16 about cases, but not with Consular Affairs.

17 MR. DAVID: The next date I
18 would like to bring you to is October 22nd,
19 wherein you came to Ottawa for a meeting and you
20 met with Mr. Arar, you met with his wife, Alex
21 Neve, Kerry Pither, and I believe that there was a
22 phone participation of Mr. Waldman?

23 MR. LOCKYER: Yes. Yes, I
24 remember that.

25 MR. DAVID: If you could just

1 describe that meeting and what was discussed?

2 MR. LOCKYER: Well, at this point
3 in time, obviously it was public that Mr. Arar was
4 back, but he hadn't gone public as to the
5 treatment that he had received. So he related to
6 us the treatment that he had received, that he had
7 been tortured.

8 The main purpose of the meeting
9 was discussing how and when he should go public
10 with what had happened to him. He was obviously
11 even then, I mean, three weeks had passed since
12 his release, but clearly there was some mental
13 frailty to him still and he was quite anxious
14 about going public.

15 But, as well, we had this
16 additional concern of the Canadians that he had
17 left behind in Syria, Mr. Almalki being the one
18 that we were most concerned about because he had
19 met him in prison. Mr. Almalki -- am I
20 pronouncing it right?

21 MR. DAVID: Yes, that is correct.

22 MR. LOCKYER: Mr. Almalki, Maher
23 made it clear to us, had received much worse
24 torture than he had. He emphasised that, "In a
25 sense I was lucky compared to what they did to

1 him." I distinctly remember Maher talking about
2 how Almalki got the tire treatment, which Maher
3 had not got. I remember the tire treatment.

4 And we were worried, as you always
5 are in these cases, that if you go public you may
6 end up doing more harm than good. I mean, I think
7 you just witnessed it in the Indonesian situation
8 with the Australian lady, where you would have to
9 question whether what happened in Australia helped
10 her cause in Indonesia. I'm not saying it did and
11 I'm not saying it didn't, it is a concern. You
12 just don't know in these cases.

13 Ultimately we decided that since
14 it was Maher's -- the publicity around Mr. Arar's
15 case had been enormous and he was out, and there
16 had been virtually no publicity around any of the
17 other cases and they were still in, there seemed a
18 certain logic to the idea that maybe if we start
19 publicizing their cases they will get out, too.

20 It was very comforting to have
21 Alex Neve there, who would have been the expert in
22 the room on these kinds of issues as the -- I'm
23 not sure whether he was the Chair of Amnesty, the
24 head of Amnesty in Canada in any event.

25 I had never met Alex before. The

1 first time I actually met him was that day.

2 So that was the focus of the
3 discussion, and if indeed he was going to go
4 public. I think by the end of the meeting we
5 decided he would. Who was going to draft his
6 statement? Who was going to essentially debrief
7 him -- I knew Alex and Kerry Pither had already
8 started doing that, taking him through his
9 experiences in Syria right from when he had been
10 apprehended in New York -- and the respective
11 roles of each of us.

12 So that is really what
13 we discussed.

14 MR. DAVID: You have mentioned
15 that Mr. Arar did provide you with a briefing,
16 with a narrative of what he experienced.

17 Did you take any notes of
18 that narrative?

19 MR. LOCKYER: I did not.

20 MR. DAVID: Can you, to the best
21 of your ability, provide us with your recollection
22 of what Mr. Arar informed you of in terms of what
23 he had experienced in --

24 MR. LOCKYER: I will do my best.
25 He described his cell as a grave.

1 I remember the emphasis on the "A". He described
2 his cell as being essentially underground. I had
3 an image of the door -- I have the image in my
4 head now of the door being sort of at the top of
5 the cell, the entranceway. He described beatings;
6 being shackled, manacled to chairs; being
7 threatened; being absolutely terrified; and being
8 prepared, essentially, to sign whatever they put
9 in front of him. That the treatment was at its
10 worse in the first few weeks, but it continued
11 right through for many months until about some two
12 or three months before he -- maybe a month before
13 October 5th -- is that the day he got out --
14 October 5th, yes.

15 MR. DAVID: That is right.

16 MR. LOCKYER: He was transferred
17 from the building he was in, which was the
18 security building -- I forget.

19 MR. DAVID: Palestine Branch?

20 MR. LOCKYER: Thank you -- to
21 a regular prison where there wasn't mistreatment,
22 short of ghastly prison conditions. But leaving
23 that aside, there was no actual torture going on.
24 That is where he met Almalki who described his
25 experiences to him. And then the unexpected

1 release.

2 MR. DAVID: Mr. Lockyer, you are
3 knowledgeable of Mr. Arar's press conference on
4 November 4, 2003?

5 MR. LOCKYER: I was not at it,
6 but, yes.

7 MR. DAVID: You are aware of
8 the narrative that Mr. Arar provided at this
9 occasion?

10 MR. LOCKYER: At the press
11 conference?

12 MR. DAVID: At the press
13 conference.

14 MR. LOCKYER: To an extent. I
15 didn't watch it. I was -- I forget. I think I
16 was in Winnipeg at the time working on a case.

17 MR. DAVID: Have you ever taken
18 knowledge of the transcripts of the press
19 conference, of the details that Mr. Arar provided
20 about his mistreatment in Syria?

21 MR. LOCKYER: I may have read
22 them. I certainly read about them in the paper.

23 MR. DAVID: To your mind, were
24 there any inconsistencies or contradictions
25 between the narrative he provided you at the

1 October 22nd meeting and his narrative on
2 November 4th?

3 MR. LOCKYER: Definitely not.

4 MR. DAVID: How would you
5 describe your relationship with Mr. Arar from
6 October 22nd on?

7 Did you consider yourself to be
8 retained by him? Were you acting for him? In
9 other words, were you his lawyer?

10 MR. LOCKYER: I didn't really see
11 it that way. He might have seen it that way; I
12 didn't really. I sort of felt I was sort of
13 wearing my AIDWC hat.

14 My view of these kinds of -- I
15 shouldn't say these kinds of cases, because
16 Mr. Arar's case is a one-and-only, really, for me.
17 But cases which I get involved with on behalf of
18 AIDWC at a general level, I try and keep the
19 lawyer side of it out as much as possible, because
20 the public is suspicious of lawyers and lawyers
21 are generally seen, in a criminal context, as
22 being obstructionist rather than helpful.

23 So I have always tried to play
24 down my lawyer's hat as much as I can and keep
25 on my AIDWC hat. That is how I saw what I was

1 doing for Mr. Arar, because that is what I was
2 doing for him.

3 I dropped out pretty quickly.
4 Lorne Waldman wasn't sure if he could make the
5 press conference. When he decided that he could,
6 I felt quite comfortable not attending it then.
7 I thought two lawyers at the press conference
8 would be certainly one too many lawyers, put it
9 that way.

10 --- Laughter / Rires

11 MR. LOCKYER: So I said that I
12 don't think it is a good idea if I go. Besides
13 which, I was right in the middle of a case of a
14 chap in Winnipeg at the time who had been in jail
15 for 12 years who I was trying to get released.

16 Then I just sort of dropped out of
17 it because I felt that Mr. Arar had great support
18 and didn't -- I wasn't really needed. I felt that
19 there was -- that is how I felt.

20 It wasn't that I didn't continue
21 to support him right through to this minute, but I
22 didn't feel I was needed. I felt my resources
23 could be better used elsewhere.

24 I don't know if I'm getting that
25 across quite right.

1 THE COMMISSIONER: I think
2 I understand.

3 MR. DAVID: I bring you now,
4 Mr. Lockyer, to October 29th. There was a meeting
5 on that date with the Minister of Foreign Affairs,
6 Mr. Bill Graham.

7 MR. LOCKYER: Yes.

8 MR. DAVID: If you wish, I can
9 refer you to tab 634. That would be in volume 7.

10 MR. LOCKYER: This is before the
11 press conference, of course.

12 MR. DAVID: This is before
13 the press conference. That was on the 4th
14 of November.

15 MR. LOCKYER: So I am very much
16 involved, still, at this point?

17 MR. DAVID: Yes, you are.

18 THE COMMISSIONER: Tab 634?

19 MR. DAVID: Tab 634. This is just
20 a reference, Mr. Lockyer, to the actual meeting
21 that you had with Mr. Graham on this date.

22 MR. LOCKYER: Yes.

23 MR. DAVID: We have certainly
24 heard much testimony about this meeting from
25 people directly involved in it, and we understand

1 that there were in fact two meetings. There was a
2 private meeting wherein Monia and Maher met with
3 Mr. Graham and his political attache, Mr. Fry, and
4 thereafter followed a more general meeting, a more
5 well attended meeting, and you were present at
6 this meeting?

7 MR. LOCKYER: I was. This is
8 another time I saw Mr. Sigurdson. So this is the
9 other time I saw him. I forgot that.

10 MR. DAVID: I also understand that
11 you were one of the principal speakers, or you
12 certainly took the floor at this meeting.

13 MR. LOCKYER: I did.

14 MR. DAVID: I would like you to
15 tell the Commissioner what that meeting was about
16 and what was discussed.

17 First of all, if I can
18 interrupt you, who do you recall being attendance
19 at this meeting?

20 MR. LOCKYER: Well, it is sort of
21 written here. I can cheat.

22 I certainly remember from our
23 side, so to speak, or Mr. Arar's side, there was
24 myself, Alex Neve, and Kerry Pither, who did some
25 fabulous work for Mr. Arar. I remember Mr. Fry,

1 who I had not met before, the Minister, who I had
2 not met before, Mr. Sigurdson, who I had.

3 If I can cheat?

4 MR. DAVID: That's fine.

5 That's fine.

6 MR. LOCKYER: There was at least
7 one or two others there.

8 THE COMMISSIONER: Mr. McNee, it
9 says was there.

10 MR. LOCKYER: Yes.

11 THE COMMISSIONER: He is an ADM.
12 We have heard evidence.

13 MR. DAVID: That's right.

14 MR. LOCKYER: Yes, okay. I
15 remember him.

16 I thought there was a lady there.
17 I have a feeling they are missing someone, but I
18 could be wrong. And of course Monia was there,
19 obviously.

20 MR. DAVID: The meeting lasted how
21 long, approximately?

22 MR. LOCKYER: I would say with the
23 Minister, for, at a guess, 30 to 40 minutes, and
24 then the Minister left and we stayed with Mr. Fry.
25 I can't remember if Mr. Sigurdson, Mr. McNee,

1 remained or not. I think they did, but I'm not
2 sure. But certainly Mr. Fry did, and Mr. Fry was
3 the person that was doing all the talking from the
4 governmental side.

5 I thought the meeting went
6 extremely well. I found the Minister -- I thought
7 he presented himself completely appropriately with
8 Mr. Arar. I was very impressed. I hadn't met him
9 before. He did all the talking. He didn't rely
10 on his aides when he was there, Minister Graham.

11 Alex Neve and I did the talking --
12 I don't actually think Mr. Arar or Monia said
13 anything while we were there. Alex Neve and I
14 both were really pushing as hard as we could for
15 a public inquiry. That was our goal really for
16 that meeting, besides the simple human side of
17 the meeting.

18 MR. DAVID: And the reaction that
19 you got to this?

20 MR. LOCKYER: From Minister
21 Graham? In a nutshell, I would say that the
22 Minister tried to communicate -- or did
23 communicate to us that he thought a public inquiry
24 was a grand idea but, unfortunately, there was a
25 Cabinet he had to deal with.

1 He may have been saying that to
2 make myself look good in our eyes, but I have no
3 reason to conclude that. He seemed very genuine
4 when he was talking. I got the clear impression
5 that he was on-side with us.

6 MR. DAVID: After the meeting you
7 had a tête-à-tête with Mr. Fry?

8 MR. LOCKYER: As a group, yes,
9 we did.

10 MR. DAVID: What was discussed at
11 this point?

12 MR. LOCKYER: The public inquiry
13 aspect. We continued working on it. We talked
14 about the leaks. We talked about that with the
15 Minister as well, because they were still coming
16 fast and furious, trying to blacken Mr. Arar's
17 reputation.

18 We, I'm almost certain, did
19 talk about future potential cases. We definitely
20 talked about Almalki, both with the Minister and
21 Mr. Fry. I forgot that. And I talked about
22 Almalki primarily. I just saw Almalki as really,
23 really important. At that meeting I saw him
24 perhaps as more important than a public inquiry in
25 a sense.

1 THE COMMISSIONER: Okay. Go
2 ahead.

3 --- Technical difficulties /
4 Difficultés techniques

5 MR. LOCKYER: Do you want me to
6 carry on?

7 THE COMMISSIONER: Yes, carry on.
8 At the meeting we were told that
9 just that day Syria had advised, I guess Foreign
10 Affairs, that they would allow a member of the
11 Embassy in Damascus to visit Almalki, which would
12 be the first visit.

13 MR. DAVID: Essentially consular
14 access?

15 MR. LOCKYER: Yes. As I recall it
16 was Mr. Sigurdson who told us that. It may have
17 been Mr. Fry, I don't actually remember which one
18 as I think about it more.

19 I left there feeling pretty good.
20 I thought these people were really -- that they
21 had really got the message on Almalki, as if they
22 didn't already have it hopefully. Of course there
23 were two others we were talking about as well,
24 there was a chap in Egypt, El Maati.

25 MR. DAVID: That's right.

1 MR. LOCKYER: Yes, okay. Then
2 there was -- is it Al Bushi?

3 MR. DAVID: Yes.

4 MR. LOCKYER: Who I think is still
5 in jail in Syria, isn't he? He still in Syria
6 anyways.

7 MR. DAVID: Yes, he is.

8 MR. LOCKYER: Al Bushi, which
9 is perhaps a case we should think about getting
10 back into again, our organization. But that is
11 by the by.

12 So we talked about them as well,
13 but Almalki was the real one we were troubled by
14 because of what Maher had told us, at least in
15 conversation with him.

16 MR. DAVID: After this, I guess we
17 could call it the third meeting, where after
18 Mr. Graham had left and Mr. Fry stayed on and you
19 carried on with Mr. Fry, you had a private
20 conversation with Mr. Fry?

21 MR. LOCKYER: Yes, I did, in
22 the car park.

23 MR. DAVID: If you could just
24 tell the Commissioner the circumstances and what
25 was said?

1 MR. LOCKYER: Yes. I mean, let me
2 say at the outset, under normal circumstances I
3 would never have revealed this conversation. I
4 mean, part of what you do in these cases is you
5 respect confidentiality completely. Any number of
6 confidential things I have been told in these
7 cases I have always kept. It is just because of
8 where we are now I felt I had to talk about this.

9 We went down to the underground
10 car park where Mr. Neve's vehicle was -- he has
11 an RV as I recall -- and we went down to the car
12 park and we were just chatting with Mr. Fry. He
13 had come down with us. I don't think anyone else
14 had, any other official, not that I recall.
15 and Mr. Fry was very -- I liked him a lot. I
16 thought he was very -- he seemed very genuine
17 as well.

18 He took me, in a manner of
19 speaking, to one side -- of the rear bumper of
20 Mr. Neve's vehicle I remember, when the others
21 were distracted and talking amongst themselves --
22 and told me that CSIS had been to Syria around
23 Christmas of the previous year on Mr. Arar's case.
24 He obviously told it to me in confidence I hasten
25 to add, because one of the things we talked about

1 were the leaks upstairs, if you remember, and I
2 just digested the information and that was it.

3 MR. DAVID: Was that the extent of
4 his revelation to you?

5 MR. LOCKYER: Yes. Mr. Pardy had
6 hinted at it to me in the past, but had not ever
7 directly come out with it.

8 MR. DAVID: What did you
9 understand was the purpose of giving you this
10 information?

11 MR. LOCKYER: One concerned person
12 to another, no more and no less.

13 MR. DAVID: I would like to file
14 a letter from you, Mr. Lockyer, to the Solicitor
15 General of Canada, Mr. Easter, dated November 3rd.

16 That would be P-159? Thank you.

17 EXHIBIT NO. P-159: Letter
18 from Mr. Lockyer to
19 Mr. Easter the Solicitor
20 General of Canada dated
21 November 3

22 MR. DAVID: Essentially in this
23 letter you are militating in favour of a public
24 inquiry being held?

25 MR. LOCKYER: I certainly am, yes.

1 That was one of my assignments at the -- I don't
2 know whether it was at the May -- sorry, the
3 October 22nd meeting or shortly thereafter, but it
4 was one of my assignments.

5 MR. DAVID: The second thing or
6 the second issue that you raise in this letter are
7 the leaks?

8 MR. LOCKYER: Yes.

9 MR. DAVID: You are requesting
10 that an investigation be undertaken to identify
11 the sources of the leaks?

12 MR. LOCKYER: Yes. Now I had done
13 this -- I had spoken first to the Executive
14 Assistant, Mr. Morrow. I think that was, as I
15 recall it, at Mr. Fry's suggestion. He had given
16 me the name and number.

17 MR. DAVID: The Executive
18 Assistant of Mr. Easter.

19 MR. LOCKYER: Correct. Because
20 I had never dealt with his office before in any
21 capacity.

22 Sorry? What did you ask me,
23 sorry?

24 MR. DAVID: Simply those were
25 the two basic issues that you are raising in

1 this letter?

2 MR. LOCKYER: Yes, they were.

3 MR. DAVID: I would like to file
4 now your notes that are dated November 5, 2003 and
5 November 6, 2003. There are two separate entries.

6 That would be P-160.

7 EXHIBIT NO. P-160: Notes of
8 Mr. Lockyer dated November 5,
9 2003 and November 6, 2003

10 MR. DAVID: Your handwriting is
11 somewhat challenging, so maybe if you want to --

12 MR. LOCKYER: Can I go to
13 the original?

14 MR. DAVID: Sure.

15 MR. LOCKYER: The blacked-out
16 portions are phone numbers.

17 MR. DAVID: That's fine.

18 MR. LOCKYER: I'm allowed to
19 say that?

20 So you want me to read it
21 literally.

22 MR. DAVID: Yes, if you could read
23 it and then just describe to us what is going on.

24 MR. LOCKYER: November 5, 2003, I
25 am having a phone call with the RCMP. I speak to

1 Inspector Warren Coons who is with the RCMP.

2 MR. DAVID: He is calling you or
3 you are calling him?

4 MR. LOCKYER: I'm sorry. Let me
5 just read it.

6 MR. DAVID: Yes. Fine.

7 --- Pause

8 MR. LOCKYER: Okay. I'm not
9 quite -- can you help me -- the first paragraph, I
10 don't quite understand its context.

11 "Edelson was meeting
12 Cabana..."

13 Who is an RCMP officer, right, who
14 was in charge of "this investigation". Those are
15 presumed to be Coons' words.

16 "Edelson asked if he wanted
17 to speak to Arar"

18 Meaning if the RCMP wanted to
19 speak to Arar:

20 "Edelson was told to call
21 Corcoran"

22 Who is also with the RCMP.

23 "If Arar wants to meet to
24 discuss beyond what he said
25 yesterday..."

1 Presumably the press conference
2 was November 4th.

3 Is that right?

4 MR. DAVID: That is correct.

5 MR. LOCKYER: Okay.

6 "You", meaning Coons:

7 "...would like to talk to
8 him, but he is not looking to
9 do so at this time."

10 Coons is obviously telling me that
11 Corcoran oversees the investigation. Coons is on
12 the National Security Enforcement Team, and so he
13 is calling -- crikey, you know, I'm not quite sure
14 if I'm speaking to Corcoran or Coons. It looks
15 like I'm talking to Coons, but I'm not sure.

16 So he is -- you know what? Okay.
17 I understand now what is happening.

18 I had put a call in -- I think
19 this is what happened. I put a call in to Cabana
20 because of what Mr. Edelson had told me as to
21 whom he had been dealing with, and then Coons
22 returns the call. So in fact this is a return
23 call from Coons to me. I had left a message, in
24 other words, on November 5th. I think then that
25 makes sense.

1 "This investigation", meaning
2 Coons' words, "his association," meaning
3 Mr. Arar's association:

4 "...with Mr. Almalki is of
5 interest to the authorities,
6 but we have no information
7 we want from Mr. Arar at this
8 time."

9 Then on November 6, 2003,
10 Inspector Coons called me again and said:

11 "We have no documents with
12 Arar's signature on them or
13 otherwise."

14 Now, perhaps to give you a
15 background to this, one of the roles that was
16 assigned me was to try to get as much information,
17 and especially documentary information, out of the
18 RCMP as I could, and to use carrots, if you will,
19 in trying to get that information out of them.

20 The obvious carrot I had up my
21 sleeve in those conversations was Mr. Arar might
22 talk to them if they cooperated with us. So that
23 is what I was dangling in front of them.

24 I'm not entirely sure I wasn't
25 being a bit manipulative. I have a sense

1 Mr. Arar would not have spoken to them
2 whatever they supplied, but that was the purpose
3 of the exercise.

4 We were particularly interested,
5 because of the leaks, in getting copies of any of
6 the so-called confessions that the leaks are
7 saying Mr. Arar signed. That is what we
8 particularly wanted to see, because obviously
9 given what had happened to Mr. Arar in Syria you
10 never knew what might come out of there.

11 MR. DAVID: Did you have any
12 involvement in further follow-up to these
13 conversations with Mr. Coons?

14 MR. LOCKYER: Yes, I probably did.
15 In fact, I think I did speak to them again, and
16 ultimately it is clear that they were playing
17 probably not a dissimilar game to the game I was
18 playing, and the bottom line was we probably
19 weren't going to get anywhere. So it sort of
20 ceased until Mr. Garvie came along in December.
21 So I think we were dancing with each other.

22 MR. DAVID: I bring you now also
23 to November 6th to tab 673. That would be in
24 volume 8.

25 I don't want to deal with this

1 very extensively. It is simply that I bring to
2 your attention, Mr. Lockyer, that you were
3 providing a CBC Newsworld interview --

4 MR. LOCKYER: Yes.

5 MR. DAVID: -- with a show called
6 "Your Call". Basically, this is more or less a
7 transcript of your interventions on this show.
8 You were the invited speaker and people were
9 calling in.

10 The message that you are
11 delivering essentially is to be found on the first
12 page, and it is the before-last paragraph. You
13 are seeking, again"

14 '...an omnibus public
15 inquiry..."

16 MR. LOCKYER: Yes.

17 MR. DAVID:

18 "...that looks in to the
19 individual cases, how they
20 were dealt with, Mr. Arar,
21 Mr. Sampson, and others, but
22 also looks at the broader
23 issues, that's what public
24 inquiries are for as much as
25 anything, is to look in to

1 the broader systemic issues
2 as to what foreign affairs
3 should be doing in these
4 kinds of cases, in future
5 cases and indeed in present
6 cases."

7 So essentially the message you are
8 delivering is the message you have delivered all
9 throughout, and that is, let's get a public
10 inquiry going in this matter.

11 MR. LOCKYER: Yes.

12 MR. DAVID: The only thing I wish
13 to highlight is the fact that there is an
14 individual by the name of Yousef Almalki that
15 called in to the show?

16 MR. LOCKYER: Yes, a brother.

17 MR. DAVID: A brother of Abdullah
18 Almalki, who was in Syria --

19 MR. LOCKYER: Yes.

20 MR. DAVID: -- and detained in
21 Syria at this time, as you referred to.

22 MR. LOCKYER: Yes.

23 MR. DAVID: There was an anecdote
24 in terms of your informing Mr. Yousef Almalki that
25 consular access was granted for his brother that

1 he was not aware of?

2 MR. LOCKYER: That Syria had
3 advised that they would grant it. Not that they
4 had got in, but that they were to get in.

5 MR. DAVID: That they were to get
6 in. Basically you are just relaying to Mr. Yousef
7 Almalki what you had been informed of at the
8 Minister's meeting?

9 MR. LOCKYER: It was quite
10 startling, the whole thing. I was actually
11 standing on University Avenue in the sun as I
12 talked on my cell phone for this interview. I
13 remember it quite well. You hear traffic if you
14 listen to the original.

15 MR. DAVID: Any other comments
16 about this interview?

17 MR. LOCKYER: No. I think
18 you should know, I never really did anything on
19 Mr. Almalki's case, perhaps to my shame, but I
20 didn't do anything beyond, you know, what you
21 have heard.

22 MR. DAVID: I would like to file
23 now a document that is dated November 17th. That
24 would be P-161. It is a reference document and I
25 would like you to explain what was going on in

1 reference to the contents.

2 EXHIBIT NO. P-161: Reference
3 document November 17th

4 MR. DAVID: By way of background,
5 there is a background document, or a background
6 paragraph, and it says the following:

7 "(Somebody) advised on the
8 14th of November, 2003 that
9 James Lockyer, one of Arar's
10 lawyers, had indicated to him
11 that he was trying to reach
12 (someone) in CSIS and to
13 check with somebody or
14 something on the 17th of
15 November, determined that he
16 had received a call from
17 Lockyer on or about the 7th
18 of November, at which time
19 latter requested of him a
20 name that he could contact at
21 CSIS to discuss his client
22 and possible CRIS, (CSIS
23 being CRIS), interview."

24 (As read)

25 Do you have a recollection of the

1 chain of events, and if you can just describe what
2 was going on?

3 MR. LOCKYER: Well, I had now
4 heard from Mr. Fry that CSIS had been to Syria by
5 this time. I'm busy reading media reports where
6 all sorts of claims are being made by CSIS about
7 what -- or by sources -- about what Mr. Arar is
8 supposed to have told the authorities in Syria,
9 and what the authorities in Syria have determined.
10 So I'm trying to get to the documents, supposedly
11 if such documents exist, that CSIS might have in
12 its possession, given they are the ones who, I
13 understand, went to Syria.

14 So this is part of my attempt to
15 get from them anything I could get from them.

16 MR. DAVID: In the end, did you
17 ever speak with anybody at CSIS and was there ever
18 an interview with CSIS?

19 MR. LOCKYER: No, I never -- I
20 gave up. I realized that they were wise to me,
21 just as I was wise to them. I was shown this this
22 morning for the first time and it speaks for
23 itself. They basically see me as someone to get
24 anything out of if they can, if they can, but give
25 nothing to, and I guess in a way I was doing the

1 same thing from my side.

2 MR. DAVID: I would like to file
3 now a document dated December 11th. It is a
4 letter from Mr. Easter in response to your letter
5 that we have reviewed already. That would be
6 P-162.

7 EXHIBIT NO. P-162: Letter
8 dated December 11 from
9 Mr. Easter

10 MR. DAVID: Essentially, I
11 don't want to spend much time on this letter. It
12 is simply a response that your request for a
13 meeting with the Minister is inappropriate at this
14 time, given the fact that there is both a CPC,
15 that is a Public Complaints Commission Inquiry
16 going on with regard to the RCMP, as well as SIRC,
17 the Security Intelligence Review Committee was
18 also carrying on an investigation, so in the
19 Minister's opinion, it was not appropriate for him
20 to meet you at this time.

21 MR. LOCKYER: Yes, it was no
22 surprise. Mr. Morrow had already told me that.
23 My phone call with Mr. Morrow had been quite an
24 aggressive call in terms of Mr. Morrow's reaction
25 to me, so this letter didn't surprise me.

1 MR. DAVID: All right. In
2 December I understand that Chief Superintendent
3 Brian Garvie of the RCMP called, contacted you?

4 MR. LOCKYER: He came to my
5 office, actually, in Toronto.

6 MR. DAVID: Can you tell us
7 what happened?

8 MR. LOCKYER: I just want to
9 give you a date. I don't know if I diarized it.
10 I think it may have been December 15th, but I'm
11 not sure.

12 MR. DAVID: Perhaps, Mr. Lockyer,
13 I will just file at this point a document from
14 Mr. Garvie that is dated December 15, 2003. That
15 would be a letter that is going from Mr. Garvie to
16 you.

17 MR. LOCKYER: I think he gave me
18 that letter at the meeting. It wasn't like I got
19 it in the mail.

20 MR. DAVID: Exhibit P-163.

21 EXHIBIT NO. P-163: Letter
22 dated December 15, 2003 from
23 Mr. Garvie to Mr. Lockyer

24 MR. DAVID: The more
25 interesting part of this letter is the second

1 page, wherein he says:

2 "I would appreciate your
3 assistance..."

4 This is halfway down.

5 "...your assistance in
6 facilitating a meeting with
7 Mr. Maher Arar".

8 MR. LOCKYER: That was his purpose
9 for coming to my office.

10 MR. DAVID: Then you have an
11 enumeration and an agreement on his part that
12 these are the questions that would be the subject
13 matter of the interview and that it would not go
14 beyond these questions, these identified
15 questions?

16 MR. LOCKYER: Yes, we had had
17 phone calls before this, obviously, and he came up
18 to meet me.

19 At this point my involvement in
20 Mr. Arar's case was really -- this was a like
21 leftover, you might say. I had really dropped out
22 by this time and this was just a leftover that I
23 took on. It seemed like a good idea for me to
24 keep the contact.

25 I guess what he says speaks for

1 itself. We talked for a good 45 minutes.
2 Mr. Garvie was very pleasant, very persuasive and
3 I was impressed by him. I liked him.

4 At that point in time it was
5 certainly Mr. Pardy's view -- because I was still
6 talking to him regularly -- that the likelihood of
7 the government calling this inquiry was about
8 zero. This was before the search warrant stuff
9 happened. I respected Mr. Pardy's opinion and
10 tended to think that it may well be, like it or
11 not, that this Public Complaints Commission
12 process may be the only process where he could
13 conceivably ever get any satisfaction.

14 It was felt within most circles
15 that the lady, whose name I have forgotten, who
16 ran the --

17 MR. DAVID: Ms Heafey, Shirley
18 Heafey?

19 MR. LOCKYER: Yes -- the
20 Complaints Commission was a fine person. That
21 seemed to be everyone's opinion.

22 So that is why I met this chap.
23 Again, I said to him, look, if you start giving us
24 some stuff, if you give us just at a bare minimum
25 the supposed statements that it is being claimed

1 Mr. Arar signed in Syria, then you are much more
2 likely to get Mr. Arar to agree to talk to you.

3 So I'm still playing that card, so
4 to speak. Ultimately, nothing came of it.

5 MR. DAVID: One last thing,
6 Mr. Lockyer, and it has to do with your
7 discussions with Mr. Pardy. I just want to note,
8 in any of your discussions with Mr. Pardy, did you
9 ever discuss the issue of torture or of abuse of
10 Mr. Arar, or the potential for such whilst --

11 MR. LOCKYER: I'm sorry, I lost
12 you. Could you do it again?

13 MR. DAVID: Sure. I'm just asking
14 you if in any of your discussions with Mr. Pardy
15 throughout your involvement concerning the Arar
16 case, did you ever have any discussions with
17 Mr. Pardy concerning abuse or potential abuse or
18 torture or issues of torture in Syria as they
19 could involve or implicate Mr. Arar?

20 MR. LOCKYER: Every time we
21 talked, yes.

22 MR. DAVID: So would you say,
23 then, from the very beginning of your
24 conversations with Mr. Pardy about Mr. Arar, that
25 he was live and you were live to the issue of

1 possible abuse?

2 MR. LOCKYER: Neither of us had
3 any doubt that Maher Arar was being tortured in
4 Syria. Neither of us.

5 MR. DAVID: Thank you. Those are
6 my questions.

7 THE COMMISSIONER: Thank you,
8 Mr. David.

9 Ms Edwardh? Do you know how long
10 you will be? I'm just looking at the schedule.

11 MS EDWARDH: I would expect,
12 Mr. Commissioner, to be 35 to 40 minutes.

13 THE COMMISSIONER: Ms McIsaac,
14 do you know how long at this stage how long you
15 will be.

16 MS McISAAC: Ten minutes.

17 THE COMMISSIONER: Would you like
18 to take a break or would you like to start now.

19 MS EDWARDH: I am quite content to
20 start if Mr. David would assist me with his
21 podium, because ours seems to have taken a walk
22 somewhere.

23 MR. DAVID: I will do that
24 right now.

25 THE COMMISSIONER: You will let me

1 know if you need a break?

2 MR. LOCKYER: I don't know if
3 Mr. David is -- I don't know if he ever got this
4 letter, which is a summary of my meeting with
5 Mr. Garvie. It may have been thought to have been
6 privileged at the time.

7 MR. DAVID: We don't have it.

8 THE COMMISSIONER: Why don't you
9 take that, if you can provide a copy. You and you
10 can always introduce it in re-examination.

11 We will let Ms Edwardh go ahead.

12 MR. DAVID: Yes.

13 EXAMINATION

14 MS EDWARDH: Mr. Lockyer, just to
15 close off an area of questioning that you have
16 just left, Mr. David referred you to your
17 communications and correspondence with Mr. Garvie.

18 But I take it, sir, that around
19 this time, Mr. Waldman began acting for Mr. Arar
20 as well, and that ultimately you tossed the ball
21 to him to deal with the final decision about
22 cooperation with Mr. Garvie?

23 MR. LOCKYER: Oh, he had taken the
24 ball long before Garvie, several weeks before. I
25 would say Garvie was really a remnant of my

1 involvement. I was really out of it by then.

2 MS EDWARDH: All right. Do you
3 recall discussing with him any final decision
4 about cooperation with Mr. Garvie, or was that
5 something that ultimately was left with
6 Mr. Waldman?

7 MR. LOCKYER: I left that
8 decision -- well, the decision was Mr. Arar's,
9 obviously, but I left that with Mr. Waldman.
10 Indeed the letter I have just passed over is
11 addressed to Mr. Waldman, I believe.

12 MS EDWARDH: That's helpful.

13 MR. LOCKYER: Yes. Telling him
14 about the meeting and suggesting how he might go
15 from there.

16 MS EDWARDH: It does make some
17 sense if Mr. David -- I have not seen the letter.

18 THE COMMISSIONER: We will get
19 copies made. There will be a break soon.

20 MS EDWARDH: Okay, fine.

21 MR. DAVID: The only issue that
22 existed -- I'm informed that we did have the
23 letter. The only issue was the issue of
24 solicitor-client privilege and that is why we
25 didn't file it. Given the record as it stands we

1 have absolutely no problem --

2 THE COMMISSIONER: What we can
3 do is at the break make copies and circulate it
4 to everybody.

5 MS EDWARDH: I want to deal with a
6 number of issues and also the evolution of your
7 role, if I could, as an observer, and what you
8 understand an observer to be.

9 I take it that once mid-August
10 comes around you are turning your mind -- and
11 perhaps with the assistance of Mr. Gar Pardy --
12 with what are the possible conditions of both
13 confinement and/or trials that could take place in
14 Syria. Are you given any specific information by
15 Mr. Pardy, or anyone else in the department after
16 his departure, to prepare you for the
17 circumstances you might encounter?

18 MR. LOCKYER: No. I mean, the
19 problem was that they didn't even know whether
20 Mr. Arar was charged with anything and, if so,
21 what, and when the trial would be, and where it
22 would be and whether it would be in public or not.
23 There was no -- so it was all very sort of -- it
24 was a bit iffy at that point.

25 MS EDWARDH: Moving forward in

1 time, if I could, towards the latter part of
2 August, I want to know whether at any time you
3 became aware that the embassy in Damascus produced
4 its own human rights report that was similar -- I
5 think one can say this -- to the kinds of reports
6 that are commonly provided by the Department of
7 State, the Country Reports, the Department of
8 State in the U.S.?

9 MR. LOCKYER: Do you mean the
10 embassy, the Canadian Embassy?

11 MS EDWARDH: The Canadian Embassy
12 in Damascus produces a Human Rights Report, and
13 were you given --

14 MR. LOCKYER: On Syria?

15 MS EDWARDH: Yes. Were you ever
16 informed about that --

17 MR. LOCKYER: I would like to see
18 it. I don't think so, but if I could see it I
19 might be able to answer.

20 MS EDWARDH: I'm sorry, I don't
21 have a copy to give to you.

22 MR. LOCKYER: All right.

23 MS EDWARDH: But I take it you
24 have reviewed your file and there is nothing that
25 looks like a human rights report produced by the

1 Government of Canada in respect of any information
2 you may have needed about Syria?

3 MR. LOCKYER: I think I can
4 probably say I definitely never saw it, just
5 because of what I have been reading in the media
6 about the embassy's views of what was going on in
7 Syria. If it in any way reflected those views, I
8 would never have forgotten what it said. I would
9 have remembered it very well.

10 MS EDWARDH: Well, I don't
11 know that I can put forward any specific views,
12 but I take it, Mr. Lockyer, you, as a person who
13 accepted the task of being an observer, were
14 aware of the human rights record of the Government
15 of Syria?

16 MR. LOCKYER: Sure. It was hard
17 not to be. I mean, definitely.

18 MS EDWARDH: You were aware
19 specifically, were you not, that the Military
20 Intelligence wing of the Government of Syria had a
21 particularly difficult and bad reputation in the
22 world of human rights, and also that it was known
23 to use torture?

24 MR. LOCKYER: I might have said it
25 was known to always use torture. But I wouldn't

1 want to be arrested by the Syrian police, let's
2 put it that way.

3 MS EDWARDH: I don't want to speak
4 in euphemisms, because when we say it isn't a good
5 reputation I want to understand clearly that in
6 the timeframe that you were contacted you were
7 aware that there was a reputation for the use of
8 torture in extracting information from detainees?

9 MR. LOCKYER: I certainly was. I
10 had known for years and years and years.

11 MS EDWARDH: We have a copy of a
12 report done by Amnesty International in this time
13 period -- if you would like to see it, I can show
14 it to you -- but one of the things it talks about
15 is that there is a tendency to use torture or very
16 aggressive interrogation techniques at the
17 beginning of any period of detention in order to
18 obtain information from a detainee?

19 MR. LOCKYER: It is always true.
20 It is true wherever torture is used.

21 MS EDWARDH: Now, I want, then, to
22 establish -- while I understand that there were --

23 MR. LOCKYER: As a part of State
24 policy, I should say.

25 MS EDWARDH: Certainly what you,

1 sir, have identified is that you understood Syria
2 to be a State in which torture was used as a
3 matter of State policy, not just as an offside
4 unusual piece of behaviour by a police officer or
5 someone in intelligence?

6 MR. LOCKYER: Correct.

7 MS EDWARDH: I want then to turn
8 to a couple of other issues and ask whether or not
9 during any of the period you were waiting -- once
10 Mr. Pardy leaves, any of the time period you were
11 waiting to potentially be tossed on to an airplane
12 and head off to Syria, if you could get a visa --
13 you were ever briefed about the potential
14 allegations that Mr. Arar may face if he did go to
15 trial in Syria?

16 MR. LOCKYER: Well, certainly in
17 discussions with Mr. Pardy I got some idea of what
18 was being alleged, and of course from media, too.

19 MS EDWARDH: Right.

20 MR. LOCKYER: But in September, I
21 guess is really what you are talking about.
22 Things are pending --

23 MS EDWARDH: Well, yes. I'm
24 particularly interested in September.

25 MR. LOCKYER: Because the last

1 two weeks of Mr. Pardy's tenure were presumably
2 pretty busy, he didn't have a whole lot of time to
3 deal with me.

4 No, I can't say I did. I didn't
5 get any particular information, other than that
6 they didn't have information. I mean, that is
7 really what I kept hearing, they say he hadn't
8 been charged with anything, as far as they knew,
9 or if they had, they didn't know what it was.

10 It always struck me as
11 extraordinary, that the Government of Canada
12 couldn't get the Government of Syria to give them
13 that information.

14 MS EDWARDH: Now before I turn to
15 the specifics of what was known and not known in
16 the role of observer, I want to flip for a moment,
17 if I could, to another side of the coin, and it is
18 consular services and what you know to have been
19 available in other cases.

20 I want, for just a moment, to turn
21 your mind back to the case of Stan Faulder. Would
22 you agree with me, Mr. Lockyer, that one of the
23 things that you learned about consular services in
24 death penalty cases was that the division saw
25 itself as having a significant role in providing

1 information to defence counsel so that they might
2 assist a person who was facing the death penalty,
3 and indeed that was the position they took in the
4 amicus brief in the U.S. Supreme Court in the
5 Faulder case?

6 MR. LOCKYER: I couldn't speak for
7 the government, I can only speak, really, for
8 Mr. Pardy. He did not like the death penalty. So
9 the answer is he would do -- whatever his group
10 could do, he would do when someone was facing the
11 death penalty.

12 MS EDWARDH: Do you recall
13 specifically, though, the position of the
14 government being that the U.S. had violated the
15 Vienna Convention and the Government of Canada was
16 deprived the right of providing important and
17 useful information to defence counsel in the State
18 of Texas that might have resulted in the death
19 penalty not being imposed?

20 MR. LOCKYER: Yes, because
21 Faulder hadn't known for 15 years about the
22 Vienna Convention.

23 MS EDWARDH: And indeed there was
24 evidence said to come from Alberta that could have
25 been provided at an earlier occasion when the

1 death penalty had not yet been imposed?

2 MR. LOCKYER: So consular affairs,
3 Mr. Pardy got the funding to file an amicus brief
4 in the U.S. Supreme Court on the issue.

5 MS EDWARDH: But his vision of
6 consular affairs included providing information
7 from Canada that could assist somebody?

8 MR. LOCKYER: Definitely.

9 MS EDWARDH: Now, I want to turn
10 to the next case. Maybe perhaps you can only
11 speak to Mr. Pardy's vision, but I want to turn to
12 the case of Madam Nguyen. Of course, you have
13 described her and her daughter --

14 MR. LOCKYER: Her mother.

15 MS EDWARDH: Her mother as
16 being two people who I gather were charged with
17 exporting heroin from --

18 MR. LOCKYER: From Hanoi.

19 MS EDWARDH: From Hanoi, and were
20 tried and convicted in Hanoi?

21 MR. LOCKYER: They were.

22 MS EDWARDH: And Madam Nguyen was
23 sentenced to death?

24 MR. LOCKYER: Yes, and her mother
25 was sentenced to life in prison.

1 MS EDWARDH: Do you recall whether
2 it was Mr. Pardy who made the approach to
3 Metropolitan Toronto Police Services, the Heroin
4 Division, or was it the family, or was it someone
5 in AIDWC who tried to marry up the delivery of
6 consular services with the police department?

7 MR. LOCKYER: By the time I came
8 to know of the case it was a good year into it, if
9 not more. I think she was sentenced to death in
10 1999, and I got involved in 2000-2001. The
11 Toronto Heroin Squad were already in the thick of
12 it by then, indeed had already been to Vietnam by
13 the time I got involved in the case.

14 MS EDWARDH: And it was your
15 understanding, was it not, that it was Mr. Pardy
16 who had tried to marry the information flowing
17 from the Metropolitan Toronto Police Services'
18 Heroin Squad with the delivery of consular
19 services in Vietnam?

20 MR. LOCKYER: Oh, he was in the
21 thick of it, yes, if that is what you mean.

22 MS EDWARDH: I gather it was his
23 view, as expressed in that case, that policing
24 agencies should provide information that would
25 assist an accused or a convicted person either

1 resist conviction or resist the death penalty, and
2 that is what he was doing in her case?

3 MR. LOCKYER: Yes, but I hasten to
4 add I don't think the police would normally have
5 got involved in something like that except they,
6 as a result of investigations they had conducted
7 in Toronto and Peel Region, particularly the use
8 of wiretaps, they came to believe that it was, to
9 use their way of looking at it -- I would have
10 taken it further than they did, but they thought
11 it was quite conceivable, I thought it was quite
12 likely -- they thought it was quite conceivable
13 that what Madam Nguyen and Madam Tran had told the
14 Vietnamese police on arrest was true, namely that
15 they had no idea that they were carrying heroin in
16 some paintings.

17 Indeed, interestingly enough in
18 that case, through Mr. Pardy I obtained the
19 statements that the two of them had given to the
20 Vietnamese police and other material that had come
21 out of Vietnam, including the judgment of the
22 Court of Appeal that had turned down their appeal.

23 MS EDWARDH: Right. Now, when you
24 say that the police would usually not be involved,
25 that is in part a conclusion you draw, is it not,

1 Mr. Lockyer, from the fact that investigations and
2 trials are not often international in scope?

3 MR. LOCKYER: That's right.

4 MS EDWARDH: Right. I want to ask
5 you some questions about the Arar case.

6 We understand now that it is on
7 the public record that Mr. Arar provided one, if
8 not more, statements, and that one statement was
9 brought back by the Ambassador in November 2002,
10 about November 4th, given to the RCMP and CSIS,
11 and it was a statement in which they drew
12 conclusions that Mr. Arar had admitted to being in
13 Afghanistan in 1993.

14 Now we have heard evidence as well
15 that there may have been another statement that
16 was in the hands of CSIS in late November of 2002,
17 and it is unclear whether the Mounties got it then
18 or at a later date.

19 MR. LOCKYER: Mm-hmm.

20 MS EDWARDH: In any event, I would
21 like to ask the following questions: In your role
22 as an observer, would you agree with me that one
23 of the critical issues an observer would address
24 is whether the tribunal, constituted as a trial
25 court, would permit any evidence of a statement or

1 confession to be challenged by the accused person,
2 would be an important consideration of fairness?

3 MR. LOCKYER: Obviously, yes.

4 MS EDWARDH: I don't mean to ask
5 stupid questions, Mr. Lockyer, but we are doing
6 this for other purposes.

7 MR. LOCKYER: I understand.

8 MS EDWARDH: So being able to
9 challenge an admission or confession is
10 essential to meet the international standards of
11 a fair trial?

12 MR. LOCKYER: Mm-hmm. Yes.

13 MS EDWARDH: Now, as an observer,
14 or someone preparing to go to Syria, did anybody
15 ever tell you, or give you any information, or
16 indicate that Syrian counsel who had been retained
17 was being provided with the statements made by
18 Mr. Arar while he was in detention in the hands of
19 the Syrian Military Intelligence?

20 Were you aware of them? Were they
21 given to you? Or did you know that they were
22 given to the defence counsel?

23 MR. LOCKYER: I never had reason
24 to believe that they were in Canada, so obviously
25 I didn't get them.

1 MS EDWARDH: No one told you they
2 were in Canada?

3 MR. LOCKYER: No one told me they
4 were in Canada, or that they existed in Canada.
5 I'm quite certain that the chap, whose name I
6 forget, the lawyer in Syria, got nothing. He
7 wasn't even allowed to see his own client so...

8 MS EDWARDH: But there is two ways
9 we have to look at the nothing. He may have got
10 nothing from the Syrians, and I was going to take
11 you there, but I don't need to other than to put
12 these propositions.

13 There is nothing in our record
14 that discloses that the Government of Canada ever
15 knew the precise charge.

16 MR. LOCKYER: Right.

17 MS EDWARDH: There is nothing to
18 indicate that Mr. Arar's defence lawyer ever saw
19 him at any time prior to his appearance in the
20 trial court. Nothing to indicate --

21 MR. LOCKYER: Or at it. He wasn't
22 at it.

23 MS EDWARDH: That is right, he
24 wasn't at it as well.

25 Nothing to indicate that anyone

1 got access to the file which would apparently
2 disclose evidence of what the allegation was.

3 So this was a whole thing that
4 happened in a complete vacuum from the perspective
5 of information and counsel and disclosure.

6 But assuming that there was to
7 be a real trial, or any kind of trial, as an
8 observer, you will agree with me that if there was
9 evidence of a statement, or evidence of innocence,
10 in the hands of the government, you would fully
11 expect that to have been handed over to defence
12 counsel, even in anticipation of a trial?

13 MR. LOCKYER: Of course.

14 MS EDWARDH: So I'm going to put
15 to you the following fact and ask you to direct
16 your mind to whether you think this is the kind of
17 fact that must, in fact, have been disclosed to
18 defence counsel in Syria.

19 Assume that the RCMP attended in
20 Afghanistan in the summer of 2002, and interviewed
21 a person who had knowledge of the camp in which
22 Mr. Arar was alleged to been in in 1993, and in
23 the course of that interview, having been shown a
24 photograph of Mr. Arar, could not identify him as
25 having been present.

1 Is that the kind of evidence of
2 innocence, or pointing to innocence, that you
3 would expect to be handed to defence counsel?

4 MR. LOCKYER: Yes, assuming one
5 of the allegations is that Mr. Arar was there
6 in 2003.

7 MS EDWARDH: Of course.

8 MR. LOCKYER: Sorry, 1993.

9 MS EDWARDH: Yes, 1993.

10 MR. LOCKYER: Whichever it is.

11 MS EDWARDH: If that forms any
12 part of the allegation?

13 MR. LOCKYER: Right.

14 MS EDWARDH: Indeed what we do
15 know, Mr. Lockyer, is one of the allegations that
16 continues throughout the year that Mr. Arar is in
17 Syria relates to his possible involvement in a
18 training camp in 1993. So given that that is out
19 there, I take it you are unequivocal that that
20 information should have been put in the hands of
21 Syrian defence counsel.

22 MR. LOCKYER: Yes, I'm sure it
23 should have been put in my hands too, given the
24 role I was to play.

25 MS EDWARDH: Now I want to talk

1 about an observer. I'm going to put to you a
2 series of propositions and see if you agree with
3 me.

4 As an observer, it would be
5 your obligation, would it not, to ensure that,
6 number one, you saw and had access to the trial
7 proceedings?

8 MR. LOCKYER: Yes.

9 MS EDWARDH: Number two, you would
10 have had access, hopefully, to the place of
11 detention of the accused person so as to see the
12 condition of their confinement during the trial?

13 MR. LOCKYER: And to talk to them
14 too, yes.

15 MS EDWARDH: Well, I was going to
16 get to that.

17 You would have wanted then
18 to speak to the accused person and defence
19 counsel to ensure that they had access to one
20 another in order to consult before the trial and
21 during the trial?

22 MR. LOCKYER: Definitely.

23 MS EDWARDH: You would have wanted
24 to speak to defence counsel to ensure that they
25 understood the specifics of the charge?

1 MR. LOCKYER: Obviously, yes.

2 MS EDWARDH: You would have wanted
3 to determine whether defence counsel had access to
4 the evidence underlying the charge?

5 MR. LOCKYER: Yes. I have been an
6 observer once at a trial.

7 MS EDWARDH: Yes?

8 MR. LOCKYER: So we had gone
9 through all of this.

10 MS EDWARDH: Where was that?

11 MR. LOCKYER: It was in British
12 Columbia, actually, New Westminster, B.C., the
13 extradition proceedings involving Leonard
14 Pelletier. I was an observer for Amnesty
15 International in 1975, thereabouts.

16 MS EDWARDH: So I should let
17 you, then, continue the list. I am trying to
18 give to the Commissioner a sense of the categories
19 and matters that a trained observer would want to
20 look at.

21 So we have just gone through:
22 does the defence counsel have disclosure of
23 information to know what the charge is and to be
24 able to meet it.

25 Fair enough?

1 MR. LOCKYER: Mm-hmm.

2 MS EDWARDH: You are nodding and I
3 take it that is a yes?

4 MR. LOCKYER: Yes. But the
5 one thing that I had got from Foreign Affairs
6 was they had given me documents that related the
7 constitutional/legal/judicial process in Syria
8 at sort of a very broad level, sort of a 25-page
9 summary of Syrian law, you might say. I did
10 have that.

11 MS EDWARDH: But you didn't know
12 what the charge was.

13 MR. LOCKYER: No, I didn't.

14 MS EDWARDH: Or how that framework
15 could play out?

16 MR. LOCKYER: Well, I
17 understand they didn't know, so it was hard for
18 them to tell me that.

19 MS EDWARDH: I'm not faulting
20 them, I am just trying to establish as an observer
21 what you were armed with.

22 Would you have expected or hoped,
23 as an observer, to meet with the prosecutor?

24 MR. LOCKYER: Yes.

25 MS EDWARDH: The purpose of

1 meeting with the prosecutor would be what?

2 MR. LOCKYER: More than anything
3 probably, in a Syrian context, to tell him how the
4 process was outrageous and unacceptable.

5 MS EDWARDH: Would you do that --

6 MR. LOCKYER: Because it would
7 have been, I'm sure.

8 MS EDWARDH: Well, we are going
9 to come to what the process was leading up to
10 Mr. Arar's release, but I'm assuming that you
11 would have, at least, started the conversation
12 by wanting to see what the prosecutor's position
13 was, if it was before the trial commenced?

14 MR. LOCKYER: Of course.

15 MS EDWARDH: You answered that
16 "Of course."

17 MR. LOCKYER: Yes.

18 MS EDWARDH: Now, it is a
19 troubling issue, I think, that the Commissioner
20 has to struggle with, in this case. I was going
21 to take you through all these tabs, but I think it
22 is unnecessary.

23 We see that at no time is there
24 even a minimum effort made by the Government of
25 Syria to inform Mr. Arar or his counsel of the

1 substance of the allegations, to provide
2 disclosure, to ensure that the court will be open,
3 to give counsel the file, and this is all despite
4 considerable efforts on the part of the department
5 to encourage that this process be transparent and
6 have materials available.

7 I want you to reflect on a fact
8 for us, Mr. Lockyer: The Minister made numerous
9 public calls that Mr. Arar either be brought home
10 or be permitted to stand his trial.

11 MR. LOCKYER: Mm-hmm.

12 MS EDWARDH: I would like you to
13 just reflect, if I could, on the decision that was
14 made by the Department of Foreign Affairs to issue
15 such a call for Mr. Arar to stand his trial in
16 Syria. I mean, given what was known and what we
17 see eventually happened, I wonder if you have any
18 observation about the wisdom of that call?

19 MS McISAAC: Excuse me, sir. My
20 recollection is that the Minister qualified the
21 kind of trial he wanted Mr. Arar to have, and was
22 quite clear on that, and I think that should be
23 fairly put to the witness.

24 MS EDWARDH: Yes, I think he
25 called for an open and fair trial.

1 THE COMMISSIONER: Yes. That is
2 what you are referring to, Ms McIsaac?

3 MS McISAAC: Yes.

4 MS EDWARDH: I don't mean to
5 suggest he didn't say that he would like to have
6 an open and fair trial. The difficulty, of
7 course, is to comprehend whether there ever is one
8 in the Supreme Security Court of Syria?

9 MR. LOCKYER: I doubt it.

10 But I remember actually discussing
11 this very issue with Mr. Pardy, and it was
12 Mr. Pardy's view that it was advisable to make
13 that as one of the demands of Canada, if only
14 because it would bring the case out of the unknown
15 into the known.

16 The biggest problem with
17 Mr. Arar's case was that it was in this -- it was
18 an unknown. It was like this man had all but
19 disappeared. I know he was getting the occasional
20 consular visit, but beyond that he, to all intents
21 and purposes, disappeared off the face of the
22 earth, and the way of giving him an identity and
23 an existence back would be to at least have a
24 trial, with some kind of certainty that a trial,
25 however unfair it might be, some kind of certainty

1 that a trial might produce.

2 MS EDWARDH: One of the
3 allegations against Mr. Arar during the course
4 of the year that was identified to the Government
5 of Canada by the Syrians was that he was either
6 associated with or connected to the Moslem
7 Brotherhood.

8 MR. LOCKYER: Right.

9 MS EDWARDH: That is a death
10 penalty offence.

11 MR. LOCKYER: Okay.

12 MS EDWARDH: And, of course,
13 bringing to an end the black hole status of
14 Mr. Arar is of marginal benefit if it is to place
15 him in the hands of a tribunal that is going to
16 convict him and then sentence him to death.

17 Your comment?

18 MR. LOCKYER: Well, I mean, it is
19 a terrible conundrum, because at the end of the
20 day whether or not Mr. Arar is going to be either
21 sentenced to death or executed is at the whim of
22 the Syrian authorities. I must say, I feel that
23 the demand for a trial was not such a bad idea,
24 even in those circumstances, just because things
25 had to be brought to a head.

1 My vision, and indeed
2 Mr. Pardy's vision of Mr. Arar's situation, is
3 that he was in a dungeon and being mistreated,
4 tortured, you know, likely as we spoke on the
5 phone, and something, anything that would bring
6 that to some kind of conclusion would be better
7 than what he was facing at that moment, given that
8 if he was going to be executed the Syrians would
9 do it anyway.

10 MS EDWARDH: Well, you have
11 identified that in your conversations with others
12 one of the issues was there needed to be more
13 high-level representations.

14 MR. LOCKYER: For sure.

15 MS EDWARDH: What is wrong,
16 Mr. Lockyer, with a simple position, which is:
17 Send him home. Let him come back to Canada.
18 There are no impediments to his return. He will
19 be welcome. His family is here. Why call for
20 him, if you think about it, to stand trial in a
21 tribunal with a fixed result, with a death penalty
22 looking at him?

23 MR. LOCKYER: I understand. Let
24 me answer it this way. I have answered you so far
25 in the context of what the Canadian government was

1 doing, which was occasional requests, months
2 apart, by one form or another, to try and help
3 Mr. Arar.

4 Not all of them perhaps, as it
5 turned out, but some of them designed to help
6 Mr. Arar.

7 If the Canadian government had
8 been much more proactive, as I think they should
9 have been and should be in many of these cases,
10 not necessarily at a public level but certainly at
11 a diplomatic/Ministerial/Prime Ministerial level,
12 then I think I would agree with you that the
13 demand should have been, "Give him back to us.
14 Give him back to us. Give him back to us."

15 But in the context in which the
16 occasional interventions that they were having, I
17 think that the dual approach may have made more
18 sense in that context, if you understand me.

19 MS EDWARDH: Well, we will agree
20 to disagree.

21 MR. LOCKYER: One or the other.

22 The point is, I think they
23 should have been making demands far more powerful
24 than they were, and the demand should have been
25 "Give him back."

1 MS EDWARDH: Now I want to turn to
2 just a few more points, if I could?

3 We have reviewed your overtures to
4 the RCMP and CSIS with respect to obtaining some
5 information from them.

6 Without disclosing the secret
7 techniques of a criminal defence counsel, I take
8 it we can agree, sir, that you were not at that
9 time committed in any way, or did you have
10 instructions from Mr. Arar, that he would sit for
11 an interview with either agency?

12 MR. LOCKYER: I did not.

13 MS EDWARDH: With respect to your
14 recounting of Mr. Arar's description of what had
15 happened to him in Syria, you will agree that,
16 having no notes, your recollection of what he said
17 and what happened to him remain as strong
18 impressions in your mind, but you wouldn't want us
19 to rely on each detail to compare it with his
20 version now to see if there is an inconsistency?

21 MR. LOCKYER: No. I gave my
22 impressions, yes. Yes.

23 MS EDWARDH: Now --

24 MR. LOCKYER: Well, the grave
25 wasn't an impression. That is a distinct memory.

1 MS EDWARDH: Well, we have heard
2 about it since.

3 I want to rely a little bit on
4 your experience -- and if my friend has any
5 objection she might make it now -- as someone who
6 probably has spent more time than anyone in the
7 country looking at the causes of wrongful
8 conviction, and I would like to have some brief
9 comments from you, if I could, Mr. Lockyer, about
10 racial profiling and tunnel vision.

11 Could the witness please be given
12 Exhibit P-85, volume 5?

13 In particular, I would like you to
14 turn to tab 23, page 3 of the document, and it is
15 a criminal intelligence brief, and the date of it
16 is September 18, 2001.

17 This is about a discussion, "Law
18 Enforcement Strategies and Requirements to Combat
19 Terrorism", and I would like to take you to the
20 paragraph entitled "The second phase."

21 "The second phase is to
22 develop a long-term strategy
23 to deal with future potential
24 attacks. This longer-term
25 strategy will have to take

1 into account the `type of
2 adversary' we are up against.
3 By all accounts the hijackers
4 of the four planes were men
5 who had lived in the United
6 States for some time, did not
7 act conspicuously, were
8 well-spoken, well-dressed,
9 educated, and blended in well
10 with the North American
11 lifestyle. Similar subjects
12 live in Canada, and some have
13 been identified through the
14 (blank) investigation. These
15 identified individuals travel
16 internationally with ease,
17 use the Internet and
18 technology to their
19 advantage, know how to
20 exploit our social and legal
21 situation, and are involved
22 in criminal activities."
23 (As read)

24 Now, leaving aside the phrase "and
25 are involved in criminal activities" for a moment,

1 when you read that description, Mr. Lockyer, does
2 it raise any concern in your own mind about the
3 use of profiling? Because embedded in this
4 phrase -- in this paragraph I have read you, would
5 also be the words "Middle Eastern origin."

6 Does that raise any concerns in
7 your mind if that is how these persons are being
8 described, and what are the concerns you see?

9 MR. LOCKYER: I mean, it does
10 obviously reflect a policy, or a suggested policy,
11 of racial profiling. That they should -- I mean
12 the practical consequences of this is that Middle
13 Eastern people are more likely to be stopped at
14 airports and more likely to be the subject of
15 surveillance, harassment, et cetera, et cetera.

16 MS EDWARDH: From your
17 perspective, how does profiling fit into issues
18 around police reasoning, quality investigations,
19 and the possibility of wrongful convictions or
20 wrongful conclusions? I know that is a big
21 question but...

22 MR. LOCKYER: Well, racial, and
23 indeed non-racial profiling as well, can certainly
24 have been seen to play a substantial role in some
25 wrongful convictions, of course.

1 MS EDWARDH: Can you expand on
2 that a little?

3 MR. LOCKYER: Well, just -- Donald
4 Marshall I guess is as good an example as any, in
5 terms of his case. It is particularly prevalent
6 in the United States, racial profiling is. I
7 mean, we have it here, but we sure get it in the
8 United States at a degree that is far worse than
9 we have it here.

10 MS EDWARDH: we have heard
11 evidence that men of the Muslim community --

12 MR. LOCKYER: Right.

13 MS EDWARDH: -- feel that
14 post-9/11 they have been identified as targets by
15 Canadian intelligence and policing services and
16 feel vulnerable to the surveillance and other
17 techniques that go along with racial profiling.

18 But you can agree with me if we
19 just take it this far, that this description
20 invites the conclusion that persons are being
21 racially profiled, does it not?

22 MR. LOCKYER: It invites the
23 policy, definitely.

24 MS EDWARDH: Yes.

25 MR. LOCKYER: Yes.

1 MS EDWARDH: And that when racial
2 profiling occurs, it often is a convenient short
3 form to draw conclusions which may not be
4 justified by any evidence?

5 MR. LOCKYER: Such has been said
6 by our Court of Appeal.

7 MS EDWARDH: Yes. Now, I want to
8 ask you your views in one other area, and it is
9 this whole almost delicious invitation that you
10 were offered to provide some advice to the
11 Department of Foreign Affairs and give some input
12 into the consular process, what changes could be
13 made and how it could be improved.

14 I take it from what you said that
15 after the invitation was extended the other party
16 never called back?

17 MR. LOCKYER: Right.

18 MS EDWARDH: I want to talk, if I
19 could, Mr. Lockyer, or invite you to at least
20 comment upon what were the kind of concerns that
21 you had that brought you into this potentially
22 consultative process, because undoubtedly the
23 Commissioner will be in a position to make some
24 recommendations and if you have thought about it,
25 and given the work that you have done, I think he

1 should have the benefit of your observations.

2 MR. LOCKYER: Well, I feel,
3 and I suspect Alex Neve would say the same,
4 that the work that we did -- and I never worked
5 with Alex, but he was doing much the same as me
6 for individuals, too, I'm sure, or his
7 organization was.

8 I felt -- I suppose we always like
9 to feel what we are doing is productive, but I
10 felt it was productive. I thought it was. The
11 most practical example of that is the Charron case
12 in Missouri. It didn't turn out the way we hoped
13 it would, but it -- well, I'm not sure I should
14 even say that. If Mr. Charron committed the
15 crime, so be it. We actually found out the truth,
16 which is what we were there for. That is what we
17 were trying to do.

18 But It shows you how a
19 governmental body can benefit from outside agency
20 assistance, human rights organizations or whatever
21 they may -- whatever rubric you want to put them
22 under. I know that at an informal level, and a
23 formal level too, in a way, but not at a written
24 level, Mr. Pardy did that, a lot.

25 It wasn't just me or Amnesty he

1 worked with. He worked with James Young, for
2 example, the pathologist, or Deputy Solicitor
3 General, he used him to -- sent him abroad to help
4 out on cases, one in Nigeria I particularly I
5 remember that he got him involved in.

6 MS EDWARDH: Indeed I might just
7 add you were aware that Dr. Young was also
8 prepared to travel to Tehran on the Kazemi case?

9 MR. LOCKYER: Yes. Of course I
10 was aware of that, yes.

11 In Mr. Sampson's case, for
12 example, he retained a psychiatrist to go and see
13 Mr. Sampson, to assist him. Although you can't
14 help wondering if Mr. Sampson wasn't the most sane
15 person out there. His conduct was remarkably
16 brave, in my view.

17 I feel, you know, now Mr. Pardy is
18 gone, as far as I know this kind of cooperation,
19 or use of -- just using outside organizations that
20 might be there able to help has sort of come to a
21 bit of a halt.

22 It certainly has where I'm
23 concerned, and I wish it hadn't. Maybe that is
24 partly my fault, but I certainly haven't
25 received overtures.

1 If you take the Vietnamese
2 ladies' case, for example, I think we did play a
3 big role in that. Our Executive Director, for
4 example, had the fortune, right in the middle of
5 the period we were trying to help the two ladies,
6 to have a chance to sit in the White House for
7 four hours, or three hours, with Mr. Clinton on
8 one side of him and Mrs. Clinton on the other side
9 of him while they all watched the film
10 "Hurricane." And we were having these frantic
11 phone calls, Mr. Carter and I, about the case of
12 the two Vietnamese ladies, as to what the
13 Americans might be able to do to help, and indeed
14 they did intervene.

15 So there was a way that -- you
16 know, we got them involved, albeit ultimately to
17 no avail where Madam Nguyen was concerned.

18 MS EDWARDH: But Madam Tran had
19 the sentence of life commuted and she came home?

20 MR. LOCKYER: Four or five months
21 after the execution of her daughter, yes.

22 So I think it would be
23 really helpful if some consideration was given
24 to the idea of setting up a body of outside
25 citizens, along with members of Foreign Affairs

1 with the expertise in the area, to meet on a
2 regular basis, to look at the kinds of cases that
3 are not the norm.

4 Not the straight criminal arrests
5 where there is no reason to believe there is
6 anything more than a Canadian is believed to have
7 committed a crime abroad and is apprehended and
8 charged and tried in the normal course of events
9 in a foreign country, but rather the kinds of
10 cases that we have been talking about, the cases
11 of people who have been arrested, there is good
12 reason to think they are innocent, Canadians
13 abroad, the cases of any Canadian sentenced to
14 death, guilty or innocent, and cases of those like
15 Mr. Arar, Mr. Almalki, where we have good reason
16 to believe -- or every reason to believe that
17 Canadians are being tortured in a foreign
18 jurisdiction.

19 That group, if it had the
20 necessary expertise on it, both within and
21 without government, could review these cases and
22 develop stratagems and policies and ways of
23 dealing, both at the broader level and at the
24 individual case level.

25 The Vietnamese ladies was such a

1 good example of needing that kind of
2 collaboration, because the first question was: If
3 you go public with their case -- it was already in
4 the media, but to a limited degree in Canada -- if
5 you do go public with it, what is the reaction of
6 the Vietnamese government going to be? Does that
7 mean they are going to take Madam Nguyen out the
8 next morning and execute her at dawn? That is the
9 kind of worry you have.

10 MS EDWARDH: In that case it is
11 fair to say that the advice given by Mr. Pardy to
12 others working in it was that it would be
13 preferable to keep the case out of the public eye
14 in order to best effect the objectives?

15 Whether that was the right advice
16 or not, you never know?

17 MR. LOCKYER: Well, it was also
18 the view of the International Secretariat of
19 Amnesty in London, because I called them and asked
20 them for their views. So it was my view, too.
21 Were we right? Were we wrong? I don't know. We
22 will never know.

23 MS EDWARDH: In any event, go
24 back to the kind of body that you were talking
25 about. Maybe you completed your thoughts there,

1 but the purpose of it would be what? To give
2 innovative advice to the head of consul affairs,
3 to work with them, to have good ideas, and to
4 think outside the box?

5 MR. LOCKYER: To think way
6 outside the box, and to make the kinds of
7 organizations that can help in these cases aware
8 of the existence of the cases. I mean, the
9 beauty of dealing with Mr. Pardy was that he kept
10 me advised of any Canadian facing the death
11 penalty abroad.

12 If there was a Canadian facing the
13 death penalty abroad he would call me and let me
14 know and we would discuss whether it was a serious
15 situation or not, whether it required outside work
16 on the part of my organization for example, or
17 not, and my organization would tend to drag in
18 other ones, too, whether it was imminent or not,
19 and we would act accordingly.

20 I think there were two other
21 Canadians -- maybe even three even -- who were on
22 death row back in 2000, thereabouts, and we
23 discussed them and felt that it wasn't time to get
24 to work on their cases because there was no
25 imminence at all about their actual executions

1 coming up. But we regularly talked about where
2 they were at because Mr. Pardy, through his
3 office, was keeping an eye on their progress,
4 through the court system or whatever process was
5 going on with them at the time.

6 MS EDWARDH: All right. Now, I
7 think that covers the questions, unless you have
8 any other systemic issue you want to address, or
9 institutional organization pattern, or whatever.

10 Any other thought, Mr. Lockyer?

11 MR. LOCKYER: No. I think
12 Mr. Pardy would probably be better than me at
13 following through on what I am saying. We have
14 talked about the idea that I am presenting, in a
15 rather nebulous form I must admit, but he might be
16 able to be a little more practical in his
17 presentation than me.

18 MS EDWARDH: Anyway, thank you
19 very much.

20 THE COMMISSIONER: Okay. Why
21 don't we take the morning break before you
22 cross-examine and we will have Commission counsel
23 make a copy of the document and distribute it.

24 MS McISAAC: I should tell you,
25 sir, that I may be a few minutes more than I

1 suggested, probably closer to a half an hour.

2 THE COMMISSIONER: That's fine.

3 We will rise for 15 minutes.

4 THE REGISTRAR: Please stand.

5 --- Upon recessing at 11:05 a.m. /

6 Suspension à 11 h 05

7 --- Upon resuming at 11:21 a.m.

8 Reprise à 11 h 21

9 THE REGISTRAR: Please be seated.

10 Veuillez vous asseoir.

11 MS EDWARDH: Mr. Commissioner, I

12 have just read the document, and with your

13 permission and my friend's indulgence I have one

14 question I would like to ask.

15 THE COMMISSIONER: Go ahead. It

16 is P-164.

17 EXHIBIT NO. P-164: Summary

18 of Mr. Lockyer's meeting with

19 Mr. Garvie

20 MS EDWARDH: Do you have a copy of

21 P-164, Mr. Lockyer?

22 MR. LOCKYER: Yes, I do.

23 MS EDWARDH: I want to take you to

24 paragraph 7?

25 MR. LOCKYER: Yes.

1 MS EDWARDH: I wonder if you can
2 assist us as to whether you have any recollection
3 of what it was that Mr. Arar believed had come
4 from sources, which would be Canadian agency
5 sources, that had been used in the U.S. or Syria
6 or Jordan at the time of his interrogations?

7 MR. LOCKYER: His computer records
8 rings a distinct bell.

9 MS EDWARDH: That is one.
10 Anything else?

11 MR. LOCKYER: You would have to
12 help me.

13 MS EDWARDH: Would it be also
14 information about his lease?

15 MR. LOCKYER: Yes.

16 MS EDWARDH: Would it also include
17 information about people who he would have had on
18 his Palm Pilot, names of persons?

19 MR. LOCKYER: That is what I mean
20 by his computer records.

21 MS EDWARDH: Okay. I just wanted
22 to be clear.

23 Any other recollection you can
24 have that would assist us in that regard?

25 MR. LOCKYER: It would probably

1 include knowledge of some of his movements in
2 Ottawa, insofar as he was under surveillance, but
3 I can't remember what they were.

4 MS EDWARDH: Okay.

5 MR. LOCKYER: The questions that
6 implied they knew things that would have had to
7 have come from Canada for them to know.

8 MS EDWARDH: Those matters
9 which you believe would have had to come from
10 Canada, those came out of the mouths --
11 knowledge of those matters came out of the
12 mouths of the interrogators in either the U.S.,
13 Jordan or Syria?

14 MR. LOCKYER: As I recall,
15 particularly in the U.S. and Syria.

16 MS EDWARDH: All right.

17 MR. LOCKYER: I don't recall
18 Mr. Arar ever suggesting anything from the
19 Jordanians. I'm not sure I ever -- the Jordanian
20 part of his experience was not something that I
21 ever really dwelt on with him anyway.

22 MS EDWARDH: Would you have any
23 recollection, Mr. Lockyer, of whether the
24 information that he attributed to Canadian
25 agencies that the Syrians had was used in

1 interrogations at the very beginning part of those
2 interrogations or was it used at a later date, in
3 the course of -- in the 10 months and 10 days that
4 he was detained?

5 MR. LOCKYER: It was in the
6 beginning, as best I can recall.

7 MS EDWARDH: Thank you very much.
8 Those are my questions.

9 THE COMMISSIONER: Ms McIsaac?

10 EXAMINATION

11 MS McISAAC: Mr. Lockyer, I
12 would like to ask you some questions about a
13 couple of areas, as soon as I get my podium to
14 stop rocking here.

15 The first one relates to the
16 difficulty of providing assistance to individuals
17 who are incarcerated abroad. I take it you would
18 agree with me that dealing with an individual who
19 was incarcerated in a country such as Saudi
20 Arabia, Vietnam, Syria is very different than
21 dealing with an individual who is in a country
22 like the United States?

23 MR. LOCKYER: I would have found
24 it a lot easier to agree with you five years ago.
25 I'm not so sure I would agree with you necessarily

1 now. I mean, we have never had access to -- we
2 have had one visit, I think, for someone in
3 Guantanamo Bay.

4 MS McISAAC: Other than perhaps
5 Guantanamo Bay.

6 But what I'm suggesting to you is,
7 the United States has a legal system similar to
8 that which we have in Canada, it has a rule of law
9 which we are relatively familiar with, it tends to
10 generally accept the right of consular access?

11 MR. LOCKYER: Well, if you
12 substituted "European countries", I would be a
13 little more comfortable, and I would say yes to
14 your question.

15 MS McISAAC: Okay. What I'm
16 really getting at is -- I suppose, first of all,
17 I should ask you: Have you ever been to Syria
18 yourself?

19 MR. LOCKYER: No.

20 MS McISAAC: Have you ever
21 travelled in the Middle East yourself?

22 MR. LOCKYER: No.

23 MS McISAAC: I take it that you
24 would agree with me that the domestic political
25 situation in a country like Syria is very

1 complicated, and in a country like Syria
2 particularly equally complicated by the whole
3 problem in the Middle East and the situation
4 between Middle Eastern Arab countries and Israel?

5 MR. LOCKYER: Yes. I'm not sure
6 what you mean by "complicated". I would think in
7 a place like Syria it is pretty simple, it is
8 repressive, so in a sense it is quite simple, but
9 obviously there are all sorts of political
10 complexities involved in Syria. You simply have
11 to look at Lebanon as well, for example.

12 MS McISAAC: Exactly. Now,
13 in terms of a Canadian dual national, as
14 Mr. Arar was --

15 MR. LOCKYER: Yes.

16 MS McISAAC: -- incarcerated in a
17 country like Syria, I take it you are aware that
18 Syria would not normally recognize Mr. Arar's
19 Canadian citizenship?

20 MR. LOCKYER: Wouldn't recognize
21 it in the sense of would say they would see him as
22 a Syrian citizen, yes.

23 MS McISAAC: Exactly.

24 MR. LOCKYER: I know that that is
25 their posture.

1 MS McISAAC: Correct. When, as is
2 the case here, Canada is able to gain consular
3 access to Mr. Arar, which we have heard evidence
4 was a first in the case of a dual national, I take
5 it that you would agree that maintaining that
6 consular access is a great priority?

7 MR. LOCKYER: It is certainly an
8 important thing, yes, definitely. Consular access
9 is good.

10 MS McISAAC: You mentioned, in the
11 context of the two ladies in Vietnam that it is
12 often difficult to determine whether one should
13 undertake a publicity campaign or not and what the
14 consequences of any particular action might well
15 be in the other country?

16 MR. LOCKYER: Especially in the
17 Far East. It is especially true in countries like
18 Malaysia, Indonesia, Vietnam. Very true. It is
19 actually true in the Middle East, too.

20 MS McISAAC: Would you not agree
21 that it might --

22 MR. LOCKYER: I would worry about
23 it there, of course.

24 MS McISAAC: Okay. Would you
25 agree with me that it is often a set of very

1 difficult choices in that the taking of a
2 particular action, say an aggressive statement or
3 publicity, might actually be counterproductive in
4 that one would lose consular access?

5 MR. LOCKYER: I don't think I
6 would agree at the governmental level. I think
7 what you worry about is media. I don't think you
8 worry about -- certainly I would never think to
9 worry about that if Jean Chrétien had been more
10 demanding of the Syrian authorities, that that
11 could lead to more torture for Mr. Arar. I don't
12 think that.

13 But if, on the other hand -- it is
14 the media side of it that is always worrying. If
15 there is a lot of media, is that going to
16 reflect -- is that going to cause an effect in the
17 country that is really the opposite of what you
18 are looking for?

19 MS McISAAC: Okay. Now, on
20 the other hand, though -- it is an interesting
21 concept that you don't believe that a governmental
22 effort would necessarily result in a loss of
23 consular access or a loss of cooperation.

24 What do you base that on?

25 MR. LOCKYER: I think it is pride

1 as much as anything. Government pride. That a
2 government that sees itself -- I think one of the
3 best-known cases is the case of the Australian in
4 Malaysia 20 years ago who was sentenced to be
5 hanged for drug crimes. I forget his name now.
6 And there was a huge hooveraw in -- hooveraw is
7 the wrong way of putting it -- a huge protest in
8 Australia about his potential fate, there was
9 massive media and governmental -- at a media level
10 too. The government was talking to the media
11 saying their views on it -- and it caused the
12 Malaysian government to bring the execution date
13 closer. They brought up the execution date, so
14 you can see the effect it had.

15 But if government works behind the
16 scenes, I think that is a very different story.

17 MS McISAAC: Behind the scenes?

18 MR. LOCKYER: Yes.

19 MS McISAAC: Okay. In fact, you
20 are aware that the government did make a number of
21 behind-the-scenes efforts on behalf of Mr. Arar.
22 We have heard evidence that shortly after Mr. Arar
23 surfaced in Syria, if I can put it that way, the
24 Syrian Ambassador was called in by Foreign Affairs
25 here in Ottawa.

1 Were you aware of that?

2 MR. LOCKYER: Probably.

3 MS McISAAC: Subsequently Minister
4 Graham called the Foreign Minister of Syria.

5 You are aware of that?

6 MR. LOCKYER: I am.

7 MS McISAAC: All right. Were you
8 aware of Ambassador Pillarella's testimony earlier
9 this week that on every occasion that he had an
10 opportunity to meet with the Syrian officials, he
11 raised the issue of Mr. Arar and made the point
12 that the Canadian government would like to have
13 Mr. Arar returned?

14 MR. LOCKYER: I'm not sure I
15 would like to comment on his evidence, from what I
16 have read.

17 MS McISAAC: Well, were you aware
18 that that evidence was made -- or given, pardon
19 me? That's all I'm asking.

20 MR. LOCKYER: I'm not sure it was
21 in the media. I'm not sure if I was.

22 MS McISAAC: All right. Coming
23 back to your comments about the media, you are
24 aware, of course, that Mr. Al Bushi is still
25 incarcerated in Syria?

1 MR. LOCKYER: Yes.

2 MS McISAAC: Would you agree
3 with me that it would be most unfortunate if the
4 publicity surrounding this inquiry were to affect
5 Mr. Al Bushi in any way?

6 MR. LOCKYER: Obviously. Equally,
7 I would be delighted if it helped him.

8 MS McISAAC: But we never know,
9 do we?

10 MR. LOCKYER: Well, no. That is
11 the trouble, you don't.

12 I mean, you can take
13 educated guesses. My educated guess is that this
14 inquiry would more likely help him than hurt him,
15 given what happened to Mr. Arar and Mr. Almalki,
16 but that is an educated guess.

17 MS McISAAC: Based on what?

18 MR. LOCKYER: They are out. They
19 are free, despite --

20 MS McISAAC: They are out. They
21 are free. But we don't know whether that was the
22 efforts of --

23 THE COURT REPORTER: I'm sorry,
24 "Despite"...?

25 MS McISAAC: I'm sorry?

1 MR. LOCKYER: I say despite the
2 publicity, but what I'm trying to say is it may
3 have been because of the publicity.

4 MS McISAAC: But we don't know?

5 MR. LOCKYER: No, I say it is
6 an educated guess. That is what I mean when I
7 say that.

8 MS McISAAC: It might be
9 despite the publicity and it might be because of
10 the publicity?

11 MR. LOCKYER: Maybe Mr. Arar would
12 have got back six months earlier if he hadn't had
13 the Canadian media, but my suspicion is that -- as
14 I say, an educated guess that the media helped
15 Mr. Arar, and indeed that is where I came down on
16 whether we should make Mr. Almalki's case public.
17 Because until then his family had not wanted it to
18 be public, Mr. Almalki's family.

19 MS McISAAC: These are very
20 difficult decisions to make, though, are they not?

21 MR. LOCKYER: Yes. And that is
22 why I like my systemic idea of getting others
23 involved too.

24 MS McISAAC: They might backfire.
25 You never know.

1 MR. LOCKYER: Of course you can
2 make a decision that backfires. Oh, yes. Yes.

3 MS McISAAC: Turning to another
4 area, which is the questions that Ms Edwardh asked
5 you with respect to racial profiling.

6 If I could ask you to look at
7 again Exhibit P-85, tab 23?

8 --- Pause

9 MS McISAAC: This is an
10 intelligence

11 MR. LOCKYER: Could you tell
12 me what this is? I'm not sure I understand what
13 this is.

14 MS McISAAC: Well, it is a
15 document entitled, "A Criminal Intelligence
16 Brief," and it is dated the 18th of September
17 2001, just after the --

18 MR. LOCKYER: All right.

19 MS McISAAC: -- September 11th
20 attacks on the World Trade towers.

21 I wonder if you could help the
22 Commissioner with something that I find a bit
23 difficult myself when one deals with the issue of
24 racial profiling.

25 Is there, in your mind, a

1 difference between racial profiling and
2 criminal profiling?

3 MR. LOCKYER: I suppose it
4 depends on the person who is using those terms
5 whether there is a difference between them. So I
6 can't answer you.

7 MS McISAAC: All right. Let me
8 put it another way. When I read the passage that
9 Ms Edwardh took you to at the third page of
10 tab 23, the RCMP is saying:

11 "The longer term strategy
12 will have to take into
13 account the type of adversary
14 we are up against." per cent

15 I take that to mean that one
16 of the issues is: How do we identify people
17 who might engage in similar activity as the
18 9/11 terrorists?

19 Is that the way you read it?

20 MR. LOCKYER: I'm not sure. It is
21 a bit ambiguous.

22 One could also say the type of
23 adversary could be how determined they are, the
24 type, meaning the kinds of things they will do --

25 MS McISAAC: Fair enough. Fair

1 enough.

2 MR. LOCKYER: -- you could
3 interpret as being the ethnic origin of the
4 adversary. There is any number of -- it is a
5 bit ambiguous.

6 MS McISAAC: What I really want to
7 take you to, though, is I would suggest to you
8 that what this document is really saying is that
9 the individuals who were involved in the 9/11
10 attacks were, in fact, very hard to identify,
11 because they had lived in the United States for
12 some time, they did not act conspicuously, they
13 were well-spoken, they were well-dressed,
14 educated, and they blended in well with the North
15 American lifestyle.

16 Now, presumably, you would
17 agree with me, that that is a legitimate concern
18 on the part of the RCMP, or indeed any law
19 enforcement agency, as to how do you deal with an
20 adversary, to use their term, a potential
21 terrorist, when they in fact blend in so well to
22 the general population?

23 That has to be a fair concern,
24 doesn't it?

25 MR. LOCKYER: Well if it is true.

1 I mean, I -- I would have thought the hijackers
2 were easily identifiable by virtue of the odd
3 things they were doing, learning to fly --

4 MS McISAAC: Odd things in
5 retrospect I would say to you.

6 Taking flying lessons is odd?

7 MS EDWARDH: Perhaps Mr. Lockyer
8 could finish his statement?

9 MR. LOCKYER: I'm really a bit out
10 of my depth here, but as I recall all they seemed
11 to be interested in was how to fly an airplane,
12 not how to land it or take it off. So that is how
13 I recall it. That certainly might have attracted
14 my interest.

15 MS McISAAC: What I'm trying to
16 get at here, Mr. Lockyer, is with respect to the
17 issue of racial profiling -- and I don't mean to
18 be facetious, or treat the matter lightly -- but
19 would you agree with me that if you are looking
20 for a possible member of al-Qaeda, you would not
21 look first at a Jewish grandmother?

22 MR. LOCKYER: Obviously not. But
23 the trouble is, what you are saying there is that
24 therefore you target a particular race or ethnic
25 origin, and that is -- immediately that is where

1 the dangers begin.

2 The way that the potential
3 dangerous people can be identified is through
4 identifying them through what they do.

5 MS McISAAC: Exactly.

6 MR. LOCKYER: It seems to me that
7 is how you might have got the hijackers, is
8 through what they were doing.

9 MS McISAAC: Exactly.

10 MR. LOCKYER: There were all sorts
11 of alarms about Mazoai I remember reading about,
12 for example.

13 MS McISAAC: All right. But what
14 I would suggest to you is that when you try to
15 deal with an issue like this, the fact is
16 nevertheless going to be that the likelihood is
17 that a Northern Ireland terrorist will be an Irish
18 person.

19 Correct?

20 MR. LOCKYER: Generally, you would
21 expect that, yes.

22 MS McISAAC: And a Tamil Tiger
23 will likely be a Tamil?

24 MR. LOCKYER: Yes.

25 MS McISAAC: All right. How do

1 you define racial profiling if the police are
2 looking at the activities of a particular
3 community? Is that, in your view, racial
4 profiling, bearing in mind I use the words "the
5 activities" of individuals in a particular
6 community?

7 MR. LOCKYER: Okay. You didn't
8 say individuals the first time around.

9 MS McISAAC: Okay. Individuals.

10 MR. LOCKYER: Let's do it again.
11 So looking at the activities of individuals in a
12 community, if those individuals have come to their
13 attention for a legitimate reason to do with
14 police matters, then sure, then that is fine.

15 MS McISAAC: All right.

16 MR. LOCKYER: But it has to come
17 to their attention for something other than the
18 reason that they are Tamil or Irish.

19 MS McISAAC: Right. Something
20 they have done. They are engaged in some kind of
21 activity that raises suspicions.

22 MR. LOCKYER: Correct.

23 MS McISAAC: Thank you very much.

24 THE COMMISSIONER: Mr. David?

25 EXAMINATION

1 MR. DAVID: Two brief areas I
2 would like to re-explore, Mr. Lockyer.

3 I noted your comment concerning
4 Mr. Pardy, that Mr. Pardy was not a fan of the
5 death penalty, that he abhorred the death penalty.

6 MR. LOCKYER: In fact, he had
7 always said that when he retired -- he didn't
8 follow through on this, but neither did I, that he
9 was going to set up some kind of process whereby a
10 group of people could talk about what Canada could
11 do to undermine the use of the death penalty
12 elsewhere in the world. It is something we have
13 always talked about doing.

14 MR. DAVID: I take your
15 qualification of Mr. Pardy with regard to the
16 death penalty not to mean that in the way he would
17 lend assistance and carry out his duties with
18 regard to Canadians detained abroad --

19 MR. LOCKYER: I don't understand
20 what you are asking me.

21 MR. DAVID: I'm asking you this:
22 You have mentioned well that Mr. Pardy was not a
23 fan of the death penalty and worked very hard and
24 very strong in cases of Canadians detained abroad
25 that were facing the potential death penalty.

1 MR. LOCKYER: He certainly did.

2 MR. DAVID: I'm just putting to
3 you that we shouldn't take that to mean that
4 Mr. Pardy acted any differently with regards to
5 other Canadians facing other situations that were
6 detained that were not necessarily facing the
7 death penalty. In other words, he laboured as
8 much for all Canadians detained abroad.

9 MR. LOCKYER: I mean, actually I'm
10 not really able to answer that because I didn't
11 deal with the daily cases that he dealt with. In
12 fact, I think probably the daily cases that he
13 dealt with he probably didn't deal with very much,
14 but the people in his department, that would be
15 their role, whoever had that part of the world.
16 I'm not sure Mr. Pardy necessarily had a lot to do
17 with individual cases. I don't know. He could
18 tell you.

19 I think he probably devoted most
20 of his energies, when it came to particular cases,
21 to the kinds of cases that I was getting involved
22 in, where it was death penalty.

23 So, in other words, I'm not
24 sure I would agree with you. I think he would
25 devote much more energy to a death penalty case

1 just because of the consequences being so much
2 more serious.

3 MR. DAVID: Because of the
4 consequences, not because -- I mean, it was clear
5 in your mind that his dedication was for all cases
6 of dealing with --

7 MR. LOCKYER: Oh, yes. I'm not
8 trying to suggest that just because someone is
9 only getting 10 years for some crime, that he
10 ignored them. No, I'm not suggesting that. But
11 clearly -- you know, a death penalty has a focal
12 point, namely the moment of death, which you have
13 to try to stop it.

14 MR. DAVID: Right. The other area
15 I just want to explore with you has to do with the
16 kinds of cases that you had worked with Mr. Pardy
17 on. You referred to the case of Mr. Faulder?

18 MR. LOCKYER: Faulder, yes.

19 MR. DAVID: Faulder. The two
20 Vietnamese ladies.

21 MR. LOCKYER: Yes.

22 MR. DAVID: And there was the case
23 of Mr. Charron?

24 MR. LOCKYER: Yes.

25 MR. DAVID: There was the fourth

1 case of Mr. Sampson --

2 MR. LOCKYER: Sampson. There
3 was the chap in Saudi Arabia whose name I
4 didn't mention.

5 MR. DAVID: Right. All those
6 cases fell into really the classical criminal
7 trial or criminal evidence type of procedure.

8 MR. LOCKYER: No, I wouldn't
9 say that is true of Mr. Sampson and I wouldn't
10 say that is true of the other chap in Saudi
11 Arabia either.

12 Certainly that is true of
13 Mr. Faulder and I would say of the two Vietnamese,
14 albeit I think they were innocent, but it was a
15 criminal process. There was no political
16 overtones to it other than prison conditions and
17 use of the death penalties.

18 MR. DAVID: Certainly in
19 that regard in Mr. Arar's case there was a
20 distinction to be drawn in the sense that
21 it wasn't your standard criminal law type of
22 approach --

23 MR. LOCKYER: No, it wasn't.

24 MR. DAVID: -- where the criteria,
25 for instance, of reasonable and probable grounds

1 or, you know, reasonable suspicion or proof beyond
2 a reasonable doubt, existed. We were in a
3 different type of environment, an environment
4 where evidence, if it could be called as such, was
5 based on innuendo very often, and suspicion.

6 MR. LOCKYER: Well, torture, as
7 much as anything.

8 MR. DAVID: And torture.

9 MR. LOCKYER: Yes.

10 MR. DAVID: Certainly you will
11 agree with me that if you compare the case of a
12 classical criminal scenario, in terms of the
13 State's obligation to disclose to defence counsel,
14 is very different than if you are looking at a
15 situation where you are dealing with intelligence,
16 intelligence-based evidence, and the fact that in
17 a scenario such as Mr. Arar's it was very much
18 based on intelligence as opposed to criminal type
19 of evidence, police evidence?

20 MS EDWARDH: I am going to object
21 to Mr. Lockyer answering that, because I don't
22 think he knows. He never got it.

23 THE COMMISSIONER: Well, I
24 think he is asking from his experience, but
25 just see if Mr. Lockyer is comfortable with the

1 question.

2 MR. DAVID: From your
3 understanding, Mr. Lockyer, the situation that
4 Mr. Arar was facing, was it based on the evidence
5 supplied by a criminal investigation or was it
6 based on evidence coming from an intelligence type
7 of inquiry?

8 MR. LOCKYER: Well, I didn't know.
9 But let's suppose the latter.

10 MR. DAVID: Mm-hmm.

11 MR. LOCKYER: If I had known, for
12 example, that the RCMP or CSIS had any or all of
13 the supposed confessions given by Mr. Arar, I
14 would think it was fundamental that they should be
15 provided to me and to defence counsel by the
16 Canadian authorities. I would have thought that
17 was fundamental, whatever the security situation.

18 MR. DAVID: Even if the
19 evidence in question or the statement in question
20 was protected by National Security Confidentiality
21 concerns?

22 MR. LOCKYER: But it is
23 information that is supposedly come from Mr. Arar
24 himself, so if it has then why are you claiming
25 secrecy over something that presumably, if it is

1 true, I can just get from the client anyway.
2 Right? I mean, he is the one who is supposed to
3 have provided the information. So why have
4 secrecy over something that presumably, as I say,
5 if it is true, he can just give you? I don't
6 understand that.

7 If, on the other hand, he hasn't
8 given it, or it is given under torture, then it
9 shouldn't be protected by security interests
10 because of the likelihood that it is nonsense,
11 that it is false, that it is just made-up stories.

12 I just think the inequities of
13 Mr. Arar's situation, at least to me, was so
14 apparent that he was undoubtedly the victim of
15 torture and had been, and that anything that he
16 signed was so inherently unreliable that it should
17 have been, if it was in the hands of Canadians --
18 and I'm still not sure it was, but if it was -- it
19 should have been provided to me.

20 Maybe there was a plan to provide
21 it to me in the event I got a visa. I don't know.
22 I don't know if that has come up at all. But I
23 would hope if I got a visa and headed out there
24 that I would have got those materials.

25 But obviously I appreciate there

1 are -- you know, national security issues can
2 arise with respect to some materials. Of course,
3 I appreciate that.

4 MR. DAVID: Thank you.

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

7 Well, thank you, Mr. Lockyer.
8 Thank you for --

9 MR. LOCKYER: It is a pleasure.

10 THE COMMISSIONER: -- providing
11 the inquiry with your experience and perspectives
12 on a number of issues. It is been very helpful.
13 Thank you for coming.

14 MR. LOCKYER: Thank you for
15 having me.

16 THE COMMISSIONER: You may step
17 down.

18 I see Mr. Cavalluzzo is here.
19 Shall we take a break?

20 MR. CAVALLUZZO: Before we --
21 --- Off microphone / Sans microphone

22 THE COMMISSIONER: No, I'm
23 content, if you are ready to.

24 --- Off microphone / Sans microphone

25 THE COMMISSIONER: Okay. We will

1 take a 10-minute break.

2 THE REGISTRAR: Please stand.

3 --- Upon recessing at 11:49 a.m. /

4 Suspension à 11 h 49

5 --- Upon resuming at 11:57 a.m. /

6 Reprise à 11 h 57

7 THE REGISTRAR: Please be seated.

8 Veuillez vous asseoir.

9 MR. CAVALLUZZO: Good morning,
10 Commissioner.

11 We have Mr. Pardy once again for
12 his -- I think it is his third or fourth
13 appearance.

14 THE COMMISSIONER: Welcome back,
15 Mr. Pardy.

16 MR. PARDY: More comebacks than
17 Cher, I think.

18 --- Laughter / Rires

19 MR. CAVALLUZZO: This will be your
20 final appearance in public, Mr. Pardy, I can
21 guarantee that.

22 MR. PARDY: That is welcome news.

23 THE COMMISSIONER: The home
24 stretch.

25 MR. CAVALLUZZO: Commissioner, I'm

1 going to deal with about five areas, five very
2 discrete areas with Mr. Pardy, and they all relate
3 to information which was brought out in
4 cross-examination. There are a few areas that I
5 would like Mr. Pardy to clarify for us so that we
6 have a firm view of the record at the end of his
7 testimony.

8 PREVIOUSLY SWORN: HENRY GARFIELD PARDY
9 EXAMINATION

10 MR. CAVALLUZZO: The first area,
11 Mr. Pardy, relates to access to CAMANT notes. You
12 were asked, I believe it may have been by me
13 actually, about what kind of access that people
14 outside of Consular Affairs had to the COSMOS, or
15 the CAMANT notes. You have reflected on that and
16 I understand that you want to clarify your
17 evidence in that regard.

18 MR. PARDY: Yes. I think in my
19 testimony on May 24th I think there was a series
20 of questions about access with respect to
21 officials in the Security and Intelligence
22 Division, and inadvertently I had forgotten at the
23 time that we had provided access for Mr. Jonathan
24 Solomon so that he could follow the case in the
25 same level of detail because he was directly

1 involved in those days.

2 The way CAMANT is structured, the
3 access was specific to Mr. Solomon, and when
4 Mr. Solomon left the -- not the department, I
5 think he left sometime in late spring of 2003,
6 then that access terminated. The way it's
7 structured is it's individual-specific in every
8 case, yes.

9 MR. CAVALLUZZO: And I understand
10 that Mr. Solomon, at the material time, was
11 responsible for Canadian detainees abroad?

12 MR. PARDY: He was more generally
13 involved in -- and certainly part of his
14 responsibilities were the whole series of cases of
15 Canadians in difficulty abroad that had national
16 security elements associated with them, yes.

17 MR. CAVALLUZZO: And do you recall
18 when you gave Mr. Solomon access to the COSMOS or
19 CAMANT notes?

20 MR. PARDY: I think it would have
21 been October.

22 MR. CAVALLUZZO: 2002 --

23 MR. PARDY: 2002. I think it
24 would roughly be in that --

25 MR. CAVALLUZZO: In that area?

1 MR. PARDY: We can certainly check
2 on those dates because there is a log kept of
3 entry and exit of access, yes.

4 MR. CAVALLUZZO: I understand it
5 was November of 2002, would that --

6 MR. PARDY: A little later then --
7 possibly, yes, yes.

8 MR. CAVALLUZZO: You said after
9 Mr. Solomon left, that no one else has direct
10 access outside of the consular bureau?

11 MR. PARDY: Certainly when I left
12 at the end of August that was my -- well, not
13 outside the consular bureau, in ISI. That was the
14 only -- because we do give, sometimes, access to
15 people in the political division, depending on the
16 nature of the case itself, yes.

17 MR. CAVALLUZZO: But in respect of
18 ISI, at least at the time that you had left on
19 August 31st of 2003, that when Mr. Solomon had
20 left in, you say, the spring of 2003, that access
21 had stopped at that point in time --

22 MR. PARDY: That is my
23 understanding. Well, if Mr. Solomon is not there,
24 there is no access, because it is specific to the
25 individual.

1 MR. CAVALLUZZO: Okay. Now, the
2 next area that I would like to deal with,
3 Mr. Pardy, relates to questions that Ms Edwardh
4 had asked you relating to information that you had
5 sought from Mr. Arar's family in respect of
6 certain allegations that he spent some time in
7 Afghanistan in 1993.

8 And just to perhaps save some
9 sometime and to be as clear as possible, I'm going
10 to make direct reference to transcript entries,
11 and I will just read them to you for -- this is
12 when you testified on May 26th, and the first
13 reference would be to page 3943, at line 8, where
14 Ms Edwardh says to you:

15 "Yes, now let me just go
16 back.

17 I've looked through your
18 notes or the CAMANT notes, or
19 the voluminous e-mails
20 between you and Dr. Mazigh,
21 and I cannot find anywhere,
22 Mr. Pardy, any specific
23 reference to `can you help me
24 find X, Y, and Z?'"

25 And your response in that regard,

1 at line 13 is:

2 "Not in that period. As I
3 mentioned, I thought it was
4 done in a telephone call with
5 her, and as you know, I think
6 there were quite a number of
7 telephone calls.

8 I think it does find
9 reflection in August in a
10 written record."

11 And your testimony was that there
12 was a phone call in about March --

13 MR. PARDY: February or March. I
14 wasn't sure. It was largely in response to the
15 fact that there were noises from the Syrians, or
16 noises that the Syrians made, that were
17 interpreted by the Embassy about the possibility
18 of a trial taking place, yes.

19 MR. CAVALLUZZO: That was, we saw,
20 in a consular visit of February 18th, 2003 --

21 MR. PARDY: Okay.

22 MR. CAVALLUZZO: -- and it was
23 after that time. You go on at page 3952, just to
24 give context to the question I'm about to ask, at
25 line 16 at 3952. This is your response:

1 "The record is so large here
2 and so frequent with respect
3 to the conversations I had
4 with Dr. Mazigh through this
5 period -- I don't think there
6 was hardly a day that went
7 by; and if I had to sit down
8 after every one of those
9 conversations and give you
10 the level of detail that
11 you're suggesting here, well,
12 I'm sorry, then I don't think
13 that I would have been able
14 to do the job that I was
15 asked to do."

16 In respect of information that was
17 sought, I finally refer to page 3955 at line 8, a
18 question from Ms Edwardh. She says:

19 "... we don't have any other
20 follow-up, even from the
21 August meeting.

22 But let me just ask you:
23 Were you aware or did you
24 make any inquiry of Dr.
25 Mazigh, about the difficulty

1 she had getting transcripts?
2 Did you make any inquiry
3 about that?"
4 Your response, Mr. Pardy, at line
5 12 was:
6 "Transcripts of what?"
7 "Of Mr. Arar's attendance at
8 McGill because he was not --"
9 And your answer was.
10 "No, I don't know that was
11 the case, no. I did not..."
12 And then:
13 "Were you aware that Dr.
14 Mazigh had tried to get the
15 lawyer in Syria to obtain a
16 power of attorney that would
17 give her access to certain
18 documents, but, of course he
19 never got in."
20 And your answer was:
21 "Which lawyer is this now?"
22 "The lawyer in Syria."
23 "That was appointed..."
24 And so on.
25 Now the question that I have, in

1 your response you talked about a telephone
2 conversation with Dr. Mazigh in February or March,
3 and as well, you talked about a meeting in August
4 of 2003, with Dr. Mazigh and Bassam, Mr. Arar's
5 brother, and I would like to show you now a note
6 of a meeting on August the 25th. These are the
7 notes of Myra Pastyr-Lupul, who has not testified
8 yet but will be testifying on July 27th. Could
9 you tell us who she is?

10 MR. PARDY: Myra was the Case
11 Management Officer for cases in the Middle East in
12 the Consular Affairs Bureau.

13 THE COMMISSIONER: Should this be
14 marked as an exhibit, Mr. Cavalluzzo?

15 MR. CAVALLUZZO: Yes, we will have
16 it identified by Myra Pastyr-Lupul.

17 THE COMMISSIONER: I think it's
18 P-165.

19 EXHIBIT NO. P-165: Notes of
20 Myra Pastyr-Lupul of a
21 meeting on August 25, 2003

22 MR. CAVALLUZZO: And if you will
23 note, Mr. Pardy, at the top right corner, it says
24 August 25th, and about halfway down it says:

25 "Meeting with Bassam Aug 25".

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: Could you read
3 that for us, if you can read her writing? Because
4 it is quite a -- it says ask Swiss embassy of
5 extradition treaty with Syria?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: Could you tell us
8 the context of that note?

9 MR. PARDY: My recollection, and I
10 think the next two lines sort of provides an
11 explanation, I think Bassam was planning to visit
12 Switzerland --

13 MR. CAVALLUZZO: Right.

14 MR. PARDY: -- and I think there
15 was a general concern that the Arar family might
16 be in some general way on a variety of lists, and
17 he was concerned as to whether or not the Swiss
18 had an extradition treaty with Syria that could
19 get him into jeopardy if he were outside of
20 Canada.

21 MR. CAVALLUZZO: Okay. Just so
22 that we set the stage here, this is a meeting
23 between who?

24 MR. PARDY: It's Myra, Dr. Mazigh,
25 and Bassam Arar, and myself. I think there was

1 just the four of us there.

2 MR. CAVALLUZZO: Do you recall
3 where the meeting was?

4 MR. PARDY: It was in my office.

5 MR. CAVALLUZZO: If we pick it up,
6 you will see the notation "1993".

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: What does that
9 say, if you could help us?

10 MR. PARDY: What was -- well, the
11 "MA" is Maher Arar, and what I was saying --
12 coming back to this issue of the allegations about
13 being in Afghanistan and Pakistan for seven and a
14 half months in 1993, and at this point, of course,
15 the Syrians had announced to us a few days earlier
16 that there was going to be a trial.

17 MR. CAVALLUZZO: Right.

18 MR. PARDY: Very specific, and we
19 were in the process of having a lawyer appointed.
20 The family made some decisions there.
21 Mr. Lockyer, I was in touch with him, and he would
22 go out as our observer, and I was saying, look, we
23 need -- if this could be a central element in any
24 trial that would be held, and if the family had
25 any records that would deal with this issue of

1 where Mr. Arar was in 1993, then we needed to have
2 it and we needed to have it quickly, yes.

3 MR. CAVALLUZZO: Now, if I can
4 just read it, the line after "Where was Maher
5 Arar," it says "MA" It looks like it says "bank
6 transactions"?

7 MR. PARDY: Yes, it is.

8 MR. CAVALLUZZO: "McGill
9 University attendance?"

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: "Power of
12 attorney"?

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: "1992, began at
15 McGill"?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: "Met..." -- I
18 guess that's Met Dr. Mazigh 1994?

19 MR. PARDY: That's right.

20 MR. CAVALLUZZO: And --

21 MR. PARDY: "Married in 1995" I
22 think is what it says. Yes.

23 MR. CAVALLUZZO: So was this the
24 discussion to which you referred as to seeking
25 information which may deal with that allegation of

1 being in Afghanistan in 1993?

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: Okay. And this
4 is August 25th of 2003. When did you leave DFAIT?

5 MR. PARDY: The 31st of August.
6 Six days later, yes.

7 MR. CAVALLUZZO: Okay. And was
8 there any follow-up in respect of this information
9 you were seeking between August 25th and the time
10 you left DFAIT?

11 MR. PARDY: I don't think --
12 unless -- and I think Ms Pastyr-Lupul might be
13 able to give you because she was in touch with
14 Bassam in particular -- because I think Bassam
15 undertook to research this issue on behalf of the
16 family. He was -- and still is -- living in
17 Montreal.

18 And when I left on the -- in the
19 next intervening six days, I think we were
20 concerned with the appointment of the lawyer,
21 trying to make some arrangements with the lawyer
22 to get access in terms of the documentation, what
23 the Syrians were going to charge him with and
24 everything else, and this was -- I'm quite sure
25 that Ms Pastyr-Lupul will probably testify to the

1 effect that she -- as to what happened after that
2 on this very specific issue.

3 MR. CAVALLUZZO: Okay. That's
4 fine.

5 Okay, Mr. Pardy, I would now like
6 to move on to the third area that I'm seeking
7 clarification on, and that relates to the conduct
8 of consular officials in New York, in particular
9 between, I guess, October 1st and October 8th,
10 when Mr. Arar was deported to Syria.

11 In cross-examination you were
12 asked a number of questions as to the role of
13 consular officials, particularly relating to the
14 fact that there were a couple of indices that
15 could have raised red flags. In particular, on
16 two occasions there were suggestions that Mr. Arar
17 had received threats of being deported to Syria,
18 and at the same time, there was this admonition
19 from the INS official who said that this is a
20 serious case and you should raise it with your
21 ambassador.

22 Just to be crystal clear as to
23 what was said, I'm referring once again to your
24 transcript on May 26th of 2005, and just making
25 brief reference to questions put to you by Ms

1 Edwardh at page 3975.

2 Just let me start at the question
3 which can be found at line 1. She states:

4 "But my point isn't that you
5 drew the wrong conclusion, my
6 point is that you didn't get
7 any information from the INS
8 about the allegations,
9 about the suggestion, about
10 the process.

11 It looks to me like
12 everybody didn't understand
13 what was happening, and
14 perhaps including Mr. Arar's
15 New York lawyer."

16 And your answer at line 9 is:

17 "Well, that was the whole
18 point, to get a lawyer into
19 the process as early as
20 possible. And, really, from
21 quite early on in Ms Girvan's
22 testimony here, not only did
23 we raise this issue with the
24 family, they decided they
25 would go out through contacts

1 of their own and seek the
2 appointment of Ms Oummih."

3 Who was the New York lawyer.

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO:

6 "But on top of that we were
7 talking to people at the
8 Centre for Constitutional
9 Rights, who had a fair bit of
10 experience in this area, that
11 could advise us on these
12 things so it wasn't a static
13 situation in that sense..."

14 Now, we heard evidence from our
15 expert panel last week, in particular from Dr.
16 Stephen Yale-Loehr, who talked about the removal
17 order in respect of Mr. Arar, and we discovered on
18 its face it states that this was a section 235(c)
19 proceeding, which was not only unusual, Doctor --
20 or, excuse me, Mr. Yale-Loehr said, but was the
21 first occasion upon which he had ever seen --

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: -- a 235(c)
24 proceeding. And what I would like to ask you in
25 this regard is, what is the role of a consular

1 official, particularly in the United States, after
2 a lawyer has been retained on behalf of a Canadian
3 detainee?

4 MR. PARDY: Once a lawyer -- well,
5 the initial objective in proceedings such as this
6 is to get a lawyer, and to make sure that the
7 lawyer -- I shouldn't say "make sure," but would
8 hope that the decision that is made on the lawyer,
9 that they have ended up with a good one.

10 The lawyer in this case, as I have
11 indicated in that testimony, we did not have a
12 role, we did not know this person, and the
13 embassy -- or the consulate in New York, of
14 course, keeps a list of lawyers that they have had
15 some experience with. This lady was not on that
16 list.

17 But once that appointment is made,
18 then our role is to support that lawyer in any way
19 that we consider appropriate. We will provide her
20 with all of the information that we have, that's
21 come to us, so that she comes to the case as fully
22 prepared -- because we had a fair bit of
23 information -- and I think that took place, when
24 Ms Girvan spoke to the lawyer, she provided
25 whatever information we had. The fact of the

1 235(c), which Ms Girvan obtained information about
2 on October the 3rd, right about then, I think that
3 was provided to the lawyer. But I think as the
4 professional witness, Dr. Ofay[sic], was that his
5 name?

6 MR. CAVALLUZZO: Dr. Ofshe.

7 MR. PARDY: Ofshe. As he said,
8 this was a very unique procedure, this 235(c), and
9 I'm not surprised that perhaps the lawyer that was
10 involved wasn't fully aware of the implications of
11 this, what is now referred to as expedited
12 removal. It's just a process by which, in effect,
13 removal can be -- the process can be
14 foreshortened.

15 MR. CAVALLUZZO: By the way, the
16 expert who stated that was Mr. Yale-Loehr.
17 Stephen Yale-Loehr.

18 MR. PARDY: Yale-Loehr. I'm
19 sorry. Yes, Mr. Ofshe was the fingernail man,
20 yes.

21 MR. CAVALLUZZO: I call him the
22 reliable confession man rather than the
23 fingernail --

24 MR. PARDY: Okay.

25 --- Laughter / Rires

1 MR. CAVALLUZZO: In any event,
2 Commissioner, for your information and for
3 information of counsel, we have attempted to
4 obtain the assistance of Ms Oummih, who is an
5 immigration lawyer in New York. We have asked her
6 to attend as a witness here in any date in May or
7 June. She told us she was not available for any
8 day in May and June. We also told her that we
9 would love to have her as a witness at the end of
10 July or the beginning of August. That letter went
11 out a week or two ago and we still have received
12 no response from her. We were having a great deal
13 of trouble getting her cooperation.

14 THE COMMISSIONER: But the point
15 is that if she -- we will do whatever we can to
16 have her called.

17 MR. CAVALLUZZO: And certainly we
18 will do whatever we can to have her here.

19 MR. PARDY: Can I make one
20 comment? I think I do understand why the family
21 made the choice they did. I think it was done
22 through a variety of contacts, but given an
23 understanding that perhaps Ms Oummih might have
24 had some experience in dealing with these kinds of
25 cases involving people from the Middle East who

1 ran into difficulty with the American authorities.
2 I think that was their thinking here. But how
3 current she was in terms of -- as you know,
4 Americans were making changes as we acted almost
5 with respect to their immigration regulations and
6 procedures.

7 MR. CAVALLUZZO: But if we -- we
8 will be obviously pursuing that effort in respect
9 of having her cooperate and appear.

10 Now, the fourth area, Mr. Pardy,
11 relates to what you referred to, and counsel has
12 been referring to, as working or operational
13 assumptions in respect of torture, and in
14 particular, if I can be as precise as possible, I
15 will refer once again to the transcript at --

16 This once again is from May 26th
17 of 2005, and in particular at 3982, and this is a
18 question at line 6 from Ms Edwardh. It says:

19 "You are all involved..."

20 She's talking about you and your
21 colleagues in DFAIT.

22 "You are all involved in a
23 pretty close circle of
24 providing consular services
25 to Mr. Arar. Now, I want to

1 talk about up the chain of
2 authority.

3 There are other people
4 above you, and while you may
5 have been alive to these
6 issues in October, in
7 November, I have not seen any
8 document, Mr. Pardy, that
9 clearly expresses your
10 concerns about this issue to
11 your superiors, right on up
12 to the Minister's office.

13 But would it be clear
14 from your briefings, and I
15 know you spoke to all of
16 these people in addition to
17 providing written
18 information.

19 Would they have been
20 aware of the working
21 assumption that you had about
22 Mr. Arar's treatment in
23 October and November of
24 2002?"

25 And then your response at line 23

1 at that page is:

2 "Yes, I think both
3 horizontally and vertically
4 that was the case."

5 And then moving on to 3893,

6 "I would just explain to you
7 that, like in New York, I had
8 a dual reporting
9 relationship. Ms McCallion
10 who ostensibly was my
11 theoretical boss, every time
12 we had a major case involving
13 a country like this case,
14 then I went over to the
15 political side. And it
16 wasn't so much as the boss
17 but the people on the Middle
18 East side of things,
19 Mr. Sinclair was there as the
20 Director General and
21 Mr. McNee was the ADM. And
22 that's the route that we
23 would go upstairs on this
24 kind of an issue. It
25 wouldn't go up the other

1 route at all."

2 And what I would like to ask you
3 is for some clarification on this particular point
4 in time, when you said that this working
5 assumption or operational assumption -- and
6 obviously we are talking about whether Mr. Arar
7 was tortured or mistreated in that first period of
8 a couple of weeks when the Syrians had denied that
9 he was there, and I want to deal first whether it
10 was shared horizontally, and we are talking, in
11 particular, two people that I would refer to, and
12 that is Helen Harris and Dan Livermore.

13 And why I refer to Dan
14 Livermore -- who, as you know, was ISD or the Head
15 of Security and Intelligence -- is that he is the
16 first person that sent an e-mail -- if the witness
17 could have Exhibit P-134, please, the Pillarella
18 Book of Documents.

19 MR. PARDY: Tab?

20 MR. CAVALLUZZO: Tab 1. This is
21 an e-mail to Damascus, which is dated October
22 10th, and it's from Mr. -- signed by
23 Mr. Livermore, Director General of Security and
24 Intelligence Bureau, and the reference that I
25 would make is to the last sentence in the

1 second-last paragraph, where he's asking for
2 Damascus to locate Mr. Arar, if they could, and he
3 says -- this is Mr. Livermore:

4 "There are concerns that Arar
5 may be aggressively
6 questioned by Syrian Security
7 Services."

8 And ask you whether, at that point
9 in time, whether you were in Ottawa at the time
10 and whether you were in discussion with
11 Mr. Livermore and Ms Harris?

12 MR. PARDY: I was in Washington --
13 I think -- this is what?

14 MR. CAVALLUZZO: October --

15 MR. PARDY: Thursday, October the
16 10th, yes. I came back from Washington on Friday
17 evening, the following day, but there is other
18 correspondence there to reflect the fact that I
19 was in direct communication with Ms Harris on all
20 of this. She was acting for me back here in
21 Ottawa, and once we started to get, as you know,
22 those three events on October the 10th that gave
23 us really a target with respect to Syria and we
24 were looking then, as I understand it -- she spoke
25 to Mr. Livermore and together crafted or wrote

1 this particular instruction going out to the
2 Mission. There is an associated message that went
3 out to Amman, Jordan, the following day.

4 And I remember with Ms Harris --
5 she had served in Syria -- it seems like everybody
6 in the foreign service had served in Syria except
7 myself in terms of the -- but Ms Harris had served
8 in Syria a few years earlier and was responsible
9 for the consular program there. And certainly in
10 our discussions, this issue had come up, and as I
11 had testified earlier, of course, our general
12 knowledge about Syria and what had happened to
13 Mr. El Maati or what Mr. El Maati reported to us
14 in August of 2002 when we got to see him in Cairo.

15 So all of these are coming back,
16 and it's really, in a sense, the "aggressively
17 questioned" is a bit of shorthand here in terms of
18 what we sort of felt might be the case as far as
19 Mr. Arar was concerned in Syria.

20 MR. CAVALLUZZO: Okay. And
21 Mr. Livermore, although he's the head of ISD, we
22 heard evidence that he used to be the Director of
23 Human Rights in DFAIT as well, so that he had some
24 background as well.

25 MR. PARDY: Absolutely, yes.

1 MR. CAVALLUZZO: So at least the
2 operational assumption between the three of you at
3 that time is that something may have happened in
4 light of Syria's human rights record.

5 MR. PARDY: Yes. What we are
6 saying -- we are at the very beginning, very
7 beginning of this approach of looking at Syria
8 with respect to Mr. Arar, and right from the very
9 beginning, I think, we were making this
10 assumption.

11 MR. CAVALLUZZO: Okay. Now, I've
12 looked at the e-mail to Amman, Jordan, and the
13 wording of the e-mail is very similar. This one
14 is signed and approved by Helen Harris. The
15 wording is very similar except it doesn't have
16 that line about aggressive questioning. Could you
17 tell us why that is?

18 MR. PARDY: I think our -- at this
19 point, in these two days, I think we were still --
20 or the sense we had, it was Syria, I think when
21 this message went out. The Jordanian thing came
22 up I think as a result of a conversation I had
23 with Mr. Cerda, because I said, "Well, we're
24 having some trouble here in terms of Syria." And
25 he said, "Well, try Jordan." And then we started

1 to -- how can I put it? -- to do scenarios here,
2 to a certain extent.

3 In my own mind, I had a sense that
4 it would be unlikely for the Americans to fly
5 directly to Damascus in a situation like this, but
6 I did know that Amman, Jordan, was a way station
7 for them for the movement of people around the
8 world, because Amman, Jordan, has been used for
9 people coming out of Afghanistan, in particular.

10 But in terms of when we sent the
11 message, and I think it was that we had less
12 concern in this area with regards to the
13 Jordanians. Now, people could certainly quibble
14 with that statement, and I'd be prepared to debate
15 with them, but our experience with Jordanians on
16 cases was quite different than it was with the
17 Syrians. The Jordanians were fairly forthcoming,
18 we had cooperated with them on a number of very
19 difficult cases in the past, and the level of
20 cooperation, their willingness to talk to us as
21 another government was there, which was never
22 there with the Syrians.

23 MR. CAVALLUZZO: And certainly the
24 language used in the Damascus letter suggested to
25 the staff in Damascus the urgency of the matter by

1 making express reference to --

2 MR. PARDY: Oh, yes. And I think
3 the embassy responded, I think, in -- with that
4 same sense of urgency that we imparted here, yes.

5 MR. CAVALLUZZO: Now that's
6 horizontally.

7 I'd like to deal vertically now.
8 This is, your answer suggested, would include in
9 this kind of situation the ADM in the Middle East
10 section, John McNee, who was at that point in time
11 holding that position. Now, I understand that
12 Mr. McNee also had experience in Syria?

13 MR. PARDY: Yes, he was the
14 Ambassador in Syria, more recently than Ms
15 Harris's experience, I think. If my recollection
16 is right, yes.

17 MR. CAVALLUZZO: The evidence
18 yesterday from Mr. Edelson was that there was
19 conversation between him and Mr. McNee, and that
20 there was a -- in fact, there was a note to the
21 effect of torture by Syria, torture by proxy, and
22 the evidence was that Mr. McNee told Mr. Edelson
23 to speak to you, and then you and Mr. Edelson met
24 about Mr. Arar?

25 MR. PARDY: Yes, I think that was

1 about the third week in October, I think it was,
2 yes.

3 MR. CAVALLUZZO: So it would
4 appear that at least Mr. McNee's operating
5 assumption was the same as yours, and that is that
6 torture is a reasonable prospect in respect of
7 Mr. Arar's early stay in Syria, and in respect of
8 this kind of situation, as you said, he would be
9 the person to whom you would report in terms of
10 the hierarchy within DFAIT?

11 MR. PARDY: Yes, on these cases,
12 where there's a very large political content to
13 the case, that's the way the system went, yes.

14 MR. CAVALLUZZO: Okay. Now, I'd
15 like to deal with Minister Graham. Minister
16 Graham testified that he was not briefed as to the
17 real possibility that Mr. Arar was subjected to
18 torture in his early stay in Syria, and I wonder
19 if you might give us some background here in terms
20 of Mr. Graham's experience in respect of Middle
21 Eastern countries and torture.

22 MR. PARDY: Yes, the specific
23 example is that in August of 2001, William
24 Sampson, Bill Sampson, had been in prison in Saudi
25 Arabia. He had been detained in about -- I think

1 December 17th in the year 2000, so nine, ten
2 months later, and in an associated -- and we had
3 strong suspicions that Mr. Sampson was tortured by
4 the Saudis.

5 If anybody had seen the video
6 confession that the Saudis put on in early
7 February of 2001, I think gave some credence to
8 all of this. We did not -- I forget when we
9 actually got in to see Mr. Sampson, but again, it
10 was even a longer period than was the case with
11 Mr. Arar, I think it was five, six weeks after he
12 had been detained.

13 But another Canadian had been
14 detained by the Saudis in April of 2001, and we
15 finally got that Canadian out after about 60-odd
16 days of being in a Saudi prison. And when we got
17 him out, we sat down and debriefed him and he
18 provided us with a day-by-day account of what
19 happened to him in the Saudi prison, and it was a
20 very troubling document indeed. And I think we
21 had all of this together by mid summer, late
22 summer -- there was some problems in terms of
23 communication and that.

24 But with that document and with
25 what was said in that document, our concerns for

1 Mr. Sampson, of course, went straight through the
2 roof. We approached the Prime Minister and he
3 agreed that Mr. Graham, who was then Chair of the
4 Commons Committee on Foreign and Defence Policy,
5 would go out to Saudi Arabia as a special envoy
6 and would take a copy of this report that we had
7 put together from the second Canadian and present
8 it to the Crown Prince of Saudi Arabia. We were
9 able to arrange that, and Mr. Graham went out and
10 sort of -- we had briefed him on all these kind of
11 things and he obviously read the report, met the
12 Crown Prince and presented it to the Crown Prince
13 in early September of 2001, and as a matter of
14 fact, Bill just got back in the country, I think,
15 the day before 9/11 occurred --

16 MR. CAVALLUZZO: This is Bill
17 Graham --

18 MR. PARDY: The Minister, I should
19 have said. Sorry.

20 MR. CAVALLUZZO: Okay. So that he
21 had direct experience, you're saying, in respect
22 of Canadian detainees held abroad in the Middle
23 East with allegations of torture.

24 Now, do you have any comment in
25 respect of how the Saudis treated that envoy, and

1 whether that informed your position in respect of
2 Mr. Arar within the year, or a year later?

3 MR. PARDY: Yes. Mr. Graham was,
4 I mean, accorded all the courtesies by the Crown
5 Prince, he had a very detailed meeting, very well
6 done, and he left the country. And I'm going to
7 sort of fast-forward to a certain extent here, but
8 within weeks, the Saudis put Mr. Sampson on trial,
9 there was a secret trial, there was no legal
10 representation for Mr. Sampson, he was convicted
11 of murder and sentenced to death.

12 This was, I think, in October of
13 2001. And that -- you know, you reach certain
14 conclusions when these kind of things happen. I
15 think the Crown Prince himself might have been
16 sensitive to what we were saying to him at that
17 level but the people further down in that system
18 just said, well, to hell with this, we're going to
19 do what we want to do, and that's what they did.

20 We didn't find out about the trial
21 until the spring of 2002, I think it was, and
22 there was legal representation for Mr. Sampson,
23 good legal representation in Saudi Arabia for him
24 in all of this. They were not informed at the
25 time, but they did find out subsequently. And

1 really in a sense the use of the information we
2 had -- I don't want to say it was the conclusion I
3 came to but certainly really indicated to me that
4 one had to be very careful in using information
5 like this with the government that you're charging
6 with this sort of thing. And so that experience
7 certainly influenced me with respect to the
8 information that -- or the conclusions or
9 operational assumptions we had with respect to
10 torture and Mr. Arar.

11 MR. CAVALLUZZO: Now, the final
12 area that I would like to ask about is, in
13 particular, the consular reports, and we saw the
14 very first consular report in respect of Mr. Arar
15 was on or about October 23rd. Now, would those
16 consular reports go to the Minister's office?

17 MR. PARDY: I think you would have
18 to look at each individual one of them. I think
19 just about in every case that they did, although I
20 know the C-4 ones you see the office of MINA and
21 perhaps Mr. Fry gave some evidence to what
22 happened to the reports in the office.

23 But in addition to the reports
24 going there, the C-4 system is a little slower
25 than an e-mail system as such, that just about --

1 there was a level of interest in every visit that
2 was made to Mr. Arar by Mr. Fry and the Minister,
3 and so there was always the briefings that went
4 along with this, almost the moment that -- and
5 sometimes we had telephone calls from Damascus,
6 even before they wrote the reports and speak to us
7 about this sort of thing, so the information was
8 in play very quickly.

9 MR. CAVALLUZZO: Now, the final
10 question, and we've gone through the first
11 consular report with several witnesses now, and
12 certainly there are negative aspects to it, and I
13 want to ask you, despite the negative aspects, was
14 it good news for you from your perspective based
15 on your working assumptions?

16 MR. PARDY: In Syria this was -- I
17 can't characterize it as anything other than good
18 news, you know, given the trouble -- and perhaps
19 we'll get a chance to talk about Mr. El Maati, the
20 trouble we had there, and Mr. Almalki and
21 subsequently other cases, and to this day, I don't
22 know why the Syrians cooperated on Mr. Arar to the
23 extent that they did, but out of the blue, we had
24 this, and we exploited it to the maximum.

25 We would see Mr. Arar. We had

1 five visits, I think, before the end of December,
2 you know, and you make certain observations -- the
3 conditions were by no means the best, but we took
4 that information, and each visit -- one built on
5 the other, to a certain extent. The October 23rd
6 visit gave us, I think, the initial standard, the
7 benchmark that we used, and then we kept referring
8 back to that. Mr. Martel, being the only person
9 that was doing this, was able to make that, and to
10 say, well, it's worse today than it was the last
11 time, and that was -- you know, I thought it was
12 good news. I thought -- and when we shared this
13 with the family, that they thought the fact that
14 we were doing this was good news, but by no means
15 we would accept that this was the best, no.

16 MR. CAVALLUZZO: Finally, in
17 respect of this area, I think it's fair to say
18 that you did not give anyone a tutorial on Torture
19 101, but did you feel that your working assumption
20 was shared --

21 MR. PARDY: Oh, yes.

22 MR. CAVALLUZZO: -- by people on
23 your level as well as people --

24 MR. PARDY: I know it was. You
25 know, you talked about it. You can sit down and

1 sort of look somebody in the eye and give them 10
2 minutes on Syria. You just say, look, this is
3 Syria. You know the record that's out there --
4 how can I -- you -- from what we did and how the
5 information was treated, maybe we
6 overcharacterized all of this, the goodness of it,
7 in that sense, in terms of the releases to the
8 public. But from our perspective, this was good
9 news that was out there. And I don't think there
10 was anybody who has any understanding of the
11 Middle East in the Department of Foreign Affairs
12 would have not had some sort of concerns about
13 what the Syrians would do with prisoners such as
14 Mr. Arar.

15 MR. CAVALLUZZO: Okay. Now, I'd
16 like to move on to another area, and that is ask
17 you just a couple of questions relating to the
18 Syrian Human Rights Committee report. You were
19 asked a couple of questions about that, and you
20 may recall, in your direct examination, you had
21 expressed some scepticism about the committee, in
22 particular, you said that you had certain concerns
23 in respect of emigre organizations like this, and
24 you didn't really have the chance to clarify what
25 your concerns were in respect of the report of the

1 Syrian Human Rights Committee which came out in
2 the summer, early summer of 2003.

3 MR. PARDY: The report itself I
4 think should be treated differently than the
5 letter. I guess I'll make a distinction there
6 right at the very beginning.

7 MR. CAVALLUZZO: You're comparing
8 now the report and the letter of July 28th, 2003,
9 to Dr. Mazigh?

10 MR. PARDY: July 29. Yes.

11 MR. CAVALLUZZO: You've got better
12 control of the facts than I.

13 --- Laughter / Rires

14 MR. PARDY: But the report itself,
15 I mean, when organizations publish annual reports,
16 you know, the assumption is made that that wasn't
17 fresh information that came to them overnight. I
18 mean, they write these reports, and there was a --
19 Mr. Arar's case was in there, I think there were
20 six or seven lines, I think, in total, along with
21 other people that were there.

22 The concern I had was, you know,
23 how reliable that was, and it didn't ring any
24 large bells in terms of -- I mean, because the
25 working assumption was, yes, early on, real

1 trouble, we've seen him a number of times since
2 then, and we think that that interval period --
3 certainly in terms of the specific treatment of
4 Mr. Arar, to his body, if you like, or to his
5 mind -- the prison conditions, as we have
6 subsequently learned, were horrible, but certainly
7 in terms of that report, no. I mean, it was
8 another report that was there that you took note
9 of it but did not lead to any great action on our
10 part.

11 My concern would be that I know
12 that if Amnesty International was operating, and
13 if they had information that came in to them from
14 something happening to a Canadian overseas, I know
15 they would be on the phone to me in that same time
16 frame that they got that information.

17 SHRC did not operate that way.
18 But when the letter then came in on 29th, where
19 there was a lot more specificity with respect to
20 all of this, then on that basis that's when we
21 acted and got the Embassy to push again for
22 another visit, which had not happened since April.

23 MR. CAVALLUZZO: And have you
24 compared that letter to Dr. Mazigh and the
25 ultimate statement made by Mr. Arar on November

1 the 4th?

2 MR. PARDY: Yes. I thought the
3 letter, when I read it, was almost a checklist of
4 things that happens when government does bad
5 things to people sort of thing, and I think that
6 there are some significant differences to what
7 Mr. Arar himself gave public evidence on on
8 November the 4th, I guess, or 5th, I guess, after
9 his return to Canada, yes.

10 MR. CAVALLUZZO: Now, the
11 second-last area that I would like to deal with is
12 just for clarification because we have heard some
13 of this evidence in camera and some of the
14 evidence has a claim in regard to NSC, but it does
15 require some clarification in respect of certain
16 timing.

17 First of all, Mr. El Maati.
18 You've told us about the statement that he made
19 about torture while he was in Syria, that his
20 torture by the Syrians, and he made this statement
21 while he was in Egyptian detention in August of
22 2002. It's not clear to us as to how Canada
23 became aware that Mr. El Maati was detained in
24 Syria in 2001.

25 MR. PARDY: Yes. I think I can't

1 give you detail, but I received information from a
2 source that was always reliable, it was an
3 internal Canadian government source -- I will go
4 that far -- and that came to us, I think it was,
5 in August -- let me just remind myself here --
6 August 13th or 12th or something like that.

7 MR. CAVALLUZZO: Is that Mr. El
8 Maati or --

9 MR. PARDY: I'm sorry. El Maati.
10 I'm sorry. No.

11 MR. CAVALLUZZO: Let's deal with
12 El Maati?

13 MR. PARDY: El Maati first. No,
14 I'm sorry. In Mr. El Maati's case, it was the
15 family that called us on, I think it was November
16 16. He had left Canada with his mother. They
17 both flew together to Vienna, Austria, and in
18 Austria, his mother was scheduled -- she flew on
19 to Cairo and Mr. El Maati was catching an Austrian
20 airline flight direct to Damascus where he was
21 going to get married. And I think within a couple
22 of days -- I think that those flights were on
23 November 12th, I think, and November 16th is when
24 the family actually contacted us and said Mr. El
25 Maati did not show up in Damascus. So immediately

1 we started to try to locate him. One of the very
2 first things we did was to go to Austrian Airlines
3 to get confirmation from them that Mr. El Maati
4 was on the flight to Damascus, and it took us
5 almost a month before we could get the Austrian
6 Airlines to confirm that because it was an
7 essential piece of information for us because we
8 were getting nothing from the Syrians at this
9 point. So we got waltzed around a fair bit there,
10 because we even tried -- whether or not he ended
11 up in Egypt in that November time frame. He
12 wasn't there -- or the Egyptians said that he
13 wasn't there. I mean, we kept asking the embassy
14 in Damascus to keep pushing on all of this. They
15 were in touch with the family of the woman that
16 Mr. El Maati was going to marry. They suggested
17 that maybe he had been detained and then shipped
18 to Egypt. I think in -- I think it was on
19 December 21st, 2001, I spoke to the Ambassador in
20 Damascus and asked him to go in at a high level in
21 the foreign ministry because of the run-around we
22 were getting and the Ambassador then spoke to
23 Vice-Minister Haddad on the case, saying, look, we
24 needed information. And on I think it was
25 December 29th or 30th, the office of the

1 Vice-Minister called back to the Ambassador and
2 reported to him that, yes, Mr. El Maati was in
3 custody in Syria but that he was a Syrian citizen,
4 which was news to us, and therefore, there was no
5 consular access -- no consular access would be
6 granted.

7 MR. CAVALLUZZO: So that the
8 important point in terms of clarification for our
9 public record is that the embassy in Damascus
10 discovered about -- discovered Mr. El Maati
11 through head office, DFAIT, in Ottawa.

12 MR. PARDY: Yes. The family I
13 think called us here, and I'm trying to think -- I
14 think his father was still in Canada because his
15 mother was in Cairo throughout this period, yes.

16 MR. CAVALLUZZO: Okay. We'll hear
17 other evidence relating to him in camera.

18 Now, the other Canadian detainee
19 that we were interested in in terms of the public
20 record is Mr. Almalki, and I'm wondering if you
21 could tell us the background as to how DFAIT
22 discovered that Mr. Almalki was being detained in
23 Syria?

24 MR. PARDY: Maybe the recorder can
25 get the first part of that information and carry

1 it over, but it was through information in the
2 Canadian government who came to me about August
3 12th or 13th of 2002 and immediately then we got
4 on the -- sent the mission -- this information out
5 to the mission and they immediately did a
6 diplomatic note to the Syrians on all of this.
7 Again, as others have given testimony to, the
8 Syrians very rarely respond to these inquiries; we
9 got nowhere. When the Ambassador met with the
10 Vice-Minister on October 19th, 2002 with respect
11 to Mr. Arar, he also raised the Almalki case,
12 which was interesting, because in our mind, there
13 was certainly some similarities, although how
14 Mr. Almalki arrived there, they were slightly
15 different than the way Mr. Arar did, but what was
16 interesting was that the Syrians responded on
17 Mr. Arar but refused to respond on Mr. Almalki.

18 MR. CAVALLUZZO: And were you in
19 touch with the family as to whether Mr. Almalki
20 should get consular access on behalf of DFAIT, in
21 other words, was DFAIT asked to attempt to get
22 consular access or were you asked to back off?

23 MR. PARDY: No, the -- I mean, the
24 information we had, we were taking consular
25 actions. We are out irrespective. We never did

1 establish contact with the family, I think, until
2 late in the year of 2002, and it was on our
3 initiative that we discovered, because we had no
4 contact with the family, we discovered that there
5 was a brother here in Ottawa and we spoke to the
6 brother, but his instructions to us were that,
7 yes, keep going, everything you can do on the
8 consular side, but the family wanted no publicity
9 whatsoever on this case, and they maintained that
10 position, as I understand it, right up until
11 Mr. Arar gave public evidence -- public
12 information about his meeting with Mr. Almalki at
13 Sednaya prison. I think there is some dispute
14 about this. There were three or four brothers
15 involved here. We were dealing with at least two,
16 if not three of them. Now, Ms Pastyr-Lupul, who
17 is the desk officer, she can give you, I think, a
18 day-to-day accounting of what went on.

19 I think as well -- I didn't hear
20 the testimony completely yesterday -- I think
21 maybe Mr. Edelson was retained by the Almalki
22 family or was involved with Mr. Almalki, was that
23 the evidence?

24 MR. CAVALLUZZO: Yes.

25 MR. PARDY: Because I know there

1 was -- I remember reading a press report in
2 mid-2003 in which Mr. Edelson was interviewed and
3 one of the comments he made in that interview was
4 that the family had asked him not to speak
5 publicly about the case.

6 MR. CAVALLUZZO: But in any event
7 they sought DFAIT's assistance in respect of
8 attempting to get consular access, but low
9 profile?

10 MR. PARDY: Low profile. The
11 family, the Almalki family, and I think the
12 rationale for this was that their -- Mr. Almalki,
13 the father, I think, had been a lawyer and a judge
14 in Syria before they emigrated and they had good
15 contacts themselves and they were certainly hoping
16 through those contacts that they could be
17 effective as well.

18 MR. CAVALLUZZO: Finally,
19 Mr. Pardy, I've reviewed your contact with
20 Mr. Arar's family and, for example, at Tab 317, I
21 see that you sent an e-mail at 5:49 in the
22 morning, Tab 42, 4:40 in the morning, Tab 384,
23 3:39 in the morning, Tab 386, 2:24 in the morning,
24 5:50 in the morning -- I could go on and on and
25 on. Obviously it's not just family but these are

1 e-mails relating to Mr. Arar. And we understand
2 that you really worked --

3 MR. PARDY: That's Newfoundland
4 time, you have to remember that.

5 MR. CAVALLUZZO: I'll add 30
6 minutes to that. It seems you were involved to
7 getting airline tickets through asking the Prime
8 Minister to intervene on Mr. Arar's behalf, and
9 obviously, at the same time, you had SARS going
10 on, you had Mr. Sampson going on, you told us
11 many, many other activities you had going on at
12 the same point in time.

13 The question that I have for you,
14 in respect of your efforts on behalf of Mr. Arar,
15 in all of your experience in terms of consular
16 affairs, do you think that the time you expended
17 on Mr. Arar was more than any other Canadian
18 detained abroad?

19 MR. PARDY: Yes, it was
20 extraordinary -- it was quite concentrated. I
21 mean, ten months is reasonable -- no, I shouldn't
22 say reasonable, there was nothing reasonable with
23 this case at all, but was a short period of time
24 for a consular case of this intensity. But again,
25 you know, the records are there. We just try to

1 keep the pressure on in terms of every door that
2 we found, reach out to people outside of
3 government, if you like, and talking to people,
4 anybody that we thought that could help here. But
5 in terms of my direct involvement, it was every
6 day, seven days a week.

7 MR. CAVALLUZZO: Thank you,
8 Mr. Pardy. I believe that completes your
9 evidence.

10 MS EDWARDH: Excuse me, sir, could
11 I have a moment with Mr. Cavalluzzo, please?

12 THE COMMISSIONER: Yes.

13 --- Pause

14 THE COMMISSIONER: You have a
15 sidebar --

16 MR. CAVALLUZZO: We learned what
17 that was during O.J.'s case.

18 THE COMMISSIONER: Maître David
19 started to call me Judge Ito.

20 --- Laughter / Rires

21 MR. PARDY: The term bar comes
22 from when courts used to be in saloons in the
23 western United States.

24 --- Pause

25 MR. CAVALLUZZO: Just one final

1 question, Mr. Pardy, and that is, in respect of
2 the -- and in terms of your efforts on behalf of
3 Mr. Arar, the cooperation you got from the staff
4 in Damascus?

5 MR. PARDY: I have no quibble -- I
6 think on direct testimony, I think in response to
7 a question from Ms Edwardh, and this comes back to
8 this "rebut" word and that, and I, in terms of
9 speaking with the ambassador and Mr. Martel and
10 other people in the embassy, I don't think that
11 there is an incident or an -- what's the word
12 here -- any evidence to suggest that there was any
13 reluctance on their part in terms of their
14 willingness to go as far as possible. I think
15 there's some evidence of slight differences of
16 opinion in terms of how one proceeds in policy and
17 all of that, but once the issue was decided, the
18 embassy saluted and got on with it in that sense.

19 So I can't -- I would not suggest
20 that there was any reluctance whatsoever in this
21 case -- and on the other cases, too. I think if
22 you ever get a chance to look at some of the other
23 records here. And I think the thing to remember
24 is the extraordinarily difficult environment that
25 Syria represents. I can't think of another case

1 that -- where it's been as difficult. Vietnam was
2 a lot easier in its own way, even other states
3 around the world where you deal with things. It
4 was the shadows, the lack of transparency in Syria
5 that really creates the difficulty in doing these
6 things.

7 MR. CAVALLUZZO: As well as some
8 of the resistance from Canadian agencies that you
9 seem to experience?

10 MR. PARDY: Oh, that's another
11 story, yes.

12 MR. CAVALLUZZO: Thank you. I
13 have no further questions.

14 THE COMMISSIONER: Thank you,
15 Mr. Pardy. That completes your evidence. You've
16 been most patient, you've been here on three
17 occasions?

18 MR. PARDY: Five.

19 THE COMMISSIONER: Five. Was the
20 mannequin sitting here for those others?

21 --- Laughter / Rires

22 THE COMMISSIONER: But you have
23 been extraordinarily helpful.

24 One other comment I'd like to make
25 is that I've heard from a number of witnesses and

1 have now observed firsthand myself the
2 contribution you made over the course of your
3 career in consular affairs, and the comments have
4 been universally praiseworthy, and I think
5 listening to your evidence, your dedication
6 obviously to your task over the course of your
7 career is something that, as Canadians, we can all
8 be very proud of you and you should be as well.

9 Thank you very much.

10 MR. PARDY: Thank you,
11 Commissioner, for those kind words. Can I leave
12 you with one small piece of advice in all this, if
13 that's possible?

14 THE COMMISSIONER: I can use a
15 much advise as you're willing to give.

16 MR. PARDY: I've seen a number of
17 commissions come and go who have operated in this
18 area of national security. Some of the problems
19 we have today is as a result of recommendations
20 that have come from the past. And the creation of
21 institutions in this area of national security are
22 extremely difficult, and you look around the world
23 today and all countries are grappling with this.
24 There are no easy answers to most of these issues
25 in that sense, other than through the quality of

1 the people that are involved and the leadership
2 that is displayed by people there.

3 So I would hope that when we look
4 back on this period and your report we can say
5 that this Commission got it right.

6 THE COMMISSIONER: Thanks very
7 much.

8 Well, that completes the evidence
9 this week.

10 MR. CAVALLUZZO: Yes. Just one
11 announcement to counsel, and that is that next
12 week, of course, we have Mr. Martel on Monday and
13 Tuesday. We did have Mr. Cabana scheduled for
14 Wednesday. Mr. Cabana's evidence is creating a
15 great deal of challenge in respect of the evidence
16 that he can share with us, and I'll be meeting
17 with Government counsel later on today and through
18 the weekend. As a result of the complications, we
19 are going to start Mr. Cabana on Thursday of next
20 week, so that Wednesday will be a clear day.

21 THE COMMISSIONER: Do we know yet?
22 Would we continue on the following week?

23 MR. CAVALLUZZO: I am going to
24 assume that Mr. Cabana will start Wednesday of the
25 next week, which I think is June 29th. It hasn't

1 been confirmed yet, but assume that it is
2 confirmed; I have a call in to his counsel.

3 And we will be remaining with
4 Mr. Loeppky for June 30th.

5 THE COMMISSIONER: Okay. Well,
6 we'll rise -- are we starting Monday at ...

7 MR. CAVALLUZZO: I think Monday we
8 can --

9 THE COMMISSIONER: Monday is --
10 oh --

11 MR. CAVALLUZZO: Monday is a
12 difficult day. If you can explain the schedule?

13 THE COMMISSIONER: Right. Let me
14 explain for the record my schedule on Monday.

15 I have a doctor's appointment
16 that's been scheduled for 3 months that I have to
17 go to -- nothing urgent, but I do have to go to
18 it, at three o'clock. With that in mind, I
19 thought we'd start at nine o'clock, we would sit
20 with breaks every once in a while, but we would
21 take a very brief 15-minute lunch hour. I would
22 leave at 2:30, be back by four o'clock, and we
23 could sit as late as six o'clock, because
24 Mr. Martel is scheduled for two days.

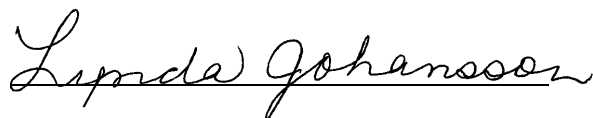
25 If we don't have to sit that long,

1 that would be fine, but if that -- those hours are
2 necessary in order to complete Mr. Martel in two
3 days, then that would be the schedule. Okay?

4 Well, that's it for this week.
5 Everybody have a good weekend.

6 THE REGISTRAR: Please stand.
7 --- Whereupon the hearing adjourned at 12:55 p.m.,
8 to resume on Monday, June 20, 2005, at 9:00 a.m. /
9 L'audience est ajournée à 12 h 55, pour reprendre
10 le lundi 20 juin 2005 à 9 h 00

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Lynda Johansson,

C.S.R., R.P.R.

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