

**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 mardi 23 août 2005

Held at:

**Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario**

Tuesday, August 23, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Tuesday, August 23, 2005

3 at 9:07 a.m. / L'audience reprend le mardi

4 23 août 2005 à 9 h 07

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning.

8 PREVIOUSLY SWORN: RICHARD FLEWELLING

9 THE COMMISSIONER: Mr. Cavalluzzo?

10 MR. CAVALLUZZO: Thank you,

11 Commissioner.

12 EXAMINATION

13 MR. CAVALLUZZO: Mr. Flewelling,
14 when we broke yesterday, we had reached the point
15 in time where Mr. Arar was detained in New York
16 City, and I understand from your evidence of
17 yesterday that you did not learn about Mr. Arar's
18 detention in the United States until October 2nd.

19 MR. FLEWELLING: That's correct.

20 MR. CAVALLUZZO: And on October
21 2nd, you learned that information from whom?

22 MR. FLEWELLING: I was informed by
23 Inspector Richard Roy.

24 MR. CAVALLUZZO: And we're going
25 to come to that particular date. But prior to

1 doing that, I would like you to look at exhibit
2 P-83, volume 1, at page 187.

3 MR. FLEWELLING: Sorry.
4 Whereabouts is it?

5 MR. CAVALLUZZO: Page 187.

6 THE COMMISSIONER: Tab 1?

7 MR. CAVALLUZZO: Behind Tab 1,
8 yes.

9 Now, this is a fax, which is dated
10 September 26th of 2002, and it is sent to
11 headquarters NOC with an informational copy sent
12 to international liaison as well as headquarters'
13 attention, and I understand that's to yourself,
14 Mr. Flewelling, and it's from "A" Division, and
15 you'll see it says:

16 "Attached pages are suggested
17 questions for Mr. Arar as per
18 your request. The list was
19 prepared earlier this year,
20 prior to Arar's sudden
21 departure from Canada, and as
22 such some questions are a
23 little bit dated." (As read)

24 It goes on:

25 "Secondly, we appreciate your

1 assistance in interviewing
2 Arar." (As read)

3 It's from "A" Division, and
4 appended to the fax are about three pages of
5 interview questions relating to Mr. Arar.

6 The question I have for you is
7 that this is sent -- at least a copy is sent for
8 your attention. Did you see a copy of this
9 particular fax?

10 MR. FLEWELLING: Not to my
11 knowledge.

12 MR. CAVALLUZZO: Not to your
13 knowledge. Even though it says copies go to
14 Mr. Flewelling?

15 MR. FLEWELLING: Correct.

16 MR. CAVALLUZZO: When did you
17 first see a copy of these questions which were
18 forwarded to the United States?

19 MR. FLEWELLING: I don't ever
20 remember seeing a copy of these questions.

21 MR. CAVALLUZZO: Right. But
22 certainly in preparation for these hearings,
23 you've reviewed a copy of those questions.

24 Is that correct? You've seen them
25 before?

1 MR. FLEWELLING: Yes. Only
2 through preparation.

3 MR. CAVALLUZZO: Right. Now, in
4 reviewing those questions, I'd ask you whether
5 these are the kinds of questions that should have
6 received CID approval before going to the United
7 States, to a foreign agency, in particular in the
8 United States?

9 --- Pause

10 MR. FLEWELLING: I think in having
11 reviewed our policy, and providing that approval
12 was sought through the CROPS officer, that these
13 types of questions could have been exchanged. I
14 believe that would be the -- would have been
15 allowed at that time.

16 MR. CAVALLUZZO: Do you not
17 believe that CID could have had some input in
18 respect of these questions; for example, in
19 respect of personal information that may be
20 involved that is going down without CID's
21 approval? Are there other inputs that CID could
22 have had?

23 MR. FLEWELLING: I think, as I
24 stated before, that it certainly would have been a
25 prudent thing to have done, to engage CID as well

1 as to inform management at that level that these
2 types of things were going to take place.

3 MR. CAVALLUZZO: Do you believe
4 that "A" Division -- or, excuse me, Project
5 A-OCANADA would have had authorization to send
6 these questions directly to the Americans without
7 CID approval?

8 MR. FLEWELLING: I believe with
9 respect to the policy as it was, that if they had
10 approval through their CROPS officer, that they
11 could have sent or -- yes.

12 MR. CAVALLUZZO: You believe that
13 they could have done this with -- only with the
14 authorization of a CROPS officer?

15 MR. FLEWELLING: Yes, and that
16 would have to be verified through investigators
17 there.

18 MR. CAVALLUZZO: Right. And do
19 you know if CROPS officers approved this
20 particular submission of questions to the
21 Americans?

22 MR. FLEWELLING: No, I have no
23 idea.

24 MR. CAVALLUZZO: Wouldn't
25 "A" Division or CROPS say, "What are you talking

1 about, we didn't have CID approval? We sent a
2 copy through headquarters NOC to be forwarded on
3 to the Americans, and on top of that, we gave a
4 copy to Rick Flewelling, who is responsible for
5 Project A-OCANADA? They knew about it"? What
6 would you say to that?

7 MR. FLEWELLING: I don't know if I
8 have an answer for you. I think perhaps they may
9 have thought that where they had forwarded a copy,
10 that they were within existing policy.

11 MR. CAVALLUZZO: Now, if you had
12 seen these questions prior to their submission to
13 the Americans, what would you have done in respect
14 of the questions as to whether it would be
15 appropriate to send these questions to the
16 Americans? Would you have sought advice from
17 somewhere?

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: Who would you
20 have sought advice from?

21 MR. FLEWELLING: I would have
22 sought advice through our RCMP DOJ to ensure that
23 everything fit properly and that we were
24 following -- working within existing policy.

25 MR. CAVALLUZZO: Okay. Now, I'd

1 like you to review two particular SitReps that we
2 will file now as new exhibits.

3 THE COMMISSIONER: 222.

4 EXHIBIT NO. 222: SitRep from
5 "A" Division for September
6 26, 2002, dated September 27,
7 2002 and signed by Mr. Cabana
8 and Mr. Callaghan

9 MR. CAVALLUZZO: Let us look at
10 the first SITREP, which is exhibit 222. It is
11 dated September 27th of 2002.

12 It is from "A" Division, signed by
13 Mr. Cabana, and the other name -- I'm going to
14 release that name right now because that name
15 crops up -- I shouldn't use the word "crops" --
16 but comes up quite frequently, and that is
17 Mr. Patrick Callaghan, who is one of the two
18 supervisors in respect of Project A-OCANADA.

19 And this particular SITREP goes to
20 a number of people, once again headquarters, NOC.
21 What does NOC stand for at headquarters?

22 MR. FLEWELLING: "National
23 Operations Centre."

24 MR. CAVALLUZZO: Then it goes on
25 to CID, NSID, to your attention, and then it goes

1 to a number of INSETs as well as other people,
2 including NSIS in "A" Division.

3 THE COMMISSIONER: Are they the
4 same? Mr. Cavalluzzo, I'm just wondering about
5 marking the second one.

6 MR. CAVALLUZZO: The second one
7 should be 223.

8 THE COMMISSIONER: Okay, thank
9 you. I'm sorry to interrupt.

10 EXHIBIT NO. 223: SitRep from
11 "A" Division for September
12 27, 2002, dated September 30,
13 2002

14 THE COMMISSIONER: Go ahead.

15 MR. CAVALLUZZO: And dealing with
16 the first one for September 27th, which is for
17 September 26th, exhibit 222, in essence what it
18 says -- what we can read from the unredacted
19 portion is that A-OCANADA was advised by somebody,
20 and the information there should be an American,
21 that Maher Arar was to arrive in New York City at
22 two o'clock via a commercial airline flight. Some
23 American were to interview him and then refuse
24 Arar entry into the United States. That American
25 somebody requested a list of questions from

1 A-OCANADA for their interview. The questions were
2 faxed as requested.

3 And I ask you whether you saw a
4 copy of exhibit 222?

5 MR. FLEWELLING: This one I didn't
6 see until sometime after October the 2nd.

7 MR. CAVALLUZZO: Now, when you
8 saw -- indeed, if it was after October the 2nd
9 that Project A-OCANADA had sent out a list of
10 questions, I assume you didn't ask to see the list
11 of questions that was faxed out in the previous
12 week?

13 MR. FLEWELLING: Not that I
14 recall.

15 MR. CAVALLUZZO: And just to
16 ensure that -- if your testimony is that they
17 could have sent these questions out so long as
18 they had CROPS approval. If we look to the bottom
19 of that page, we see Mr. Wayne Watson --

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: -- approved this
22 situation rep which clearly refers to the
23 questions, which means that CROPS had given
24 Project A-OCANADA authorization to do what they
25 did, presumably?

1 MR. FLEWELLING: It would appear.

2 MR. CAVALLUZZO: Okay. Now, if we
3 go to exhibit -- and I see if you go to the second
4 page that at this point in time, in September of
5 2002, that Project A-OCANADA is inserting the
6 third party rule.

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Now, if we go to
9 exhibit 223, which is dated September 30th, and
10 that's for September 27th, and it's sent to the
11 same persons as exhibit 222, just let me read to
12 you the unredacted portion in paragraph 2 on
13 page 2. It says:

14 "This American entity
15 notified A-OCANADA that Maher
16 Arar was in custody at an
17 airport in New York after
18 flying in from Europe. That
19 [somebody] advised that Arar
20 was --"

21 Then there's a pile of words that
22 are redacted, and then it goes on:

23 "And then refused entry to
24 the United States. He was
25 also denied permission to

1 enter Canada via the U.S.
2 Arar was then removed from
3 the country."

4 We will subsequently see that last
5 bit of information is incorrect as of that point
6 in time.

7 But in any event, I ask you
8 whether you received and reviewed this particular
9 situation report?

10 MR. FLEWELLING: Again, I didn't
11 see this until sometime after October the 2nd.

12 MR. CAVALLUZZO: And once again I
13 note that Mr. Wayne Watson, the assistant CROPS
14 officer, has approved this particular SITREP?

15 MR. FLEWELLING: I know his name
16 is there. I don't see his signature. But I'm
17 assuming.

18 MR. CAVALLUZZO: I would like to
19 come now to October 2nd. Could you tell us how it
20 was that you became aware that Mr. Maher Arar was
21 detained in the United States?

22 MR. FLEWELLING: It would have
23 been, I believe, the afternoon of October the 2nd
24 when Inspector Richard Roy, our liaison officer
25 with DFAIT came into our office, approached me,

1 and advised me of the situation.

2 MR. CAVALLUZZO: So this would
3 have been Mr. Roy coming to headquarters, your
4 office at headquarters?

5 MR. FLEWELLING: That's correct.

6 MR. CAVALLUZZO: And headquarters
7 is in a location different than Project A-OCANADA?

8 MR. FLEWELLING: Yes, it is.

9 MR. CAVALLUZZO: And you said he
10 advised you of the situation. Could you tell us
11 what he advised you of?

12 MR. FLEWELLING: The exact wording
13 I don't recall, other than -- to summarize it, he
14 advised me that Mr. Arar was detained in New York.

15 MR. CAVALLUZZO: I would like to
16 show you exhibit 209, which was introduced
17 yesterday through Mr. Roy, and these are the notes
18 that Mr. Roy took relating to the advice that he
19 received on October 2nd when he discovered the
20 situation of Mr. Arar.

21 You will see at the top that date
22 should be October 2nd, 2002. "Jonathan" is
23 Jonathan Solomon from DFAIT ISI, and you'll see
24 "Canadian arrested". And then it says "Canadian,
25 Montreal or Toronto", and then it says "Syrian."

1 THE COMMISSIONER: Montreal or
2 Ottawa, do you think?

3 MR. CAVALLUZZO: I'm sorry?

4 THE COMMISSIONER: Montreal or
5 Ottawa?

6 MR. CAVALLUZZO: What did I say?

7 THE COMMISSIONER: Toronto.

8 MR. CAVALLUZZO: Oh, excuse me.

9 THE COMMISSIONER: You people from
10 Toronto --

11 MR. CAVALLUZZO: It may show that
12 I want to get home, but I should have said
13 "Ottawa".

14 And then it says "Syrian." It
15 says "arrested at JFK Airport, New York." And
16 then it says "Tunis." That must mean Tunisian,
17 "to Mirabel." And then it says:

18 "Arrest not
19 immigration-oriented.
20 Consulate not able to see
21 him. He called parents to
22 advise."

23 And then Mr. Arar's date of birth.

24 And then it says:

25 "'A' and CID in loop in

1 notebook."

2 The information that is on this
3 page, is this the information that Mr. Roy related
4 to you on October 2nd?

5 MR. FLEWELLING: I don't think
6 that everything that was listed here was presented
7 to me.

8 MR. CAVALLUZZO: Let's go through
9 it, then.
10 He obviously told you a Canadian
11 was detained?

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: He said he was
14 either from Montreal or Ottawa?

15 MR. FLEWELLING: No.

16 MR. CAVALLUZZO: He didn't say
17 that?

18 MR. FLEWELLING: I don't recall
19 that.

20 MR. CAVALLUZZO: Did he tell you
21 he was a Syrian?

22 MR. FLEWELLING: I don't recall
23 that ever being stated.

24 MR. CAVALLUZZO: He didn't say he
25 was a Syrian?

1 MR. FLEWELLING: Not to my
2 knowledge. I'm not going to tell you that he
3 didn't. I just don't recall him telling me that
4 he was a Syrian at that time.

5 MR. CAVALLUZZO: Obviously if he
6 is saying that "A" Division and CID are in the
7 loop, presumably there would be no reason why he
8 wouldn't tell you that he was Syrian because
9 that's an important fact, isn't it?

10 MR. FLEWELLING: All I can tell
11 you is just what I recall.

12 MR. CAVALLUZZO: In Mr. Roy's
13 notes of that day, he says:

14 "See Rick Flewelling re
15 Maher Arar's phone number."

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: Then there is
18 reference to Almalki, and then he says:

19 "26 September advised of
20 itinerary of Maher to 'A'
21 Division. Arrested on the
22 27th. Re Maher Arar 'A'
23 supplied questions on the
24 26th to the American entity."

25 Did he tell you that?

1 MR. FLEWELLING: I don't recall
2 that.

3 MR. CAVALLUZZO: Did he tell you
4 on the 27th "less than forthcoming"?

5 MR. FLEWELLING: Less than --
6 sorry?

7 MR. CAVALLUZZO: "Less than
8 forthcoming"? The point there being that
9 Mr. Arar, when being questioned on the 27th, was
10 less than forthcoming with the Americans.

11 MR. FLEWELLING: And when was this
12 supposed to have happened?

13 MR. CAVALLUZZO: The notes
14 indicate that this was done on October 2nd.
15 --- Pause

16 MR. FLEWELLING: I don't recall
17 that.

18 MR. CAVALLUZZO: Then there's a
19 communication problem. A report was sent by fax
20 to CID noting same. Did he tell you that faxes
21 had been sent to the CID, in particular the ones
22 that we have just referred to, exhibit 222 and
23 223?

24 MR. FLEWELLING: He may have. At
25 this particular juncture in time, I just don't

1 recall.

2 I know that he stopped by my
3 office on the way down to see Mr. Pilgrim. I know
4 that we engaged in a brief conversation where he
5 did advise me.

6 MR. CAVALLUZZO: Right.

7 MR. FLEWELLING: And shortly
8 thereafter I left the office to go to a meeting.

9 MR. CAVALLUZZO: And do you know
10 what time approximately he would have advised you?

11 MR. FLEWELLING: It would have to
12 have been, I believe, according to my notes,
13 sometime prior to three o'clock in the afternoon,
14 I believe.

15 MR. CAVALLUZZO: Well, if we go to
16 your notes for October 2nd at page 35, you will
17 see at 1500 hours that there was a meeting with
18 CSIS.

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: Where Project
21 A-OCANADA and Arar was discussed.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: And there is no
24 reference to you having been advised by Mr. Roy on
25 that day.

1 Would you have been advised by Mr.
2 Roy before 1500 hours?

3 MR. FLEWELLING: I'm assuming so
4 because I know when I was at this meeting, I had
5 spoken to an individual at the meeting where I was
6 at to confirm Mr. Arar's detention.

7 MR. CAVALLUZZO: Okay.

8 MR. FLEWELLING: Which would lead
9 me to believe I did know prior to 1500.

10 MR. CAVALLUZZO: So that you would
11 have been advised prior to 1500.

12 At this meeting at the CSIS
13 building, was this with CSIS reps?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: And obviously you
16 discussed Project A-OCANADA, and indeed Mr. Arar.

17 MR. FLEWELLING: The meeting was
18 not with respect to Mr. Arar personally.

19 MR. CAVALLUZZO: Right.

20 MR. FLEWELLING: I do know that
21 with one of the representatives from CSIS that I
22 engaged him -- at least from my recollection, I
23 engaged one of the representatives from CSIS and
24 asked him to confirm with me whether or not he had
25 the same information as I, in that Mr. Arar was

1 being detained.

2 MR. CAVALLUZZO: And was there any
3 discussion with CSIS that Mr. Arar was refused
4 entry?

5 MR. FLEWELLING: No. I didn't
6 become aware that he was refused entry until I
7 read the SITREPs.

8 MR. CAVALLUZZO: And when did you
9 read the SITREPs?

10 MR. FLEWELLING: I'm believing it
11 was sometime after the 2nd.

12 MR. CAVALLUZZO: We are going to
13 come to a continuation report of the same day,
14 which will indicate the state of your knowledge.

15 Was there any discussion with the
16 CSIS rep regarding Mr. Arar being Syrian or being
17 a dual national?

18 MR. FLEWELLING: I honestly don't
19 recall where I learned that he was a dual
20 national.

21 MR. CAVALLUZZO: You honestly
22 don't recall where you learned. What about how
23 you learned?

24 MR. FLEWELLING: I can't give you
25 an exact answer as to how, or when, or where I

1 learned it. Just somewhere in that period of time
2 I became aware that he was a dual national.

3 MR. CAVALLUZZO: You came back to
4 the office, obviously, at 5:30 on that date. You
5 prepared a continuation report?

6 MR. FLEWELLING: Yes.

7 MR. CAVALLUZZO: And I would like
8 to file that as exhibit 224.

9 THE COMMISSIONER: 224.

10 EXHIBIT NO. 224:

11 Continuation Report, dated
12 October 2

13 MR. CAVALLUZZO: This is called a
14 continuation report, which is dated October 2nd at
15 5:30 in the afternoon.

16 Could you tell me why you would do
17 a continuation report rather than putting it in
18 your notes?

19 MR. FLEWELLING: The only response
20 I can give you is probably I had a pad of these
21 right next to me at the time.

22 MR. CAVALLUZZO: And could you
23 tell us -- why don't you read that for us.

24 MR. FLEWELLING: It says:
25 "Received [blank] --"

1 MR. CAVALLUZZO: Wait a minute.
2 You received something.

3 MR. FLEWELLING: "Received call
4 from."

5 MR. CAVALLUZZO: Okay.

6 MR. FLEWELLING: "According to
7 him, Arar was --"

8 MR. CAVALLUZZO: Just a minute,
9 before LEGAT, let's just advise the public what
10 that is.

11 This is an American agent
12 somewhere?

13 MR. FLEWELLING: It would be a
14 representative from the American Embassy.

15 MR. CAVALLUZZO: So you received a
16 call from that person.

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: Okay, go on.

19 MR. FLEWELLING: "According to
20 him, Arar was arrested by
21 [blank]. He is still being
22 detained. They are looking,
23 exploring possible charges.
24 If no charges are pending,
25 then he will be removed --"

1 I believe "from the U.S."
2 "... and as noted by 'A'
3 Division he will be denied
4 access to fly directly into
5 Canada. Therefore, he will
6 be returned to Switzerland
7 where he departed from.
8 Requested that [blank] keep
9 me in the loop."

10 MR. CAVALLUZZO: This is the
11 [blank] individual from the American Embassy?

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: What this
14 indicates to me is that by this point in time you
15 had read the SITREPs, because it says in the
16 second paragraph:

17 "As noted by 'A' Division he
18 will be denied access to fly
19 directly into Canada.
20 Therefore, he will be
21 returned to Switzerland where
22 he departed from."

23 MR. FLEWELLING: That was my
24 understanding.

25 MR. CAVALLUZZO: Right. But it

1 sounds to me like -- well, let me just ask you:
2 Did you learn those facts or that information from
3 the SITREPs, or from a telephone call with "A"
4 Division?

5 --- Pause

6 MR. FLEWELLING: Where I say "as
7 noted by", I believe that there's a possibility
8 that we discussed that very issue.

9 MR. CAVALLUZZO: But how did you
10 discuss it: through reading a SITREP, or through
11 a discussion on the telephone, or at "A" Division?

12 MR. FLEWELLING: Well, it would
13 have been through a telephone call, I believe.

14 MR. CAVALLUZZO: So if you had a
15 telephone call, who would you likely have spoken
16 to at Project A-OCANADA?

17 MR. FLEWELLING: Oh, I mean, I
18 would have learned through the SITREP that came
19 from A-OCANADA.

20 MR. CAVALLUZZO: So that means by
21 this time, by 5:30 on October 2nd, you had read
22 the SITREP?

23 MR. FLEWELLING: According to the
24 note, I would agree.

25 MR. CAVALLUZZO: So that as of

1 5:30 on Tuesday, October the 4th, what you do know
2 is three things: One, he is being detained in the
3 United States. Second, he is going to be denied
4 access to fly directly to Canada. And third, he
5 is going to be deported or returned to Switzerland
6 from whence he came?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: So those three
9 things you are aware of by that point in time.
10 Did anything else happen in
11 respect of Mr. Arar on October 2nd that you can
12 help us with?

13 MR. FLEWELLING: I informed
14 Mr. Pilgrim as to what transpired through an
15 e-mail.

16 MR. CAVALLUZZO: Just one final
17 thing before we move on to the next day.

18 I'm referring back to exhibit 209,
19 which is the note of Mr. Roy. Do you have that in
20 front of you?

21 MR. FLEWELLING: I believe that's
22 this one.

23 MR. CAVALLUZZO: He makes
24 reference to "Consulate not able to see him." And
25 I'm wondering whether Roy told you that the

1 Consulate had not been able to see Mr. Arar at
2 this point in time, as of October 2nd?

3 MR. FLEWELLING: I wasn't aware of
4 that at that time. He may have discussed it with
5 Superintendent Pilgrim, because I know that after
6 he spoke with me, he walked down and had a
7 discussion with him.

8 MR. CAVALLUZZO: Now, presumably
9 Mr. Pilgrim knew that you were responsible for
10 Project A-OCANADA, as its overseer?

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: Presumably
13 Mr. Pilgrim, if he discovered that, would have
14 told you that information, because once again that
15 is important information that you should know as
16 being the overseer of Project A-OCANADA?

17 You would agree with that?

18 MR. FLEWELLING: Yes. I just
19 don't recall learning that that day.

20 MR. CAVALLUZZO: Is it possible
21 that Roy or Pilgrim would have told you that?

22 --- Pause

23 MR. FLEWELLING: It's very
24 difficult for me to put everything back in that
25 day because of the things that I've learned

1 subsequently.

2 MR. CAVALLUZZO: I understand.

3 MR. FLEWELLING: My honest belief
4 is I didn't know that until later on.

5 MR. CAVALLUZZO: What do you mean
6 by "later on"?

7 MR. FLEWELLING: It would have
8 been sometime thereafter.

9 MR. CAVALLUZZO: Well, I don't
10 know whether you would have learned that sometime
11 thereafter, because on October the 3rd, which is
12 the very next day, he did receive consular access.

13 Did you learn it? Did you learn
14 that he wasn't getting consular access?

15 MR. FLEWELLING: I -- at that time
16 I can tell you that I don't recall that being a
17 topic of discussion.

18 MR. CAVALLUZZO: Because if you
19 did know, then you would have known it before 3:45
20 on October 3rd or thereabouts. It would have been
21 before then because that's when at least there's a
22 report in the DFAIT system that he received
23 consular access on October 3rd.

24 MR. FLEWELLING: I learned that he
25 had access sometime thereafter, and I'm just

1 trying to recall how I learnt it.

2 MR. CAVALLUZZO: Well, let us take
3 you through these days step by step and maybe it
4 will assist in your memory.

5 If we go to October 3rd -- let's
6 go to your notes at page 36.

7 On October 3rd, your notes don't
8 indicate this, and with the permission of counsel
9 for the government, I'm going to advise you that
10 in that redaction at eight o'clock you telephoned
11 somebody in respect of another matter.

12 I just want to tell him who he
13 telephoned, if you agree.

14 MR. FOTHERGILL: I take it this is
15 an A-OCANADA investigator whose name has
16 previously been identified?

17 MR. CAVALLUZZO: No. This is a
18 DFAIT liaison officer who testified yesterday.

19 MR. FOTHERGILL: In that case,
20 there will be no objection.

21 MR. CAVALLUZZO: In that
22 redaction, let me tell you, Mr. Flewelling, that
23 I've read the redaction, and it is that you called
24 Mr. Roy on an unrelated matter, okay? So just put
25 that in context.

1 Sometime early in the day, you
2 talked to Mr. Roy, at least, according to your
3 notes, on an unrelated matter. Okay?

4 And then if we go down to 1600
5 hours --

6 MR. FLEWELLING: Yes.

7 MR. CAVALLUZZO: Can you just read
8 that for us.

9 Once again, it says somebody in
10 the redaction called...

11 And that somebody is an American?
12 Or do you know? You don't know that?

13 MR. FLEWELLING: Sorry.

14 MR. CAVALLUZZO: Okay. What about
15 the next line, the last three lines, if you could
16 read that for us?

17 MR. FLEWELLING:

18 "Re subject Arar. He sent a
19 message needing urgent
20 attention."

21 MR. CAVALLUZZO: Now, you said
22 "he." I think that's "she". "She sent a
23 message."

24 MR. FLEWELLING: Sorry, you're
25 correct. "She sent a message, needing urgent

1 attention."

2 MR. CAVALLUZZO: Now, who is
3 "she"?

4 MR. FLEWELLING: Another U.S.
5 Embassy representative.

6 MR. CAVALLUZZO: Okay. And could
7 you tell us, without disclosing any redacted
8 information, what "she" was about to do?

9 MR. FLEWELLING: She had requested
10 information with respect to our investigation that
11 we could forward to American authorities for their
12 assistance in pursuing, I believe, charges.

13 MR. CAVALLUZZO: Criminal charges?

14 MR. FLEWELLING: Criminal charges.

15 MR. CAVALLUZZO: Against Mr. Arar?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: Now, she is doing
18 that through CID?

19 MR. FLEWELLING: That is correct.

20 MR. CAVALLUZZO: And then you
21 would forward whatever, and we're going to
22 introduce a new exhibit now. You would forward
23 that on to Project A-OCANADA?

24 MR. FLEWELLING: That is correct.

25 MR. CAVALLUZZO: Okay. Could we

1 have this document introduced?

2 THE COMMISSIONER: 225.

3 EXHIBIT NO. 225: Document to
4 Project A-OCANADA from
5 Mr. Flewelling, dated
6 October 3, 2002

7 MR. CAVALLUZZO: This is
8 exhibit 225, it is dated October 3rd of 2002, and
9 it is to Project A-OCANADA from Mr. Flewelling,
10 and just let me read the body of the document. It
11 says:

12 "Re Abdul Hamid Arar," and
13 then it says: "This
14 individual, this American,
15 contacted this office after
16 hours looking for Project
17 A-OCANADA's assistance with
18 information pertaining to
19 the --"

20 I guess that's the captioned? Cn
21 is the captioned?

22 MR. FLEWELLING: That's correct.

23 MR. CAVALLUZZO:

24 "On behalf of American law
25 enforcement (this

1 organisation or she) is
2 seeking any evidence that can
3 assist in the support of
4 criminal charges. Find
5 attached request forwarded by
6 this person with a list of
7 questions. They would be
8 most appreciative of any
9 additional information you
10 can supply on this subject.
11 They further request that any
12 response be channelled
13 through the [whatever]
14 organization for evidentiary
15 purposes. Due to time
16 restrictions facing
17 investigators in the U.S.
18 they would be most grateful
19 for your attention to this
20 matter."

21 And then you would have received
22 this document on October the 3rd after hours?

23 MR. FLEWELLING: That is correct.

24 MR. CAVALLUZZO: And the next
25 page, what is that? The next page, is that just

1 the fax cover?

2 MR. FLEWELLING: No, that would be
3 the process by which we would have the document
4 entered onto our SCIS.

5 MR. CAVALLUZZO: Okay. And then
6 the next page, you have a third page there.
7 That's a fax transmittal form?

8 MR. FLEWELLING: That would be the
9 fax transmittal form that came in from the
10 embassy.

11 MR. CAVALLUZZO: Okay. And then
12 the next two pages are redacted questions that
13 came along with that?

14 MR. FLEWELLING: I believe so.

15 MR. CAVALLUZZO: Now, what is
16 interesting, and I guess new information for you
17 in respect of this particular fax, is that it's
18 clear now that the Americans are looking to
19 criminally charge Mr. Arar -- first thing. You're
20 aware of that now.

21 Correct?

22 MR. FLEWELLING: That they're
23 seeking information for the purposes, yes.

24 MR. CAVALLUZZO: Right. And the
25 second thing, obviously, is they are seeking

1 Canadian assistance in supporting those criminal
2 charges?

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: Now, I'd like to
5 introduce a new exhibit. This is a time line
6 which was prepared --

7 MR. FLEWELLING: 226.

8 EXHIBIT NO. 226: Timeline
9 prepared by Inspector Cabana

10 MR. CAVALLUZZO: -- by Inspector
11 Cabana.

12 Now, I assume that after receiving
13 these questions from the Americans that you
14 forwarded those questions on to Project A-OCANADA?

15 MR. FLEWELLING: It's my
16 understanding that I forwarded -- actually sent
17 the fax the following morning.

18 MR. CAVALLUZZO: The following
19 morning, on October the 4th? Would that have been
20 the first thing that you did?

21 MR. FLEWELLING: I believe so.

22 MR. CAVALLUZZO: And if you go to
23 page 38 of your notes for Friday, October 4th, it
24 says:

25 "Forwarded fax requesting

1 A-OCANADA's assistance in
2 answering (somebody's)
3 questions. Request for info
4 on Arar A-OCANADA."

5 And this was done at, it looks
6 like eight o'clock in the morning.

7 Is that correct?

8 MR. FLEWELLING: Yes.

9 MR. CAVALLUZZO: And if you refer
10 to the time line, exhibit 226, on the second page,
11 for October 4th, you will see the last entry for
12 eight o'clock, although this is not in your notes.
13 It says that:

14 "(somebody at Project
15 A-OCANADA) contacted Rick
16 FLEWELLING and advised him of
17 our interest in interviewing
18 ARAR..."

19 And I'm putting it to you that
20 that was Mr. Pat Callaghan.

21 MR. FLEWELLING: Sorry. What date
22 was that again?

23 MR. CAVALLUZZO: This is October
24 4th. If you go -- this is at page 2. If you go
25 three lines down, it says 02/10/04?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: Okay. And you'll
3 see the first entry above 11:15, under the eight
4 o'clock entry:

5 "(somebody from project
6 A-OCANADA) contacted
7 FLEWELLING and advised of our
8 interest in interviewing ARAR
9 in New York."

10 MR. FLEWELLING: I'm aware of
11 that.

12 MR. CAVALLUZZO: You're aware of
13 that?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: Okay. But the
16 point is, the question is, was it Mr. Callaghan
17 that phoned you in the morning of October 4th
18 indicating an interest that they want to interview
19 Arar?

20 MR. FLEWELLING: He was usually
21 the one I spoke to. He was one of my main
22 contacts over there, I believe.

23 MR. CAVALLUZZO: Okay. Now, did
24 you do anything as a result of them indicating an
25 interest in interviewing Arar? Did he want you to

1 do anything, or were they going to arrange that on
2 their own and were just keeping you in the loop?

3 MR. FLEWELLING: It was my
4 understanding at that particular juncture in time
5 that they were exploring the idea of going down to
6 interview Mr. Arar.

7 MR. CAVALLUZZO: So that that
8 wouldn't have called upon you to do anything other
9 than being aware that they were contemplating
10 that?

11 MR. FLEWELLING: Not at that time
12 because they would have had to have gone through a
13 certain procedure before authorization could be
14 granted.

15 MR. CAVALLUZZO: Okay. Now, if we
16 stay in your notes at October 4th, this is Friday
17 once again, October 4th. It says:

18 "Called Richard Roy to advise
19 what status is."

20 Do you see that?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: Now, do you
23 recall approximately what time you would have
24 called Mr. Roy?

25 MR. FLEWELLING: No.

1 MR. CAVALLUZZO: Do you recall
2 calling Mr. Roy?

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: Mr. Roy testified
5 yesterday that he was not at work on October 4th;
6 he was on leave.

7 MR. FLEWELLING: It wouldn't be in
8 my notes if I hadn't have called him.

9 MR. CAVALLUZZO: Okay. Is it
10 likely then you would have called him on his cell
11 or on his home number?

12 MR. FLEWELLING: Very possible.

13 MR. CAVALLUZZO: So you
14 specifically recall that conversation with Mr. Roy
15 on the Friday. It's in your notes --

16 MR. FLEWELLING: I don't recall
17 the conversation, but this event was in relation
18 to another matter other than with respect to
19 Mr. Arar.

20 MR. CAVALLUZZO: Are you sure of
21 that?

22 MR. FLEWELLING: There is a couple
23 of other things that were going on at that time
24 that I was dealing with, and I was dealing with
25 officials from DFAIT.

1 MR. CAVALLUZZO: That's very
2 strange to me, because if we go on the previous
3 page, when you called Mr. Roy in relation to an
4 unrelated matter, it was redacted. When we come
5 to October the 4th and it says you called Mr. Roy,
6 it is still there. It is not redacted. Which
7 indicates to me that you talked to Mr. Roy about
8 Mr. Arar?

9 MR. FOTHERGILL: Mr. Commissioner,
10 that could be an error on the part of the redactor
11 who didn't realise that it concerned an unrelated
12 matter.

13 I note that the entry before is
14 blacked out with the notation in the margin of
15 unrelated, so that may simply be an error in
16 redaction as opposed to anything for which the
17 witness could be held responsible.

18 MR. CAVALLUZZO: Well,
19 Mr. Commissioner, we find ourselves in the
20 peculiar situation where I am aware that there is
21 another forum in which the witness testified about
22 speaking to Mr. Roy about Mr. Arar. That
23 information, unfortunately, is redacted testimony,
24 and I'm in a position where, as a lawyer, I feel
25 an obligation that I must confront this witness

1 with that evidence.

2 THE COMMISSIONER: And the reason
3 that it's redacted is because of an NSC concern.

4 Is that the case?

5 MR. FOTHERGILL: In this
6 particular document, it's not redacted. I think
7 that's part of the difficulty. I think --

8 THE COMMISSIONER: Let's just --
9 on a hypothetical, Mr. Fothergill. If there has
10 been evidence about this particular phone
11 conversation in another forum, would it not make
12 sense, if there's not an NSC claim with respect to
13 just this specific piece of evidence, that
14 reference could be made to it? All I'm trying to
15 do is just get to the bottom of it in public --

16 MR. FOTHERGILL: Yes. And I'm
17 quite content for Mr. Cavalluzzo to use his
18 discretion and refer to in-camera evidence. I
19 think he knows where NSC claims lie, and there is
20 no NSC claim with respect to the particulars of
21 this conversation if it occurred.

22 THE COMMISSIONER: Thank you, that
23 would be helpful.

24 Mr. Cavalluzzo, I'd say to you
25 that in doing it, if there's any doubt in your

1 mind, if you were going to refer to that about the
2 NSC claim you should speak to Mr. Fothergill or
3 handle it appropriately. Thank you.

4 Thank you, Mr. Fothergill.

5 MR. CAVALLUZZO: Now,
6 Mr. Flewelling, you testified in camera, on or
7 about January 20th of 2005 --

8 MR. FLEWELLING: That's correct,
9 yes.

10 MR. CAVALLUZZO: -- which is
11 about eight months ago, and I did the questioning,
12 you'll recall.

13 MR. FLEWELLING: Mm-hmm.

14 MR. CAVALLUZZO: And I had your
15 notes?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: And we discussed
18 you calling Mr. Roy on October 4th. At no time
19 during that testimony did you ever say that that
20 telephone conversation did not relate to Mr. Arar.
21 Can you tell us why?

22 MR. FLEWELLING: When I made the
23 phone call, it was in relation to a matter that
24 was unrelated.

25 Now -- if I gave the wrong

1 impression, excuse me, but I know that we -- I
2 think I used the term, there is a possibility or a
3 very good possibility that we discussed issues
4 with respect to Mr. Arar.

5 MR. CAVALLUZZO: That's not what
6 you said, Mr. Flewelling. You said you didn't
7 recall the specifics of the conversation.

8 MR. FLEWELLING: That's true.

9 MR. CAVALLUZZO: But you did
10 recall that you spoke to him about Mr. Arar.

11 MR. FLEWELLING: That's very
12 true -- that's very possible, yes.

13 MR. CAVALLUZZO: So it's possible
14 that you would have spoken about Mr. Arar?

15 MR. FLEWELLING: Yes.

16 MR. CAVALLUZZO: Okay. Shortly
17 after this telephone conversation with Mr. Arar --

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: -- with Mr. Roy,
20 in which Mr. Arar was obviously discussed, you
21 went to the immigration office.

22 Isn't that correct?

23 MR. FLEWELLING: Just prior to
24 lunch, or in and around lunchtime, yes.

25 MR. CAVALLUZZO: Okay. And do you

1 recall when this telephone conversation with
2 Mr. Roy was?

3 MR. FLEWELLING: The specifics of
4 it, no. Not in relation to Mr. Arar.

5 MR. CAVALLUZZO: But how many
6 telephone conversations did you have with Mr. Roy
7 on that day?

8 MR. FLEWELLING: One that I can
9 think of. The only one that I've got written
10 down.

11 MR. CAVALLUZZO: Right. And I'm
12 putting it to you that after that telephone call,
13 you went up to the immigration office of the RCMP.

14 MR. FLEWELLING: It would have
15 been a short time thereafter, yes.

16 MR. CAVALLUZZO: Right.

17 MR. FLEWELLING: Because I recall
18 having a meeting, or I think it was with the
19 ministerial liaison's office.

20 MR. CAVALLUZZO: Well, where do we
21 see that?

22 MR. FLEWELLING: It wouldn't have
23 been documented.

24 MR. CAVALLUZZO: It wouldn't have
25 been documented. In any event, when did you go up

1 to the immigration office?

2 MR. FLEWELLING: It would have
3 been in around lunch hour.

4 MR. CAVALLUZZO: And lunch hour is
5 when?

6 MR. FLEWELLING: Around noon.

7 MR. CAVALLUZZO: Okay. And we see
8 that the entry just before 12:30 says:

9 "Called Roy to advise what
10 status is."

11 MR. FLEWELLING: So I'm assuming
12 just sometime prior to 12:30, yes.

13 MR. CAVALLUZZO: Okay. Now, what
14 did you mean by "Called Roy to advise what status
15 is"?

16 MR. FLEWELLING: The status is
17 with respect to or what I thought was the
18 unrelated issue. Now, with respect to what
19 exactly we spoke about with Mr. Arar, I don't
20 recall. But something obviously has prompted me
21 to go to the immigration office.

22 MR. CAVALLUZZO: And what prompts
23 me is knowing what you said in January, because
24 what you said in January was something like you
25 were concerned about consular access.

1 MR. FLEWELLING: That could be.

2 MR. CAVALLUZZO: So you could have
3 talked to Roy about consular access?

4 MR. FLEWELLING: Could have been.

5 MR. CAVALLUZZO: Could have been.
6 Then you go to the immigration office.

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: And why do you go
9 to the immigration office?

10 MR. FLEWELLING: I wanted to find
11 out what the term, or what the law was with
12 respect to removal.

13 MR. CAVALLUZZO: What?

14 MR. FLEWELLING: What the term
15 "removal" went.

16 MR. CAVALLUZZO: Where did you get
17 the term "removal" from?

18 MR. FLEWELLING: The term
19 "removal" was being used throughout in
20 conversations with my colleagues at A-OCANADA as
21 well as -- you'll notice, I believe, on the SITREP
22 and in discussions with the Americans.

23 MR. CAVALLUZZO: And it would seem
24 to me that logic would dictate that something that
25 Roy said instigated you going up to the

1 immigration office and asking them some questions.

2 MR. FLEWELLING: It could have
3 been. I just don't recall the content of that
4 conversation.

5 MR. CAVALLUZZO: Let me tell you
6 what I surmise Mr. Roy told you, and that is,
7 because on October the 3rd, Mr. Arar had consular
8 access, and during the course of that consular
9 access, he advised Maureen Girvan, who is the
10 consulate, that two immigration officers in the
11 United States told him that he was going to be
12 deported or removed, whatever the language was, to
13 Syria. Just listen to the question now.

14 MR. FLEWELLING: Mm-hmm.

15 MR. CAVALLUZZO: I'm putting it to
16 you that that is what Roy told you and that is
17 what caused you to go to the immigration office to
18 ask some questions.

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: Isn't that
21 correct?

22 MR. FLEWELLING: No.

23 MR. CAVALLUZZO: It's not correct?

24 MR. FLEWELLING: No. I don't
25 recall ever being -- well, I can't say "ever." I

1 don't recall at that time where I was told that
2 the immigration officers had mentioned something
3 to the effect of him going to Syria.

4 I didn't learn that until
5 afterwards, I believe in -- it wasn't until I was
6 involved in preparations.

7 MR. CAVALLUZZO: Is it possible
8 that Mr. Roy -- leaving aside the immigration
9 officers, is it possible that Mr. Roy told you
10 that Mr. Arar's brother and Mr. Arar were very
11 concerned that he was going to be deported to
12 Syria? Is it possible that he told you that at
13 that time?

14 MR. FLEWELLING: No, because if I
15 had gone to the immigration, I wouldn't have asked
16 about removal, I would have asked about the
17 deportation process.

18 MR. CAVALLUZZO: What are you
19 talking about? You just told us that the only
20 reason you went up there was to talk about
21 removal.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: Well, you just
24 said now that you didn't go up there to talk about
25 removal, you would have talked about deportation?

1 MR. FLEWELLING: In my opinion,
2 those are very two distinct procedures, and
3 removal, in my opinion, and what I was seeking, it
4 was whether or not the removal would be where he
5 would be placed on an aircraft. Once he was
6 placed on that aircraft, he was on his own free
7 volition to go where he so chose, whereas the
8 deportation --

9 MR. CAVALLUZZO: Well, presumably
10 he wouldn't have volition until that plane landed
11 somewhere?

12 MR. FLEWELLING: Correct.

13 MR. CAVALLUZZO: And where was
14 that plane going to go?

15 MR. FLEWELLING: It was my
16 understanding that he was going to be going back
17 to Zurich.

18 MR. CAVALLUZZO: Right. And you
19 knew that on October the 2nd because that
20 continuation report that we just reviewed,
21 exhibit -- whatever the exhibit number is. Let me
22 just refer it to you again.

23 MS VERMA: 224.

24 MR. CAVALLUZZO: Thank you.

25 Exhibit 224 says that:

1 "No charges are pending and
2 that he will be removed from
3 the United States, and as
4 noted by 'A' Division, he
5 will be denied access to fly
6 directly into Canada.
7 Therefore, he will be
8 returned to Switzerland where
9 he departed from."

10 And obviously Zurich is in
11 Switzerland.

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: So what October
14 2nd tells us is that you knew about removal and
15 you knew that they were going to remove him to
16 Switzerland.

17 So the question I have is: Why
18 would you be going to the immigration office at
19 twelve o'clock, at lunch, on October 4th?

20 MR. FLEWELLING: Because I wanted
21 to satisfy in my mind what the law and procedure
22 was for removal.

23 MR. CAVALLUZZO: Why would you go
24 to a Canadian immigration office to find what the
25 law in the United States is about removal?

1 MR. FLEWELLING: Because our
2 fourth floor dealt with immigration matters, and
3 quite often they dealt with -- or had exchanges
4 with immigration matters that dealt with -- or I
5 thought was with both Canadian and American
6 officials.

7 MR. CAVALLUZZO: And to be fair to
8 you, I'm going to have a witness this afternoon
9 from the immigration and passport office who says
10 that he would never render an opinion on American
11 law.

12 MR. FLEWELLING: All I can tell
13 you, sir, is I did show up at that office, I did
14 engage in a conversation, and my recollection is
15 that he provided me with -- actually, there's two
16 of them. And they provided me with advice.

17 MR. CAVALLUZZO: And we're going
18 to come to that conversation in a minute. But I
19 just want to once again be clear in my mind, as we
20 move on, as to the precise reason why, just after
21 talking to Roy, you go up to the fourth floor, to
22 the immigration and passport office --

23 MR. FLEWELLING: It wasn't a
24 direct -- get off the phone and went up to the
25 fourth floor.

1 MR. CAVALLUZZO: That's fine.

2 MR. FLEWELLING: I just --

3 MR. CAVALLUZZO: Shortly
4 thereafter.

5 MR. FLEWELLING: Shortly
6 thereafter, I took some time out in between
7 meetings to go and inform myself as to what the
8 process was.

9 MR. CAVALLUZZO: Right. So what
10 you are saying is you already knew he was being --
11 at least you were advised he was being removed.
12 He is going to be removed to Syria. What you are
13 saying is you went to the immigration office to
14 find out what the U.S. law was on removal.

15 MR. FLEWELLING: I'm sorry?

16 MR. CAVALLUZZO: On removal?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: That's why you
19 went up?

20 MR. FLEWELLING: Yes.

21 MR. FOTHERGILL: I don't want to
22 interrupt Mr. Cavalluzzo's flow, but I think
23 Mr. Roy told us yesterday that he didn't learn
24 about Mr. Arar's fears of being sent to Syria
25 until he read it in a CAMANT note that he received

1 on October 7th. So I think that does in fact
2 contradict the proposition that Mr. Cavalluzzo has
3 just put to the witness, that Mr. Roy might have
4 informed him of this concern on October 3rd.

5 MR. CAVALLUZZO: Well,
6 Mr. Commissioner, when Mr. Roy found out about
7 Syria, in my respectful submission, is very much
8 in play. I heard his evidence. There is other
9 evidence. And at the end of the day you are going
10 to have to make a determination as to when Mr. Roy
11 discovered that --

12 THE COMMISSIONER: There is other
13 evidence that I haven't heard in public; but in
14 any event.

15 I think that is a fair comment.
16 It's a factual issue that will have to be
17 addressed.

18 MR. CAVALLUZZO: Okay. You went
19 up to the fourth floor. That is where we
20 understand the immigration office is?

21 MR. FLEWELLING: That's correct.

22 MR. CAVALLUZZO: Were you looking
23 for anyone in particular?

24 MR. FLEWELLING: I was looking for
25 our CID member who works in -- or with immigration

1 matters.

2 MR. CAVALLUZZO: And he wasn't
3 there, I understand.

4 MR. FLEWELLING: No. I noticed
5 that there were two other individuals that were in
6 the immigration department, so I had asked them if
7 they could assist me, after I introduced myself,
8 at which point I asked them if they knew what the
9 international law was or what the procedure would
10 be for a removal process, at which point I then
11 turned and I gave them some background
12 information --

13 MR. CAVALLUZZO: This is very
14 important now. You asked them. And there were
15 two gentlemen, there are two men --

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: They were men
18 having lunch at a table in the area?

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: And you don't
21 recall their names?

22 MR. FLEWELLING: I know one of
23 their names now. At the time I didn't.

24 MR. CAVALLUZZO: And you met him
25 two days ago.

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: And his name
3 is...?

4 MR. FLEWELLING: Williams, I
5 believe, is one of them.

6 MR. CAVALLUZZO: Greg Williamson.

7 MR. FLEWELLING: Okay.

8 MR. CAVALLUZZO: I'm sorry, my
9 partner here is going to correct me.
10 I'm sorry, it's Williams. You are
11 correct. Greg Williams.

12 So that you find yourself in front
13 of these two gentlemen, including Mr. Williams,
14 and you said you gave them the background
15 situation. Why don't you tell us what you told
16 them?

17 MR. FLEWELLING: From my
18 recollection, I advised them that there was a
19 subject of interest of ours that had flown in from
20 Switzerland -- I believe I used the word
21 "Zurich" -- to New York, and that once this
22 individual landed in New York, he was detained by
23 American authorities.

24 I believe at that time I was aware
25 through conversation with American colleagues that

1 the explanation that I got was that he was not
2 admitted into the United States, and where he was
3 not legally admitted into the United States, the
4 process by which they were going to remove him was
5 a term called "removal".

6 I asked them what the normal
7 process, procedure or law would be with respect to
8 removal, at which point I got a reply that the
9 normal procedure would be that they would place
10 him on an aircraft, normally the same aircraft
11 which flew him in, and at the expense of that
12 airline he would be flown back to the last port of
13 call prior to entering the United States.

14 MR. CAVALLUZZO: So that clearly
15 what you told these gentlemen was that -- would
16 you say a Canadian?

17 MR. FLEWELLING: I don't know
18 if -- I can't tell you whether or not I mentioned
19 whether he was Canadian, dual or I made any
20 reference. I'm not quite sure.

21 MR. CAVALLUZZO: Well, you said a
22 subject of interest. So it's possible you could
23 have said a Canadian. It's possible you could
24 have said a Canadian with Syrian citizenship as
25 well; a dual national, in other words?

1 MR. FLEWELLING: Honestly, I don't
2 remember.

3 MR. CAVALLUZZO: It's possible.
4 In any event, however Mr. Arar's
5 status was characterized, you asked them what the
6 removal procedure would be?

7 MR. FLEWELLING: That's correct.

8 MR. CAVALLUZZO: And clearly you
9 are asking them about what the removal procedure
10 in the United States would be?

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: Once again
13 Mr. Williams is going to testify that -- let me
14 just tell you, to give you total context here.

15 He does not recall the
16 conversation at all. He does not recall you. And
17 what he does say, though, is that he would never
18 offer an opinion on American law.

19 MR. FLEWELLING: The only thing I
20 can tell you, sir, is that I did go to the fourth
21 floor on that day, I did engage those two
22 individuals, I did solicit a response, and that
23 was the response that I got.

24 MR. CAVALLUZZO: So the response
25 that you are telling us that he gave you -- would

1 it be Mr. Williams or was it the other gentleman,
2 or do you remember?

3 MR. FLEWELLING: No, I don't.

4 MR. CAVALLUZZO: Whoever it was
5 said that this individual, this Canadian or this
6 subject of interest, or however he was
7 characterized, would be put on a plane and brought
8 back to Switzerland from where he came --

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: -- at the plane's
11 expense or the airline's expense.

12 Did they tell you that?

13 MR. FLEWELLING: Yes, that was my
14 understanding.

15 MR. CAVALLUZZO: Now that was the
16 very same information that you already knew in the
17 sense that you put that in your continuation
18 report, that he would be removed to Switzerland;
19 denied entry and confirmed what "A" Division told
20 you, that he would be removed to Switzerland.

21 The question I have is: Once
22 again, I don't understand why you would go up and
23 ask that question when you already had that
24 information.

25 MR. FLEWELLING: I don't know.

1 MR. CAVALLUZZO: Let me suggest
2 something to you: that Syria came into the play.
3 That is, this idea that he might be deported to
4 Syria came into play, which made it a far more
5 complicated issue. And that as a result of that,
6 you went up to immigration and posed some
7 questions.

8 Is that possible?

9 MR. FLEWELLING: No, sir.

10 MR. CAVALLUZZO: And I note for
11 the record, although you don't recall this, that
12 in the consular report, which is exhibit P-42, tab
13 31, there is a specific reference to removal; that
14 is that Mr. Arar has been charged under section
15 235(c) of the Immigration Act of the United
16 States, and sets out certain allegations which may
17 have raised some questions as to the removal
18 procedure in your mind.

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: What did you do
21 with that information that you got from the
22 immigration and passport office?

23 MR. FLEWELLING: After that
24 meeting with the two gentlemen, I had to run
25 downstairs and attend another meeting. I believe

1 that meeting was outside the office.

2 So right afterwards, I didn't do
3 anything with that information other than -- it
4 was to inform myself at that particular point in
5 time.

6 MR. CAVALLUZZO: You didn't tell
7 Pilgrim?

8 MR. FLEWELLING: At that time, no.

9 MR. CAVALLUZZO: Didn't tell Roy?

10 MR. FLEWELLING: No. I had to
11 rush off to another meeting.

12 MR. CAVALLUZZO: We do know that
13 on that particular day as well the A-OCANADA
14 people sent back information pursuant to the
15 request that you had faxed to them earlier in the
16 day?

17 MR. FLEWELLING: I believe so,
18 yes.

19 MR. CAVALLUZZO: Let me show you
20 the exhibit. It's exhibit P-172.

21 Do you have that in front of you?

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: Let's just
24 correct certain matters. This is exhibit P-172.

25 It's dated October 2nd, but we

1 have corrected that. That should be October 4th.
2 Do you see that in the top right corner?

3 MR. FLEWELLING: There's a bit of
4 a sticky here that I can't --

5 MR. CAVALLUZZO: Okay.

6 MR. FLEWELLING: Yes, it says
7 October 2nd?

8 MR. CAVALLUZZO: Yes, and it
9 should be October 4th.

10 MR. FLEWELLING: Okay.

11 MR. CAVALLUZZO: What A-OCANADA is
12 saying to you -- and I assume this goes through,
13 once again, head office and then on to the LO at
14 headquarters and goes to the Americans from head
15 office.

16 Is that correct?

17 MR. FLEWELLING: It would have
18 gone that channel, I believe, yes.

19 MR. CAVALLUZZO: What it says, if
20 I can just pick up a portion of it in the second
21 paragraph in 172, it says -- this is the second
22 sentence:

23 "We are requesting that our
24 investigators from Project
25 A-OCANADA be allowed access

1 to Arar for the purposes of
2 conducting an interview in
3 relation to our
4 investigation.

5 It is important to note that
6 the information contained in
7 the attached report only
8 addresses the issues raised.
9 Project A-OCANADA has
10 significant documentation on
11 this individual that could be
12 of assistance in your
13 investigation."

14 And then it's signed by somebody
15 from Project A-OCANADA, who I believe is Mr. Pat
16 Callaghan, once again.

17 What this document indicates is
18 two things: one, Project A-OCANADA is answering
19 the questions which have been directed by the
20 Americans, and the second thing it does is it is
21 saying to the Americans that we've got a lot more
22 information on this guy and presumably it could --
23 and not presumably, it says which could be of
24 assistance in your investigation.

25 In other words, they are offering

1 more information if asked. Is that correct?

2 MR. FLEWELLING: It would appear
3 so, yes.

4 MR. CAVALLUZZO: And then if we go
5 to the second page, we have the RCMP caveat.

6 "This document is the
7 property of the RCMP. It is
8 loaned --"

9 And so on?

10 MR. FLEWELLING: Yes.

11 MR. CAVALLUZZO: And then in terms
12 of the answers, we have some of the unredacted
13 portions, for example, and paragraph iv) talks
14 about:

15 "In October 2001, Project
16 A-OCANADA investigators
17 conducted surveillance on
18 Abdullah Almalki and observed
19 him meeting with Arar at a
20 local Ottawa restaurant,
21 Mangos."

22 And so on.

23 Then on the next page, the
24 unredacted portion in paragraph 5) is:

25 "A link analysis has yet to

1 be completed on Arar and
2 while he has had contact with
3 many individuals of interest
4 to this project we are unable
5 to indicate links to
6 al-Qaeda."

7 And then 6):

8 "This service does not hold
9 any information on this
10 matter."

11 And 7:

12 "A detailed investigation
13 into Maher Arar is not
14 completed to date."

15 So that by Friday afternoon, you
16 have no idea as to whether this reached the
17 Americans or whatever. But in any event, it
18 appears to have been faxed on that day.

19 Is that correct?

20 MR. FLEWELLING: I'm assuming with
21 the date that that would be a reasonable
22 assumption, yes.

23 As a matter of fact, in the
24 transmittal report it says it was at 5:08 p.m.

25 MR. CAVALLUZZO: A-OCANADA, as I

1 say, does two things here. One, they say we've
2 got a lot more information on this guy, if you
3 want it. And on top of it, we're interested in
4 interviewing him, presumably while he's in the
5 United States.

6 On that day, did you speak to
7 anybody else about Mr. Arar?

8 MR. FLEWELLING: October 4th?

9 MR. CAVALLUZZO: Yes, Friday,
10 October 4th?

11 MR. FLEWELLING: That would have
12 been Friday, October 4th. Yes.

13 MR. CAVALLUZZO: And who did you
14 speak to?

15 MR. FLEWELLING: I spoke to a
16 representative from the American Embassy.

17 MR. CAVALLUZZO: What time would
18 that have been?

19 MR. FLEWELLING: That would have
20 been, I believe, sometime after six o'clock that
21 evening.

22 MR. CAVALLUZZO: Your notes for
23 October 4th, as I pointed out earlier, do not
24 indicate that there was this phone call with this
25 American.

1 Do you agree with that?

2 MR. FLEWELLING: That's correct.

3 MR. CAVALLUZZO: And could you
4 tell us why you didn't enter that phone call?

5 MR. FLEWELLING: It was Friday
6 afternoon. I had packed up everything, and I was
7 on my way home when -- and on my way out when the
8 phone rang.

9 MR. CAVALLUZZO: So you didn't
10 note that call?

11 MR. FLEWELLING: No, I did not.

12 MR. CAVALLUZZO: And what was the
13 substance of the call, taking into account that we
14 can't disclose NSC information? But was it about
15 Arar?

16 MR. FLEWELLING: Part of the
17 conversation definitely was, yes.

18 MR. CAVALLUZZO: Could you tell us
19 what he said about -- was it a he or a she?

20 MR. FLEWELLING: He.

21 MR. CAVALLUZZO: All right. Could
22 you tell us what he said about Arar?

23 MR. FLEWELLING: Basically after
24 discussing a couple of unrelated issues, I asked
25 him what the status was with Mr. Arar, at which

1 point he advised me that he was due to appear
2 before a hearing on the 9th of October.

3 MR. CAVALLUZZO: That would be the
4 following Wednesday?

5 MR. FLEWELLING: I believe so.

6 MR. CAVALLUZZO: Right.

7 MR. FLEWELLING: That he would in
8 all likelihood be removed from the country and
9 sent back to Switzerland. That was still a
10 consistent message at that time.

11 Then we discussed that -- I'm just
12 trying to recall here the sequence of events.

13 I know that we had discussed that
14 once he arrived in Zurich, he could go just about
15 anywhere he so chose, whether it be Canada and/or
16 Syria. So I think at that time was one of the
17 first times that we actually discussed his dual
18 nationality in that respect.

19 MR. CAVALLUZZO: It's important.
20 He discussed Syria?

21 MR. FLEWELLING: Yes, in the
22 context that he would be free to go to Canada,
23 Syria, or anywhere for that matter.

24 MR. CAVALLUZZO: Right. That's
25 rather an odd choice, isn't it?

1 MR. FLEWELLING: Well, that was --

2 MR. CAVALLUZZO: Here we have
3 someone that didn't perform his military service
4 in Syria -- in any event, what this person is
5 saying, is that once he gets to Zurich, he can go
6 to Canada or he can go to Syria because he is a
7 dual national. It's his choice.

8 MR. FLEWELLING: Yes. I had no
9 idea that he had anything about military, whatever
10 it was that you mentioned.

11 MR. CAVALLUZZO: Right. But you
12 do know that there are certain human rights
13 concerns about Syria?

14 MR. FLEWELLING: I knew that they
15 don't have the same system as we do.

16 MR. CAVALLUZZO: In fact, around
17 August the 15th of 2002, you had been party to
18 media lines concerning another Canadian, whose
19 name was Mr. El Maati, who made allegations that
20 he had been tortured while he was in Syria.

21 MR. FLEWELLING: On what date?

22 MR. CAVALLUZZO: August the 15th
23 of 2002.

24 Do you want to go back to your
25 notes --

1 MR. FLEWELLING: Would it suffice
2 if we look after what else we discussed on the
3 4th?

4 MR. CAVALLUZZO: No. I just want
5 to know the state of your mind on the 4th of
6 October, and I'm putting it to you that at least
7 about a month and a half before, you were aware
8 that something happened to a Canadian while he was
9 detained in Syria, indeed torture.

10 --- Pause

11 MR. FLEWELLING: I know that we
12 had a meeting, and I think, as I stated, I don't
13 totally recall exactly what transpired, what was
14 discussed in that meeting, but I know that Syria
15 does not have the same system as we do, or the
16 same level or standards that we do.

17 MR. CAVALLUZZO: Right. Now, I
18 wonder if you might just speculate for us? Now,
19 if the Americans were concerned about Mr. Arar
20 being a threat to them -- right? Just assume
21 that.

22 MR. FLEWELLING: Okay.

23 MR. CAVALLUZZO: -- where do you
24 think they would prefer Mr. Arar to go? Do you
25 think they would prefer that he went to Canada or

1 that he went to Syria?

2 MR. FLEWELLING: I believe that he
3 was going before a legal system and that
4 arbitrarily he would have the opportunity to
5 present his facts before that tribunal.

6 MR. CAVALLUZZO: That wasn't the
7 question. The question was, once again: If the
8 Americans believed that Mr. Arar was a threat to
9 them, where do you think the Americans would
10 prefer him to go? To Canada, who they share a
11 border with, about 3,000 miles, or to Syria, which
12 is a few miles away?

13 MR. FLEWELLING: I don't know how
14 I can answer for them.

15 MR. CAVALLUZZO: You can't
16 speculate?

17 MR. FLEWELLING: That's right.

18 MR. CAVALLUZZO: Okay.

19 Now, you would agree with me
20 that -- in fact, you just told us, that one of the
21 things that Mr. Arar could do, if he went to
22 Switzerland, is obviously he could come to Canada?

23 MR. FLEWELLING: Yes.

24 MR. CAVALLUZZO: Right. And the
25 Americans to this point in time are telling you

1 that they are going to refuse him, basically,
2 direct entry into Canada?

3 MR. FLEWELLING: Yes.

4 MR. CAVALLUZZO: Now, if they're
5 refusing him direct entry into Canada, why do you
6 think they would permit indirect entry into Canada
7 through Switzerland?

8 MR. FLEWELLING: I don't know. I
9 don't know if I actually thought about that.

10 MR. CAVALLUZZO: Do you think it's
11 fair that the Americans viewed Mr. Arar to be a
12 threat to them?

13 MR. FLEWELLING: The only thing
14 that I can tell you is that our belief was that we
15 did not have enough supporting material to support
16 charges.

17 MR. CAVALLUZZO: Well, you didn't.
18 But I believe we've heard that the American
19 threshold for criminal charges is much less than
20 Canada's.

21 MR. FOTHERGILL: Commissioner,
22 could Mr. Cavalluzzo clarify the basis upon which
23 he asserts that the Americans regarded Arar as a
24 threat to them? I know we see that in the removal
25 order ultimately. But presumably we're situating

1 his line of questioning in terms of what the
2 witness knew at the time.

3 THE COMMISSIONER: I think that's
4 fair.

5 MR. CAVALLUZZO: And I guess what
6 I could rely on is the CAMANT note, which I've
7 just referred to, and the CAMANT note makes
8 specific reference to, on October the 3rd, and
9 probably earlier than that, they had given
10 Mr. Arar notice with certain allegations, and let
11 me read it to you:

12 "You are not a citizen of the
13 United States. You are a
14 native of Syria and a citizen
15 of Syria in Canada."

16 Interesting how they emphasize the
17 word "Syria," but in any event, we'll come back to
18 that.

19 "You arrived in the United
20 States on September the 26th
21 and applied for admission as
22 a non-immigrant."

23 And then it goes on in paragraph
24 4:

25 "You are a member of an

1 organization that has been
2 designated as the Secretary
3 of State as a foreign
4 terrorist organization, to
5 wit, al-Qaeda."

6 The list that the Secretary of
7 State has set as terrorist organizations indicate
8 that, in my respectful submission, that they view
9 al-Qaeda to be a threat to the United States and
10 that a member of al-Qaeda is a threat to the
11 United States.

12 MR. FOTHERGILL: I guess,
13 Commissioner, my point is, it's not clear that
14 that information was transmitted to Mr. Flewelling
15 at the relevant time.

16 THE COMMISSIONER: And I think
17 that's the point the witness should address,
18 whether or not what he was aware, how they viewed
19 him -- he had obviously received a call saying
20 they were interested in pursuing criminal charges
21 or looking at him but...

22 MR. CAVALLUZZO: Right.

23 You are aware from the fax that
24 you received from this American person on October
25 the 3rd that what the Americans were trying to do

1 was to link Mr. Arar to al-Qaeda because that's
2 what the answers we've just reviewed indicated.

3 MR. FLEWELLING: It was my
4 understanding that they were looking for
5 information in support of criminal charges.

6 MR. CAVALLUZZO: Right. And
7 there's reference to al-Qaeda. Do you want me to
8 review that with you?

9 It's the answer that "Project
10 A-OCANADA says that we cannot establish any links
11 with al-Qaeda."

12 So clearly the Americans were
13 asking about information, trying to establish that
14 he was a member of al-Qaeda.

15 MR. FLEWELLING: That must be a
16 speculation that they made in their response.

17 MR. CAVALLUZZO: Right, right.
18 But in any event, whether it's speculation or not,
19 if they're trying to tie this person in to
20 al-Qaeda, do you not think that they -- if they
21 could establish, that they would view him to be a
22 threat to the United States?

23 MR. FLEWELLING: Any discussions
24 that I had with the American officials was in
25 relation to supporting criminal charges.

1 MR. CAVALLUZZO: Right? Criminal
2 charges for what? Not that he was a bank robber.

3 MR. FLEWELLING: The terms or
4 reference of the charges that they were looking
5 at, I don't recall them bringing it forward. We
6 never discussed the organization or the term
7 "al-Qaeda" in any of my conversations.

8 MR. CAVALLUZZO: But it was in the
9 fax.

10 MR. FLEWELLING: Yes.

11 MR. CAVALLUZZO: So you must have
12 surmised, if they were referring to al-Qaeda in
13 the fax and they wanted information that Canada
14 had relating to his association with al-Qaeda, you
15 must have -- surely you must have understood that
16 they were trying to charge him criminally as being
17 a member of al-Qaeda.

18 MR. FLEWELLING: Not necessarily
19 al-Qaeda but perhaps terrorism, yes.

20 MR. CAVALLUZZO: Did they mention
21 any other terrorist organizations? Is Hamas
22 mentioned?

23 MR. FLEWELLING: Pardon me?

24 MR. CAVALLUZZO: Is Hamas
25 mentioned?

1 MR. FLEWELLING: No.

2 MR. CAVALLUZZO: Is Hezbollah?

3 MR. FLEWELLING: No.

4 MR. CAVALLUZZO: The only one I
5 see is al-Qaeda.

6 MR. FLEWELLING: In the response
7 that "A" Division sent, yes.

8 MR. CAVALLUZZO: Well, let's not
9 play with that one. I've seen the fax that came
10 from the Americans and I didn't see any terrorist
11 organization other than al-Qaeda mentioned, unless
12 I missed something?

13 MR. FLEWELLING: Could very well
14 have. I'm just going by my recollection and by
15 the conversation that I had.

16 MR. CAVALLUZZO: But you cannot
17 recall, anyway, any organization other than
18 al-Qaeda being mentioned?

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: Okay. Let us
21 come then to Saturday.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: On Saturday,
24 October the 5th, we had a very important telephone
25 call?

1 MR. FLEWELLING: Again, it was
2 late in the afternoon on Saturday, I believe,
3 October the 5th.

4 MR. CAVALLUZZO: Okay. And let us
5 go to your notes at page 39. Do you see that?

6 MR. FLEWELLING: Yes.

7 MR. CAVALLUZZO: And it says,
8 Saturday, October 5th. And it says -- is that
9 1810? The photocopying, it looks like it may
10 have --

11 MR. FLEWELLING: I believe so.

12 MR. CAVALLUZZO: So it would be
13 6:10 in the afternoon?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: Now, I have a
16 note at the top, it says PID. Could you tell us
17 what that stands for? Beside the date?

18 MR. FLEWELLING: RTO.

19 MR. CAVALLUZZO: RTO. That means
20 "Rotation time off"?

21 MR. FLEWELLING: "Regular time
22 off."

23 MR. CAVALLUZZO: Okay. And this
24 is a telephone call?

25 MR. FLEWELLING: Yes.

1 MR. CAVALLUZZO: And it's from
2 whom?

3 MR. FLEWELLING: It would be from
4 a representative from the American Embassy.

5 MR. CAVALLUZZO: Same person as
6 called you at six o'clock the night before?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Very same person?

9 MR. FLEWELLING: Same person.

10 MR. CAVALLUZZO: Why don't you
11 read that for us because your handwriting is a
12 little difficult at this part?

13 MR. FLEWELLING:

14 "Received call from ... in
15 relation to Maher Arar. The
16 (blank) in New York were
17 unable to read A-OCANADA
18 report, and he wanted to have
19 the report --"

20 I believe it's "refaxed".

21 "Secondly, the (blank)
22 appeared that they did not
23 have enough information to
24 make the charges stick. They
25 would be looking at deporting

1 Arar. Where Arar has dual
2 citizenship and that he has
3 to be deported to Canada,
4 (blank) wanted to know our
5 interest in Arar and can the
6 RCMP refuse Arar's entry into
7 Canada. I stated that where
8 he has Canadian citizenship
9 and that there was not enough
10 evidence to support charges
11 in the U.S., let alone
12 Canada, the likelihood is
13 that, no, we could not refuse
14 him entry."

15 MR. CAVALLUZZO: Okay. Now, this
16 telephone call, in effect what this person, this
17 American from whatever agency is saying to you is
18 that -- really two things: One, that we don't
19 have enough to make criminal charges stick and
20 convict him; and the other thing he's saying is
21 that Arar's a dual citizenship -- or Arar's a dual
22 citizen, he's asked to be deported to Canada, do
23 you guys have to accept him or can you charge him
24 criminally?

25 MR. FLEWELLING: I looked at it in

1 the frame that they were wondering whether or not
2 we had any additional information to assist them,
3 and then, secondly, I viewed it as an
4 investigator, or an investigative body,
5 ascertaining whether or not we had any laws that
6 would prevent Mr. Arar from coming to Canada or --
7 how else was it put?

8 MR. CAVALLUZZO: Can you refuse
9 him entry?

10 MR. FLEWELLING: Can we refuse him
11 entry? I looked at it as an administrative
12 question as to what our laws were.

13 MR. CAVALLUZZO: I would agree
14 with that except for one thing. He says Mr. Arar
15 has said he would like to be deported to Canada?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: And then he says,
18 "Can you refuse him entry?" Isn't there a signal
19 there to you?

20 MR. FLEWELLING: I didn't take it
21 as a signal, no.

22 MR. CAVALLUZZO: But, you see, he
23 mentions dual citizenship.

24 Right?

25 MR. FLEWELLING: Yes.

1 MR. CAVALLUZZO: That means there
2 are two options: Canada, Syria?

3 Right?

4 MR. FLEWELLING: I would agree
5 with that.

6 MR. CAVALLUZZO: Okay. And then
7 he says, "He's opted for Canada, do you guys have
8 to take him"?

9 MR. FLEWELLING: It's my
10 understanding in a deportation hearing, now that
11 they're using the word, that he has a say in that
12 process.

13 Now, if I looked at it from the
14 point of view is that if we had laws, or that we
15 would want to prevent him from coming to Canada,
16 that, from an administrative point of view, they'd
17 have to go elsewhere or make alternate
18 arrangements, because it is my understanding that
19 deportation is the host country, or country of
20 origin or the host country has to accept him.

21 MR. CAVALLUZZO: Right. When did
22 you learn that?

23 MR. FLEWELLING: That was just my
24 general understanding of the deportation process.

25 MR. CAVALLUZZO: Right. But he's

1 saying: "Dual national, wants to come to Canada;
2 do you guys have to accept him?"

3 And you interpreted that -- you
4 didn't interpret that to mean: You know what? I
5 think these guys may want to send him to Syria?

6 MR. FLEWELLING: No.

7 MR. CAVALLUZZO: Because what he's
8 asking us, he's asking us, can we charge him
9 criminally? Because if we charge him criminally,
10 we'll get him off the streets and he won't be a
11 threat to us in the United States, and if they
12 can't charge him criminally, then, the next
13 question is, do you have to accept him? And when
14 you say, yes, we have to accept him, doesn't that
15 indicate to you that he's going, okay, I guess
16 where Mr. Arar is going to end up is going to be
17 his other country of citizenship --

18 MR. FLEWELLING: I honestly
19 thought -- I honestly thought by stating that no,
20 we could not refuse him entry and, no, we did not
21 have sufficient evidence to support any charges
22 would assist him in him coming back to Canada.

23 Secondly, I also thought, at the
24 time, that he was going before a hearing on
25 Wednesday, that he had a court process by which he

1 could make whatever argument needed to be made at
2 that time.

3 MR. CAVALLUZZO: But didn't it
4 seem -- you said -- there's a couple of things you
5 said that I'd like to ask you about.

6 You said that you honestly thought
7 that by us telling him that we couldn't charge him
8 that that would have assisted Mr. Arar -- is that
9 what you just told us?

10 MR. FLEWELLING: Well, obviously
11 they are putting together what appeared to me was
12 a final submission or preparing a file for
13 whatever case that they were doing.

14 MR. CAVALLUZZO: No, but let's
15 look at that. You're saying that you thought that
16 they thought -- that if I told them we couldn't
17 charge him criminally, that that would assist
18 Mr. Arar's case. That's what you said?

19 MR. FLEWELLING: Well, obviously
20 they would have to release him.

21 MR. CAVALLUZZO: Yes, but for the
22 last year, what Americans were doing -- you must
23 have been aware of this, it's one of their ways of
24 fighting terrorism -- was getting people off the
25 street, putting them somewhere, and not even

1 charging them. There are 600 people in Guantanamo
2 Bay that are still not charged.

3 Weren't you aware that that was an
4 American policy? To get people off the street
5 that they thought were terrorists?

6 MR. FLEWELLING: I had never heard
7 of a process which took place to Mr. Arar ever
8 occurring in the United States. It did not occur
9 to me at all.

10 MR. CAVALLUZZO: No, but were you
11 aware of that American policy, which was called
12 the clean the streets of terrorist policy? Never
13 mind what the charges are, just get rid of them
14 for now? Never heard of that?

15 MR. FLEWELLING: Never crossed my
16 mind one bit.

17 MR. CAVALLUZZO: Now, the other
18 question I have is you're, certainly to this point
19 in time, you've been told on a couple of occasions
20 at least that the Americans are going to refuse
21 his direct entry into Canada.

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: Okay. Did you
24 not think that because of that information that
25 this was a very strange question coming from this

1 American individual?

2 MR. FLEWELLING: It did not cross
3 my mind at the time.

4 MR. CAVALLUZZO: Do you think in
5 retrospect that this American was sending some
6 signals to you?

7 MR. FLEWELLING: No.

8 MR. CAVALLUZZO: No?

9 Now, what did you do as a result
10 of this telephone call? Did you advise anybody
11 that you had the telephone call on the weekend?

12 MR. FLEWELLING: I recalled two
13 occasions -- well, one occasion, on that night, I
14 gave a call to Mr. Ron Lauzon.

15 MR. CAVALLUZZO: And Ron Lauzon
16 was your supervisor at that time?

17 MR. FLEWELLING: That is correct.

18 MR. CAVALLUZZO: All right. Did
19 you call anybody else on that weekend?

20 MR. FLEWELLING: No. The
21 following day, I sent a message to the
22 investigative team, with A-OCANADA, and then on
23 the morning of the 7th, I informed Mr. Pilgrim as
24 well as, again, I informed Mr. Ron Lauzon of what
25 transpired over the weekend.

1 MR. CAVALLUZZO: Okay. I just
2 want to clarify something in respect of that, and
3 then I think we should have a break, but...

4 --- Pause

5 MR. CAVALLUZZO: I just want to
6 clarify. If you could be shown your statement to
7 Mr. Garvie, which is exhibit 221.

8 --- Pause

9 If you refer Mr. Flewelling to
10 page 6, at line 28, I guess, Garvie asks the
11 question:

12 "Did you have any other
13 involvement in this file
14 prior to going on ...
15 personal leave on the morning
16 of October 8th?"

17 And then you respond:

18 "I came in to work on Monday,
19 I notified both Lauzon and
20 Superintendent Pilgrim of
21 what transpired over the
22 weekend, and I can't think of
23 what else I had done that
24 day."

25 So if you could just clarify for

1 us? You told us just now that you told Pilgrim on
2 Monday morning. Is it possible you may have told
3 him on the weekend?

4 MR. FLEWELLING: At one point I
5 had thought that I had actually called -- either
6 it was Superintendent Pilgrim or Ron Lauzon.

7 MR. CAVALLUZZO: Right. What is
8 your best recollection today?

9 MR. FLEWELLING: My best
10 recollection as of this time is it was Ron Lauzon.

11 MR. CAVALLUZZO: Okay. But did
12 you also -- is it possible you also called
13 Pilgrim, or does your recollection tell you you
14 told Pilgrim on Monday morning?

15 MR. FLEWELLING: Oh, I had a few
16 meetings with Pilgrim on the Monday.

17 MR. CAVALLUZZO: Right. So you
18 didn't call him on the weekend?

19 MR. FLEWELLING: No.

20 MR. CAVALLUZZO: Mr. Commissioner,
21 it's now 10:40. It may be an appropriate time for
22 a break.

23 THE COMMISSIONER: Okay. We'll
24 take a 15-minute break.

25 THE REGISTRAR: Please stand.

1 --- Upon recessing at 10:40 a.m. /

2 Suspension à 10 h 40

3 --- Upon resuming at 10:58 a.m. /

4 Reprise à 10 h 58

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 MR. CAVALLUZZO: Mr. Flewelling, I
8 would like to move on to Monday, October 7th. But
9 before doing that, I just want to bring your mind
10 back once again to that phone call you had on
11 Friday, October the 4th, after six o'clock, when
12 you were leaving the office.

13 MR. FLEWELLING: Yes.

14 MR. CAVALLUZZO: Do you recall
15 that telephone conversation?

16 I would ask whether you recall
17 speaking with this American individual about, you
18 know, rather than sending him to Switzerland, why
19 don't you drive him up to the Canadian border, or
20 words to that effect?

21 MR. FLEWELLING: That is correct.

22 MR. CAVALLUZZO: And was that
23 exactly what you said?

24 Why don't you just, from your
25 memory, as far as that aspect is concerned, tell

1 us what you said.

2 MR. FLEWELLING: I recall the
3 individual telling me that Mr. Arar had indicated
4 that he wished to come to Canada, at which point I
5 raised the question: Well, why not send him to
6 Canada?

7 I was left with the impression
8 that it was a very real possibility that that
9 indeed may take place.

10 MR. CAVALLUZZO: And this
11 conversation, was that on the Friday or was that
12 on the Saturday?

13 MR. FLEWELLING: That would have
14 been on the Saturday -- hang on here. That would
15 have been on the Friday night.

16 MR. CAVALLUZZO: So on the Friday
17 night you said, "Why not send him to Canada?"

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: You told us that
20 on the weekend you spoke to Mr. Lauzon about the
21 phone call on the 5th. And then when you showed
22 up for work on Monday, October the 7th -- I
23 understand that that was going to be a vacation
24 day, but you came in.

25 Why don't you tell us what your

1 status was on that date?

2 MR. FLEWELLING: Initially I was
3 going to be going away on vacation; however, I
4 came in to deal with another matter. I can't
5 recall exactly why I ended up coming in for the
6 Monday, but my vacation was delayed a day.

7 MR. CAVALLUZZO: Did you send an
8 e-mail on the Sunday, October 6th?

9 MR. FLEWELLING: Yes, I believe
10 so.

11 MR. CAVALLUZZO: I would like
12 to -- introduce an exhibit now, a new exhibit.

13 THE COMMISSIONER: 227.

14 EXHIBIT NO. 227: E-mail to
15 Pat Callaghan from Richard
16 Flewelling, dated October 6th

17 MR. CAVALLUZZO: This is an e-mail
18 that you sent on the Sunday. It is from yourself
19 and I understand it's to Pat Callaghan, who is one
20 of the supervisors of Project A-OCANADA?

21 MR. FLEWELLING: I believe so.

22 MR. CAVALLUZZO: And just let me
23 read it so the public is aware of what we are
24 talking about.

25 It says:

1 "Apparently your report was
2 received on Friday, however,
3 it was received in a
4 non-legible state. Can you
5 re-send a copy to --"

6 Whoever the American person is.

7 And that is, of course, the report
8 that was faxed out on the Friday.

9 And then it goes on. This is
10 about the phone call the day before:

11 "This American advised that
12 the --"

13 That should be "trial".

14 "... is slated for
15 Wednesday --"

16 Which you told us, October the
17 9th; right?

18 MR. FLEWELLING: That's correct.

19 MR. CAVALLUZZO: "...and it looks
20 like they do not have enough
21 evidence to support charges.
22 It would appear that Arar is
23 requesting to be deported to
24 Canada following the trial.
25 [This American individual]

1 would like to know if we have
2 any objections or laws that
3 would prevent Canada from
4 accepting him into the
5 country."

6 And then it goes on:

7 "The answer I gave to [this
8 individual] is where Arar is
9 a Canadian citizen, we cannot
10 refuse him entry into the
11 country. We would most
12 certainly want to know where
13 he is coming and any
14 information obtained by U.S.
15 authorities that would assist
16 in building a case against
17 Arar. We will have to follow
18 up on this further on
19 Monday."

20 And then it goes on:

21 "One area of minor concern,
22 and perhaps you may have
23 already looked at it
24 therefore making this
25 question a moot point.

1 However, I just want to make
2 sure this area is looked
3 after so I can answer the
4 question Monday: Have you
5 touched base with --"

6 And the name is redacted, but I
7 understand that that is a member from CSIS.

8 MR. FLEWELLING: Correct.

9 MR. CAVALLUZZO:

10 "Have you touched base with
11 [this particular member of
12 CSIS] on this issue? If not,
13 we may want to call him to
14 fill in him on what is going
15 on and let him know that in
16 responding to this American
17 request information has been
18 alluded to in the report. I
19 will be in on Monday now. I
20 will be leaving on Tuesday in
21 lieu. Rick."

22 So, it would indicate from this
23 e-mail -- and in particular I'm looking at the
24 third paragraph, second sentence:

25 "We would most certainly want

1 to know when he is coming and
2 any information obtained by
3 U.S. authorities that would
4 assist in building the case
5 against Arar."

6 So it would indicate from this
7 that as of the Sunday, October the 6th, when you
8 say "we want to know when he is coming" --

9 MR. FLEWELLING: Correct.

10 MR. CAVALLUZZO: -- your view is
11 that he is coming to Canada?

12 MR. FLEWELLING: I maintain that
13 view, yes. And if I can go back for just a second
14 to the conversation that I had with him on -- I
15 believe it was the Friday evening, I also
16 suggested that if he does come to Canada, that I'm
17 quite sure that the investigators from the Project
18 A-OCANADA team would like to speak to him in order
19 to clear up their issues that they want to discuss
20 with him; as well, if need be, that they could
21 employ any investigative avenues that they so
22 deemed necessary.

23 MR. CAVALLUZZO: Right. But I
24 just want to make very clear that when you say
25 "when he is coming" --

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: -- clearly you
3 are saying in your view, on Sunday, October the
4 6th, he is coming to Canada; not to Syria, not to
5 Switzerland. He is coming --

6 MR. FLEWELLING: I was still of
7 the impression -- and I think that that same
8 message was being conveyed to Mr. Callaghan --
9 that he was definitely coming to Canada.

10 MR. CAVALLUZZO: And then it goes
11 on and you say basically:

12 "... and then any information
13 the Americans have that would
14 assist us in building a case
15 against Arar, we should try
16 to get that information."

17 MR. FLEWELLING: Any information
18 that they had, we were dearly interested in
19 finding out what it was.

20 MR. CAVALLUZZO: You received this
21 e-mail. It went to Pat Callaghan, and I
22 understand that you received an e-mail from
23 Mr. Callaghan on the Monday, October 7th.

24 Is that correct?

25 MR. FLEWELLING: I believe so.

1 MR. CAVALLUZZO: And I would like
2 to introduce now another new exhibit.

3 THE COMMISSIONER: 228.

4 EXHIBIT NO. 228: E-mail from
5 Pat Callaghan to Rick
6 Flewelling, dated October 7th

7 MR. CAVALLUZZO: And this e-mail,
8 if we start at the bottom, it's Mr. Callaghan
9 at "A" Division. It is sent at 10:40 a.m., and it
10 says:

11 "Hi, Rick. I spoke with --"
12 This is an American that he is
13 referring to.

14 "He indicated that he
15 received the fax from us on
16 Friday in illegible state.
17 It was when he sent it to
18 [whoever] that they received
19 an illegible copy. He was
20 able to have NOC send it
21 directly to [whoever the
22 individual is]. This was not
23 a problem involving
24 A-OCANADA."

25 And then it goes on:

1 "We are still seeking to
2 interview Arar. [Somebody]
3 indicated that [somebody] was
4 dealing with our request --"
5 Et cetera, et cetera.

6 And then you respond at some time
7 later, at 10:53, and you are referring to a
8 particular news article in the National Post and
9 so on, and there is no more reference to Mr. Arar
10 in that e-mail.

11 Did you have a telephone
12 conversation with Mr. Callaghan on Monday?

13 MR. FLEWELLING: Through
14 preparation, I learned that I had one later on
15 that day, yes.

16 MR. CAVALLUZZO: And was it
17 about -- was it about Mr. Arar?

18 MR. FLEWELLING: I believe so. I
19 would have to refresh my memory.

20 MR. CAVALLUZZO: In terms of that
21 day, if we go back to that timeline that we shared
22 with you --

23 THE COMMISSIONER: What number was
24 that again?

25 MR. CAVALLUZZO: I'm just getting

1 it. It's exhibit 226.

2 And if we go to page 3 for the
3 entry for October 7th, we see at 8:30, it says:

4 "Corporal Rick Flewelling
5 sent an e-mail indicating
6 that it would appear U.S.
7 authorities would not have
8 enough evidence to charge
9 Arar and therefore would
10 release him and they would
11 most likely deport him to
12 Canada."

13 And then if you go to page 5,
14 these are the last entries for that date, October
15 7th, and I'm referring now to four lines down
16 where it says -- and this is A-OCANADA talking:

17 "As such we decided that we
18 would cancel our plans to
19 travel to New York and await
20 Arar's deportation to Canada
21 and approach him at that time
22 for an interview. Also
23 discussed was the possibility
24 of making arrangements for
25 somebody to follow Arar for a

1 few days upon his return to
2 Canada after which we would
3 endeavour to interview him."

4 And then it says:

5 "[Somebody] contacted
6 [somebody] and advised that
7 we would not be travelling to
8 New York to conduct the
9 interview. That person was
10 asked to provide the
11 projected travel itinerary
12 for Arar, specifically his
13 arrival and location into
14 Canada."

15 And then it says:

16 "One of the members of
17 A-OCANADA contacted Rick
18 Flewelling and advised him of
19 our position not to travel to
20 New York."

21 So that from this document it
22 would appear that when you left -- or around the
23 time you were leaving for vacation that you were
24 of the view, or at least had been advised by
25 Project A-OCANADA, that they had given up their

1 intention to interview Mr. Arar in New York.

2 Is that correct?

3 MR. FLEWELLING: That is correct,
4 and that there would be a wait and see what
5 transpired on October 9th once he went through his
6 proceedings there.

7 MR. CAVALLUZZO: Now, when you
8 went on vacation on October the 8th, which would
9 be the Tuesday, who was going to be filling in for
10 you in respect of your duties and responsibilities
11 of being overseer of A-OCANADA?

12 MR. FOTHERGILL: Commissioner,
13 this might be a name that we would prefer to
14 protect, unless there is a compelling reason why
15 the name needs to be disclosed. I don't think
16 it's a name that's been disclosed previously.

17 MR. CAVALLUZZO: I'm prepared to
18 go along with that. We'll call this Mr. A,
19 because his name is going to come up the next day
20 as well.

21 So that Mr. A was going to fill in
22 for your duties and responsibilities while you
23 were away?

24 MR. FLEWELLING: As well as
25 Mr. Lauzon.

1 MR. CAVALLUZZO: Okay. And Mr. A
2 and Mr. Lauzon would be overseeing Project
3 A-OCANADA during that period of time?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: Did you brief
6 Mr. A on the status of, if we can call it, the
7 Arar file?

8 MR. FLEWELLING: We worked quite
9 extensively together, and it was my belief that he
10 was aware of what had been going on up to that
11 point, yes.

12 MR. CAVALLUZZO: And when would
13 you have left on Monday, the office?

14 MR. FLEWELLING: I would have to
15 take a look at my notes.

16 MR. CAVALLUZZO: We don't have any
17 notes for that day as I assume there are no Arar
18 entries.

19 MR. FLEWELLING: No, I was dealing
20 actually with the events that you have on that
21 e-mail. I'm assuming approximately four o'clock,
22 in around that area.

23 MR. CAVALLUZZO: So that when you
24 leave for vacation in the evening of Monday,
25 October 7th, two things -- or at least three

1 things that seem to be important as far as Arar is
2 concerned.

3 One is he is going to have a
4 deportation hearing on Wednesday, October the 9th?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: Is that correct?

7 MR. FLEWELLING: That's correct.

8 MR. CAVALLUZZO: Second, he is
9 likely to be returned, removed, whatever, to -- at
10 this point in time you think it's Canada, or do
11 you still think it's Switzerland to Canada, or
12 whatever?

13 MR. FLEWELLING: One of the two.

14 MR. CAVALLUZZO: So you think it's
15 either going to be Switzerland or Canada?

16 MR. FLEWELLING: I was
17 anticipating Canada.

18 MR. CAVALLUZZO: Okay. And the
19 third point is that at least at this point in time
20 that A-OCANADA has taken off the table, so to
21 speak, their intent to go to New York to interview
22 Mr. Arar?

23 MR. FLEWELLING: Yes.

24 MR. CAVALLUZZO: Before we move
25 on, in respect of Mr. Roy, do you recall Mr. Roy

1 sharing with you at any time any documents from
2 DFAIT relating to Mr. Arar?

3 MR. FLEWELLING: I don't recall.
4 However, there would be one way of finding out,
5 and that would be if there are any documents with
6 my initials, then that would be the only way I
7 could determine.

8 MR. CAVALLUZZO: Well, we don't
9 have -- we have documents that came from DFAIT, so
10 that they wouldn't have your initials.

11 Perhaps the easiest way is if I
12 could show them to you.

13 Could you refer to exhibit P-42.

14 THE COMMISSIONER: Volume 1?

15 MR. CAVALLUZZO: Volume 1, yes.

16 MR. FLEWELLING: What number was
17 that again?

18 MR. CAVALLUZZO: Let's start at
19 tab 10. This is a CAMANT note dated October 1:

20 "Brother called this morning
21 in a state of panic. He said
22 that subject was able to call
23 him this morning from MDC and
24 informed him that he would be
25 deported back to Syria where

1 he was born."

2 Do you recall Mr. Roy sharing that
3 document with you?

4 MR. FLEWELLING: No, although the
5 contents I learned at a much later time.

6 MR. CAVALLUZZO: Right. But we
7 are talking about now before October 7th when you
8 left for vacation?

9 MR. FLEWELLING: No, not to my
10 knowledge.

11 MR. CAVALLUZZO: Let's go to tab
12 22. This is a CAMANT note which is dated October
13 2nd, and it concerns a call from a friend of
14 Mr. Arar and them retaining or finding a lawyer.

15 MR. FLEWELLING: I learned
16 through -- I believe it was Mr. Cabana or
17 Mr. Callaghan relaying to me a message about the
18 fact that Mr. Cabana had a discussion with
19 Mr. Arar's lawyer in Ottawa and that they were
20 making arrangements for a lawyer.

21 MR. CAVALLUZZO: This refers to a
22 lawyer in New York, though, not in Ottawa. Were
23 you --

24 MR. FLEWELLING: This specific --
25 no, I learned the fact that he was getting a

1 lawyer through Mr. Cabana.

2 MR. CAVALLUZZO: That he was
3 getting a lawyer in New York --

4 MR. FLEWELLING: In New York.

5 MR. CAVALLUZZO: That's fine. You
6 didn't see this then.

7 Let us go then to tab 31, which we
8 referred to earlier as the consular visit. This
9 is where Mr. Arar receives a document, a factual
10 allegation of admissibility under section 235(c)
11 of the Immigration and Nationality Act.

12 Do you recall seeing a copy of
13 this?

14 MR. FLEWELLING: No.

15 MR. CAVALLUZZO: You never saw
16 this.

17 And finally tab 35, which is dated
18 October the 3rd as well, about speaking to a
19 lawyer who will contact the MDC to arrange to
20 visit Mr. Arar.

21 MR. FLEWELLING: No, I don't
22 recall this.

23 MR. CAVALLUZZO: Do you recall
24 Mr. Roy sharing any documents with you?

25 MR. FLEWELLING: With respect to

1 this, I don't recall him sharing any documents
2 with me.

3 MR. CAVALLUZZO: You are on
4 vacation from October the 8th until October 16th?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: And when did you
7 learn that Mr. Arar had been deported from the
8 United States?

9 MR. FLEWELLING: I had learned
10 that through a phone conversation with Mr. A.

11 MR. CAVALLUZZO: And when do you
12 recall Mr. A having called you?

13 MR. FLEWELLING: In exploring my
14 telephone records, the only plausible date would
15 have to be May the 11th, and I called him --

16 MR. CAVALLUZZO: May...?

17 MR. FLEWELLING: -- according to
18 the records.

19 MR. CAVALLUZZO: It certainly
20 wouldn't be May.

21 MR. FLEWELLING: Sorry, not May,
22 but it would have been October the 11th. I
23 believe that's what it is. I would have to take a
24 look.

25 MR. CAVALLUZZO: Now,

1 Commissioner, I'm going to show the witness some
2 cell phone records. There is a great deal of
3 personal information on this, and I will just show
4 it to him, and the relevant portions will be
5 shared with counsel for the other parties once we
6 remove the personal information.

7 THE COMMISSIONER: So we don't
8 need to enter it as an exhibit now.

9 MR. CAVALLUZZO: That's correct.

10 THE COMMISSIONER: Okay.

11 --- Pause

12 MR. FLEWELLING: It would be 15th
13 at approximately 12:32, is the only plausible time
14 I can recall. And that would be where I made a
15 phone call to -- sorry.

16 MR. CAVALLUZZO: The October 15th,
17 12:32, is that what you are referring to?

18 MR. FLEWELLING: I'm just trying
19 to look here.

20 --- Pause

21 MR. FLEWELLING: No, it would have
22 been the 11th, and I'm looking at the number, and
23 that would have been at 1406.

24 MR. CAVALLUZZO: At 1406 on the
25 11th?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: You don't have to
3 tell us what the number is, but would that number,
4 the prefix is 993, what number is that?

5 MR. FLEWELLING: That would have
6 been Mr. A's phone number.

7 MR. CAVALLUZZO: Okay. And you're
8 calling from Welsford?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: And that is
11 where?

12 MR. FLEWELLING: In New Brunswick.

13 MR. CAVALLUZZO: Right.

14 Now, you told us before, and this
15 certainly isn't privileged information, you told
16 us before that you were sure that the phone call
17 was on October the 8th.

18 MR. FLEWELLING: Yes.

19 MR. CAVALLUZZO: And you were also
20 sure that it was on your way to New Brunswick, and
21 that, in fact, you mentioned the place that you
22 were at where you took the own call, it was a
23 place something Perth --

24 MR. FLEWELLING: Perth-Andover.

25 MR. CAVALLUZZO: Perth-Andover.

1 That's what you told us before. It was on October
2 the 8th, it was in Perth-Andover, and there are
3 indications here on this phone record, for
4 example, that there were phone calls on October
5 the 8th.

6 However, it would appear that it
7 was, for example, the two bottom calls, incoming
8 calls from your cell phone record, and the call
9 location -- I understand that's where the call is
10 from. It says Montreal.

11 MR. FLEWELLING: Yes.

12 MR. CAVALLUZZO: So could you tell
13 us why you told us before it was October the 8th
14 and --

15 MR. FLEWELLING: I must have had
16 it mixed up with another trip that I had taken
17 down -- I had gone down there a couple of times
18 over the course of the last year or two and...

19 MR. CAVALLUZZO: In any event,
20 you're telling us now that it's October 11th?

21 MR. FLEWELLING: After reviewing
22 my phone bill, that's the only plausible time, and
23 the only one that makes sense to me is that it
24 was -- that it was on the 11th at approximately
25 14 -- it looks like 14 -- 1406 -- 1404, 1406, one

1 of those two.

2 MR. CAVALLUZZO: This was with
3 Mr. A?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: You were just
6 happening to be calling into the office?

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: Did he call you
9 or were you calling him?

10 MR. FLEWELLING: I believe that I
11 called him, having reviewed my records, that it
12 was me who called him.

13 MR. CAVALLUZZO: Because
14 previously you said he called you?

15 MR. FLEWELLING: Yes.

16 MR. CAVALLUZZO: But you're sure
17 today it was on -- well, at least you say the most
18 plausible time is October the 11th --

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: -- and that you
21 would have called Mr. A, and at that point he
22 would have told you that Mr. Arar had been
23 deported?

24 MR. FLEWELLING: Obviously an
25 error in my recollection.

1 MR. CAVALLUZZO: In terms of that,
2 were you surprised with the information you
3 received from Mr. A?

4 MR. FLEWELLING: Absolutely. I
5 had every reason to believe that he was either
6 going to -- coming to Canada or going to Zurich.

7 MR. CAVALLUZZO: Did Mr. A
8 indicate anything?

9 MR. FLEWELLING: He advised me
10 that he had received a phone call from one of the
11 individuals from the American Embassy notifying
12 him that Mr. Arar had been removed from the States
13 and taken to Syria.

14 MR. CAVALLUZZO: Just out of
15 interest, I noted that the information that you
16 sent to the Americans, at least that A-OCANADA
17 sent to the Americans on October 4th had that
18 caveat.

19 Do you know if the Americans, if
20 they were going to use any -- if they did use any
21 of the information that was received from the
22 Canadians on October the 4th, whether they sought
23 permission from the RCMP to use that information
24 against Mr. Arar?

25 MR. FLEWELLING: I don't recall

1 seeing any requests coming in to use any of that
2 information, no.

3 MR. CAVALLUZZO: Is it likely, in
4 your position, that you would have seen that
5 request? Although you may have been on vacation,
6 in retrospect, would you have seen that request
7 when you came back?

8 MR. FLEWELLING: Assuming that it
9 had arrived, I would have seen it, or I would have
10 been advised that it came in through my
11 counterparts at A-OCANADA.

12 MR. CAVALLUZZO: Just a couple
13 of -- one final question before we leave your
14 phone records.

15 As I pointed out earlier, there
16 are two incoming calls to you, one at 11:05 for
17 five minutes and one at 11:23 for two minutes.

18 THE COMMISSIONER: This is on
19 October 8th?

20 MR. CAVALLUZZO: October 8th,
21 that's correct. The two bottom entries.

22 And obviously you receive those
23 calls. I guess when you were in the Montreal
24 area, on your way to New Brunswick. Is it
25 possible that those two calls came from Mr. A?

1 MR. FLEWELLING: I don't believe
2 so.

3 MR. CAVALLUZZO: Do you recall who
4 those phone calls came from?

5 MR. FLEWELLING: No.

6 MR. CAVALLUZZO: I notice that you
7 use this phone very infrequently. There's not a
8 lot of calls on here?

9 MR. FLEWELLING: It's my personal
10 phone.

11 MR. CAVALLUZZO: Right. Do you
12 use it for business or just personal calls?

13 MR. FLEWELLING: I would use it
14 for business from time to time.

15 MR. CAVALLUZZO: And so that Mr. A
16 would have your cell phone number?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: Leaving aside
19 Mr. A, is it possible that those two calls on
20 October the 8th came from somebody in the RCMP
21 relating to a file such as Mr. Arar's?

22 MR. FLEWELLING: Could you repeat
23 the question, please?

24 MR. CAVALLUZZO: Yes. There are
25 only two phone calls on October the 8th?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: They occurred
3 when you're travelling to New Brunswick for a
4 holiday?

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: And the question
7 that I have, is it possible that those two calls
8 came from somebody in the RCMP relating to
9 Mr. Arar?

10 MR. FLEWELLING: I don't believe
11 so.

12 MR. CAVALLUZZO: You just have no
13 recollection of who those calls came from?

14 THE COMMISSIONER: That same
15 number shows up with incoming calls a number of
16 times on the next page.

17 MR. CAVALLUZZO: Commissioner,
18 that's his number.

19 MR. FLEWELLING: That's my number.

20 MR. CAVALLUZZO: When you have an
21 incoming call with your own --

22 THE COMMISSIONER: Oh, I see.

23 MR. CAVALLUZZO: Obviously you've
24 never --

25 THE COMMISSIONER: I've got it.

1 It's obvious I've never looked at my cell phone
2 book.

3 MR. FLEWELLING: It could very
4 well have been my wife calling me. She didn't
5 accompany me on that trip.

6 But I don't recall taking any
7 calls in and around the Montreal area in relation
8 to work.

9 MR. CAVALLUZZO: Okay then. If we
10 could move on, if we look at exhibit P-180, it's a
11 briefing note for the Commissioner of the RCMP
12 which is dated October 9th.

13 --- Pause

14 MR. CAVALLUZZO: Now, do you know
15 who drafted -- it is dated October the 9th. Do
16 you know who drafted this particular briefing
17 note?

18 MR. FLEWELLING: Exactly, no.
19 However, it could be one of two people.

20 MR. CAVALLUZZO: Okay. And who
21 are those individuals? Mr. A would be one?

22 MR. FLEWELLING: I believe Mr. A
23 and/or Sergeant Lauzon.

24 MR. CAVALLUZZO: Okay.

25 It says, the unredacted portions,

1 in terms of background, and it's under
2 Mr. Proulx's name for Commissioner Zaccardelli for
3 October the 9th, it says:

4 "CID NSOS learned --" (As
5 read)

6 Excuse me, let's me pick up the
7 previous paragraph:

8 "Arar's present circumstances
9 are unknown at this time and
10 CID is attempting to secure
11 this information. CID
12 learned that Project
13 A-OCANADA investigators had
14 submitted a request to (this
15 American person) to interview
16 Arar while he was detained in
17 New York. RCMP investigators
18 were concerned as to what
19 grounds they were holding
20 Arar, if Arar had volunteered
21 any information to U.S.
22 authorities relating to
23 activities and which country
24 Arar would be returning to if
25 he was deported. According

1 to A-OCANADA investigators,
2 (somebody) had some
3 unidentified issues regarding
4 an RCMP interview of Arar.
5 During this process it was
6 determined that whatever
7 (somebody) eventually decided
8 to return Arar to his country
9 of birth. Although Arar's
10 role in the bearing on the
11 outcome --" (As read)

12 Excuse me.

13 "Although Arar's role in the
14 A-OCANADA investigation is
15 still not known,
16 investigators indicated that
17 his detainment in Syria has
18 no bearing on the outcome or
19 integrity of this
20 investigation." (As read)

21 So this would have been either
22 Lauzon or Mr. A who drafted this for Mr. Proulx
23 for the Commissioner?

24 MR. FLEWELLING: I believe so,
25 yes.

1 MR. CAVALLUZZO: Now, on
2 Wednesday -- or excuse me, on Tuesday, October the
3 8th, although you were on vacation, the evidence
4 indicates that sometime during the day, that
5 Mr. Roy indicated to the A-OCANADA investigators
6 that there's the real possibility of a deport or
7 removal to Syria? Subsequently you became aware
8 of that, I assume.

9 MR. FLEWELLING: Correct.

10 MR. CAVALLUZZO: Okay.

11 And at that point in time, when
12 the real possibility of Syria arose on October the
13 8th, the assumption as well was that Mr. Arar was
14 going to deportation court the next day, on
15 October the 9th.

16 MR. FLEWELLING: That was my
17 understanding.

18 MR. CAVALLUZZO: And the evidence
19 also indicates that Project A-OCANADA became very
20 circumspect about an interview, because they were
21 concerned -- in fact, let me just read the time
22 line to you, just to be fair to you. It's once
23 again exhibit 226.

24 --- Pause

25 MR. CAVALLUZZO: You'll see it for

1 October 8th, if we could start at page 5 of the
2 exhibit -- or the time line of Mr. Cabana. It
3 says at 9:45:

4 "... ROY arrived at the ...
5 office and was advised of
6 ARAR's situation concerning
7 the interviews and ARAR's
8 potential deportation to
9 Canada on Wednesday."

10 Then it says:

11 "Insp. ROY indicated that he
12 was not aware of this
13 potential deportation to
14 Canada. Insp. ROY stated
15 that he only knew ARAR was
16 still in custody and there
17 was a possibility he would be
18 sent to Syria."

19 Do you see that?

20 Then if we go to twelve o'clock,
21 it said that:

22 "(Certain individuals on the
23 Project A-OCANADA team) met
24 with Insp. CABANA and
25 discussed the interview. We

1 discussed a concern that if
2 U.S. was only holding ARAR so
3 that we could interview him
4 and that if there was any
5 suggestions that he did not
6 cooperate with Canadian
7 investigators and would be
8 sent to Syria, then the
9 perception would be very
10 damaging to the RCMP. We
11 agreed to speak with
12 (whomever) and advised him of
13 our concerns up front and
14 await a response."

15 Then you'll see on the next page,
16 they set out certain conditions before they would
17 ever have a meeting in the next -- the 1415 entry,
18 it says:

19 "We indicated that we need to
20 know why ARAR was being held,
21 where he would be sent to
22 once we had interviewed him,
23 and what he had already
24 said..."

25 And so on and so forth.

1 So what appears to be the case is
2 that A-OCANADA is apprised of the fact that Arar
3 may be deported to Syria on October the 8th.

4 They know that -- or they're of
5 the knowledge that he is going to go to court the
6 next day, on October the 9th.

7 And as far as an interview is
8 concerned, they set down stringent conditions
9 because they don't want the RCMP to be embarrassed
10 if there is some tie between him and being
11 deported to Syria and an interview with the RCMP.

12 So you're aware of all of that
13 knowledge?

14 MR. FLEWELLING: Well, I am now.

15 MR. CAVALLUZZO: Yes.

16 So the question that I have is:
17 Did you ever learn that after the RCMP discovered
18 that he was going to be deported -- a real
19 possibility that he would be deported to Syria,
20 and then he, in their view, was going to court the
21 next day, on October the 9th, did you ever learn
22 of any RCMP protest or objection to the Americans
23 on that day saying something like, "You guys
24 better not deport him to Syria or you're
25 endangering our relationship," or words to that

1 effect? Any kind of protest or objection?

2 MR. FLEWELLING: Not that I
3 recall, or that I'm aware of.

4 MR. CAVALLUZZO: Now, we do know
5 that, in fact, Mr. Arar was deported at three
6 o'clock in the morning on October the 8.

7 However, we didn't discover -- or
8 the RCMP didn't discover that until the next day.

9 But you're not aware of any
10 protest or objection proffered to the Americans
11 from the RCMP respecting the possible deportation?

12 MR. FLEWELLING: I don't know if
13 anybody from A-OCANADA or CID, or --

14 MR. CAVALLUZZO: We have
15 absolutely no evidence of that, and just wanted to
16 know if you have any knowledge.

17 MR. FLEWELLING: No. Not that I'm
18 aware of.

19 MR. CAVALLUZZO: Okay.

20 Now, you return on October 16th?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: And if we go to
23 your notes, Mr. Flewelling, at page 40, it would
24 appear that at ten o'clock Mr. Pilgrim called you
25 into his office?

1 MR. FLEWELLING: That's correct.

2 MR. CAVALLUZZO: And he had a
3 meeting with DFAIT, and this is -- we've heard a
4 great deal of evidence on this, and I'm going to
5 quickly bring you through this.

6 This is when DFAIT raised a number
7 of questions regarding the RCMP, because on the
8 previous day, there was some American statements
9 to the effect that the RCMP knew why Mr. Arar --
10 knew the situation and knew the conditions under
11 which Mr. Arar was deported, and as a result of
12 that, DFAIT, in particular Mr. Pardy, called in
13 RCMP and threw out a lot of questions.

14 Is that what Pilgrim is talking to
15 you about upon your return on October 16th?

16 MR. FLEWELLING: Yes, I believe
17 so.

18 MR. CAVALLUZZO: On October the
19 18th, we see at page 41, which is -- no, that
20 would be the next day.

21 But I assume that you were tasked
22 with the responsibility to help prepare the
23 briefing note -- or not the briefing note but the
24 memorandum that went to DFAIT? Let me just show
25 it to you.

1 MR. FLEWELLING: Yes, please.

2 MR. CAVALLUZZO: It's exhibit

3 P-137.

4 --- Pause

5 MR. CAVALLUZZO: Do you recall
6 having assisted in the drafting of this memorandum
7 which went to DFAIT through Mr. Roy from
8 Mr. Pilgrim? It's page 5, I'm sorry, of --

9 MR. FLEWELLING: Six pages in.
10 That's the one we're referring to?

11 MR. CAVALLUZZO: Yes.

12 Do you recall that?

13 MR. FLEWELLING: Yes.

14 MR. CAVALLUZZO: Okay. So just a
15 couple of questions. So that where it says that,
16 for example, under question 2, the question is:

17 "How did the U.S. become
18 aware/interested in ARAR?"

19 It says:

20 "U.S. authorities learned of
21 ARAR through a sharing of
22 information between RCMP
23 investigators and U.S.
24 Intelligence authorities.
25 ARAR was connected to an

1 ongoing RCMP investigation
2 that involved individuals
3 also of interest to U.S.
4 authorities. It is also
5 possible that U.S.
6 authorities are in possession
7 of information relating to
8 ARAR's activities during the
9 period of time when he lived
10 and worked in Boston, Mass.,
11 area."

12 Now, in terms of answering or
13 preparing that answer to that question, did you do
14 the research on that and prepare that?

15 MR. FLEWELLING: I discussed with
16 a couple of members from the A-OCANADA team.

17 MR. CAVALLUZZO: So that you
18 received the information from A-OCANADA too.

19 Did anyone from A-OCANADA, after
20 having submitted this memorandum to DFAIT, come
21 back to you and say: "You're wrong, that
22 memorandum is wrong?"

23 MR. FLEWELLING: I don't even know
24 if they've got a copy of this, to be quite honest
25 with you.

1 MR. CAVALLUZZO: Assume they did.

2 MR. FLEWELLING: Then I don't
3 recall anybody coming back.

4 MR. CAVALLUZZO: Okay. In terms
5 of the answer to question 4, which was:

6 "Did the U.S. approach
7 Canadian authorities
8 regarding the possibility of
9 ARAR's deportation?"

10 Answer:

11 "U.S. authorities requested
12 the RCMP to provide
13 information that might assist
14 in the filing of criminal
15 charges against ARAR. U.S.
16 authorities made inquiries as
17 to the level of interest the
18 RCMP had in pursuing Arar
19 criminally. They also made
20 inquiries regarding the
21 RCMP's ability to refuse
22 ARAR's entry into Canada.
23 The U.S. authorities were
24 advised that the RCMP was
25 interested in ARAR from a

1 criminal perspective. They
2 were also advised that where
3 ARAR is a Canadian citizen,
4 the RCMP could not refuse his
5 entry into Canada."

6 And that of course is that
7 telephone call that we have reviewed with you.

8 And then it goes on:

9 "What was the level of threat
10 relating to ARAR's presence
11 in the U.S.?"

12 And then it says:

13 "The RCMP has no information
14 concerning any threat
15 associated with/by ARAR."

16 Did anybody from A-OCANADA ever
17 come back to you and say that's wrong?

18 MR. FLEWELLING: No.

19 MR. CAVALLUZZO: And then there is
20 reference to Syria and Jordan that we have dealt
21 with.

22 --- Pause

23 MR. CAVALLUZZO: On October 21, we
24 have heard evidence that Mr. Cabana told
25 Mr. Gould -- Mr. Gould, as you know, is with DFAIT

1 ISI, and that Mr. Cabana told Mr. Gould that
2 A-OCANADA was prepared to share all of its
3 information on Mr. Arar and another with the
4 Syrians.

5 I am wondering if you had any
6 knowledge of that offer from Cabana through Gould?

7 MR. FLEWELLING: I became aware of
8 it at a later point.

9 MR. CAVALLUZZO: But was it around
10 that time?

11 MR. FLEWELLING: It would have
12 been following.

13 MR. CAVALLUZZO: It would have
14 been following the request?

15 Did you say anything to Cabana as
16 to the propriety of making that particular offer?

17 MR. FLEWELLING: I don't recall.

18 MR. CAVALLUZZO: Just moving
19 along, I have a couple of final questions.

20 In respect of evidence that we
21 have heard -- and it's exhibit P-138. This is a
22 fax that the RCMP received from Mr. Pillarella,
23 who is the Ambassador to Syria at that time.

24 --- Pause

25 MR. FLEWELLING: Sorry? That was

1 what date again?

2 MR. CAVALLUZZO: It's November 3rd
3 or 4th. And what this is, this is information
4 that Mr. Pillarella had received from the Syrian
5 Military Intelligence relating to Mr. Arar
6 concerning his possible links with al-Qaeda, and
7 this information was faxed to the RCMP.

8 There was a meeting that was held
9 on November the 6th, an interagency meeting
10 between DFAIT, the RCMP and others, CSIS included,
11 concerning this particular information that was
12 contained in this e-mail.

13 I am wondering if you attended at
14 that meeting?

15 MR. FLEWELLING: That was what
16 date, sorry?

17 MR. CAVALLUZZO: November 6th.
18 --- Pause

19 MR. FLEWELLING: I have no notes
20 so, no, I wouldn't have been there.

21 MR. CAVALLUZZO: I note that on
22 November the 8th -- this is page 41 -- there is
23 reference to a meeting at DFAIT.

24 Do you see that at it looks like
25 either 1:30 or 1330 entry?

1 MR. FLEWELLING: That's correct.

2 MR. CAVALLUZZO: It says:

3 "Meeting at DFAIT with Don."

4 That would be Don Saunders?

5 MR. FLEWELLING: Ron.

6 MR. CAVALLUZZO: Excuse me, Ron?

7 MR. FLEWELLING: Yes. Mr. Lauzon.

8 MR. CAVALLUZZO: Wayne Pilgrim?

9 MR. FLEWELLING: And myself.

10 MR. CAVALLUZZO: And myself.

11 "Also in attendance was CSIS,

12 DFAIT."

13 Do you recall what that particular
14 meeting was about?

15 MR. FLEWELLING: I can't recall
16 what the topic of that meeting was. I could make
17 assumptions, but I'm afraid that I might be wrong.

18 MR. CAVALLUZZO: If you can't
19 recall it, then it wouldn't be of assistance, any
20 speculation on your part.

21 MR. FLEWELLING: I'm quite sure
22 that Ron, I do believe he might be able to shed a
23 little bit more light on that issue or what
24 transpired during that meeting.

25 MR. CAVALLUZZO: Do you recall

1 having seen, though, this information that
2 Mr. Pillarella brought back from Syria?

3 MR. FLEWELLING: Without seeing my
4 initials on it, I can't tell you that I've seen
5 it.

6 MR. CAVALLUZZO: But what it does,
7 it says that the Syrians, in a very short period
8 of time, have absolutely -- they are absolutely
9 positive, and this is General Khalil is absolutely
10 positive about Arar's links with al-Qaeda. He
11 said that he had been recruited with the specific
12 purpose of recruiting others in Canada, et cetera,
13 et cetera.

14 Wouldn't you recall if you had
15 seen that before?

16 MR. FLEWELLING: I recall that
17 information coming to light at a later point in
18 time, yes.

19 MR. CAVALLUZZO: Well, no matter
20 how you discovered this information, whether it be
21 through this document or being advised of it
22 otherwise, in your role as reviewer-analyst and
23 being responsible for Project A-OCANADA, did you
24 ever or are you aware of anybody in the RCMP ever
25 doing a reliability assessment of this particular

1 statement?

2 MR. FLEWELLING: I can only answer
3 from our perspective, and I can't recall anybody
4 being tasked with that at our level.

5 MR. CAVALLUZZO: And is it fair to
6 say, because last June and July of 2004 we took
7 Mr. Loeppky through a great deal of policies,
8 particularly in terms of the criminal intelligence
9 program, and it would seem to me anyways that one
10 of the important things that the CID does is a
11 reliability assessment of statements such as this.

12 And it would seem to me that if a
13 reliability assessment would have been done in the
14 RCMP, it would have been done at the CID.

15 MR. FLEWELLING: Or could have
16 been done with one of the individuals who had an
17 in-depth knowledge with the entire file with
18 A-OCANADA.

19 MR. CAVALLUZZO: Right. In any
20 event, we certainly didn't hear any information
21 from them. But just from CID's perspective -- you
22 were the overseer of the Project A-OCANADA file --
23 you were not aware of CID doing a reliability
24 assessment of this?

25 MR. FLEWELLING: Not that I can

1 recall right now.

2 MR. CAVALLUZZO: Just a couple of
3 final things.

4 If you go back to your notes, if
5 you can help us at page 45, this would appear to
6 be an entry for Friday, November 22nd of 2002.

7 MR. FLEWELLING: Yes.

8 MR. CAVALLUZZO: At the bottom
9 there it says:

10 "A-OCANADA to go through LOs.
11 I am to prepare an e-mail
12 message on behalf of
13 Mr. Proulx."

14 Now, what is that all about, that
15 "A-OCANADA to go through LOs"?

16 MR. FLEWELLING: One of the
17 investigative team members from the project team
18 had made a contact with a representative from the
19 French Embassy.

20 MR. CAVALLUZZO: Right.

21 MR. FLEWELLING: And I believe, if
22 memory serve me correctly, they posed a question
23 or they solicited information.

24 MR. CAVALLUZZO: Right.

25 MR. FLEWELLING: And that got back

1 to, I believe, Mr. Proulx.

2 MR. CAVALLUZZO: And basically
3 Proulx once again saying, "Listen, guys, you don't
4 deal directly with foreign agencies. You come
5 through us."

6 Is that fair?

7 MR. FLEWELLING: Correct.

8 MR. CAVALLUZZO: The next page,
9 page 46, the entry at 1330 says:

10 "Message sent to A-OCANADA re
11 [the redacted something]."

12 It says:

13 "Message sent replacing
14 caveats on all
15 correspondence. Message sent
16 issue pertaining to the lack
17 of response as well as our
18 own."

19 So the message concerning placing
20 of caveats on all the correspondence in November
21 of 2002, you are still having a problem with
22 A-OCANADA not putting caveats on?

23 MR. FLEWELLING: I think they had
24 appointed a new individual to step in to do the
25 situation reports, and he either forgot or was

1 unaware, and it was just a reminder that --

2 MR. CAVALLUZZO: Okay.

3 MR. FLEWELLING: They subsequently
4 showed up following.

5 MR. CAVALLUZZO: If you go down to
6 1430, it says:

7 >Note prior to [something]
8 meeting. Inspector Cabana
9 called to voice his concern
10 and displeasure with the
11 discussion to have them go
12 through the LOs."

13 So Cabana is phoning saying, "Why
14 do I have to go through the LOs?"

15 MR. FLEWELLING: Well, he had some
16 concerns, and I believe that the agreement that
17 apparently he was aware of extended to be able to
18 deal with all individuals within the National
19 Capital Region.

20 MR. CAVALLUZZO: Were you aware of
21 that agreement?

22 MR. FLEWELLING: I was not aware
23 of an agreement with respect to other agencies
24 other than the Americans.

25 MR. CAVALLUZZO: Right, okay.

1 Then if we go to page 54, this is
2 the entry for January 22, 2003.

3 I am wondering if you could just
4 read that? I have trouble with the -- it looks
5 like the 1330 entry, "Meeting at with [somebody]."

6 Could you pick it up from there?

7 MR. FLEWELLING: "Spoke with
8 [somebody] re the computer.
9 His point was A-OCANADA asked
10 for the material, therefore
11 it was theirs to act on. I
12 should have called and I
13 should not have -- and that I
14 should have called to advise
15 them. I replied that the
16 info was not theirs and
17 theirs alone. Foreign
18 material is given, loaned to
19 the Government of Canada, and
20 the RCMP is the guardian of
21 that material. That's why it
22 is addressed to the
23 Commissioner and not
24 A-OCANADA. It is my job to
25 disseminate that information,

1 evaluate it, and have it
2 uploaded to the system. I
3 need that information as much
4 as they in order to properly
5 advise management."

6 MR. CAVALLUZZO: So this is I
7 guess another -- I don't want to call it dispute.
8 It seems like an ongoing debate that doesn't seem
9 to be resolved as to the proper protocol in
10 respect of how information comes in from foreign
11 agencies.

12 Is that fair?

13 MR. FLEWELLING: It was with
14 respect to an individual who was from a Canadian
15 agency that was partnering with the team that was
16 unaware of that aspect.

17 MR. CAVALLUZZO: Right. Okay.

18 Finally, at page 55, if you could
19 look at page 55, and if you could start reading
20 six lines from the bottom?

21 MR. FLEWELLING: "I stated that
22 they continuously break
23 protocol in dealing with
24 foreign agencies and
25 material."

1 MR. CAVALLUZZO: Just before we go
2 on, you say "they". "They" is Project A-OCANADA?

3 MR. FLEWELLING: I'm referring,
4 yes.

5 MR. CAVALLUZZO: Go on.

6 MR. FLEWELLING: "I advised that
7 instead of pointing fingers
8 at one another, perhaps a
9 call would solve a lot of
10 hostility."

11 MR. CAVALLUZZO: And then finally
12 the next page, it says meeting between --

13 MR. FLEWELLING: "Meeting between
14 CSIS and RCMP CID."

15 MR. CAVALLUZZO: What does the
16 next line say?

17 MR. FLEWELLING: "National
18 security --"

19 That has to do with UC matters and
20 really doesn't have anything to do with A-OCANADA.

21 MR. CAVALLUZZO: But it has to do
22 with the divisions, does it not?

23 MR. FLEWELLING: Yes.

24 MR. CAVALLUZZO: So what is the
25 point there? National security what? Major or

1 minor has to be approved by -- does that mean any
2 national security investigations, either major or
3 minor, has to be approved by headquarters?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: Next line says:

6 "Files on national security
7 belong to the Commissioner
8 and not the divisions."

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: Okay. We've seen
11 that problem in the past and now this is very
12 clear, as of January 2003 the files belong to the
13 institution and not the division.

14 So the Commissioner, not the
15 divisions; correct?

16 MR. FLEWELLING: Yes.

17 MR. CAVALLUZZO: Then it says
18 foreign agencies.

19 "Divisions will not deal --"

20 MR. FLEWELLING: "...with foreign
21 agencies without HQ
22 involvement or knowledge."

23 MR. CAVALLUZZO: So that's
24 another, certainly, direction that as of January
25 2003 would be enforced. Is that correct?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: Just another
3 question before a concluding comment is whether
4 you were aware in November of 2002 of the trip of
5 CSIS to Syria?

6 MR. FLEWELLING: I became aware of
7 it, I believe, afterwards.

8 MR. CAVALLUZZO: After? So you
9 had no participation in the events leading up to
10 the trip?

11 MR. FLEWELLING: Not to my
12 knowledge.

13 MR. CAVALLUZZO: Mr. Flewelling,
14 after taking you through all of these debates and
15 dialogues you had with A-OCANADA, you must have
16 found it pretty frustrating being the overseer of
17 Project A-OCANADA. Is that correct?

18 MR. FLEWELLING: I would say
19 that's a fair statement, but not unusual.

20 MR. CAVALLUZZO: Well, if it's not
21 unusual, I'll leave that for others.

22 In any event, I understand that
23 the structure in respect to A-OCANADA changed
24 shortly after this last debate we saw in January
25 of 2003. Is that correct?

1 MR. FLEWELLING: I don't recall
2 the exact date.

3 MR. CAVALLUZZO: February 4th,
4 2003.

5 MR. FLEWELLING: February 4th...

6 MR. CAVALLUZZO: 2003.

7 MR. FLEWELLING: I'll take your
8 word for it. I believe the team folded back into
9 or under the umbrella of A-INSET.

10 MR. CAVALLUZZO: That's correct.
11 Mr. Cabana departed the team, the project fell
12 under the A-INSET?

13 MR. FLEWELLING: Yes.

14 MR. CAVALLUZZO: And a coordinator
15 by the name of Mr. Jago was appointed, who was
16 going to coordinate not only Project A-OCANADA but
17 with O-Canada in Toronto and with C-Canada in
18 Montreal?

19 MR. FLEWELLING: Yes.

20 MR. CAVALLUZZO: Mr. Flewelling,
21 thank you. I have no further questions.

22 THE COMMISSIONER: Thank you,
23 Mr. Cavalluzzo.

24 Mr. Waldman?

25 How long do you think you will be?

1 Let me just take a roll call here.

2 MR. WALDMAN: How long do you
3 think I'm going to be?

4 THE COMMISSIONER: Yes.

5 MR. WALDMAN: An hour to an hour
6 and a half.

7 THE COMMISSIONER: Mr. Boxall, you
8 are going to have questions?

9 MR. BOXALL: I do. An hour?

10 THE COMMISSIONER: All right.
11 Anybody else here?

12 Mr. O'Brien?

13 MR. O'BRIEN: Possibly a few
14 minutes.

15 THE COMMISSIONER: Anybody else?
16 We will wait to see.

17 We will rise for five minutes for
18 you to get organized.

19 --- Upon recessing at 11:57 a.m. /

20 Suspension à 11 h 57

21 --- Upon resuming at 12:06 p.m. /

22 Reprise à 12 h 06

23 THE REGISTRAR: Please be seated.

24 THE COMMISSIONER: Mr. Waldman?

25 MR. WALDMAN: Yes, I'm going to

1 try to cover one or two areas before lunch, and I
2 think I have half an hour before and half an hour
3 after.

4 THE COMMISSIONER: That's great.
5 Thank you.

6 MR. WALDMAN: At lunch I'll have
7 an opportunity to reorganize and probably a lot of
8 the questions I had I see were already covered.

9 THE COMMISSIONER: Mr. Cavalluzzo
10 covered it.

11 MR. WALDMAN: Covered most of it.

12 EXAMINATION

13 MR. WALDMAN: I want to deal with
14 one area now, and this is -- if I could ask you to
15 go to your personal notes, P-211, page 25.

16 THE COMMISSIONER: Twenty-five?

17 MR. WALDMAN: Yes.

18 So at 12:30 on August 13th, you
19 receive an urgent message, call by so and so.
20 They have an urgent message.

21 And then a little bit later,
22 you're called and advised that they had been in
23 contact with DOJ, media, DFAIT, Gould, and "A"
24 Division, and they've set up a meeting.

25 So it's quite clear that on the

1 13th of August, 2002, someone with whom you were
2 working closely advised you that there was
3 something very urgent going on.

4 Is that correct?

5 MR. FLEWELLING: Obviously if
6 they're bringing all of these agencies together, I
7 would assume that there's definitely something.

8 MR. WALDMAN: Right. And you
9 don't remember being advised at that time of what
10 the urgent message was that was being given to you
11 at that time?

12 MR. FLEWELLING: I try to put
13 myself back in that time frame and try to recall
14 exactly what the affairs were, and, I'm sorry, I
15 just keep drawing a blank.

16 MR. WALDMAN: Well, it says that
17 the meeting is going to be set up with DOJ (that's
18 the Department of Justice) headquarters, members
19 of A-OCANADA, media relations, and then following
20 that there's going to be another meeting with CSIS
21 and DFAIT.

22 Is that your reading of that?

23 MR. FLEWELLING: Yes.

24 MR. WALDMAN: I'm going to suggest
25 to you that it would be extremely unusual to have

1 such a meeting.

2 All of a sudden all of these
3 different partners being brought together,
4 Justice, media, DFAIT, headquarters, "A" Division,
5 CSIS, all to discuss an issue.

6 This is not something that
7 happened very often in your experience?

8 MR. FLEWELLING: Over the course
9 of my time frame between Project Shock as well as
10 this one, there were a number of times where a lot
11 of these Canadian agencies and representatives
12 would get together.

13 MR. WALDMAN: Yes, but this -- I
14 could imagine that would happen. But how often
15 would it be that a meeting was arranged from one
16 day to the other to getting all of these very busy
17 individuals together all at once to come together
18 in a very short period of time?

19 I would suggest to you that that
20 would be extremely unusual.

21 Correct?

22 MR. FLEWELLING: It was not the
23 norm, no.

24 MR. WALDMAN: Not the norm.
25 Right.

1 So I would suggest to you that it
2 would suggest that there was something extremely
3 important and urgent that needed to be discussed.

4 MR. FLEWELLING: Oh, whenever you
5 bring these agencies together, there's definitely
6 something, yes.

7 MR. WALDMAN: Yes. That's a lot
8 of resources getting a lot of people together on
9 one day's notice for a meeting about something
10 that was very urgent.

11 Correct?

12 MR. FLEWELLING: Yes.

13 MR. WALDMAN: Now, on page 26 of
14 your notes, the middle of the page, it says -- it
15 starts:

16 "Advised by (blank) that
17 DFAIT officials in Egypt have
18 seen El Maati. They're
19 advised of his present
20 conditions and claims of
21 mistreatment while in Syrian
22 custody."

23 I've read your notes correctly?

24 MR. FLEWELLING: It's there, yes.

25 MR. WALDMAN: Right. So what do

1 you think the investigator meant when he said,
2 "claims of treatment"?

3 Would you agree with me that that
4 wording suggests, given that it's put in the form
5 of "claims of treatment," that Mr. El Maati would
6 have been treated -- the suggestion was that he
7 was being treated badly, because it wouldn't make
8 any sense otherwise to put "claims of treatment,"
9 would it?

10 MR. FLEWELLING: Well, obviously
11 if I put it there in that context, then obviously
12 that's what -- there's got to be some situation
13 that's been brought up.

14 MR. WALDMAN: Yes. There must
15 have been some allegation or suggestion by the
16 person that Mr. El Maati was stating that he
17 wasn't being treated very well.

18 Is that fair to say?

19 Otherwise, it wouldn't make any
20 sense to put it in those terms?

21 MR. FLEWELLING: No. Yes.

22 MR. WALDMAN: So clearly your
23 notes suggest that as of this date, which is
24 August 13th, you were being made aware by some
25 individuals that Mr. El Maati had made allegations

1 that he was being badly treated in Syria.

2 Is that correct?

3 MR. FLEWELLING: I take it from
4 this entry, yes.

5 MR. WALDMAN: So presumably you
6 would have been curious about what all the fuss
7 was about.

8 You had just received an urgent
9 message that a big meeting had been planned where
10 all the major players are going to be at the
11 table, something that you acknowledge is quite
12 unusual, getting all these people together in a
13 short period of time.

14 We're talking here about
15 Mr. El Maati, who we now know was one of the
16 targets of the A-OCANADA investigation, and he's
17 making claims of bad treatment while he was in
18 Syria.

19 Given your oversight role, don't
20 you think it's likely that you would have wanted
21 to know more about the nature of Mr. El Maati's
22 claims at that time?

23 Don't you think it would have been
24 important to you to get more information?

25 I mean, you are the oversight

1 person for A-OCANADA. This is August 2002.
2 You've already taken over this role.

3 MR. FLEWELLING: Starting, yes.

4 MR. WALDMAN: Right. And Mr. El
5 Maati we know is one of the targets. You haven't
6 been able to get any contact with him for months
7 and all of a sudden you're able to -- DFAIT is
8 able to get to him. They speak to him. And he
9 tells DFAIT officials that he's badly treated.

10 Don't you think it would be
11 important for you at that time to try to get more
12 information about this?

13 MR. FLEWELLING: From my
14 understanding, that's what the role of DFAIT is,
15 is to acquire or to obtain as much information as
16 possible.

17 MR. WALDMAN: Right. But I'm not
18 asking you about what DFAIT's role is, sir. I'm
19 asking you about whether you made further
20 inquiries, or ought to have made further
21 inquiries, at that point to get more details about
22 what Mr. El Maati had said, given your overseeing
23 role.

24 MR. FLEWELLING: Throughout the
25 course or the latter part of my tenure, we

1 endeavoured and had discussed amongst the group
2 the aspect of going over to see Mr. El Maati for
3 the expressed view of obtaining or acquiring
4 information as we could glean.

5 MR. WALDMAN: Right, and don't you
6 think in that context, if you were thinking about
7 going to interrogate Mr. El Maati, it would have
8 be important to know what he said -- how he had
9 said he had been treated while he was in Syria?

10 MR. FLEWELLING: Absolutely.

11 MR. WALDMAN: And here you've got
12 in your notes that -- there is an indication that
13 you had been given information he was badly
14 treated and yet you don't have any recollection of
15 following up on this, sir? I would suggest to
16 you, sir, that you ought to have done it and
17 probably did do it.

18 MR. FLEWELLING: No, in my note,
19 it doesn't say "badly treated."

20 MR. WALDMAN: But we just went
21 through that, and I think you acknowledged to me
22 that the wording of it clearly indicated that it
23 wouldn't have made sense to word it in that manner
24 unless there was some problem with the treatment
25 that he had been given.

1 MR. FLEWELLING: Well, obviously
2 there is a question there as a result of the note.

3 MR. WALDMAN: Right. And it's a
4 question you should have followed up on given your
5 role.

6 Correct?

7 MR. FLEWELLING: Well, that's
8 where we defer to DFAIT in order to provide us
9 with the necessary information with respect to his
10 treatment. We don't have feet on the ground
11 there.

12 MR. WALDMAN: And, in fact, we
13 know that there was a meeting on August 15th that
14 you attended, right? And at that meeting, in
15 fact, there was a representative from DFAIT,
16 someone by the name of Myra, who we know is Myra
17 Pastyr-Lupul, who testified here, and, in fact,
18 she testified about this meeting. In fact, when
19 she testified about this meeting, sir, she told us
20 that the RCMP had in its possession P-192.
21 Perhaps we could show you that.

22 --- Pause

23 MR. WALDMAN: Perhaps you could
24 just -- have you seen this document before?

25 MR. FLEWELLING: No.

1 MR. WALDMAN: Perhaps you could
2 just take a second to just familiarize yourself
3 with it.

4 --- Pause

5 MR. WALDMAN: So if I could ask
6 you to go -- have you had a chance to read it?

7 MR. FLEWELLING: Your question?

8 MR. WALDMAN: We went through the
9 middle of the third paragraph. It says:

10 "During his 2 1/2 months of
11 detention in Syria, subj
12 advises that he was beaten
13 (feet/legs) and tortured
14 (electric shock) and forced
15 to give false information."

16 So it seems to me that we had a
17 meeting that you attended on August 15th, whose
18 purpose was to discuss this case note.

19 The case note was the result of an
20 interview that took place within -- the interview
21 was on August 12th, and this meeting occurred
22 three days later, on August 15th.

23 So obviously this is being given a
24 very high priority.

25 Would you not agree with me?

1 And you're at a meeting and you
2 said you would rely on DFAIT to get the
3 information. Well, DFAIT has given you the
4 information, right?

5 The information is, Mr. El Maati
6 says during his two and a half months of detention
7 in Syria, he advised he was beaten and tortured.

8 Now, in your work -- and with
9 electric shocks -- in your work with the RCMP,
10 have you had very many occasions of hearing
11 allegations that people have said they were given
12 electric shocks?

13 MR. FLEWELLING: No.

14 MR. WALDMAN: Is that something
15 that's common?

16 MR. FLEWELLING: Not at all.

17 MR. WALDMAN: So would that not be
18 something that would stick out in your mind, sir?

19 MR. FLEWELLING: It should.

20 MR. WALDMAN: Right. And yet
21 you're telling me you went to a meeting for the
22 express purpose of discussing P-192, and you're
23 not -- and you can't recall there being any
24 mention of Mr. El Maati being tortured during this
25 meeting?

1 MR. FLEWELLING: Like I said, I
2 don't recall the contents of that meeting other
3 than what I have in my notes.

4 MR. WALDMAN: And yet you've just
5 told us that, you know, information about electric
6 shocks isn't something that you would normally
7 hear.

8 Correct?

9 MR. FLEWELLING: No. I believe
10 you asked me in my normal routine of my job
11 whether or not I have heard of it.

12 MR. WALDMAN: Right. And have
13 you?

14 MR. FLEWELLING: No.

15 MR. WALDMAN: Are you familiar
16 with any person in Canada ever making an
17 allegation against any police official that
18 electric shocks were being used in their
19 interrogations?

20 MR. FLEWELLING: No. Not in
21 Canada, no.

22 MR. WALDMAN: No. Okay.

23 And have you had a lot of
24 occasions to work with countries where electric
25 shocks are normally used as part of the

1 interrogation process, sir?

2 MR. FLEWELLING: Throughout the
3 course of my service, I've been required to deal
4 with a number of countries that perhaps don't
5 subscribe to the same values as we do.

6 MR. WALDMAN: Right. So how many
7 times --

8 MR. FLEWELLING: And fortunately
9 for the pursuit of our investigations, sometimes
10 we have to deal with various countries that don't
11 have the same values as us.

12 That is why in our policy that we
13 will go and we will go through the experts and
14 utilize or acquire the necessary advice from our
15 partner agencies.

16 MR. WALDMAN: Okay. Well, that
17 wasn't the question I was asking.

18 What I was asking was whether, you
19 know, the information about electric shocks is
20 something that would stand out in your memory.

21 MR. FLEWELLING: I would think so.

22 MR. WALDMAN: Right.

23 So I'm just trying to understand,
24 sir.

25 You were at a meeting on August

1 15th. We know from other witnesses that this
2 document was discussed. We know that the document
3 now says that Mr. El Maati was subjected to
4 electric shocks.

5 I mean, the purpose of the meeting
6 was obviously to have all the partners together to
7 determine how they were going to go about
8 obtaining information given this allegation.

9 Right?

10 There was concerns about
11 admissibility, I think we were told.

12 Correct? Is that correct?

13 MR. FLEWELLING: All I can tell
14 you, sir, is that I -- I was obviously there
15 but --

16 MR. WALDMAN: What were you
17 doing --

18 MR. FLEWELLING: The content --
19 the content of that meeting, it just escapes me.
20 I don't know why.

21 MR. WALDMAN: Were you sleeping
22 through the meeting, sir?

23 MR. FLEWELLING: No.

24 MR. WALDMAN: So you weren't
25 sleeping through the meeting.

1 MR. FLEWELLING: No.

2 MR. WALDMAN: The purpose was to
3 discuss this, and you don't remember any mention
4 of Mr. El Maati being tortured?

5 MR. FLEWELLING: Over the course
6 of that period of time, I had been to so many
7 meetings, they all blend, and there's a number of
8 them that I don't recall.

9 MR. WALDMAN: Okay. But --

10 MR. FLEWELLING: This was not my
11 only case.

12 MR. WALDMAN: I understand that.
13 They all blend together. You may not recall the
14 meeting, but I was more interested in you
15 recalling the information.

16 MR. FLEWELLING: I'm sorry,
17 I don't.

18 MR. WALDMAN: But you would agree
19 with me that given what we all know and given that
20 Ms Pastyr-Lupul testified she was there and this
21 document was there and in the possession of the
22 RCMP, it was likely that this document was
23 discussed, even if you don't recall it.

24 MR. FLEWELLING: Sorry. There's a
25 bit of humming. I didn't catch the middle of that

1 part.

2 MR. WALDMAN: What I'm suggesting
3 to you, sir, is, that at least you will
4 acknowledge that the document was discussed during
5 this meeting, even if you don't remember it, given
6 that that was the reason why the meeting was
7 called and other witnesses have testified that the
8 RCMP had the document.

9 --- Pause

10 MR. FLEWELLING: I take a look at
11 my notes, and the only thing I can tell you is I
12 was there. Whether or not that document was
13 discussed or what transpired, I just don't recall.

14 MR. WALDMAN: Could I ask you to
15 go to page 39 of your notes?

16 MR. FLEWELLING: Yes.

17 MR. WALDMAN: We start talking
18 about this meeting, and you note that Myra from
19 Consular Affairs is there.

20 MR. FLEWELLING: Sorry?

21 MR. WALDMAN: Oh, sorry.

22 Twenty-eight, I'm sorry.

23 It is 28 in the round letters, 39
24 in the other. Twenty-eight. Sorry about that.

25 Talking about a meeting, it says:

1 "Myra, Consular Affairs,
2 DFAIT. August 9. DFAIT was
3 advised that El Maati was in
4 custody in Egypt. The family
5 has been advised through his
6 sister. El Maati parents are
7 in Indonesia. Uncle in Cairo
8 has contacted the --"

9 And then it runs off. It would
10 seem, sir, that there is something missing there.

11 The next page of the notes deals
12 with August 20. Would you not agree with me that
13 the note ends in the middle of the page, in the
14 middle of a sentence?

15 MR. FLEWELLING: Yes.

16 MR. WALDMAN: So that there are
17 more notes that we don't have?

18 MR. FLEWELLING: Not necessarily,
19 no.

20 MR. WALDMAN: No? You would stop
21 your note in the middle of a sentence?

22 MR. FLEWELLING: I would be more
23 than happy to take a look for you, but it's quite
24 possible.

25 MR. WALDMAN: You just leave a

1 note like that. What good is a note that's left
2 hanging in the middle of a sentence?

3 MR. CAVALLUZZO: Just to be fair
4 to the witness, it was our decision to cut that
5 off at that point in time. We will check to see
6 if there's anything relevant. It is not the
7 witness' doing.

8 MR. WALDMAN: Okay.

9 I just want to know whether you
10 think it would have been important for you to be
11 aware of the allegation that Mr. El Maati was
12 tortured in light of your function at CID.

13 MR. FLEWELLING: Would it be --
14 sorry?

15 MR. WALDMAN: Important to you to
16 be aware of these allegations. I think you told
17 us, sir, that one of the functions of CID was
18 to -- yes, CID, where you were working -- was to
19 vet requests that might be made by A-OCANADA with
20 respect to foreign interviews; correct?

21 In other words, if Mr. Cabana,
22 which he apparently did a few days later, came to
23 you and said We want to go and interview
24 Mr. Almalki, who we know at that time was sitting
25 in detention in Syria in August of 2002, that that

1 request would have to go through you; correct?

2 MR. FLEWELLING: Yes.

3 MR. WALDMAN: And you would have
4 input in the decision that would be made as to
5 whether or not a Canadian citizen sitting in Syria
6 would be interviewed by RCMP officials?

7 MR. FLEWELLING: No, I would not.
8 Not myself, no.

9 MR. WALDMAN: You wouldn't.

10 MR. FLEWELLING: No. That
11 wouldn't be my decision.

12 MR. WALDMAN: No, it wouldn't be
13 your decision. But you would prepare a briefing
14 note, I would assume.

15 MR. FLEWELLING: Not necessarily.
16 What I would do is I would prepare the necessary
17 documentation, and I would take it to the various
18 individuals and get the authority, if need be.

19 And if it was required or if it
20 was asked, then a briefing note would be done.

21 MR. WALDMAN: Right. I would
22 assume, in a delicate matter involving a Canadian
23 citizen who was detained in a regime that you
24 acknowledged doesn't have the same system as
25 ours -- that's as far as you've gone, and we will

1 explore that perhaps a bit after lunch, what you
2 knew about Syria -- it would be probably necessary
3 to very carefully weigh whether or not it was in
4 the interests of the RCMP to send people to
5 interview someone in such a situation.

6 It's not the same as sending
7 someone to the U.S. or somewhere like that. Would
8 you agree with me?

9 It's a much more complex decision;
10 right?

11 MR. FLEWELLING: Definitely.

12 MR. WALDMAN: So it's likely that
13 at some point you would be required to at least
14 have some input into the final decision that we
15 know that would be made by other people.

16 Is that fair?

17 MR. FLEWELLING: I wouldn't think
18 that that type of decision would be made
19 unilaterally; that there would be a number of
20 individuals that would have input.

21 MR. WALDMAN: So in the context of
22 that type of decision-making process, where
23 Mr. Cabana is coming and saying, "I want to go and
24 interview Abdullah Almalki in Syria" -- although
25 he didn't make a formal request at that time,

1 there were suggestions that this was something
2 they would want to do -- don't you think it would
3 have been important for you to have awareness of
4 the allegations of Mr. El Maati that he had been
5 tortured while he was in Syria, and that would
6 have been one important fact that ought to have
7 been factored into your decision-making role, sir?

8 MR. FLEWELLING: If we were going
9 to be making a decision with respect to that, I am
10 quite sure that that would have been on the table
11 and it definitely would have been discussed.

12 MR. WALDMAN: Right. So it was an
13 important fact that you ought to have known in
14 terms of your role at CID, when Mr. Cabana came to
15 you and said, "I would like to go to Syria and
16 share information with them."

17 MR. FLEWELLING: Obviously that
18 would be something that would have to be
19 discussed, definitely. I mean, any time anybody
20 is going abroad, they have to put together an
21 operation plan, and with that there are various
22 parameters by which we have to follow.

23 MR. WALDMAN: Right.

24 MR. FLEWELLING: There are
25 criteria.

1 MR. WALDMAN: Right. And
2 obviously, therefore, sir, would you not agree
3 with me that in light of that fact, the
4 allegations that were made available to the RCMP
5 in the briefing note and were discussed on August
6 15th would have been important information for you
7 to have; correct?

8 Mr. El Maati saying he was subject
9 to torture.

10 So how is it now, sir, that in
11 light of all of this, that it would be important
12 for you to know -- you were at a meeting where the
13 briefing note was discussed, you had been given
14 information days before that Mr. El Maati alleged
15 that he was treated badly. How is it, sir, that
16 in light of all of that, you still maintain that
17 you can't remember Mr. El Maati's allegations of
18 torture?

19 I find it really hard to believe.

20 It was important information that
21 was given to you on more than one occasion over a
22 short period of days. How could it be you don't
23 remember it now if you were pretending to properly
24 do your work, sir?

25 MR. FLEWELLING: I don't know what

1 I can say to you.

2 MR. WALDMAN: Mr. Commissioner,
3 it's 12:30, and I've finished this area. We can
4 move on to another.

5 THE COMMISSIONER: We will rise
6 until 1:30.

7 THE REGISTRAR: Please stand.

8 --- Upon recessing at 12:28 p.m. /

9 Suspension à 12 h 28

10 --- Upon resuming at 1:33 p.m. /

11 Reprise à 13 h 33

12 THE REGISTRAR: Please be seated.
13 Veuillez vous asseoir.

14 THE COMMISSIONER: Mr. Waldman?

15 MR. WALDMAN: I am just going to
16 pick up on a few points.

17 Sergeant Flewelling, we heard in
18 testimony from Superintendent Cabana that
19 A-OCANADA was an open book investigation, that
20 caveats were down, and that this was his
21 instruction from his superiors.

22 There is reference in the
23 transcript at page 8239, but I won't take you to
24 it.

25 Was the term "caveats are down"

1 one you had heard before 9/11?

2 MR. FLEWELLING: No.

3 MR. WALDMAN: And we know from
4 other evidence that Assistant Commissioner Proulx
5 met with both domestic and U.S. law enforcement
6 partners after 9/11.

7 Were you at that meeting with
8 Inspector Proulx -- Assistant Commissioner Proulx
9 when he talked to the U.S. domestic law
10 enforcement partners about information sharing?

11 MR. FLEWELLING: Sorry, when was
12 that again?

13 MR. WALDMAN: It was sometime
14 after 9/11, shortly after 9/11. I think in
15 September.

16 MR. FLEWELLING: And the question
17 was?

18 MR. WALDMAN: Were you at the
19 meeting when Assistant Commissioner Proulx was
20 there with the foreign and domestic law
21 enforcement partners talking about
22 information-sharing?

23 Do you recall being at such a
24 meeting?

25 MR. FLEWELLING: Not to my

1 knowledge, no.

2 MR. WALDMAN: At any time after
3 that meeting was it ever communicated to you by
4 the Assistant Commissioner or anyone else that
5 caveats are down and that RCMP policies are not to
6 be respected with respect to U.S.
7 information-sharing?

8 MR. FLEWELLING: I personally have
9 not heard of the term "the caveats are down".

10 MR. WALDMAN: Would it not be fair
11 to say, sir, given your role at CID, that if there
12 was going to be disclosure without caveats, that
13 you should have known about it?

14 MR. FLEWELLING: I would hope so.

15 MR. WALDMAN: And who would have
16 the authority to decide to share information
17 without caveats? Would that have to come from CID
18 in a national security investigation?

19 MR. FLEWELLING: I am assuming
20 that that would be discussed and arranged at, I
21 would suggest, much higher levels than at mine.
22 So it would definitely have to be either at -- I'm
23 assuming here that the Assistant Commissioner
24 would have that authority or above.

25 MR. WALDMAN: At any time while

1 you were the project coordinator for A-OCANADA did
2 Inspector Cabana ever call you up and say,
3 "Listen, you're wrong about the caveats. The
4 superiors have told us that caveats are down."

5 Did you ever have such a
6 conversation with Inspector Cabana?

7 MR. FLEWELLING: Not that I can
8 recall.

9 MR. WALDMAN: I just want to
10 understand about caveats because it's a big word.

11 Am I not correct that it's just
12 putting a stamp or two stamps on a document, like
13 it's just a few sentences that are added to a
14 document?

15 MR. FLEWELLING: There are
16 standard wordings that you would find in the
17 policy that you would either have to retype or
18 there would be a stamp, I'm assuming, yes.

19 MR. WALDMAN: Or you could, I
20 guess, format that into your document that you are
21 sending; right?

22 MR. FLEWELLING: I mean, your
23 computer or whatever your working copy, paste it
24 on.

25 MR. WALDMAN: Right. So it's not

1 a terribly difficult and onerous task to put a
2 caveat on, is it?

3 MR. FLEWELLING: No.

4 MR. WALDMAN: It wouldn't take a
5 lot of time and add extra time to someone's work
6 to add the caveat? Cutting and pasting could be
7 done in a few seconds; correct?

8 MR. FLEWELLING: Correct.

9 MR. WALDMAN: So putting caveats
10 on documents wouldn't slow down the flow of
11 information. Would you agree with me?

12 MR. FLEWELLING: It should not.

13 MR. WALDMAN: I would ask you to
14 go to P-221, the Garvie transcript, page 3.

15 Just to save time, I would ask you
16 just to read between lines 20 and 33.

17 MR. FLEWELLING: Sorry, that was
18 what again?

19 MR. WALDMAN: On page 3, if you
20 could read, starting at about line 18.

21 MR. FLEWELLING: That's page 3?

22 MR. WALDMAN: Page 3 of 11, yes,
23 and going to about 36.

24 MR. FLEWELLING: So it would be
25 line 18?

1 MR. WALDMAN: The question from
2 Mr. Garvie and then...

3 MR. FLEWELLING: Is that, "Now I'm
4 showing you --"

5 MR. WALDMAN: Yes, "I'm showing
6 you the documents."

7 MR. FLEWELLING: Okay.

8 "Now, I'm showing you the
9 four attach book into --"

10 MR. WALDMAN: There's an outline
11 of a number of questions. This is the questions
12 that we referred to that were sent down by
13 A-OCANADA. I think that is what he is referring
14 to here.

15 MR. FLEWELLING: Okay.

16 MR. WALDMAN: There are no caveats
17 and he is asking you your opinion about the
18 caveats and whether they should be on.

19 MR. FLEWELLING: Sorry, I lost you
20 there for a second.

21 MR. WALDMAN: Well, in the
22 transcript Superintendent Garvie was asking you
23 about the four questions, and he was noting that
24 there was no caveats, and then he is asking you
25 whether caveats should be put on.

1 I just want you to review your
2 answer to that.

3 MR. FLEWELLING: That's correct.

4 MR. WALDMAN: So, in other words,
5 you would have expected there to have been caveats
6 on the questions that were sent down to the United
7 States.

8 MR. FLEWELLING: The questions
9 that were sent down to the United States?

10 MR. WALDMAN: Right. That is what
11 he was asking about, sir, the four pages of
12 questions.

13 You this morning, I think,
14 suggested to Mr. Cavalluzzo that it might not have
15 been necessary to put caveats on that?

16 MR. FLEWELLING: Yes, that's
17 correct.

18 MR. WALDMAN: In your evidence to
19 Mr. Garvie, you said the opposite, sir.

20 MR. FLEWELLING: In reviewing, I
21 mean, if you have questions that are being sent
22 down and you have them caveated, then it wouldn't
23 make sense to caveat questions that you want to
24 have put to somebody.

25 What I would suggest is any

1 background information or any information that was
2 third party or subject to third party rule should
3 have those caveats.

4 MR. WALDMAN: Right. Now,
5 obviously we don't know, because all we have is a
6 redacted document. So we don't know whether there
7 was any other information there.

8 So that may be what you are
9 referring to.

10 MR. FLEWELLING: I will agree with
11 you, initially I stated that I thought that the
12 caveats should be on, and then I think throughout
13 the course of discussions, it just doesn't make
14 sense. And on reflection, you're right. I mean,
15 it doesn't make sense to put a caveat on a
16 question you want somebody to ask.

17 MR. WALDMAN: Right, except that
18 undoubtedly with the questions I would have
19 expected there was other information attached to
20 it that would have been subject to the caveats;
21 correct?

22 MR. FLEWELLING: I think if there
23 is contextual information or background
24 information, that type of thing, then I think if
25 they draw attention to that and say that it's

1 subject to third party rule or subject to caveats,
2 then to me that makes sense.

3 MR. WALDMAN: I want to move on to
4 another area.

5 Would it be fair to say, sir, that
6 in the period between September 26th and October
7 8th, you were not the only person being contacted
8 by U.S. authorities about Mr. Arar's detention?
9 There were several points of contact; right?

10 MR. FLEWELLING: In terms of --
11 sorry?

12 MR. WALDMAN: Mr. Arar's
13 detention.

14 MR. FLEWELLING: There would have
15 been myself and those over at Project A-OCANADA.

16 MR. WALDMAN: Right. So you
17 weren't the only person?

18 MR. FLEWELLING: No.

19 MR. WALDMAN: And given that there
20 was direct communication between A-OCANADA and the
21 American authorities, you don't know, in fact,
22 what type of communication was going on.

23 Is that fair to say?

24 MR. FLEWELLING: Other than that
25 information that was relayed to me.

1 MR. WALDMAN: Right. So on page 7
2 of the Garvie transcript, the same document, just
3 to confirm your evidence, on line 25 you stated:

4 "It was through that time
5 line that I also learned that
6 they had further --"

7 I can't read the word.

8 "...contacts with US
9 authorities and with DFAIT
10 that I wasn't privy to..."

11 So it's fair to say that there was
12 direct communication going on between A-OCANADA
13 and the U.S. authorities that you weren't aware
14 of?

15 MR. FLEWELLING: True.

16 MR. WALDMAN: And one example
17 would have been that an A-OCANADA investigator
18 received a call advising them that Mr. Arar was
19 arriving before he arrived and asking for the
20 questions.

21 You weren't privy to that and
22 didn't know that until October 2nd; correct?

23 MR. FLEWELLING: Or sometime
24 thereafter, yes.

25 MR. WALDMAN: Right. Well, I

1 think we established this morning that it was at
2 the end of the day on October 2nd, I think.

3 So would you not agree with me,
4 sir, that you, not knowing all of the nature of
5 all of the communications that all the people had
6 with the U.S. authorities, that it is certainly
7 possible that one of the persons who was a point
8 of contact might have acquiesced directly or
9 indirectly with the U.S. authorities about
10 Mr. Arar being sent to Syria?

11 You have no way of knowing that
12 that is not the case?

13 MR. FLEWELLING: I have no
14 knowledge that that took place.

15 MR. WALDMAN: But you can't say
16 that it didn't because you don't have information
17 with respect to all the communications; correct?

18 MR. FLEWELLING: That's fair.

19 MR. WALDMAN: You told us that --
20 you are now aware that Mr. Arar was deported on
21 September 26; correct -- sorry, detained on
22 September 26, 2002.

23 MR. FLEWELLING: Sorry, what date
24 was that again?

25 MR. WALDMAN: Twenty-sixth of

1 September in the U.S.?

2 MR. FLEWELLING: That he was...?

3 MR. WALDMAN: Detained by the U.S.
4 authorities on that day.

5 MR. FLEWELLING: No, I didn't know
6 on the 26th.

7 MR. WALDMAN: But you are now
8 aware of that fact; right?

9 MR. FLEWELLING: Yes.

10 MR. WALDMAN: And you found out
11 later on, first from Inspector Roy on the 2nd, I
12 think you told us?

13 MR. FLEWELLING: Yes.

14 MR. WALDMAN: Okay. But A-OCANADA
15 investigators found out before he is landed.

16 This morning, P-222 is a situation
17 report. It is dated --

18 MR. FLEWELLING: I'm sorry, I just
19 find it very difficult to hear you.

20 MR. WALDMAN: I'm sorry. P-222 is
21 a situation report.

22 MR. FLEWELLING: Okay.

23 MR. WALDMAN: It's dated

24 2002/09/27?

25 MR. FLEWELLING: Yes.

1 MR. WALDMAN: The priority is
2 routine.

3 Could you explain to me how a
4 decision is made as to what priority a document
5 should get? Is there another priority besides
6 routine?

7 MR. FLEWELLING: There would be
8 routine, urgent.

9 MR. WALDMAN: Could there be very
10 urgent, too?

11 MR. FLEWELLING: I suppose if the
12 individual felt that it was something that they
13 needed to qualify it even further, I suppose they
14 could.

15 MR. WALDMAN: So this document was
16 classified as routine, yet it is a document
17 advising you of the detention of someone who is in
18 some way involved in the A-OCANADA investigation
19 of an alleged al-Qaeda sleeper cell in New York.

20 Do you think this was just a
21 routine SITREP, or do you think maybe it might
22 have been better if it was marked "urgent" too?

23 MR. FLEWELLING: I don't know what
24 was in the mind of the individual who wrote this.

25 MR. WALDMAN: But I'm asking your

1 opinion.

2 MR. FLEWELLING: I think that it
3 would have been something that we should have been
4 made aware of right away.

5 MR. WALDMAN: Right. So perhaps
6 marking it "routine" was possibly not a good
7 choice, in your view?

8 I mean, the fact is, sir, you told
9 us that you didn't read it until at least sometime
10 after October 2nd; right?

11 MR. FLEWELLING: Yes.

12 MR. WALDMAN: Can you provide us
13 with any -- I mean, my understanding was that
14 these SITREPs were supposedly done almost on a
15 daily basis, if not a daily basis. Is that
16 correct?

17 MR. FLEWELLING: Yes.

18 MR. WALDMAN: To keep you informed
19 of what was going on?

20 MR. FLEWELLING: Correct.

21 MR. WALDMAN: What was the purpose
22 of giving you a daily SITREP if it was sent to you
23 on September 27th and you didn't read it until
24 sometime after October 2nd?

25 MR. FLEWELLING: The process that

1 the SITREPs went through would be that it would be
2 written by whoever the writer was that was tasked.
3 I'm assuming here that it would be approved by one
4 of the project team leaders and then forwarded to
5 their CROPS office within "A" Division. Then once
6 read and approved, it would be forwarded to
7 headquarters.

8 MR. WALDMAN: All right. Let me
9 make sure I understand.

10 You are saying that even though
11 this document was dated September 27th, it may not
12 have arrived in your office until several days
13 later?

14 MR. FLEWELLING: I don't know if
15 it would be fair to say several days later, but
16 there is the potential for delay, depending on,
17 again, if all the players are in place.

18 MR. WALDMAN: All right.

19 Could we just get September up for
20 a second so we could try to figure out whether the
21 weekend intervened?

22 THE COMMISSIONER: The 27th was a
23 Friday.

24 MR. WALDMAN: So the 27th would
25 have been the Friday, and the 30th would have been

1 the Monday. If this was prepared on the Friday,
2 you didn't see it until the Wednesday, the 2nd, at
3 the earliest.

4 Is that correct?

5 MR. FLEWELLING: Yes.

6 MR. WALDMAN: So given the nature
7 of what was going on, do you think that you ought
8 to have seen this more quickly, and do you have
9 any explanation as to why -- I guess I'm asking
10 you: Was this sitting in CROPS at "A" Division
11 between the 27th and the 2nd, or was it sitting in
12 an in-box in your office?

13 MR. FLEWELLING: It could very
14 well have been.

15 MR. WALDMAN: It could have
16 been --

17 MR. FLEWELLING: By the time it
18 was approved over at "A" Division, came over to
19 our office, it could have gone through the various
20 levels within our office. I know at that time,
21 sir, that I was looking after a couple of very
22 important issues or projects at that time as well.

23 So it's quite conceivable that
24 that information or that piece of paper sat on my
25 desk for a day before me getting to it.

1 MR. WALDMAN: Right. So the delay
2 between the 27th, the Friday and the Wednesday,
3 can be explained either by delays in getting it
4 from "A" Division over to you -- that's probably
5 part of it -- and possibly on the other hand it
6 could have been sitting in your in-box for a day
7 or two.

8 MR. FLEWELLING: It could have
9 been a combination, or a whole host of all of
10 them.

11 MR. WALDMAN: Well, how are you
12 going to be able to keep on top of a very
13 important national security investigation if it's
14 going to take you four or five days to review a
15 daily SITREP which was dealing with something on
16 September 26?

17 Let's look at this. September 26
18 was a Wednesday. You didn't read it -- you didn't
19 see it until the following Wednesday at the
20 earliest. A whole week had gone by. So what's
21 the point of getting daily SITREPs if you don't
22 see them until a day later? It would have made
23 more sense to give you weekly ones.

24 I don't understand why one would
25 ask for daily reports if it takes a week for you

1 to see them.

2 MR. FLEWELLING: I don't have an
3 answer for you.

4 --- Pause

5 MR. WALDMAN: I just want to cover
6 another area of testimony that you gave us this
7 morning.

8 I am an immigration lawyer, so I
9 was a bit intrigued by some of your answers with
10 respect to -- and I just want to make sure that
11 you and I are on the same page here.

12 If I recall your testimony
13 correctly, you said that on October 4th, you went
14 up to the fourth floor to speak to someone in the
15 immigration section of the RCMP because you had
16 been told that Mr. Arar was going to be removed as
17 opposed to deported, and you wanted to understand
18 the difference.

19 Did I understand your testimony
20 correctly?

21 MR. FLEWELLING: Yes.

22 MR. WALDMAN: So in your mind
23 there was a distinction between removal and
24 deportation; correct?

25 MR. FLEWELLING: As I understood

1 it, yes.

2 MR. WALDMAN: And what did you
3 understand the distinction to be?

4 MR. FLEWELLING: Removal was that
5 they would actually place the individual, or an
6 individual, on an aircraft and then that subject
7 would be returned to the last port of call.

8 MR. WALDMAN: Right. So removal
9 is right at the airport, right there, they are put
10 back on a plane?

11 MR. FLEWELLING: Correct.

12 MR. WALDMAN: And that's what you
13 understand --

14 MR. FLEWELLING: That was my
15 impression, or that is what I was led to believe.

16 MR. WALDMAN: Right. And
17 deportation is different?

18 MR. FLEWELLING: Well, deportation
19 would mean that you would be going through a
20 process. You would be ordered, that there would
21 be an actual physical escort and that person
22 would, first of all, have the opportunity to
23 decide where to go. That was my understanding.
24 That the person would be physically escorted to a
25 final destination, so he would be accompanied by

1 somebody.

2 MR. WALDMAN: So in your mind
3 removal was immediate return back to the --

4 MR. FLEWELLING: The last port of
5 call.

6 MR. WALDMAN: Last port. And you
7 went upstairs, and you spoke to someone upstairs
8 and basically they confirmed that information --

9 MR. FLEWELLING: Well, I didn't
10 know that at the time. It was after this exchange
11 that I learned that that's what -- or that's what
12 I perceived that removal to be.

13 MR. WALDMAN: Okay. So before you
14 went upstairs, you thought there might be a
15 difference, and you weren't sure what the
16 difference is.

17 MR. FLEWELLING: Correct.

18 MR. WALDMAN: So removal is going
19 back to last port of call?

20 MR. FLEWELLING: Yes.

21 MR. WALDMAN: Which in Mr. Arar's
22 case was Switzerland; right?

23 MR. FLEWELLING: Yes.

24 MR. WALDMAN: And deportation is
25 something else. There is a process and, you know,

1 other countries come into play?

2 MR. FLEWELLING: Yes.

3 MR. WALDMAN: You receive a phone
4 call from the American official on Saturday,
5 October 5th at six o'clock. Is that right?

6 MR. FLEWELLING: That's October
7 5th at approximately 6:10.

8 MR. WALDMAN: And you would agree
9 with me that it was extremely unusual for an
10 American official to call you on a Saturday, or is
11 that something --

12 MR. FLEWELLING: No, it -- I
13 wouldn't say it was the norm, but we called one
14 another quite frequently throughout the course of
15 the last year in order to deal with various events
16 that occurred or things that had to be arranged.

17 MR. WALDMAN: So it wasn't the
18 norm but it was unusual on a Saturday?

19 MR. FLEWELLING: Well, I mean, I
20 know that I have physically called them on
21 numerous occasions on weekends and vice versa.

22 MR. WALDMAN: Okay.

23 MR. FLEWELLING: If that makes
24 sense.

25 MR. WALDMAN: Right. I guess it

1 makes sense.

2 But you would agree with me that
3 it is -- it is also indicative, I think you said,
4 that you had a fairly close working relationship
5 with this individual for her to feel comfortable
6 calling you on a Saturday, and vice versa.

7 Is that fair to say?

8 MR. FLEWELLING: Yes.

9 MR. WALDMAN: If we could ask you
10 to go to your notes, page 39, P-211, I will do my
11 best at trying to go through this quickly.

12 "We received a call from a
13 U.S. official in relation to
14 Mr. Arar. The official --
15 [somebody] in New York was
16 unable to reach A-OCANADA."

17 That part I'm not concerned about.

18 "The official feared that
19 they did not have enough
20 information to make the
21 charges stick. Therefore,
22 they would be looking at
23 deporting Mr. Arar. Where
24 Arar has dual citizenship and
25 he asked to be deported to

1 Canada, the official wanted
2 to know our interest in Arar.
3 Can we refuse Arar's entry?"

4 So I note, sir, will you agree
5 with me, that now all of a sudden we are not
6 talking any more about removal; we are talking
7 about deportation.

8 Is that correct?

9 MR. FLEWELLING: Yes.

10 MR. WALDMAN: So you understood
11 from that, given that the day before you had a
12 conversation with these immigration officials,
13 that this was now a different procedure; fair?

14 MR. FLEWELLING: I always had in
15 the back of my mind that he had a hearing or a
16 legal process on October the 9th.

17 MR. WALDMAN: Right, okay. You
18 understood that. We understand that you were told
19 that he had a process on October the 9th.

20 But I just want to be clear on one
21 of the implications of that. The removal was
22 shipping him back on a plane right away to
23 Switzerland.

24 So is it fair to say that once we
25 are into a deportation process, as far as you

1 understood, Switzerland wasn't on the table any
2 more, correct, because it was now a deportation
3 process where other countries would come into
4 play?

5 MR. FLEWELLING: I still believed
6 Switzerland was still on the table.

7 MR. WALDMAN: So then what would
8 be the difference between a removal -- you told us
9 your understanding about the removal process, you
10 just said, was put him back on the plane right
11 away back to Switzerland.

12 So if that wasn't happening any
13 more, why would Switzerland still be on the table?
14 It's not consistent with what you just told us a
15 minute ago, I would think.

16 MR. FLEWELLING: In my mind I
17 still had the impression that it was either going
18 to be Switzerland, Canada, which would ultimately
19 be the end.

20 MR. WALDMAN: But you also
21 acknowledged to Mr. Cavalluzzo this morning that
22 Syria clearly was a hypothetical possibility at
23 this time because the dual nationality was raised?

24 MR. FLEWELLING: No. Quite
25 obviously I didn't -- I knew that he was a dual

1 national, but I never thought that Syria was in
2 play.

3 I think I mentioned in the
4 conversation that I had with the American
5 official -- I'm losing my train of thought here.
6 --- Pause

7 MR. FLEWELLING: Sorry. I just
8 lost it there for a second.

9 Do you recall what your question
10 was? Sorry.

11 MR. WALDMAN: I will move on to
12 another area. We were talking about whether Syria
13 was in play. That was my question and you were
14 giving an answer --

15 MR. FLEWELLING: I just --

16 MR. WALDMAN: You didn't see Syria
17 as being an issue?

18 MR. FLEWELLING: I never saw Syria
19 as being an issue, and I know that Mr. Arar had
20 asked to go to Canada. So therefore by saying
21 that we didn't have any reason to charge him, (a),
22 and (b), that they couldn't refuse him, I just
23 thought that it solidified his return home.

24 MR. WALDMAN: I'm going to suggest
25 one thing to you, sir. Wasn't it rather strange

1 that -- I mean, dealing with what was really an
2 immigration question, whether Canada could refuse
3 him entry, they would call you as opposed to
4 trying to check with someone at the Canadian
5 Border Service? Wouldn't that have been the more
6 appropriate question for such a question?

7 This wasn't a police matter at
8 this point, refusal of entry. And surely the U.S.
9 embassy must have, through its INS contacts,
10 contacts in the CBSA as well, wouldn't you think?

11 MR. FLEWELLING: I was of the
12 impression that it was more for investigators from
13 the American agency who were doing a final
14 checklist, so to speak, and preparing
15 themselves --

16 MR. WALDMAN: Did you ever ask --

17 MR. FLEWELLING: -- and preparing
18 themselves for a hearing. Any person or any
19 investigator that is doing an investigation, when
20 faced with a deadline, will often phone and seek
21 those types of -- those pieces of information.

22 MR. WALDMAN: Did you ask this
23 person, this U.S. official, why she was asking
24 these questions about refusal of entry to Canada?

25 MR. FLEWELLING: Actually, he.

1 MR. WALDMAN: I thought it was a
2 she. I'm sorry; he. Why the questions were
3 asked?

4 MR. FLEWELLING: No. I thought it
5 was being asked on behalf of investigators.

6 MR. WALDMAN: I will take you back
7 to your notes.

8 You said:

9 "I stated that where he has
10 Canadian citizenship and
11 there wasn't enough evidence
12 to support charges in the
13 U.S. let alone Canada likely
14 because we could not refuse
15 him entry."

16 I'm a bit curious about this. You
17 are sort of basing your refusal of entry on two
18 premises: one, he has Canadian citizenship; and,
19 two, that there is not enough evidence to support
20 charges in Canada or the U.S.

21 Why would the fact that there was
22 not enough evidence to support charges in Canada
23 or the U.S. be relevant to the issue of refusal of
24 entry to Mr. Arar?

25 MR. FLEWELLING: Sorry, go again.

1 MR. WALDMAN: Your answer to the
2 question, sir, was:

3 "I stated that where he has
4 Canadian citizenship and
5 there wasn't enough evidence
6 to support charges --"

7 So "and".

8 "... we couldn't refuse him
9 entry."

10 Now, I understand the Canadian
11 citizenship. If he is Canadian, under the Charter
12 he has a right. But what I don't understand is
13 why you would have said:

14 "Because we don't have enough
15 evidence to support charges
16 we can't refuse him entry."

17 What is the connection between the
18 charges and the refusal of entry?

19 MR. FLEWELLING: Really nothing.

20 MR. WALDMAN: I would agree with
21 you.

22 I would suggest to you that the
23 charges was relevant to whether or not Canada
24 could hold Mr. Arar. Isn't that true?

25 That is what they were asking.

1 Isn't that not correct?

2 MR. FLEWELLING: I never thought
3 of it that way.

4 MR. WALDMAN: But you were the one
5 who gave the answer. I'm just asking why you gave
6 an answer --

7 MR. FLEWELLING: The question was,
8 do we have any additional information, or do we
9 have any information to support charges?

10 I mean, the answer is, "No. We
11 don't have any information to support charges."

12 I'm looking at it from their point
13 of view that they want to support charges within
14 their system.

15 MR. WALDMAN: All I'm saying is
16 that in your notes you clearly made a connection
17 between not having enough evidence and supporting
18 charges, and I'm just wondering -- and refusal of
19 entry, rather. And I'm just wondering what that
20 connection is.

21 You would agree with me there is
22 none, right?

23 MR. FLEWELLING: There is none.

24 MR. WALDMAN: So it's not relevant
25 to whether he could be denied entry or not,

1 whether there's evidence for charges?

2 MR. FLEWELLING: That has nothing
3 to do with it.

4 MR. WALDMAN: Right. I would
5 agree with you. But it is relevant to whether the
6 Americans would feel safe if Mr. Arar was on the
7 street or not. If you could charge him, he would
8 be detained, presumably as a suspected terrorist.

9 Right?

10 MR. FLEWELLING: In hindsight,
11 probably.

12 MR. WALDMAN: Yes.

13 Now, I'd like to go on to
14 something else that's in this note. It says:

15 "The U.S. feared that they
16 did not have enough
17 information to make charges."

18 Now, these are your words, not
19 mine.

20 Right?

21 MR. FLEWELLING: True.

22 MR. WALDMAN: So I'm quite
23 intrigued by the use of the word "fear." So would
24 you agree with me that it was your assessment of
25 the state of mind of the Americans that they were

1 fearful they couldn't address Mr. Arar. Those
2 were the words that you used.

3 Correct?

4 MR. FLEWELLING: Correct.

5 MR. WALDMAN: Why would they be
6 afraid of not being able to charge Mr. Arar?

7 Presumably if they didn't have
8 enough evidence to charge him, that means that
9 they didn't have a case and that he should be let
10 free.

11 Isn't that the way the criminal
12 justice system works, normally?

13 MR. FLEWELLING: Yes.

14 MR. WALDMAN: Like, when you're
15 involved in a criminal investigation of a fraud,
16 you might be upset -- you know, you'd like to get
17 the person, but it's not very often -- or usual to
18 be afraid that you're going to be.

19 Isn't that suggesting something
20 else in the state of mind of the Americans --

21 MR. FLEWELLING: I think it's a
22 play on words. I didn't infer anything --

23 MR. WALDMAN: Well --

24 MR. FLEWELLING: I didn't infer
25 anything from it.

1 MR. WALDMAN: Well, I suppose
2 these must have been the words that were used by
3 the official, or that this is the impression that
4 was given to you.

5 Correct?

6 MR. FLEWELLING: Yes, correct.

7 MR. WALDMAN: So I would suggest
8 to you perhaps, sir, that the Americans were
9 concerned about Mr. Arar and were afraid they
10 couldn't charge him because they were concerned
11 that if they couldn't charge him and he came back
12 to Canada, that would be problematic for them?

13 MR. FLEWELLING: Again, I -- I
14 didn't -- I didn't get that from the conversation.

15 MR. WALDMAN: But the word
16 "feared" was clearly used?

17 MR. FLEWELLING: Or I wouldn't
18 have used it.

19 MR. WALDMAN: Right.

20 So the American official was
21 afraid that he couldn't charge Mr. Arar. And you
22 didn't draw anything from that --

23 MR. FLEWELLING: That -- no.

24 MR. WALDMAN: Now, in retrospect
25 don't you think it might have been wise for you to

1 draw something from that? Why would they use the
2 word fear if they weren't concerned?

3 MR. FLEWELLING: I mean,
4 hindsight, you can look at it from whatever angle
5 you wish.

6 MR. WALDMAN: Right, and
7 hindsight --

8 MR. FLEWELLING: But at the time,
9 sir, I'm telling you, if it weren't for the fact
10 that there wasn't that legal process on the 9th of
11 October --

12 MR. WALDMAN: We know that --

13 MR. FLEWELLING: That played very
14 heavily in my mind.

15 MR. WALDMAN: We know that that
16 legal process got put up to the 7th -- you didn't
17 know.

18 MR. FLEWELLING: Well, sir, I --
19 unfortunately, I had no idea that that was even
20 part of their legal process.

21 MR. WALDMAN: Now, were you aware
22 of the concept -- Mr. Cavalluzzo asked you some
23 questions. I'm just going to pick up one or two
24 points here.

25 Were you aware of the idea of

1 rendition at this point? Had you heard about
2 rendition?

3 MR. FLEWELLING: Like I said just
4 a minute ago, I never knew that that was even in
5 their system, no.

6 MR. WALDMAN: You had no knowledge
7 of --

8 MR. FLEWELLING: The term? No.

9 MR. WALDMAN: No.
10 But you were aware of what was
11 going on in Guantanamo Bay, I assume?

12 MR. FLEWELLING: Sorry?

13 MR. WALDMAN: You were aware that
14 there was a place called Guantanamo Bay, I assume?

15 MR. FLEWELLING: Oh, yes.

16 MR. WALDMAN: Yes.

17 And you were aware that there were
18 a large number of people in Guantanamo, suspected
19 terrorists, who were there without charges and
20 without due process?

21 MR. FLEWELLING: What happened in
22 the States, in my opinion, was a case-precedenting
23 situation.

24 I had no experience or anything to
25 draw off of with respect to them being able to do

1 that. Unfortunately, I did not have that
2 experience to draw off of.

3 MR. WALDMAN: I understand that.
4 But I'm not asking -- I'm not asking what you
5 think is right or wrong, I'm just asking whether
6 you were aware --

7 MR. FLEWELLING: I'm trying to
8 give you an explanation as to where I was at the
9 time.

10 MR. WALDMAN: Right, okay.

11 But you were aware that there was
12 Guantanamo Bay and you were aware that there were
13 people being detained there, I guess?

14 MR. FLEWELLING: Yes.

15 MR. WALDMAN: And that the people
16 there were being held, you know, without any due
17 process, without being brought to trial?

18 MR. FLEWELLING: I believed that
19 that was under their military law.

20 MR. WALDMAN: Right. They were
21 allegedly --

22 MR. FLEWELLING: Something,
23 non-combatants or something.

24 MR. WALDMAN: Whatever the word.
25 I can't remember the legal term that they tried to

1 use.

2 "Unlawful combatants," my friend,
3 Mr. Fothergill, reminds me.

4 Exhibit P-85, volume 5, tab 27,
5 page 9. Sorry. It's just this e-mail.

6 MR. FLEWELLING: Sorry, which tab
7 is it? Sorry.

8 MR. WALDMAN: P-85, volume 5, tab
9 27...

10 --- Pause

11 MR. WALDMAN: Sorry. I forget.
12 Time is going on, it's not that important. It's
13 going to take us too long to find this.

14 Now, I have one more question in
15 this area. I just want to be clear of one thing.

16 In this e-mail that I couldn't
17 find it says, "most likely deported to Canada." I
18 just want to be clear.

19 Was there ever a commitment at any
20 time from any of the U.S. officials where they
21 said to you, "We guarantee you Mr. Arar's going to
22 be deported to Canada"? Were you ever given
23 such --

24 MR. FLEWELLING: Was there ever a
25 concrete commitment that he would be deported to

1 Canada?

2 MR. WALDMAN: Right, in any of
3 your conversations.

4 MR. FLEWELLING: Nothing concrete
5 other than I took his word at ...

6 MR. WALDMAN: No, I'm just saying.
7 "We're going to likely." That was the words you
8 used in the e-mail to Mr. Cabana. "We are likely
9 going to deport him to Canada."

10 So was it ever -- did he say we
11 are definitely -- in any of your conversations did
12 any of the people say: "This guy's coming back to
13 Canada, you don't have to worry about it. After
14 the hearing on October 9th he's on his way"?

15 Was there anything concrete?

16 MR. FLEWELLING: No. Other than I
17 know that it was reiterated with the investigators
18 at A-OCANADA --

19 MR. WALDMAN: I was just asking
20 you, sir, in any of your conversations.

21 MR. FLEWELLING: No.

22 MR. WALDMAN: I'd like you to go
23 to P-223 just for a second. Paragraph 2.

24 I would suggest to you -- could
25 you read this -- I'll read it. Do you have it in

1 front of you?

2 MR. FLEWELLING: Yes.

3 MR. WALDMAN:

4 "They notified A-OCANADA that
5 Maher Arar was in custody at
6 the airport in New York after
7 flying from Europe. The U.S.
8 authorities advised that Arar
9 was ... and then refused
10 entry to the U.S. He was
11 also denied permission to
12 enter Canada by the U.S."

13 So this document, sir, suggests to
14 me that a decision was made on that date, and it
15 was repeated in other documents too, that Mr. Arar
16 was not -- in fact the decision was taken as early
17 as that date to deny Mr. Arar the right to come to
18 Canada.

19 You had seen that document, right?

20 MR. FLEWELLING: They're just
21 saying they're not going to allow him to pass
22 through the United States to Canada.

23 MR. WALDMAN: Right. They're not
24 going to allow him.

25 So the option that you -- you were

1 told on this report that you read sometime after
2 October 2nd, according to this report, the
3 Americans had already decided that they weren't
4 going to do what you seemed to believe they were
5 going to do, which is to allow him to come
6 directly to Canada. This report is saying that
7 there was a decision to take him -- to deny him
8 permission to enter Canada via the U.S. on that
9 date.

10 So you had, I would suggest to
11 you, clear evidence in the sit report that
12 contradicted your belief?

13 MR. FLEWELLING: Following contact
14 after this, the writing of this document and the
15 exchange had with my colleagues at the American
16 Embassy caused me to believe that after this date
17 that that was a distinct possibility.

18 MR. WALDMAN: But I'm just
19 suggesting to you that the documents you received,
20 and the advice that you were given, from your
21 A-OCANADA investigators, that you read sometime
22 after October 2nd, told you --

23 MR. FLEWELLING: That the
24 possibility was he was going to go back to Zurich.

25 MR. WALDMAN: Right. But what was

1 clearly told to you at that time was that he
2 wasn't going to be able to enter Canada via the
3 United States?

4 MR. FLEWELLING: It's written
5 there, so I --

6 MR. WALDMAN: So I'm suggesting to
7 you this was just another piece of information
8 that you had that should have set off alarm bells
9 in your mind when you had this conversation on
10 October --

11 MR. FLEWELLING: I don't see it
12 that way at all.

13 MR. WALDMAN: You don't see it
14 that way?

15 MR. FLEWELLING: No.

16 MR. WALDMAN: Okay.

17 MR. FLEWELLING: And the reason
18 why I don't is the subsequent conversations that I
19 had with my American colleagues.

20 MR. WALDMAN: I'm just going to
21 try and -- I promised the Commissioner I would be
22 done in an hour and a half, so I'm going to try to
23 cover a few quick areas. I'm cognizant of the
24 time.

25 Now, you went on vacation on

1 October 8th.

2 Correct?

3 MR. FLEWELLING: Yes.

4 MR. WALDMAN: And before you went
5 on vacation, you communicated to Mr. --

6 MR. FLEWELLING: Sergeant Lauzon.

7 MR. WALDMAN: Sergeant Lauzon and
8 Superintendent Pilgrim at CID about the
9 conversation that you had on Saturday.

10 Correct?

11 MR. FLEWELLING: Yes.

12 MR. WALDMAN: Did you tell anyone
13 else about the conversation?

14 MR. FLEWELLING: Investigators
15 from A-OCANADA.

16 MR. WALDMAN: Right.
17 You sent them that e-mail, right?

18 MR. FLEWELLING: Correct.

19 MR. WALDMAN: Now, could I ask you
20 to go to P-116. P-116.

21 --- Pause

22 MR. WALDMAN: It's a newspaper
23 report.

24 MR. FLEWELLING: P-116?

25 MR. WALDMAN: One one six. I

1 think this is a Toronto Star newspaper report,
2 October 9th, 2003. If I could just ask you to
3 read the first column?

4 MR. FLEWELLING: The first column?

5 MR. WALDMAN: Well, perhaps I can
6 just read you the relevant parts. This is a --
7 this talks about Mr. Arar being arrested, then it
8 says:

9 "When it was noted that Arar
10 was a Canadian, Canadian
11 security was contacted. "They
12 asked, 'Do you have anything
13 on him,'" an official closely
14 involved in the case, said
15 ...

16 'Yes indeed,'... 'He is
17 watched because he has been
18 to Afghanistan ...'.

19 On the basis of that, the
20 official said, Arar was
21 arrested when the plane
22 landed in New York.

23 "They then said to the
24 Canadians 'If we transfer
25 that man to you, can you give

1 us the assurance that you
2 will lay charges against
3 him?'" ... And the Canadian
4 police told them 'No, we
5 don't have anything to lay
6 against him. We can't bring
7 any charges.'

8 And the Americans said 'If
9 you aren't going to do
10 anything, if you're going to
11 let him go free ...'"

12 And then -- and so I'm suggesting
13 to you, sir, that some Canadian official had this
14 conversation with Mr. Fraser and it sounds
15 remarkably like the telephone conversation you had
16 with the American official.

17 Is that correct? Quite close in
18 its content. Would you agree with me?

19 MR. FLEWELLING: And you're
20 suggesting what, sir?

21 MR. WALDMAN: I'm asking whether
22 you were the source of this leak?

23 MR. FLEWELLING: Categorically,
24 no.

25 MR. WALDMAN: Do you have any idea

1 who could have been the source of this leak?

2 MR. FLEWELLING: I have no idea.

3 MR. WALDMAN: Because at this time
4 this was not public information. It's now public.
5 But on October 9th, 2003, it wasn't.

6 You don't have any idea. Would
7 you not agree with me that this information would
8 have only been available to only a small -- of
9 your conversation would only have been available
10 to a small group of people?

11 MR. FLEWELLING: I would suggest
12 to you that following the events that occurred,
13 that my conversation and my words had been
14 projected to numerous individuals and a number of
15 government agencies around Ottawa.

16 MR. WALDMAN: So these words were
17 easily accessible, you are saying?

18 MR. FLEWELLING: Yes.

19 MR. WALDMAN: So the source of the
20 leak could have been anyone, not necessarily
21 someone from the A-OCANADA investigation or from
22 CID?

23 MR. FLEWELLING: I wouldn't begin
24 to -- to suggest who, if anybody, may have
25 mentioned anything.

1 MR. WALDMAN: I'd like you to go
2 to P-184. Okay, sorry. No. Actually, give me a
3 minute. We're finding it so ...

4 Let me ask you some other
5 questions. We were told about this April 2nd data
6 dump. That's the expression that we've used.

7 That was when, if I remember
8 correctly, the CDs were given -- well, the whole
9 information that was in the database of A-OCANADA
10 was given to the Americans.

11 Now, that occurred before you came
12 on as the supervisor of A-OCANADA.

13 Correct?

14 MR. FLEWELLING: As a coordinator
15 overseer, yes.

16 MR. WALDMAN: But were you aware
17 of that, that that had happened?

18 MR. FLEWELLING: I became aware,
19 yes.

20 MR. WALDMAN: Okay.

21 And would you agree with me that
22 the type of data dumping, the mirroring of
23 databases, and giving copies of the entire
24 investigative report is something that should have
25 required the consultation of CID before it was

1 done?

2 MR. FLEWELLING: I think what I
3 had mentioned was -- is that I was not privy to
4 any discussion or arrangements that were made by
5 any official or any management at that time, and I
6 think it was a hypothetical question whereby, what
7 did I think.

8 MR. WALDMAN: Okay, but --

9 MR. FLEWELLING: And based on my
10 view from the present day without the knowledge of
11 whether or not there were any special arrangements
12 or authorization, my answer was, no, that it
13 should have come through CID.

14 MR. WALDMAN: And it should have
15 then been reviewed by CID to determine what
16 evidence should be released and what shouldn't,
17 and you've explained that process of --

18 MR. FLEWELLING: Well, the ability
19 to be able to go through and see what was what and
20 transfer the information -- the appropriate
21 information.

22 MR. WALDMAN: Right. So obviously
23 the concerns -- it says circumstances of
24 protecting the privacy of Canadians, protecting
25 the sources of information, and ensuring that the

1 information is only used in a manner consistent
2 with the use for which it was intended.

3 Correct?

4 MR. FLEWELLING: There's policy in
5 place in order to deal with those events.

6 MR. WALDMAN: Okay.

7 So when did you become aware that
8 this April 2nd transfer had taken place, like the
9 CDs and all that?

10 MR. FLEWELLING: Oh, the date, I
11 have no idea.

12 MR. WALDMAN: Okay. Was it after
13 you started in June as coordinator or before?

14 MR. FLEWELLING: I believe so.

15 MR. WALDMAN: Right. Did you
16 discuss with your superiors at any point your
17 concerns about this decision to holus-bolus give
18 all the information to the Americans without
19 consultation with CID?

20 MR. FLEWELLING: It was my belief
21 that management was already aware of it and
22 dealing with it.

23 MR. WALDMAN: Okay. Now, can I
24 ask you to go to P-184?

25 THE COMMISSIONER: One eighty ...

1 MR. WALDMAN: Four.

2 --- Pause

3 MR. WALDMAN: So if I could ask
4 you to go to the section in this -- well, this is
5 a briefing note.

6 Correct?

7 MR. FLEWELLING: Correct.

8 MR. WALDMAN: And it was sent to
9 the Commissioner. It says on the bottom left,
10 "(something) Inspector Rick Reynolds"?

11 MR. FLEWELLING: Yes.

12 MR. WALDMAN: Right.

13 So he was above Sergeant Lauzon in
14 the hierarchy?

15 MR. FLEWELLING: No.

16 MR. WALDMAN: No?

17 MR. FLEWELLING: Inspector
18 Reynolds was in charge of a totally different unit
19 at the time.

20 MR. WALDMAN: So did anyone in
21 your unit have anything to do with the drafting of
22 this briefing note?

23 MR. FLEWELLING: I have no idea.
24 I wasn't there then.

25 MR. WALDMAN: You weren't there.

1 It's April --

2 MR. FLEWELLING: 2003.

3 MR. WALDMAN: Right. April 30th,
4 2003 --

5 MR. FLEWELLING: I was in Alberta,
6 sir, or on my way.

7 MR. WALDMAN: Okay. Now, I'm
8 just -- with respect to this, you were aware that
9 Mr. Edelson approached Inspector Cabana about a
10 letter, correct, in October 2004?

11 MR. FLEWELLING: I'll be honest
12 with you and say most of that conversation I'm
13 aware of as a result of preparation.

14 MR. WALDMAN: Okay. So you
15 weren't aware of it at the time?

16 MR. FLEWELLING: I was aware that
17 he had a meeting with him sometime in October, I
18 believe it was the 3rd, if my memory serves me
19 correctly.

20 MR. WALDMAN: That's correct. I
21 think that's what someone's note said.

22 Were you aware at any time of your
23 office being approached with respect to the
24 request to approve such a letter that Mr. Edelson
25 had requested?

1 MR. FLEWELLING: Not to my
2 knowledge.

3 MR. WALDMAN: Did you ever receive
4 any information from the RCMP liaison officer from
5 Rome? We know he went on a trip to Syria. Were
6 you aware of whether he shared any operational
7 information with -- I gather my friend is going to
8 object.

9 MR. FOTHERGILL: Yes.
10 Commissioner, you may recall that we asserted a
11 claim of National Security Confidentiality with
12 respect to information we may have received
13 through foreign intelligence channels with respect
14 to any of the principal targets of the
15 investigation.

16 THE COMMISSIONER: Thank you.

17 MR. WALDMAN: Well, did the
18 liaison officer, to your knowledge, seek any
19 approval to seek any information from Syria? We
20 are not asking about the information; we are
21 asking about the procedures.

22 Were you at any time privy to any
23 conversations with the liaison officer, or that
24 any information came to you that the liaison
25 officer was seeking approval to travel to Syria

1 with respect to Mr. Almalki or Mr. El Maati or
2 Mr. Arar?

3 MR. FOTHERGILL: Again,
4 Commissioner, we assert National Security
5 Confidentiality with respect to whether these
6 investigative steps were taken with respect to
7 particular individuals. Certainly Mr. Waldman is
8 at liberty to explore the policy or procedure just
9 by the use of reasonable hypotheticals.

10 THE COMMISSIONER: Thank you.

11 MR. WALDMAN: I would like you to
12 go to page 9 to 10 of your notes. This is a
13 notation in --

14 MR. FLEWELLING: Sorry, what page?

15 MR. WALDMAN: Nine, at the bottom.

16 It says:

17 "'A' Division investigators
18 recently spoke to 'X'. They
19 said we should know where he
20 is. His parents just
21 returned from Syria. They
22 know he is in custody and
23 they are concerned. Mother
24 called brother in Germany who
25 advised them to contact an

1 individual in Syria for
2 additional info. It will
3 appear that we will have to
4 bring the Americans on
5 board."

6 MR. FLEWELLING: Sorry, what page
7 is that again?

8 MR. WALDMAN: Nine to 10.

9 MR. FLEWELLING: Nine to 10.

10 MR. WALDMAN: That's on the next
11 page, sorry.

12 MR. FLEWELLING: Are you sure?

13 MR. WALDMAN: The next page is
14 still part -- I'm not sure if the notation on page
15 11, "it would appear we have to bring the
16 Americans on board", is still in relation to the
17 same matter.

18 MR. FLEWELLING: I'm sorry, I'm
19 having a tough time following you.

20 MR. WALDMAN: Maybe we can leave
21 the Americans on board out of it.

22 Start at the bottom of page 9.

23 MR. FLEWELLING: Page 9? Which
24 line?

25 MR. WALDMAN: Four lines from the

1 bottom.

2 "'A' Division investigators
3 recently spoke to 'X.' They
4 said we should know where he
5 is. His parents just
6 returned from Syria. They
7 know he's in custody and they
8 are concerned. Mother called
9 brother in Germany who
10 advised them to contact an
11 individual in Syria."

12 So this notation is about an
13 individual who is a subject of interest to you who
14 was detained in Syria at this time. Is that
15 correct, based upon your notes?

16 MR. FLEWELLING: Yes.

17 MR. WALDMAN: I mean, we know from
18 other sources that the only Canadian -- the only
19 person of interest at that time was Mr. Almalki.

20 MR. FOTHERGILL: If he is asking
21 the witness to confirm his assumption, he cannot
22 do so.

23 MR. WALDMAN: If we go to page 21,
24 at the very bottom of the page, this is a notation
25 from June 21st, 2002:

1 "Solicit the assistance of
2 CSIS, LEO Rome and DFAIT to
3 apply the necessary process
4 in order to gain access.
5 Questions: I think it's
6 intelligence versus
7 criminal?"

8 MR. FLEWELLING: Yes.

9 MR. WALDMAN: "Do we want him
10 back? Do we have enough to
11 charge? 'A' Division would
12 really want him back for the
13 purpose of laying charges
14 under Bill C-36. The
15 question is really how Syria
16 is going to play. We may
17 have to --"

18 I can't read that.

19 MR. FLEWELLING: "Be satisfied".

20 MR. WALDMAN: "...be satisfied
21 with the prevention side of
22 the mandate and hope that
23 additional information can be
24 gleaned with respect to his
25 other plans we are not aware

1 of."

2 This is, I assume, in reference to
3 the same individual.

4 The thing that is of interest to
5 me, sir, in this document, is the reference: "Do
6 we want him back?"

7 It seems to me, if I interpret
8 this correctly, is that the issue was whether they
9 had enough information to lay charges or not, and
10 the question is: Well, if we have enough, we want
11 him back; but if we don't, given the prevention
12 mandate, we would rather he didn't come back.

13 Is that a fair interpretation of
14 what these notes say, sir?

15 MR. FLEWELLING: I think it was
16 just a normal strategy session and that was
17 something that somebody obviously brought up.

18 MR. WALDMAN: Yes, somebody asked:
19 "Well, do we really want to let this guy come
20 back? Do we want this guy back?" Someone asked
21 that, right, suggesting that maybe it might not be
22 in our interests to have this person, this
23 Canadian citizen, back in Canada. Is that fair?

24 That is what this note says,
25 doesn't it?

1 Someone asked that question: "Do
2 we want him back?" I'm not saying it was you, but
3 it's in your notes; right? Someone asked that.

4 MR. FLEWELLING: Obviously, or it
5 wouldn't be there.

6 MR. WALDMAN: Would you agree with
7 me that one of the easiest ways of fulfilling the
8 mandate with respect to protection of people that
9 are suspected of possibly being al-Qaeda suspects
10 is to not get them back, to keep them out, from a
11 prevention point of view; fair enough?

12 MR. FLEWELLING: I would suggest
13 to you, sir, that the role at DFAIT weighs
14 extremely heavily in acquiring an individual's
15 access to consular visits and to be able to gain
16 their freedom in a foreign country. It is very
17 difficult to align that with a strategy session
18 where somebody is just posing a question.

19 MR. WALDMAN: Right. I agree with
20 you, sir, that at the end of the day, the people
21 who are having the strategy session were not the
22 final policymakers.

23 But I'm suggesting to you that it
24 was in the mind of somebody in that room that it
25 might be better if this Canadian, this person, who

1 I would submit to you is Mr. Almalki, was not
2 allowed to come back to Canada.

3 That is what the inference of this
4 is?

5 MR. FLEWELLING: I don't know what
6 the inference was in the person's mind.

7 MR. WALDMAN: But would you not
8 agree with me that "Do we want him back?", it is a
9 reasonable inference to suggest the person was
10 thinking maybe it would be better if he weren't
11 back?

12 MR. FLEWELLING: I don't know.

13 MR. WALDMAN: You don't know.

14 MR. FLEWELLING: I can see where
15 you would think that, yes.

16 MR. WALDMAN: You could see where
17 I might think that.

18 MR. FLEWELLING: Yes.

19 MR. WALDMAN: Do you think
20 Canadians watching this on CPAC might reasonably
21 think that, sir, when somebody asked, "Do we want
22 him back" --

23 THE COMMISSIONER: That would be a
24 hard question for him to answer.

25 MR. WALDMAN: I would agree. I

1 was just being a bit --

2 MR. FLEWELLING: I would hope that
3 they would think that we would try and cover all
4 the bases.

5 MR. WALDMAN: Right, in protecting
6 Canadians.

7 MR. FLEWELLING: Yes.

8 MR. WALDMAN: Including possibly
9 letting a Canadian citizen sit in a jail in Syria
10 as opposed to being allowed to come back to Canada
11 and --

12 MR. FLEWELLING: I'm not
13 suggesting that, sir.

14 MR. WALDMAN: Mr. Commissioner, I
15 do have other areas but I promised you an hour and
16 a half.

17 THE COMMISSIONER: I don't want
18 you to leave out anything that you think is
19 crucial, but take a quick look.

20 MR. WALDMAN: One quick look.

21 --- Pause

22 MR. WALDMAN: I'm done. I kept my
23 word.

24 THE COMMISSIONER: Thank you.

25 Mr. Boxall?

1 EXAMINATION

2 MR. BOXALL: Mr. Flewelling,
3 sorry, I didn't get your current rank.

4 MR. FLEWELLING: Sergeant.

5 MR. BOXALL: Sergeant. But you
6 were a corporal at the time?

7 MR. FLEWELLING: That's correct.

8 MR. BOXALL: All right. And you
9 are aware that I represent Superintendent Cabana?

10 MR. FLEWELLING: That's correct.

11 MR. BOXALL: All right. Sir,
12 briefly with the reporting structure here, at the
13 time did Inspector Cabana report to Corporal
14 Flewelling?

15 MR. FLEWELLING: No.

16 MR. BOXALL: All right. Who did
17 Inspector Cabana report to?

18 MR. FLEWELLING: He would have
19 reported to the "A" Division CROPS officer.

20 MR. BOXALL: So he would report to
21 the Assistant CROPS Officer, who would report to
22 the "A" Division CROPS Officer, who would report
23 to the commanding officer of "A" Division?

24 MR. FLEWELLING: That's correct.

25 MR. BOXALL: Did Inspector Cabana

1 report to Mr. Proulx?

2 MR. FLEWELLING: He had a
3 reporting line with CID, which ultimately would
4 have been Mr. Proulx.

5 MR. BOXALL: Reporting through
6 who?

7 MR. FLEWELLING: Through CID.

8 MR. BOXALL: Where's the line?

9 MR. FLEWELLING: It's my
10 understanding that with a national security
11 investigation there is that reporting line.
12 Ultimately it's an investigation that is run by
13 "A" Division, but there is that side reporting.

14 MR. BOXALL: Well, sir, this was a
15 criminal investigation being run out of "A"
16 Division; correct? You are aware of that?

17 MR. FLEWELLING: A criminal
18 investigation under the auspices of national
19 security.

20 MR. BOXALL: It was being run out
21 of "A" Division with "A" Division reporting, was
22 it not?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: Because normally, a
25 national security investigation wouldn't report to

1 the CROPS officer, would it?

2 MR. FLEWELLING: In the field it
3 would. They still oversee a national security
4 investigation.

5 MR. BOXALL: We say oversee.
6 There is still some liaison between the two;
7 correct?

8 MR. FLEWELLING: Yes.

9 MR. BOXALL: All right. But it
10 would be Inspector Cabana's duty, would it not, to
11 take his instructions from the CROPS officer?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: And the commanding
14 officer at "A" Division would instruct the CROPS
15 officer?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: And it would be
18 Inspector Cabana's duty, is it not, to follow the
19 instructions of his superior officers?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: Sir, are you aware of
22 the instructions Inspector Cabana received from
23 the Assistant CROPS Officer, from the CROPS
24 Officer or from the Commanding Officer?

25 MR. FLEWELLING: That's why I

1 stated earlier that I wasn't aware when I first --

2 MR. BOXALL: Right.

3 MR. FLEWELLING: I wasn't aware of
4 the agreements or the arrangements.

5 MR. BOXALL: Right. And what
6 Mr. Cavalluzzo described to you, sir, is battles
7 between A-OCANADA and CID and that A-OCANADA won
8 those battles. Sir, would you agree that there
9 was management-level meetings, at a higher level
10 than you --

11 MR. FLEWELLING: Yes.

12 MR. BOXALL: -- and a higher level
13 than Inspector Cabana --

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: -- that set out the
16 rules for Inspector Cabana's reporting?

17 MR. FLEWELLING: I'm assuming so.

18 MR. BOXALL: In fact, although you
19 weren't personally happy with the results of some
20 of those meetings, the results were clear to you?

21 MR. FLEWELLING: Sorry, they were
22 clear what?

23 MR. BOXALL: That Inspector Cabana
24 was reporting through CROPS?

25 MR. FLEWELLING: Yes.

1 MR. BOXALL: There was other
2 persons prior to you that had this position that
3 you had at CID relative to A-OCANADA?

4 MR. FLEWELLING: That's correct.

5 MR. BOXALL: Do you know who they
6 were?

7 MR. FLEWELLING: Yes, I do.

8 MR. FOTHERGILL: Commissioner, as
9 you know, we would prefer not to name individuals
10 if it's not necessary.

11 MR. BOXALL: I'm not going to ask
12 for their names.

13 When you took over your role, were
14 you briefed by any of them?

15 MR. FLEWELLING: Was I given a
16 formal briefing on the project overall?

17 MR. BOXALL: Yes.

18 MR. FLEWELLING: No.

19 MR. BOXALL: Did you take a look
20 at any of their notes or reports or anything?

21 MR. FLEWELLING: I did a review.
22 Unfortunately, I don't recall reviewing any notes.

23 MR. BOXALL: Okay. So although
24 there had been CID involvement for some eight
25 months perhaps by the time you became involved --

1 MR. FLEWELLING: Yes.

2 MR. BOXALL: -- did you review any
3 CID notes, reports or anything before you became
4 involved?

5 MR. FLEWELLING: Before I became
6 involved?

7 MR. BOXALL: Or on becoming
8 involved with A-OCANADA?

9 MR. FLEWELLING: I read a number
10 of situation reports in order to bring myself up
11 to speed but --

12 MR. BOXALL: Sit reports, SITREPs?

13 MR. FLEWELLING: SITREPs.

14 MR. BOXALL: Yes, but they are
15 from A-OCANADA. What did you read from CID about
16 it, if anything?

17 MR. FLEWELLING: Just what was
18 readily available, sir.

19 MR. BOXALL: What is the extent of
20 that?

21 MR. FLEWELLING: What may have
22 been on SCIS or at my disposal.

23 MR. BOXALL: Do you even know why
24 there was three persons in the position before
25 you?

1 MR. FLEWELLING: Not to a full
2 extent, no.

3 MR. BOXALL: So you don't even
4 know if it had to do with conflict or just
5 staffing issues or anything such as that?

6 MR. FLEWELLING: That's correct.

7 MR. BOXALL: So any suggestion
8 that the fact that there was three persons in your
9 position before you somehow reflects some type of
10 problem, that's not necessarily accurate, is it,
11 sir?

12 MR. FLEWELLING: Not totally, no.

13 MR. BOXALL: I'm curious to know
14 how you would describe it. We have heard you
15 described as an overseer, project manager,
16 different terms by counsel today.

17 Corporal Flewelling, review
18 analyst at CID, what was your role and duties with
19 respect to A-OCANADA?

20 MR. FLEWELLING: My duties and
21 role were to acquire information and to ensure
22 that policies with respect to the acquiring of
23 information and so on and so forth was respected,
24 as well as to inform management as to what the
25 investigation was.

1 MR. BOXALL: Right. So you had a
2 role to assist them, if need be, with respect to
3 policy?

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: And you had a role to
6 help inform management?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: Okay. You didn't
9 have an operational role?

10 MR. FLEWELLING: No, not per se.

11 MR. BOXALL: Not per se. And with
12 respect to -- I will come back to that.

13 Sir, with respect to
14 information-sharing pre-9/11, you described a
15 process that would take place, the sharing of
16 information with the RCMP and foreign countries.

17 MR. FLEWELLING: Yes.

18 MR. BOXALL: And would you agree
19 with me, sir, that the process was slow,
20 cumbersome?

21 MR. FLEWELLING: In dealing with a
22 number of intelligence and/or foreign countries,
23 yes, the information retrieval was slow, yes.

24 MR. BOXALL: All right. And even
25 dealing with the United States, the number of

1 steps, the bureaucracy that you described to go
2 from the Embassy to the LO and then -- it goes
3 through an awful lot of hands; correct?

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: And it would be in
6 writing, each time, I take it, too?

7 MR. FLEWELLING: There would be
8 your formal letters and things of that nature,
9 yes.

10 MR. BOXALL: And they may sit in
11 somebody's in-basket who is busy?

12 MR. FLEWELLING: Our ability
13 pre-9/11, in order to deal with an awful lot of
14 the issues, wasn't a problem.

15 MR. BOXALL: Was a problem?

16 MR. FLEWELLING: Was not a
17 problem.

18 MR. BOXALL: Was not a problem.
19 But in 9/11 the world changed,
20 didn't it, sir?

21 MR. FLEWELLING: Absolutely.

22 MR. BOXALL: All right. And there
23 was a new reality?

24 MR. FLEWELLING: Yes.

25 MR. BOXALL: There was a new

1 reality with respect to the potential threat to
2 Canadians?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: There was a new
5 reality with respect to the speed which the police
6 forces had to respond to that threat; correct?

7 MR. FLEWELLING: I would agree
8 with that assessment.

9 MR. BOXALL: Right. And
10 accordingly, preexisting paper procedures for the
11 sharing of information were not seen as adequate
12 to protect Canadians against a potential terrorist
13 threat?

14 MR. FLEWELLING: The only thing I
15 can tell you, sir, is that the orders that were
16 given was that sharing was paramount.

17 MR. BOXALL: Right.

18 MR. FLEWELLING: Timely.

19 MR. BOXALL: Yes.

20 MR. FLEWELLING: And that was to
21 be done still with the existing policy in mind.

22 MR. BOXALL: Was it given in
23 writing to you, sir?

24 MR. FLEWELLING: No.

25 MR. BOXALL: Okay. So this little

1 rider on it, with existing policy, did you ever
2 see that in writing?

3 MR. FLEWELLING: No.

4 MR. BOXALL: But you do recall the
5 message being sharing is paramount?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: You are to share as
8 much as possible?

9 MR. FLEWELLING: I don't know if I
10 recall that term; but timely sharing, yes.

11 MR. BOXALL: And timely sharing
12 means as close to instantaneous sharing as you can
13 have; correct?

14 MR. FLEWELLING: I suppose it
15 depends on the person that is receiving the
16 message.

17 MR. BOXALL: Was not the concern
18 that there might be a piece of paper sitting in
19 somebody's in-basket that might have prevented a
20 building from being blown up or something?

21 MR. FLEWELLING: I think it would
22 be fair to say that we all had that fear.

23 MR. BOXALL: Right. And the
24 instructions coming from management to deal with
25 that, to deal with this new reality, is that to

1 prevent occurrences, not to try to and investigate
2 them after the fact, when a lot of people are
3 dead, to investigate them, you need to get that
4 information shared right away, in real time;
5 correct?

6 MR. FLEWELLING: Where there was a
7 need or a viewpoint that there was going to be a
8 threat of that nature, I don't think any one of us
9 ever had an issue with that. I don't think that
10 would be an issue.

11 MR. BOXALL: Right. But this was
12 a new reality of the type of thing that could
13 happen. Do you not agree, sir?

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: And do you not agree
16 that the -- perhaps the RCMP in general, but in
17 particular CID lacked the resources to deal with
18 this new reality?

19 MR. FLEWELLING: I would suggest
20 to you that we all did.

21 MR. BOXALL: Right. So we may all
22 have, but CID lacked the resources, with perhaps
23 numerous other agencies in this country and around
24 the world?

25 MR. FLEWELLING: Given the added

1 pressures with the G-8, G-21 and everything else,
2 there is a definite pressure on manpower.

3 MR. BOXALL: And it was beyond
4 pressure. The number of tips, the amount of
5 material, the requirement to respond to it, to
6 this unforeseen, unprecedented event, meant that
7 CID lacked the resources to handle the situation?

8 MR. FLEWELLING: I would say we
9 all did.

10 MR. BOXALL: And in this new era,
11 the message was given that information-sharing was
12 to be paramount, and information-sharing was the
13 way one would protect and prevent future
14 occurrences. Do you agree?

15 MR. FLEWELLING: I think the
16 sharing of information was stressed and was vital.

17 MR. BOXALL: Right. And what was
18 stressed as being vital about it was that it would
19 assist in prevention?

20 MR. FLEWELLING: That's always a
21 part of our mandate.

22 MR. BOXALL: Right. It's always
23 part of your mandate, but there's an awful lot of
24 RCMP investigations that are involved on crimes
25 that have already been committed; correct?

1 MR. FLEWELLING: Correct.

2 MR. BOXALL: And putting the focus
3 clearly on prevention is a change, to a certain
4 extent, in the mandate too, isn't it?

5 MR. FLEWELLING: Prevention has
6 always been part of our mandate.

7 MR. BOXALL: But now it was put at
8 the top of the list?

9 MR. FLEWELLING: I would say after
10 9/11, yes, definitely.

11 MR. BOXALL: And that is a change,
12 too; correct?

13 MR. FLEWELLING: It was definitely
14 a change in mindset, yes.

15 MR. BOXALL: Right. And so in
16 response, in part -- I won't get into all the
17 details -- it was in the aftermath of 9/11 that
18 A-OCANADA was formed; correct, sir?

19 MR. FLEWELLING: Yes.

20 MR. BOXALL: And you were not
21 present, sir, with the meeting that Mr. Proulx had
22 with domestic and foreign agencies, when there was
23 an agreement with respect to information-sharing;
24 correct?

25 MR. FLEWELLING: That's correct.

1 MR. BOXALL: You are not aware of
2 what was agreed there?

3 MR. FLEWELLING: That's correct.

4 MR. BOXALL: And you never
5 received anything in writing from Mr. Proulx
6 personally about what was agreed there?

7 MR. FLEWELLING: Not in writing,
8 no.

9 MR. BOXALL: No. You are aware,
10 sir, that a decision was made by senior management
11 that A-OCANADA would report through "A" Division;
12 correct?

13 MR. FLEWELLING: Sorry. Repeat
14 the question.

15 MR. BOXALL: That A-OCANADA would
16 have a reporting structure through "A" Division?

17 MR. FLEWELLING: I think that was
18 the normal course.

19 MR. BOXALL: Okay. Are you aware,
20 sir, of any instructions that were given to them
21 with respect to information-sharing?

22 MR. FLEWELLING: I think I've
23 already mentioned in my testimony that I wasn't
24 aware.

25 MR. BOXALL: Was it obvious to

1 you, working in CID, that A-OCANADA was having
2 direct dealings with American authorities?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: And on the face of
5 that, that would appear to be a violation of
6 policy?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: And as the Corporal,
9 you are aware of that?

10 MR. FLEWELLING: That is correct.

11 MR. BOXALL: Mr. Pilgrim was aware
12 of that?

13 MR. FLEWELLING: Yes, he was.

14 MR. BOXALL: Mr. Proulx was aware
15 of that?

16 MR. FLEWELLING: As you know, we
17 did have several discussions over that precise
18 issue.

19 MR. BOXALL: Well, we'll get to
20 the discussions. But they were all aware of that
21 in October and November and December, January?
22 They were all aware of that?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: Have you seen any
25 memos from Mr. Proulx with respect to that?

1 MR. FLEWELLING: No.

2 MR. BOXALL: There was various
3 discussions, but in different words in your notes,
4 that things weren't going to change. For example,
5 there was a meeting on September 26, 2002;
6 correct, sir?

7 MR. FLEWELLING: That is correct.

8 MR. BOXALL: Right. In which the
9 CO of "A" Division met with Mr. Pilgrim; correct?

10 MR. FLEWELLING: And there were a
11 few others that were at the meeting as well, yes.

12 MR. BOXALL: And others. And,
13 again, the open line and direct communication was
14 confirmed at that meeting for A-OCANADA with U.S.
15 authorities?

16 MR. FLEWELLING: As a result of
17 discussions and where Mr. Hovey alluded to a
18 conversation with Mr. Proulx, Mr. Pilgrim backed
19 away from his original position in order to be
20 able to discuss it further with Mr. Proulx. The
21 directives were that they would continue dealing
22 with American agencies, with the exception that a
23 member of CID would attend.

24 MR. BOXALL: Right. And as
25 described in your notes at page 34 for September

1 27th:

2 "The lines of communication
3 were open again."

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: And, in fact, except
6 for a short period prior to September 26th, the
7 lines of communication between A-OCANADA were open
8 with the American authorities, and this was with
9 the full knowledge of CID; right?

10 MR. FLEWELLING: Yes.

11 MR. BOXALL: Clearly in the manner
12 in which the RCMP works, if you have got a
13 concern, you can go to your boss or Mr. Pilgrim,
14 and Mr. Pilgrim can go to Mr. Proulx, and if
15 Mr. Proulx has a concern, he can take it up the
16 ladder too; correct?

17 MR. FLEWELLING: Yes.

18 MR. BOXALL: All right. And it
19 appears that the instructions, at least -- you
20 have indicated that Mr. Pilgrim backed off because
21 of Commanding Officer Hovey's opinion; correct?

22 MR. FLEWELLING: It was as a
23 result of Mr. Hovey alluding to a conversation
24 that he had with Mr. Proulx.

25 MR. BOXALL: Right. And that was

1 with respect to an agreement that this was how
2 A-OCANADA was to operate; correct?

3 MR. FLEWELLING: There was some
4 sort of discussion or agreement that apparently he
5 alluded to that none of us were privy to.

6 MR. BOXALL: You weren't aware of
7 it?

8 MR. FLEWELLING: None of us in the
9 room except apparently Mr. Hovey and Mr. Proulx
10 were aware of it.

11 MR. BOXALL: Mr. Hovey and
12 Mr. Proulx. And you don't know what instructions
13 were coming from Mr. Hovey to the CROPS Officer to
14 the Assistant CROPS Officer to Mr. Cabana;
15 correct?

16 MR. FLEWELLING: No.

17 MR. BOXALL: Would it be
18 reasonable to infer that the instructions that he
19 would be receiving would be the ones coming
20 directly down his line of command?

21 MR. FLEWELLING: Yes. Again,
22 under the auspices of national security, there
23 should have been that information or that
24 informing role.

25 MR. BOXALL: All right. And we

1 will get to that informing role.

2 It was clear for many, many
3 months, before you became involved with A-OCANADA,
4 that A-OCANADA had an open line of communication
5 with the American authorities. Would you agree?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: And it was known to
8 CID that they were sharing information directly?

9 MR. FLEWELLING: That's my
10 understanding.

11 MR. BOXALL: And this was pursuant
12 to a mandate to share, the importance of sharing,
13 and to share information in a timely way to save
14 lives?

15 MR. FLEWELLING: I would say
16 ultimately that that's the way it was designed,
17 yes.

18 MR. BOXALL: Right. And
19 throughout this period of time, particularly in
20 the early months, CID was overwhelmed with the
21 amount of work they had to do?

22 MR. FLEWELLING: I would suggest
23 to you all of us were.

24 MR. BOXALL: All right. And you
25 have indicated that it is important that the

1 headquarters be informed with respect to the
2 investigation that was going on by A-OCANADA?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: And you are aware of
5 the fact -- in fact, you read some of them -- that
6 the SITREPs were coming on a daily basis?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: And not every
9 investigation sends over SITREPs on a daily basis,
10 does it?

11 MR. FLEWELLING: No.

12 MR. BOXALL: So that would be an
13 extraordinary step to inform headquarters?

14 MR. FLEWELLING: That would be one
15 of the requirements under the national security
16 umbrella.

17 MR. BOXALL: It's an extraordinary
18 step, though, sir? It doesn't happen in every
19 investigation?

20 MR. FLEWELLING: No.

21 MR. BOXALL: It doesn't even
22 happen in every investigation which has national
23 security overtones, does it, that there be daily
24 SITREPs?

25 MR. FLEWELLING: I think the

1 minimum is 14, I believe.

2 MR. BOXALL: Every 14 days?

3 MR. FLEWELLING: Something like
4 that.

5 MR. BOXALL: This is every day;
6 right?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: And you are aware
9 that when they had the ability to do so, your
10 predecessors were attending meetings with the
11 A-OCANADA team?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: You are also aware
14 that your predecessors didn't have the ability to
15 attend every meeting; correct?

16 MR. FLEWELLING: Not every
17 meeting; no, that's true.

18 MR. BOXALL: In fact, it appears
19 that on one of the most important days, January
20 22nd, when there were searches taking place, you
21 were sent over to fill in for one of your
22 predecessors, and you really knew nothing about
23 the case?

24 MR. FLEWELLING: That's true.

25 MR. BOXALL: So your predecessor

1 wasn't even available on that day?

2 MR. FLEWELLING: No.

3 MR. BOXALL: So that would be
4 indicative of how overwhelmed they were, that they
5 weren't even available on the day the searches
6 were being taken place?

7 MR. FLEWELLING: I would agree
8 with that.

9 MR. BOXALL: And they would
10 certainly be aware that those searches were taking
11 place that day?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: Sir, you indicated
14 that when you were given the role of being the CID
15 person that would have what I would suggest is
16 effectively liaison with A-OCANADA, that one of
17 the things you were asked to do, or tasked to do,
18 was to try to bring them back to the pre-9/11
19 procedure?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: So clearly it was
22 acknowledged that they were not following the
23 pre-9/11 procedure? That was known to your
24 supervisors.

25 MR. FLEWELLING: Yes.

1 MR. BOXALL: Right. What I'm
2 suggesting to you is that for all of that period
3 of time, that it had been accepted that they were
4 not following the procedure, and that the need to
5 share information expeditiously was seen as an
6 appropriate response given the situation, the
7 reality of the situation?

8 MR. FLEWELLING: Would you repeat
9 the first part, please?

10 MR. BOXALL: I will rechange the
11 question. I will break it down into several
12 parts.

13 Your supervisors were aware of the
14 direct contact between A-OCANADA and the American
15 authorities?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: Your supervisors were
18 aware of the fact that the information was being
19 shared directly?

20 MR. FLEWELLING: I believe so.

21 MR. BOXALL: Right. And they were
22 aware that it was essentially an open line of
23 communication?

24 MR. FLEWELLING: Yes.

25 MR. BOXALL: That these were seen

1 as partner agencies in a very important
2 investigation?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: In fact, it was seen
5 as one of the most important investigations in
6 Canada at the time?

7 MR. FLEWELLING: One of them, yes.

8 MR. BOXALL: Right. And the need
9 for information in real time was accepted?

10 MR. FLEWELLING: Yes.

11 MR. BOXALL: The need to share
12 with the United States was accepted?

13 MR. FLEWELLING: Yes.

14 MR. BOXALL: And it's important to
15 note that we are talking here about the United
16 States, which I take it would be our most
17 important foreign partner in law enforcement and
18 security matters?

19 MR. FLEWELLING: I would say one
20 of them.

21 MR. BOXALL: Would you agree the
22 most important?

23 MR. FLEWELLING: On par with the
24 U.K.

25 MR. BOXALL: Well, it seems to me

1 we share a common border that's pretty long here,
2 sir.

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: And given the events
5 that occurred in New York City, which was less
6 than a day's drive from this country, it was seen
7 to be very important to work together with the
8 Americans, was it not?

9 MR. FLEWELLING: Let's put it this
10 way: There was a vast majority, I think there
11 were over 2,000 resources that were mobilized to
12 assist.

13 MR. BOXALL: All right. And
14 so the need and the importance of sharing with the
15 Americans was known and accepted?

16 MR. FLEWELLING: Oh, without
17 question.

18 MR. BOXALL: The need for the
19 Americans to know the information that we were
20 gathering was known and accepted?

21 MR. FLEWELLING: I think it was
22 encouraged that we shared.

23 MR. BOXALL: So they clearly had a
24 need to know what information A-OCANADA was
25 gathering?

1 MR. FLEWELLING: I think they had
2 a reasonable need, yes.

3 MR. BOXALL: And through all of
4 this period, this process, this procedure was
5 accepted by CID?

6 MR. FLEWELLING: I think that the
7 officers within CID, I think initially agreed that
8 the direct reporting and the sharing of
9 information was extremely important, yes.

10 However, after a year, as
11 Mr. Superintendent Pilgrim had mentioned to me on
12 numerous occasions, it was time to re-establish,
13 to re-establish the normal protocols, if you will.

14 MR. BOXALL: So it was recognized
15 that this was the procedures that we are
16 following, but after a year it was seen as let's
17 see if we can now work back and try to get the
18 prior procedure in place?

19 MR. FLEWELLING: The urgency was
20 slowly diminishing and that the need to
21 re-establish the normal and proper procedures were
22 needed to be put back into play.

23 MR. BOXALL: Okay. But that seems
24 to me to acknowledge, sir, that for that period
25 prior to that time, that it was appropriate to

1 proceed in the way that had been agreed.

2 MR. FLEWELLING: I think with
3 respect that they could exchange back and forth
4 one-on-one, yes.

5 MR. BOXALL: All right. Sir, even
6 with the year, with the meeting on September 26th,
7 2002, there was still to be maintained open lines
8 of communication with some new additions, such as
9 that there would be informing of headquarters when
10 they were meeting, for example.

11 MR. FLEWELLING: That there was --
12 sorry?

13 MR. BOXALL: Well, I will ask you
14 what they were then, sir.

15 You note on September 27th you say
16 that you notified project -- this is September
17 27th, 2002, page 34 of your notes:

18 "Notified Project A-OCANADA
19 of our meeting with [blank]
20 and that the lines of
21 communication were open again
22 with the new ground lines."

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: What were the "new"
25 ground lines?

1 MR. FLEWELLING: Well, as I stated
2 before, apparently there was a discussion that
3 Superintendent Pilgrim was unaware that Mr. Hovey
4 and Mr. Proulx had, as I stated before. That is
5 one of the reasons why Mr. Pilgrim at that time
6 did not pursue that avenue.

7 However, he did make it very clear
8 that what he wanted was to have a member of CID
9 attend those meetings where there was an exchange
10 of information with our U.S. counterparts.

11 MR. BOXALL: Right. And so
12 that --

13 MR. FLEWELLING: And I think that
14 was the biggest difference, is where there was an
15 exchange of information.

16 MR. BOXALL: But that was a new
17 ground line; correct?

18 MR. FLEWELLING: Well, from what
19 was transpiring, yes.

20 MR. BOXALL: Right. Is it not
21 true also, sir, that at that meeting on September
22 26th -- you were present at the meeting on
23 September 26th?

24 MR. FLEWELLING: Sorry?

25 MR. BOXALL: Were you present at

1 the meeting on September 26th, 2002?

2 MR. FLEWELLING: Yes, I was.

3 MR. BOXALL: Is it not true, sir,
4 that there was an offer of A-OCANADA that perhaps
5 Corporal Flewelling should be seconded over to
6 A-OCANADA so that he would have the time to do
7 this role and not have all the other things on his
8 plate; that he could come right over to A-OCANADA
9 and be right there in the office with them on a
10 daily basis?

11 That is the offer A-OCANADA made;
12 is it not, sir?

13 MR. FLEWELLING: I think they did.

14 MR. BOXALL: Pardon me?

15 MR. FLEWELLING: I think they did.

16 MR. BOXALL: Right. And CID
17 didn't give you that secondment. They kept you
18 doing a multitude of things; correct?

19 MR. FLEWELLING: Yes.

20 MR. BOXALL: What were some of the
21 other things that you had responsibility to do?

22 MR. FLEWELLING: I was at the time
23 monitoring several major investigations that were
24 occurring around the country, around the world, as
25 well as acting as a coach/mentor for the newer

1 individuals coming into the unit.

2 MR. BOXALL: Right. And so the
3 reality of the responsibility at CID meant that it
4 would be impossible, given your workload, for you
5 to have the time to be able to read every SITREP
6 every day, attend every briefing, and to have the
7 complete in-depth knowledge that you could have if
8 that was the only file on your desk?

9 MR. FLEWELLING: True. As a
10 matter of fact, I ultimately ended up being moved
11 to a different unit in order to be able to
12 concentrate solely on this project.

13 MR. BOXALL: And I take it that
14 your predecessors to the position also had
15 numerous other responsibilities other than just
16 A-OCANADA?

17 MR. FLEWELLING: Yes.

18 MR. BOXALL: Sir, with respect to
19 caveats, the essential purpose of a caveat is so
20 that the person receiving the information will not
21 use the information beyond the purpose for which
22 it is given without asking.

23 Would you agree?

24 MR. FLEWELLING: Yes.

25 MR. BOXALL: All right. And this

1 is basically known as the third party rule.

2 MR. FLEWELLING: Yes.

3 MR. BOXALL: All right. This
4 would be a concept that would be well-known to
5 U.S. authorities?

6 MR. FLEWELLING: I would say those
7 who are used to and deal normally with foreign
8 agencies, yes.

9 MR. BOXALL: Right. In fact, it
10 is not even just foreign agencies. This idea of a
11 third party rule applies in criminal investigation
12 generally, doesn't it, sir?

13 MR. FLEWELLING: Yes, it does.

14 MR. BOXALL: And the American
15 legal system is remarkably similar to ours?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: And so persons from
18 the FBI, or other American agencies, would be well
19 aware of the third party rule?

20 MR. FLEWELLING: Should be, yes.

21 MR. BOXALL: Certainly every
22 person that you dealt with would have the
23 experience and expertise to be aware of this rule?

24 The American persons that you were
25 dealing with, they would be well aware of it?

1 MR. FLEWELLING: The vast majority
2 of people that I dealt with would, yes.

3 MR. BOXALL: And with respect to
4 the use of caveats, sometimes a document would
5 have a caveat stamped right on it?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: Would you agree with
8 me, sir, that it would be just -- and this is a
9 hypothetical question. Would it be just as
10 effective to ask or to receive from the person who
11 is getting the information to put in writing that
12 they acknowledge the existence of the rule and
13 that they would honour it?

14 For example, what I'm going to say
15 is, in a hypothetical situation, if information
16 was to be supplied to the United States, would it
17 not be equally effective, if not more effective,
18 to receive from the Americans a letter saying, "I
19 acknowledge the third party rule and we are
20 receiving this information." It's being received
21 for whatever purpose?

22 MR. FLEWELLING: I dare say
23 nowadays that that would be something that would
24 be.

25 MR. BOXALL: Right. So in a

1 hypothetical question, if the sharing of the
2 SUPERText material was on the basis that the
3 Americans had supplied a letter, that would be in
4 fact, in my submission, more effective and more
5 meaningful than any caveat put on by a Canadian
6 authority.

7 Would you agree?

8 MR. FLEWELLING: In terms of the
9 sharing as you put it, yes.

10 MR. BOXALL: Because giving
11 somebody a letter where you stamp on it its
12 purpose, unless they sign or agree, all you have
13 really done is remind them of the third party
14 rule, haven't you?

15 MR. FLEWELLING: It should bring
16 to their attention that that information is
17 strictly for intelligence purposes for themselves,
18 period.

19 MR. BOXALL: And that should bring
20 to their attention something they already know?

21 MR. FLEWELLING: Yes.

22 MR. BOXALL: With respect to the
23 material that was sent on October 4th, 2002, that
24 material was caveated; correct, sir?

25 MR. FLEWELLING: Which?

1 MR. BOXALL: The reply from
2 A-OCANADA on October 4th, 2002, replying to the
3 American authorities, pursuant to your
4 instructions of October 3rd to supply the
5 information.

6 MR. FLEWELLING: It is my
7 understanding it did have a caveat on it.

8 MR. BOXALL: Would you agree with
9 me, sir, that if the information was caveated and
10 if the Americans used it for a process -- used it
11 for another purpose, that the use of it would be
12 improper?

13 MR. FLEWELLING: Yes, because they
14 should be --

15 MR. BOXALL: Absent request.

16 MR. FLEWELLING: They should be
17 coming back to us for the appropriate
18 authorization to use it, whether it be for a
19 judicial process or to pass it to another agency.

20 MR. BOXALL: I think you were
21 already asked, but did you ever see any request
22 from the Americans with respect to the use of the
23 material forwarded to them on October 4th for INS
24 proceedings?

25 MR. FLEWELLING: Not to my

1 knowledge.

2 MR. BOXALL: So would it be your
3 evidence that if it was used in that manner, that
4 it was inappropriate and improper?

5 MR. FLEWELLING: I would say they
6 should have come back to us.

7 MR. BOXALL: Would you have
8 expected that knowledgeable foreign authorities,
9 such as you were dealing with here and who
10 received that material on October 4th, 2002, you
11 would have expected them to have come back if they
12 were going to use it for INS proceedings?

13 MR. FLEWELLING: Yes, as I
14 understand it.

15 MR. BOXALL: Now, you were asked
16 if placing caveats, which would be so simple, just
17 stamping a document, would slow any investigation
18 down or slow the flow of information down, and
19 your initial response was, no, it's just simple to
20 stamp it, so it wouldn't slow the process down.

21 MR. FLEWELLING: Yes.

22 MR. BOXALL: However, sir, if we
23 are talking a situation where there is more than
24 two partner agencies, and we are talking a
25 situation where there is three or four partner

1 agencies, would you agree with me, sir, that if
2 you caveat the information when you send it to
3 one, that prevents that agency from dealing with
4 it with respect to the other agency?

5 MR. FLEWELLING: If it's caveated
6 and you are giving that information to one, then
7 you would have to go back and seek authorization
8 to share that information with a third.

9 MR. BOXALL: Each and every time?

10 MR. FLEWELLING: Each and every
11 time.

12 MR. BOXALL: And this would make
13 the logistics of dealing in an investigation that
14 has multiple partners very difficult?

15 MR. FLEWELLING: Unless there is a
16 written agreement amongst them, it can slow things
17 down, yes.

18 MR. BOXALL: Right. And so it
19 would slow things down unless there was an
20 agreement amongst the partner agencies that
21 anything shared with one could be shared with all
22 in the partnership; correct?

23 MR. FLEWELLING: Correct.

24 MR. BOXALL: And so it would make
25 sense, in an environment where you are dealing

1 with partner agencies, post 9/11, in a prevention
2 mandate where you wish to share information as
3 quickly as possible, that you wouldn't require
4 caveats within the group.

5 Would you agree?

6 MR. FLEWELLING: I would say
7 provided that all agencies were of the
8 understanding that their information was going to
9 be shared and allowed to be shared.

10 MR. BOXALL: Right. And if that
11 was the agreement, then it would make sense to
12 share it without the caveats; correct?

13 MR. FLEWELLING: If that agreement
14 was in place.

15 MR. BOXALL: Right. You weren't
16 present when Mr. Proulx made whatever agreement he
17 made post-9/11, were you?

18 MR. FLEWELLING: As I said, no.

19 MR. BOXALL: All right.

20 Sir, with respect to the Arar
21 timeline, you are aware that there were searches
22 conducted on January 22nd, 2002?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: In fact, we have
25 already been through the fact that you were the

1 CID representative on that day, even though you
2 knew nothing about the file?

3 MR. FLEWELLING: Correct.

4 MR. BOXALL: And you are aware,
5 though, sir, that there was a large amount of
6 material seized in those searches?

7 MR. FLEWELLING: I'm not exactly
8 sure how much, no.

9 MR. BOXALL: Well, let's just get
10 to that. You are eventually the person who has
11 overseer responsibility of this file, and you
12 familiarized yourself with the file, and you are
13 not aware if there was even a large amount of
14 material seized on January 22nd?

15 MR. FLEWELLING: I was aware that
16 there was computer equipment, but the detail of
17 all of that which was seized, no.

18 MR. BOXALL: But are you aware
19 that there was a large amount of material --

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: So you were aware of
22 that?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: Are you aware of the
25 fact that there were subsequent meetings involving

1 partner agencies, including CID representatives,
2 to discuss what to do with all this material?

3 MR. FLEWELLING: In what --

4 MR. BOXALL: How to analyze it,
5 how to review it? Are you aware of that?

6 MR. FLEWELLING: No.

7 MR. BOXALL: So you have no
8 knowledge of what meetings, or agreements, or
9 instructions there were with respect to the
10 sharing or the use of the information that was
11 received on the searches?

12 MR. FLEWELLING: I believe I
13 stated that before.

14 MR. BOXALL: Okay. And would you
15 agree with me, sir, also, that in an investigation
16 where material is obtained by way of search
17 warrant, that it would be important to look at the
18 information and review it in a timely and thorough
19 way?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: Would you agree with
22 me that in order to determine the information's
23 relevance, it would also be necessary to compare
24 that information with all the other information
25 that had been gleaned in the investigation to

1 date?

2 MR. FLEWELLING: Yes.

3 MR. BOXALL: And that's
4 particularly true in a circumstantial case, that
5 you don't look at one isolated piece in of itself.
6 But in a circumstantial case, to know the
7 significance of each piece of the puzzle, you have
8 to know everything?

9 MR. FLEWELLING: Yes.

10 MR. BOXALL: Because what may
11 appear innocent as one particular circumstance,
12 when you know all the circumstances may no longer
13 be innocent?

14 MR. FLEWELLING: I would agree
15 with that.

16 MR. BOXALL: And so that the
17 importance of sharing the information obtained on
18 the searches, in conjunction with the prior
19 information, would be critically important in
20 order to carry out a thorough and diligent
21 investigation with this preventative mandate.

22 Do you agree?

23 MR. FLEWELLING: I don't have an
24 issue with that.

25 MR. BOXALL: Right. And clearly

1 the United States would have a need to know, given
2 the international implications and common interest
3 in some of these persons?

4 MR. FLEWELLING: Yes.

5 MR. BOXALL: So the sharing of all
6 the information, the sharing of all the
7 information that had been obtained in the
8 investigation would then be appropriate?

9 MR. FLEWELLING: Provided that it
10 was done in a responsible manner and done with the
11 appropriate approval.

12 MR. BOXALL: You have indicated
13 that there were some communication problems
14 between A-OCANADA and CID?

15 MR. FLEWELLING: Yes.

16 MR. BOXALL: And would you
17 acknowledge that there is at least some
18 responsibility on CID's part with respect to that?

19 MR. FLEWELLING: Absolutely.

20 MR. BOXALL: And that CID lacked
21 the resources, we have already heard, to handle
22 all of the work that they had; correct?

23 MR. FLEWELLING: I think in
24 any issue or an investigation of that magnitude,
25 if there are any issues, there is an awful lot

1 that goes both ways.

2 MR. BOXALL: And even the
3 magnitude of information that was being given to
4 headquarters, with the daily SITREPs, the
5 investigative file was being uploaded into SCIS,
6 was it not?

7 MR. FLEWELLING: Where, sorry?

8 MR. BOXALL: The A-OCANADA file
9 was being uploaded into SCIS?

10 MR. FLEWELLING: Not totally, no.

11 MR. BOXALL: But you would have
12 access to the portions that were uploaded?

13 MR. FLEWELLING: Yes.

14 MR. BOXALL: And you would have
15 access to the SITREPs?

16 MR. FLEWELLING: As a matter of
17 fact, I took on a large part of that myself.

18 MR. BOXALL: Oh, that's
19 interesting. Which large part did you take on
20 yourself?

21 MR. FLEWELLING: The information
22 that was shared or handed over by foreign
23 agencies, and I had it uploaded.

24 MR. BOXALL: Who had been doing it
25 before you got on?

1 MR. FLEWELLING: It was left up to
2 the receiving agency or the receiving division in
3 order to upload it.

4 MR. BOXALL: And why did you take
5 it on?

6 MR. FLEWELLING: Because it wasn't
7 getting uploaded.

8 MR. BOXALL: And why wasn't CID,
9 your predecessors, ensuring that that was the
10 case?

11 MR. FLEWELLING: I have no idea.
12 I can't answer for them.

13 MR. BOXALL: And clearly, even
14 attending at all of the meetings was difficult for
15 CID?

16 MR. FLEWELLING: At times, yes.

17 MR. BOXALL: Right. We also see,
18 for example, that you were concerned because CID
19 was unable to even give you a simple clearance to
20 travel to the United States for a meeting in a
21 timely way?

22 MR. FLEWELLING: That one time,
23 yes.

24 MR. BOXALL: So you couldn't even
25 get something processed like that in a day?

1 MR. FLEWELLING: At that
2 timeframe, yes.

3 MR. BOXALL: Now, sir, one of your
4 concerns you talked about was having caveats on
5 SITREPs?

6 MR. FLEWELLING: Yes.

7 MR. BOXALL: Where were the
8 SITREPs being circulated?

9 MR. FLEWELLING: They were being
10 circulated to the Americans.

11 MR. BOXALL: Okay. And you were
12 well aware that they were being circulated to the
13 Americans?

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: You were then content
16 that they be circulated to the Americans?

17 MR. FLEWELLING: That was
18 something that was apparently agreed upon.

19 MR. BOXALL: Do you know who was
20 supplying them to the Americans and on what
21 frequency?

22 MR. FLEWELLING: Initially it was
23 being forwarded by way of the division themselves.

24 MR. BOXALL: All right. And --

25 MR. FLEWELLING: And then, at the

1 end, it was the responsibility that was taken over
2 by CID and FIB.

3 MR. BOXALL: So your evidence is,
4 then, that the SITREPs were being supplied to the
5 Americans, and this would have been with the
6 knowledge and consent of CID?

7 MR. FLEWELLING: At that time,
8 yes.

9 MR. BOXALL: According to you, you
10 asked them to start putting the caveats on the
11 SITREPs?

12 MR. FLEWELLING: Yes.

13 MR. BOXALL: And they did, in
14 response to your request?

15 MR. FLEWELLING: Yes.

16 MR. BOXALL: So the logical
17 inference is no one at CID asked them to do that.
18 None of your predecessors asked them to do it
19 before?

20 MR. FLEWELLING: To do what, sir?

21 MR. BOXALL: To it put caveats on
22 the SITREPs?

23 MR. FLEWELLING: I don't know.

24 MR. BOXALL: Certainly when you
25 made the request, they did every effort to comply

1 with that?

2 MR. FLEWELLING: Yes.

3 --- Pause

4 MR. BOXALL: Sir, you were asked
5 questions with respect to an offer, either an
6 offer or a consideration, I will put it, being
7 given by Inspector Cabana to share information
8 with the Syrians around August 20th, 2002.

9 Do you recall that?

10 MR. FLEWELLING: To share what,
11 sorry?

12 MR. BOXALL: To share information.

13 MR. FLEWELLING: Okay.

14 MR. BOXALL: Correct? And
15 Inspector Cabana is an investigator?

16 MR. FLEWELLING: Yes.

17 MR. BOXALL: And it would be his
18 duty and responsibility to investigate the matter
19 under investigation, the perceived threat or
20 criminal violation to determine if there is in
21 fact one?

22 MR. FLEWELLING: Yes.

23 MR. BOXALL: And it was his duty
24 to do a thorough and complete investigation?

25 MR. FLEWELLING: Absolutely.

1 MR. BOXALL: Would you agree with
2 me, sir, that it would be his duty to at least
3 consider the possibility of sharing with foreign
4 agencies as an investigator?

5 MR. FLEWELLING: That would have
6 to be a decision that he along with his managers
7 would have to consider as to what level and to how
8 much that he wanted to share.

9 MR. BOXALL: Right. And they
10 would have to make --

11 MR. FLEWELLING: Given the
12 guidelines that are in place.

13 MR. BOXALL: We will come to it.

14 MR. FLEWELLING: Okay.

15 MR. BOXALL: It would be his duty
16 and responsibility to at least consider it.
17 Whether it takes place or not would require
18 consultation outside the investigative team;
19 correct?

20 MR. FLEWELLING: Absolutely.

21 MR. BOXALL: But absolutely the
22 investigator should at least put his mind to the
23 possibility of sharing, to see if it would further
24 his investigation?

25 MR. FLEWELLING: Yes.

1 MR. BOXALL: And then the
2 investigator should consult with the experts at
3 DFAIT, DOJ, CID to determine if sharing is
4 appropriate?

5 MR. FLEWELLING: Yes.

6 MR. BOXALL: Right. Because the
7 investigator wouldn't be expected to know all the
8 particular circumstances that are relevant to
9 DFAIT and to CID?

10 MR. FLEWELLING: And to consult
11 all the various agencies to ensure that they are
12 complying with not only our policies but the
13 policy of government.

14 MR. BOXALL: Right. And that is
15 what Inspector Cabana did here. He considered the
16 possibility of sharing. CID was aware. You were
17 aware that he was considering the possibility of
18 sharing?

19 MR. FLEWELLING: Yes.

20 MR. BOXALL: DFAIT was aware of
21 that?

22 MR. FLEWELLING: Yes.

23 MR. BOXALL: You are aware that
24 the Department of Justice had lawyers working
25 closely with A-OCANADA; right?

1 MR. FLEWELLING: Yes.

2 MR. BOXALL: And you are aware
3 that Inspector Cabana was in consultation with
4 them?

5 MR. FLEWELLING: Yes.

6 MR. BOXALL: So there certainly
7 would be nothing improper about an investigator
8 considering the possibility of sharing with
9 foreign authorities and discussing that with
10 Canadian authorities.

11 Would you agree?

12 MR. FLEWELLING: I would suggest,
13 if it's a sharing of information, that as long as
14 he was given the appropriate approval through the
15 Assistant Commissioner of CID and consideration
16 with the partner agencies, then I think that that
17 should not be an issue.

18 MR. BOXALL: Let's just start
19 here. If he is talking with Canadian authorities
20 about the possibility of sharing --

21 MR. FLEWELLING: I have no problem
22 with that.

23 MR. CAVALLUZZO: Just to be fair
24 to the witness, my friend is posing a number of
25 questions relating to the entry of August the 20th

1 in terms of sharing information. That's not what
2 the entry for August 20th says.

3 The entry for August 20th says
4 that Mr. Cabana wanted to invite the Syrians to
5 come to Canada to review all of the information
6 that A-OCANADA had, and that's what the witness
7 was responding to before.

8 So my friend's premise, in terms
9 of these questions, in my respectful submission,
10 are unfair to the witness.

11 MR. BOXALL: Let's just deal with
12 two issues to make clear. If my reference to the
13 notes is unhelpful, I apologize.

14 However, would you agree with me
15 then, in dealing with an information-sharing, that
16 there is nothing wrong with a Canadian
17 investigator exploring the possibility with
18 Canadian officials about the sharing of
19 information with foreign authorities?

20 MR. FLEWELLING: No.

21 MR. BOXALL: That is perfectly
22 appropriate; correct?

23 MR. FLEWELLING: I think looking
24 at the possibility --

25 MR. BOXALL: Right. Is

1 appropriate.

2 MR. FLEWELLING: -- the
3 appropriateness and the level, I think that would
4 be incumbent upon the individual to explore.

5 MR. BOXALL: Right. Now, with
6 respect to the reference of inviting someone to
7 come -- all right?

8 MR. FLEWELLING: Yes.

9 MR. BOXALL: Assuming that was
10 ever contemplated, because it wasn't Inspector
11 Cabana that told you that; correct?

12 MR. FLEWELLING: He personally,
13 no.

14 MR. BOXALL: But with respect to
15 considering a meeting with foreign authorities,
16 once again, consideration of that amongst the
17 Canadian officials, if it did occur, would not be
18 improper either, would it?

19 MR. FLEWELLING: In order for that
20 to occur, or for the individual to make the
21 invitation, that invitation has to be made through
22 the Assistant Commissioner's -- the appropriate
23 director wherever that investigation is taking
24 place.

25 MR. BOXALL: Obviously, if you

1 want to carry the thought process out, there's a
2 number of steps that have to be followed?

3 MR. FLEWELLING: Absolutely.

4 MR. BOXALL: But once again,
5 speaking about it to Canadian officials, there's
6 nothing wrong with that, that you can see, is
7 there?

8 MR. FLEWELLING: The possibility,
9 I think it's another avenue that one can explore.

10 MR. BOXALL: As an investigator?

11 MR. FLEWELLING: As an
12 investigator.

13 MR. BOXALL: And the experts, if
14 they think it's inappropriate, can tell you so?

15 MR. FLEWELLING: Exactly.

16 MR. BOXALL: Thank you.

17 The American request for
18 information on October the 3rd, 2002, came to your
19 attention?

20 MR. FLEWELLING: Yes.

21 MR. BOXALL: And you forwarded it
22 to A-OCANADA and instructed them to reply to it?

23 MR. FLEWELLING: Yes.

24 MR. BOXALL: And they did reply to
25 it?

1 MR. FLEWELLING: Yes.

2 MR. BOXALL: It seems to me that
3 that is the appropriate process, that you are
4 talking about, is that the request came to CID.
5 CID instructed the division to answer.

6 You received a copy of the answer?

7 MR. FLEWELLING: Yes.

8 MR. BOXALL: You, in fact, read
9 that copy?

10 MR. FLEWELLING: That is correct.

11 MR. BOXALL: And you, in fact,
12 instructed it to be re-sent when you were under
13 the impression that the Americans had been unable
14 to read it?

15 MR. FLEWELLING: Yes.

16 MR. BOXALL: And I take it from
17 having read it and instructing it to be re-sent,
18 that you were satisfied that the sending of the
19 response was appropriate?

20 MR. FLEWELLING: The only issue
21 that I raised or wanted to raise was the fact that
22 it included a partner agency's information.

23 MR. BOXALL: Right. But you saw
24 that as a minor issue in the circumstances?

25 MR. FLEWELLING: One that I would

1 have thought that he would have -- and, again, I
2 don't know whether he did -- should have sought to
3 acquire the necessary approval.

4 MR. BOXALL: But it wasn't
5 important enough for you to hold it up because you
6 instructed it to be re-sent in any event?

7 MR. FLEWELLING: After bringing it
8 to their attention, I didn't think that I needed
9 to go back and to reinforce it or to check it.

10 MR. BOXALL: All right. And the
11 response was caveated?

12 MR. FLEWELLING: I believe so,
13 yes.

14 MR. BOXALL: In your instructions
15 on replying to the request, you placed no
16 limitations on what they were to include in their
17 reply?

18 MR. FLEWELLING: No limitations in
19 terms of what?

20 MR. BOXALL: Of the content to be
21 included?

22 MR. FLEWELLING: No.

23 MR. BOXALL: All right. And you
24 clearly were of the view that the American
25 authorities had a need to know the information?

1 MR. FLEWELLING: I knew that the
2 investigators had a timeline. It was a request
3 that I put forward that I, in turn, passed on to
4 A-OCANADA.

5 MR. BOXALL: Well, it was for more
6 than a timeline, sir.

7 MR. FLEWELLING: No, I'm saying
8 the American investigators had a timeframe --

9 MR. BOXALL: Right.

10 MR. FLEWELLING: -- upon which to
11 prepare --

12 MR. BOXALL: They needed the
13 answer.

14 MR. FLEWELLING: Exactly.

15 MR. BOXALL: But what I'm saying
16 is it was your opinion -- I'm going to try this
17 again.

18 When you were asked questions
19 yesterday about information-sharing, you said that
20 these things would have to be looked at.
21 Need-to-know would be one?

22 MR. FLEWELLING: Yes.

23 MR. BOXALL: And clearly you
24 thought the persons had a need to know?

25 MR. FLEWELLING: Yes.

1 MR. BOXALL: Okay. It's important
2 to know the purpose?

3 MR. FLEWELLING: Yes.

4 MR. BOXALL: And you were
5 satisfied that the purpose was given and
6 appropriate?

7 MR. FLEWELLING: That it was for
8 information purposes, yes.

9 MR. BOXALL: So you were satisfied
10 with that.

11 Important to know that the
12 response is relevant?

13 MR. FLEWELLING: Yes.

14 MR. BOXALL: And you believe the
15 response was relevant?

16 MR. FLEWELLING: From what I could
17 see, yes.

18 MR. BOXALL: All right.

19 MR. FOTHERGILL: Commissioner, I
20 note that we have been going for approximately two
21 hours since the break, and I wonder if we could
22 just inquire if the witness is in need of a break?

23 THE COMMISSIONER: How much longer
24 do you think you will be, Mr. Boxall?

25 MR. BOXALL: You know what? I

1 think I would appreciate five minutes, and I
2 promise I would be shorter than longer. It may be
3 that I'm just winding down here.

4 THE COMMISSIONER: Okay. You
5 don't know yet how much longer you will be?

6 MR. BOXALL: I think five to ten
7 minutes.

8 THE COMMISSIONER: Okay. We do
9 have three more witnesses scheduled for today.
10 Will ten minutes be a sufficient
11 break for you, Sergeant?

12 MR. FLEWELLING: Fine.

13 THE COMMISSIONER: All right. We
14 will break for ten minutes.

15 THE REGISTRAR: Please stand.

16 --- Upon recessing at 3:26 p.m. /

17 Suspension à 15 h 26

18 --- Upon resuming at 3:38 p.m. /

19 Reprise à 15 h 38

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

22 MR. BOXALL: Sir, I will try and
23 find the reference, if need be, but I think it was
24 around January of 2003, there was material that
25 was received that you sent off for forensic

1 examination and this caused a discussion between
2 you and an A-OCANADA investigator?

3 MR. FLEWELLING: That's correct.

4 MR. BOXALL: All right. This was
5 material that had been requested by A-OCANADA from
6 the foreign source?

7 MR. FLEWELLING: I believe so,
8 yes.

9 MR. BOXALL: Right. And
10 A-OCANADA's concern was several with that. One,
11 that when the material was received by CID, that
12 they had not been advised promptly and it took
13 them some, I think, weeks before they were aware
14 that you had received it?

15 MR. FLEWELLING: I don't think it
16 was that long but --

17 MR. BOXALL: That was their
18 concern, that there had been a delay in advising
19 them?

20 MR. FLEWELLING: I will take that
21 responsibility, yes.

22 MR. BOXALL: And they were also
23 concerned because they were conducting an
24 investigation. They were concerned whether there
25 could be continuity or admissibility issues if the

1 material was received and sent out for an
2 examination beyond their control?

3 MR. FLEWELLING: Then I would have
4 been called anyway.

5 MR. BOXALL: But would you agree
6 that those were concerns that they had?

7 MR. FLEWELLING: I think it might
8 have been a concern for them, but there again, I
9 would have touched that material, so I would have
10 been called to testify on it anyway.

11 MR. BOXALL: But we put another
12 party in place once you have sent it out
13 elsewhere; correct?

14 MR. FLEWELLING: It would have
15 happened anyway.

16 MR. BOXALL: In any event,
17 A-OCANADA perceived that CID had such enormous
18 responsibilities that CID's involvement would slow
19 down their investigation? That was their sense of
20 it?

21 MR. FLEWELLING: That may have
22 been their perception.

23 MR. BOXALL: Right. In fact,
24 their perception, that CID was busy and overworked
25 was accurate?

1 MR. FLEWELLING: I would daresay
2 that approximately January, late December, I had
3 been seconded to FIB, and as a matter of fact the
4 additional resources that were mobilized to assist
5 them was that much greater, so there were no more
6 backlogs at that particular point in time.

7 MR. BOXALL: That is 14 months
8 into this investigation?

9 MR. FLEWELLING: Even prior to
10 that, I wouldn't daresay that all the backlog was
11 a result of CID's inability, but more so the
12 ability of other agencies to supply an awful lot
13 of their information in a timely fashion.

14 MR. BOXALL: But we see that even
15 in September of 2002, although SITREPs are being
16 sent daily to you, you are not reading them daily?

17 MR. FLEWELLING: When, sorry?

18 MR. BOXALL: Even by September of
19 2002, when SITREPs are being sent daily to you,
20 you are not reading them daily?

21 MR. FLEWELLING: The reason why
22 they were not being read daily is only because of
23 my being required to deal with other urgent
24 matters.

25 MR. BOXALL: That's the whole

1 point, yes.

2 Sir, you had expressed concern
3 that A-OCANADA wasn't keeping CID in the loop, and
4 I just want to go through a list of things that
5 they did do.

6 One, there was SITREPs sent;
7 correct?

8 MR. FLEWELLING: Yes.

9 MR. BOXALL: Two, CID was invited
10 to attend meetings; correct?

11 MR. FLEWELLING: Yes.

12 MR. BOXALL: There was telephone
13 discussions between CID and A-OCANADA; correct?

14 MR. FLEWELLING: Yes.

15 MR. BOXALL: Their offices are
16 just down the road and you could attend and visit
17 when you so chose?

18 MR. FLEWELLING: And vice versa.

19 MR. BOXALL: And vice versa. And
20 those visits occurred?

21 MR. FLEWELLING: From time to
22 time, yes.

23 MR. BOXALL: And what more could
24 have been done to keep CID informed? They are
25 informing them in writing, they are informing them

1 over the telephone, and they are meeting with them
2 in person.

3 Is there something else?

4 MR. FLEWELLING: My opinion would
5 be that, yes, there could have been a greater
6 communication in terms of our ability to exchange
7 phone calls, to ensure that we were in the loop on
8 major events.

9 MR. BOXALL: Right. In fact, they
10 made the offer to have you seconded.

11 MR. FLEWELLING: Yes.

12 MR. BOXALL: And the offer was
13 declined?

14 MR. FLEWELLING: And like I said
15 in one of my notes, I do have a telephone, I do
16 have a pager.

17 MR. BOXALL: Right. Those are my
18 questions.

19 THE COMMISSIONER: Thank you,
20 Mr. Boxall.

21 Mr. O'Brien?

22 MR. O'BRIEN: Mr. Commissioner,
23 Mr. Boxall is getting like Mr. Bayne. He has a
24 tendency to steal your thunder. All my questions
25 have been asked in a different way, and I'm

1 content that anything now would just simply be
2 repetitive.

3 Thank you, sir.

4 THE COMMISSIONER: Thank you very
5 much.

6 Mr. Fothergill?

7 EXAMINATION

8 MR. FOTHERGILL: Sergeant
9 Flewelling, I would like to begin by asking you to
10 elaborate a bit on the information-sharing
11 protocol, because Mr. Boxall suggested to you this
12 is a very cumbersome and bureaucratic system, and
13 he referred to the need to send information
14 through CID and the LOs, et cetera, et cetera.

15 And I'm wondering: Is there a
16 distinction to be made between the initial contact
17 between a Canadian investigator and a foreign
18 investigator and subsequent contacts?

19 MR. FLEWELLING: It is my
20 understanding that once a Canadian investigator is
21 introduced to a foreign official, that they can
22 carry on the free exchange of information.

23 MR. FOTHERGILL: So once the
24 initial contact is established and the direct
25 dealing is taking place, what does CID expect in

1 terms of your role?

2 MR. FLEWELLING: We are expecting
3 at that particular point in time to be informed as
4 to what's transpiring with respect to that
5 investigation so that we can ensure that the
6 necessary policies and management is informed.

7 MR. FOTHERGILL: Did you notice
8 any change in CID's approach to the management of
9 national security investigations from 9/11 until
10 the time that you left the National Security
11 Offences Section?

12 MR. FLEWELLING: In 2002, there
13 was a conscious decision, if you will, to try
14 and -- or to establish or insert more central
15 control.

16 MR. FOTHERGILL: Can you comment
17 on what impact that had on your personal
18 responsibilities?

19 MR. FLEWELLING: It certainly
20 created a situation where -- how can I put it? It
21 was deemed that headquarters was now becoming
22 involved and trying to implicate themselves in
23 their normal routine, which ultimately, I believe,
24 caused some friction.

25 MR. FOTHERGILL: Did you encounter

1 this friction in other investigations other than
2 Project A-OCANADA?

3 MR. FLEWELLING: Oh, yes.

4 MR. FOTHERGILL: Without giving us
5 any operational information, can you elaborate on
6 that, give us a sense of how other projects
7 reacted to CID's increased role in centralization?

8 MR. FLEWELLING: A lot of them
9 found it to be a little bit -- I think they looked
10 at it and resented it to a certain bit, that we
11 were starting to exert a little bit more control,
12 and they voiced their concerns and we were able to
13 discuss some of the issues that were going on and
14 resolve and get around them and move on and have
15 them comply with what it is that Superintendent
16 Pilgrim was trying to establish.

17 MR. FOTHERGILL: In response to
18 one of Mr. Cavalluzzo's questions, you said that
19 you found the experience of dealing with Project
20 A-OCANADA frustrating but not unusual.

21 MR. FLEWELLING: That is correct.

22 MR. FOTHERGILL: Can you explain
23 what you meant by that?

24 MR. FLEWELLING: Normally when you
25 are dealing with an investigation of that

1 magnitude, investigators want to pursue all angles
2 as quickly and as fast as they possibly can, and
3 once you start to put some outside influence or a
4 corporate entity in place trying to exert certain
5 controls, then there's bound to be that normal
6 friction.

7 That's not necessarily a bad thing
8 all the time either. It causes each of us to look
9 inward and look at our own home to determine which
10 policies actually need change, what different
11 direction we need to go in, those types of things.

12 MR. FOTHERGILL: So when you said
13 that the experience was not unusual, were you
14 referring to your experiences with Project
15 A-OCANADA or your experiences with other projects
16 as well?

17 MR. FLEWELLING: I would say with
18 both.

19 MR. FOTHERGILL: You have
20 mentioned a few times that during the period that
21 Mr. Arar was detained in New York -- and I'm
22 referring specifically to the period September
23 26th of 2002, to October 8th, 2002 -- you were
24 especially busy.

25 Isn't that correct?

1 MR. FLEWELLING: That is correct.

2 MR. FOTHERGILL: So again without
3 giving us operational information, can you give us
4 a sense of what it was specifically that made you
5 so busy during that period?

6 MR. FLEWELLING: I had a major
7 project that was going on at that time outside the
8 country.

9 MR. FOTHERGILL: Can you give us a
10 sense of how much of your time that other project
11 consumed during that period?

12 MR. FLEWELLING: During that time,
13 it was deemed to be a priority.

14 MR. FOTHERGILL: A priority over
15 Project A-OCANADA?

16 MR. FLEWELLING: Yes, for that
17 short duration of time.

18 MR. FOTHERGILL: I don't know if
19 this is a fair way to characterize it, but can you
20 try to give us a sense of how much of your time as
21 a proportion was devoted to this other project
22 that was considered to be a priority?

23 MR. FLEWELLING: I was going to
24 say somewhere upwards of 75 to 80 per cent.

25 MR. FOTHERGILL: I would like to

1 ask you a few questions about the telephone calls
2 you had with the U.S. Embassy representative
3 during this period.

4 I think you have told us --
5 actually, let me approach this slightly
6 differently.

7 Mr. Waldman referred you to
8 Guantanamo Bay.

9 MR. FLEWELLING: Yes.

10 MR. FOTHERGILL: As perhaps an
11 event that might inform your conversations with
12 the American officials. Do you recall that?

13 MR. FLEWELLING: Yes, I do.

14 MR. FOTHERGILL: Did you make any
15 connection between what was happening to Mr. Arar
16 and what had happened to the detainees at
17 Guantanamo Bay?

18 MR. FLEWELLING: I considered
19 those to be totally two and distinct -- or two
20 separate and distinct issues. One involved
21 military law and one that involved U.S. law within
22 the continental United States.

23 MR. FOTHERGILL: So before
24 Mr. Arar, had you ever been involved in a case
25 where somebody had tried to enter the United

1 States from Canada and had been stopped due to
2 suspicions of terrorism?

3 MR. FLEWELLING: Yes, prior to
4 September 11th, I dealt with the Ressam file.

5 MR. FOTHERGILL: I think this is a
6 fairly publicly known file, but again I'm going to
7 have to caution you. Without giving us
8 operational information that isn't already in the
9 public domain, can you tell us approximately what
10 the situation was with Mr. Ressam?

11 MR. FLEWELLING: Mr. Ressam was
12 arrested by U.S. officials trying to enter into
13 the United States in Washington State, was
14 subsequently detained for some period of time
15 before being charged with terrorist-related
16 offences.

17 MR. FOTHERGILL: Do you recall
18 whether Mr. Ressam was a citizen of a country
19 other than Canada?

20 MR. FLEWELLING: Yes, he was.

21 MR. FOTHERGILL: Do you recall
22 what that country was?

23 MR. FLEWELLING: I believe it's
24 Algeria.

25 MR. FOTHERGILL: And do you know

1 whether Mr. Ressam was ever sent by the Americans
2 to Algeria for questioning?

3 MR. FLEWELLING: No, he was not.

4 MR. FOTHERGILL: Do you know how
5 long it was, approximately, before Mr. Ressam's
6 legal status in the United States was resolved?

7 MR. FLEWELLING: It's my
8 understanding it was only recently that he was
9 convicted and sentenced in the United States.

10 MR. FOTHERGILL: So it's something
11 that took a fair amount of time to resolve?

12 MR. FLEWELLING: Let's see. We
13 are 2005. I would daresay four, four and a half
14 years.

15 MR. FOTHERGILL: So prior to
16 Mr. Arar's circumstances, had you ever encountered
17 any other situation that was similar to what
18 subsequently transpired with him?

19 MR. FLEWELLING: No.

20 MR. FOTHERGILL: I want to ask you
21 a few questions about your relationship with the
22 U.S. Embassy representative with whom you spoke on
23 October 4th and again on October 5th.

24 Now, obviously you can't tell us
25 his name and you can't tell us the organization

1 with which he was affiliated beyond the fact that
2 he worked in the U.S. Embassy. But bearing those
3 constraints in mind, can you give us some sense of
4 what his function was within the U.S. Embassy?

5 MR. FLEWELLING: I deemed his to
6 be very similar in nature to the position that I
7 held, in that we were required to process
8 information, acquire information, and then
9 disseminate it.

10 MR. FOTHERGILL: Can you comment
11 on his approximate seniority within the
12 organization? Was it comparable to yours or was
13 he senior or junior?

14 MR. FLEWELLING: What I know of
15 the organization's structure, I believe that it
16 would be similar to my position.

17 MR. FOTHERGILL: And had you dealt
18 with him before?

19 MR. FLEWELLING: Quite frequently
20 over the past year.

21 MR. FOTHERGILL: In relation just
22 to Project A-OCANADA or in relation to all
23 projects --

24 MR. FLEWELLING: Oh, numerous.

25 MR. FOTHERGILL: Pardon?

1 MR. FLEWELLING: Numerous.

2 MR. FOTHERGILL: Numerous. How
3 would you categorize your working relationship
4 with this individual?

5 MR. FLEWELLING: I thought that we
6 had a very good working relationship in that much
7 of our exchange I found him to be open, honest and
8 straightforward. We relied on one another in many
9 cases.

10 MR. FOTHERGILL: If I can address
11 your attention to the October 4th telephone call,
12 this is the one that you took when you were
13 already set to leave the office and then the phone
14 rang, as I understand it.

15 I think you have told us that
16 there was a discussion about the possibility that
17 Mr. Arar might be sent to Switzerland, and you
18 also raised the possibility that he might come to
19 Canada.

20 MR. FLEWELLING: Yes.

21 MR. FOTHERGILL: My question is:
22 Was there ever any discussion in that telephone
23 call about the possibility that the United States
24 might send Mr. Arar directly to Syria?

25 MR. FLEWELLING: No. In any of my

1 conversations, it was never brought up.

2 MR. FOTHERGILL: I think
3 Mr. Cavalluzzo established in his questions with
4 you that the Canadian Department of Foreign
5 Affairs managed to arrange a consular visit with
6 Mr. Arar on October 3rd.

7 MR. FLEWELLING: Yes.

8 MR. FOTHERGILL: Do you know
9 whether you were aware of that at the time of your
10 calls on October 4th or 5th?

11 MR. FLEWELLING: I don't know if I
12 was absolutely aware at the time. Unfortunately,
13 as a result of preparing and so on and so forth, I
14 do know. But I think it was reasonable to assume,
15 where DFAIT was involved, that he had access to
16 consular visits.

17 MR. FOTHERGILL: Did you know at
18 that time whether Mr. Arar had been able to retain
19 a lawyer in the United States?

20 MR. FLEWELLING: It was my
21 understanding, through a discussion with A-OCANADA
22 investigators, that arrangements were being made
23 for him to acquire legal representation in New
24 York.

25 MR. FOTHERGILL: And you have

1 mentioned -- I think we have heard it variously
2 referred to as a hearing or even deportation
3 court. I think your e-mail refers to it as a
4 trial of some kind for October 9th?

5 MR. FLEWELLING: Yes.

6 MR. FOTHERGILL: I would like you
7 to convey to us, if you can, precisely what you
8 understood that hearing to entail.

9 MR. FLEWELLING: I understood that
10 that hearing would be somewhat similar to what we
11 have here in Canada in that it would be a hearing
12 to determine his stature and what they were going
13 to do based on whatever evidence that was
14 presented. I figured that it would be something
15 whereby if there was any objections, that there
16 would be an appeal process in place that an appeal
17 could be made.

18 MR. FOTHERGILL: I'm going to try
19 and break it down a little bit more closely.

20 Did you expect that Mr. Arar would
21 attend this hearing?

22 MR. FLEWELLING: Yes, absolutely.

23 MR. FOTHERGILL: Did you think
24 that his lawyer would attend the hearing?

25 MR. FLEWELLING: Yes.

1 MR. FOTHERGILL: Did you think
2 that consular affairs would have the opportunity
3 to monitor the hearing?

4 MR. FLEWELLING: Absolutely.
5 That's their mandate.

6 MR. FOTHERGILL: And I think you
7 have answered this. If Mr. Arar was dissatisfied
8 with the outcome of the hearing, did you think
9 that he would have the opportunity to do anything
10 about it?

11 MR. FLEWELLING: Absolutely. I
12 figured that he would have several avenues of
13 appeal open to him. If it's anything like our
14 Canadian immigration system, he would have ample
15 opportunity to voice his objections.

16 MR. FOTHERGILL: Did you have a
17 sense at that time how long it would take to
18 resolve Mr. Arar's status in the United States?

19 MR. FLEWELLING: If it was going
20 to be going that route, it could be some time. So
21 I felt there was going to be a decision made or
22 rendered on the 9th or it was going to take some
23 time.

24 MR. FOTHERGILL: On the October
25 5th telephone call with the U.S. Embassy

1 representative, am I right in saying that he
2 reported to you that Mr. Arar had indicated a
3 preference to come to Canada?

4 MR. FLEWELLING: Yes.

5 MR. FOTHERGILL: At that time, did
6 you think that Mr. Arar had some say in where he
7 would be sent?

8 MR. FLEWELLING: My understanding
9 was that he did.

10 MR. FOTHERGILL: And in the same
11 telephone call the U.S. Embassy representative
12 asked you something about whether Mr. Arar could
13 in fact return to Canada, and I would like to
14 refer you to two documents that others have
15 already referred you to.

16 The first is your notes, Exhibit
17 P-211, page 39.

18 This is your note for Saturday,
19 October 5th of 2002, at 1810 or 6:10 in the
20 evening.

21 MR. FLEWELLING: Yes.

22 MR. FOTHERGILL: And there you
23 wrote, at the bottom of the first full paragraph:

24 "Can the RCMP refuse Arar's
25 entry into Canada?"

1 Do you see that?

2 MR. FLEWELLING: Yes.

3 MR. FOTHERGILL: Can I ask you now
4 to refer to what has been marked as Exhibit P-227.
5 This is your e-mail message to, I believe,
6 Mr. Callaghan and I think we are dating this
7 either October 6 or October 7. It's probably
8 October 6.

9 MR. FLEWELLING: Yes.

10 MR. FOTHERGILL: And could you
11 just read to us the final two lines of the second
12 paragraph, "Would like to know," after the
13 redacted portion.

14 MR. FLEWELLING: "Would like to
15 know if we have any
16 objections or laws that would
17 prevent Canada from accepting
18 him into the country."

19 MR. FOTHERGILL: So in your notes
20 we have the language can the RCMP refuse Arar's
21 entry into Canada, and in your e-mail record of
22 the same conversation you say they want to know if
23 we have any objections or laws that would prevent
24 Canada from accepting him into the country.

25 So with reference to either of

1 these documents, can you recreate for us as
2 precisely as possible the wording of the question
3 asked by the American official?

4 --- Pause

5 MR. FLEWELLING: I don't know if I
6 have a precise answer for you, other than to say
7 is I don't know as I would have used that language
8 unless it came up somewhere along the line.

9 MR. FOTHERGILL: And when you say
10 that, are you referring to your notes or to the
11 e-mail or to both?

12 MR. FLEWELLING: My recollection.

13 MR. FOTHERGILL: All right. So
14 between these two accounts of the same
15 conversation, you are unable to choose between
16 them?

17 MR. FLEWELLING: No, other than
18 the way I perhaps perceived the way they were
19 looking at it.

20 MR. FOTHERGILL: I'm just going to
21 finish with a couple of points raised by
22 Mr. Waldman in his questioning.

23 I'm hoping you can clarify for us
24 your entry in your notes at pages 21 and 22 that
25 Mr. Waldman took you to.

1 MR. FLEWELLING: Yes.

2 MR. FOTHERGILL: Just to give you
3 the context, this is the portion of the notes that
4 Mr. Waldman suggested might indicate that somebody
5 thought it might be consistent with the
6 preventative mandate to leave a detainee in a
7 foreign country rather than bring them home.

8 Do you recall that discussion with
9 Mr. Waldman?

10 MR. FLEWELLING: Yes.

11 MR. FOTHERGILL: If we look at
12 page 21 of your notes, at the bottom, you have the
13 entry "questions, intel versus criminal".

14 MR. FLEWELLING: Yes.

15 MR. FOTHERGILL: Can you explain
16 that particular entry for us?

17 MR. FLEWELLING: If memory serves
18 me correctly and the individual we are talking
19 about, it was how do we want to approach to go and
20 meet the individual and how we were going to
21 approach an interview process; whether we were
22 going to go by way of trying to solicit the
23 information and be satisfied with the intelligence
24 side of things or whether or not we were going to
25 try and recreate the Canadian system when we went

1 to go see him. In other words, afford him his
2 full Charter of Rights under the Canadian system.

3 MR. FOTHERGILL: So if you were
4 unable to gain access to the individual to
5 question him yourself, and if instead questions
6 were submitted, for the sake of argument, for a
7 foreign authority to ask the individual, would
8 that make a difference to you concerning the
9 subsequent use?

10 MR. FLEWELLING: If we forwarded
11 the questions to a foreign agency to ask
12 questions?

13 MR. FOTHERGILL: Yes.

14 MR. FLEWELLING: Yes.

15 MR. FOTHERGILL: Over the page
16 then, at the bottom of page 22, you wrote:

17 "We may have to take and be
18 satisfied --"

19 Correct me if I'm reading this
20 incorrectly.

21 "We may have to take and be
22 satisfied with the prevention
23 side of the mandate and hope
24 that additional information
25 can be gleaned with respect

1 to --"

2 And then you identify a number of
3 things.

4 MR. FLEWELLING: Yes.

5 MR. FOTHERGILL: Can you assist us
6 in understanding what is meant here by the need to
7 be satisfied with the prevention side of the
8 mandate? As opposed to what?

9 MR. FLEWELLING: As opposed to
10 going after either a criminal, or information that
11 would assist us in supporting criminal charges;
12 that it may have been prudent at that time to be
13 satisfied to solicit information in order to
14 prevent a furtherance of any real attack or
15 anything of that nature.

16 MR. FOTHERGILL: Do you agree with
17 Mr. Waldman's supposition that these notes reflect
18 a discussion where somebody says it might assist
19 the preventative mandate to leave somebody
20 detained rather than bring them back to Canada?

21 MR. FLEWELLING: Sorry, go again?

22 MR. FOTHERGILL: Do you agree with
23 Mr. Waldman's supposition, his interpretation of
24 your notes, that they reflect a conversation where
25 somebody said it would assist the prevention

1 mandate if we left the detainee in a foreign
2 country rather than bringing them home?

3 --- Pause

4 MR. FLEWELLING: Sorry. I don't
5 know if I understand the question.

6 MR. FOTHERGILL: I'm sorry. It
7 may be somewhat complicated.

8 MR. FLEWELLING: It's late in the
9 day.

10 MR. FOTHERGILL: I will try and
11 break it down.

12 Do you recall Mr. Waldman
13 suggested to you that these notes recorded a
14 conversation or discussion where somebody
15 suggested that the preventative mandate of the
16 police might be best served by leaving a detainee
17 in a foreign country rather than bringing them
18 home?

19 MR. FLEWELLING: Yes, I recall
20 that.

21 MR. FOTHERGILL: Do you agree that
22 that is what these notes reflect?

23 MR. FLEWELLING: It's very hard
24 for me to be definitive in my answer. But, no,
25 none of us were really looking at that as being a

1 concrete option.

2 MR. FOTHERGILL: I would like to
3 conclude with a reference to Exhibit P-116. This
4 is the news article that Mr. Waldman referred you
5 to.

6 You will recall that Mr. Waldman
7 suggested that what was recounted in this news
8 article sounded a bit like your conversation with
9 the American official, and then he asked you if
10 you were in fact the source for the journalist's
11 article.

12 Do you recall that?

13 MR. FLEWELLING: Yes, I do.

14 MR. FOTHERGILL: The opening
15 paragraph reads:

16 "U.S. officials seized Maher
17 Arar when he was changing
18 planes in New York last year
19 and sent him to Syria because
20 Canada would not guarantee he
21 would be detained when he
22 returned to Ottawa."

23 That's the opening paragraph.

24 MR. FLEWELLING: Yes.

25 MR. FOTHERGILL: And I'm wondering

1 if you can tell us whether at any time any U.S.
2 official said to you that Mr. Arar would be
3 returned to Canada if only we would guarantee that
4 he would be detained when he got here?

5 MR. FLEWELLING: Not to my
6 knowledge. That was never on the table. It was
7 never discussed.

8 MR. FOTHERGILL: And then if we
9 continue in the news article, we come to a
10 paragraph which begins with a quotation, "Then
11 they said to the Canadians."

12 Do you see that?

13 MR. FLEWELLING: Sorry, how far
14 down again, sorry?

15 MR. FOTHERGILL: It's probably
16 two-thirds of the way down the left-hand column?

17 MR. FLEWELLING: Yes.

18 MR. FOTHERGILL: The quotation
19 attributed to somebody who apparently is in the
20 know is:

21 "If we transfer that man to
22 you, can you give us the
23 assurance that you will lay
24 charges against him? And the
25 Canadian police told them,

1 no, we don't have anything to
2 lay charges against him. We
3 can't bring any charges."

4 It's really the first portion I'm
5 interested in. Did any American official say to
6 you if we transfer the man to you, can you give us
7 the assurance that you will lay charges against
8 him?

9 MR. FLEWELLING: No. That was
10 never brought up.

11 MR. FOTHERGILL: Thank you. Those
12 are my questions.

13 THE COMMISSIONER: Mr. Cavalluzzo?

14 EXAMINATION

15 MR. CAVALLUZZO: Sergeant
16 Flewelling, just a couple of questions in
17 re-examination.

18 Mr. Boxall, throughout his
19 questioning in terms of sharing information with
20 foreign agencies, kept referring to the threat of
21 Canadians losing their lives and basically most of
22 his questions were premised on that idea, that
23 Canadians would lose their lives. And of course
24 no one wants that.

25 But let's just deal with the world

1 as it existed at the material time with A-OCANADA.

2 I understand that A-OCANADA, at
3 most, had two targets. One was Mr. Almalki; is
4 that correct?

5 MR. FOTHERGILL: Commissioner, we
6 are not prepared to acknowledge in this forum the
7 precise number of targets of Project A-OCANADA.
8 Two have been confirmed, but beyond that, I would
9 assert a claim of NSC.

10 MR. CAVALLUZZO: Okay.

11 There were two targets that we
12 have heard about.

13 Mr. Almalki. Where was
14 Mr. Almalki after November of 2001? I understand
15 that he had left Canada.

16 MR. FLEWELLING: I believe so.

17 MR. CAVALLUZZO: And I understand,
18 in fact the public record is Mr. Almalki did not
19 return to Canada until August of 2004.

20 MR. FLEWELLING: I will take your
21 word for it.

22 MR. CAVALLUZZO: Okay. The other
23 target that we have heard about is Mr. El Maati.
24 I understand that Mr. El Maati left Canada in
25 November of 2001.

1 MR. FLEWELLING: I believe
2 thereabouts.

3 MR. CAVALLUZZO: And I understand
4 that Mr. El Maati returned to Canada in March of
5 2004.

6 MR. FLEWELLING: Again, I will
7 take your word for it.

8 MR. CAVALLUZZO: So that is the
9 real context that we are dealing with with
10 A-OCANADA. Now I would like to ask you some
11 questions relating to that.

12 The RCMP policy in respect of
13 caveats in respect of the sharing of information,
14 and so on, deals with a number of interests other
15 than quick sharing of information. Isn't that
16 correct?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: The RCMP policy
19 is concerned about the sharing of and protecting
20 personal information. Isn't that correct?

21 MR. FLEWELLING: Yes.

22 MR. CAVALLUZZO: The RCMP policy
23 is concerned about the Privacy Act?

24 MR. FLEWELLING: Yes.

25 MR. CAVALLUZZO: The RCMP policy

1 is concerned about human rights?

2 MR. FLEWELLING: Definitely.

3 MR. CAVALLUZZO: And the RCMP
4 policy in respect of dealings with countries with
5 poor human rights records is very restrictive in
6 terms of what you can do with those countries.
7 Isn't that correct?

8 MR. FLEWELLING: There is
9 definitely a structure upon which one has to deal
10 with.

11 MR. CAVALLUZZO: So that there are
12 other considerations other than "Let's quickly
13 share the information". Isn't that correct?

14 MR. FLEWELLING: Yes.

15 MR. CAVALLUZZO: In terms of the
16 real world, there was, it seems to me, one time at
17 which the Americans wanted information on an
18 urgent basis that I can find in the record, and
19 that is on October the 3rd; correct?

20 When you got that message late in
21 the afternoon, and it was a she -- it was a
22 she-American. That is as far as we can go,
23 unfortunately, in this proceeding. She wanted
24 information urgently, basically to support
25 criminal charges in respect of Mr. Arar; correct?

1 MR. FLEWELLING: Yes.

2 MR. CAVALLUZZO: So that that was
3 an urgent need. You sent it to A-OCANADA?

4 MR. FLEWELLING: Yes.

5 MR. CAVALLUZZO: A-OCANADA did
6 their homework, got the information, and sent it
7 through head office to the Americans. Isn't that
8 correct?

9 MR. FLEWELLING: Yes.

10 MR. CAVALLUZZO: And on that
11 occasion, they used a caveat, didn't they?

12 MR. FLEWELLING: Yes. I
13 believe -- oh, sorry. The response to the
14 questions? Yes.

15 MR. CAVALLUZZO: On that occasion
16 they used a caveat?

17 MR. FLEWELLING: Yes.

18 MR. CAVALLUZZO: And all a caveat
19 is is a stamp.

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: It doesn't take a
22 lot of time.

23 MR. FLEWELLING: No.

24 MR. CAVALLUZZO: You were asked a
25 question by Mr. Boxall saying well, wouldn't it

1 have been all right if the Americans had sent a
2 letter saying, "We will abide by the caveats with
3 respect to the information that you have sent us."
4 And it seemed to be the idea being that that would
5 be appropriate in the circumstances.

6 MR. FLEWELLING: Of taking it in
7 the context that there would be that written
8 agreement on how to share that information and
9 deal with it.

10 MR. CAVALLUZZO: Okay. If we get
11 that letter in respect of, hypothetically
12 speaking, the data dump, that may be all right in
13 respect of how they are going to use the
14 information, but there are other problems, aren't
15 there, that that doesn't deal with?

16 First of all, would that letter
17 deal with your obligation or the RCMP's obligation
18 to ensure that there is a need to know, that
19 personal information is protected, and that no
20 national security information is given that
21 shouldn't be?

22 MR. FLEWELLING: Yes.

23 MR. CAVALLUZZO: It would deal
24 with that?

25 MR. FLEWELLING: Oh. I think that

1 you would still have to ensure that that is all
2 looked after and respected.

3 MR. CAVALLUZZO: Okay. So you
4 would still have to do that, even if you had that
5 letter. Isn't that correct?

6 MR. FLEWELLING: I believe that
7 that should be scrutinized for those types of
8 things, yes.

9 MR. CAVALLUZZO: And as well, if
10 any information in the data dump was from another
11 agency that had caveated that information, just
12 because the Americans had sent this letter of
13 approval or saying we are going to follow the
14 caveats, would not give the RCMP the permission to
15 release that information without getting the
16 consent?

17 MR. FLEWELLING: Unless they were
18 involved in that mutual agreement.

19 MR. CAVALLUZZO: Right. And in
20 looking at that mutual agreement, if we look at
21 your e-mail to Callaghan on October 6th, Sunday,
22 October 6th, after that phone call, one of your
23 concerns you expressed was did we get in touch
24 with the CSIS representative; right?

25 MR. FLEWELLING: That's correct.

1 MR. CAVALLUZZO: And your concern
2 there was that maybe some information may have
3 been released without CSIS' consent?

4 MR. FLEWELLING: Yes. I wanted to
5 ensure that they were approached, or that they
6 were notified, or that they were aware.

7 MR. CAVALLUZZO: So that even if
8 CSIS was one of these partner agencies, the fact
9 is you still had to get their consent if you were
10 going to share information that they had caveated.

11 Isn't that correct?

12 MR. FLEWELLING: Yes.

13 MR. CAVALLUZZO: You were asked
14 certain questions relating to Mr. Proulx's
15 attendance at this meeting with all these partners
16 shortly after 2001, and you were asked whether you
17 were given anything in writing that the policy
18 still applied.

19 The question I would have is: The
20 policies are in writing. Isn't that correct?

21 MR. FLEWELLING: Yes, they are
22 existing.

23 MR. CAVALLUZZO: They are
24 existing. They were never changed?

25 MR. FLEWELLING: I was referring

1 or I thought that it referred to any written
2 instruction that was different than the existing
3 policy.

4 MR. CAVALLUZZO: And what you are
5 saying is there was no written policy that caveats
6 are down, free flow of information, forget about
7 human rights, forget about personal information
8 and so on; nothing like that?

9 MR. FLEWELLING: Like I said, I
10 didn't see anything in writing that suggested
11 caveats were down.

12 MR. CAVALLUZZO: I just want to
13 clarify in my own mind something that is very
14 important that you said, and that is that you said
15 that the situation reports were going to the
16 Americans.

17 We are aware that some situation
18 reports went to the Americans in respect of the
19 data dump.

20 MR. FLEWELLING: Yes.

21 MR. CAVALLUZZO: Now, I was not
22 aware that situation reports were going
23 automatically to the Americans whenever they were
24 created by Project A-OCANADA.

25 Are you sure of that?

1 MR. FLEWELLING: Am I absolutely
2 sure that they were going down? It was my
3 understanding that there were a few. I know that
4 there were a few from Toronto that were going
5 down, and then at that point we ended up
6 soliciting that information and putting together
7 reports, vetting them, sanitizing them, and then
8 at that point, I would say probably sometime in
9 December, those were being shared.

10 MR. CAVALLUZZO: But the question
11 that I have is were the American agencies -- and
12 you need not name them. Were the American
13 agencies getting the situation reps, the SITREPs,
14 on a regular basis like CID was, or were they
15 getting -- periodically they would get ones that
16 may be of interest to them?

17 MR. FLEWELLING: I can't honestly
18 answer that.

19 MR. CAVALLUZZO: Okay. Would it
20 surprise you to know that the evidence that we
21 have heard so far is that the Americans were not
22 getting the situation reps on a regular basis,
23 like CID?

24 MR. FLEWELLING: That they were
25 not?

1 MR. CAVALLUZZO: Were not.

2 MR. FLEWELLING: Would it surprise
3 me?

4 MR. CAVALLUZZO: Yes.

5 MR. FLEWELLING: No, not
6 necessarily.

7 MR. CAVALLUZZO: Just a couple of
8 final questions regarding some questions of
9 Mr. Fothergill.

10 In terms of the Ressam case there
11 is a crucial difference there, isn't there,
12 between that and Mr. Arar's case? And that is in
13 the Ressam case, they had sufficient evidence to
14 criminally charge and convict Mr. Ressam?

15 MR. FLEWELLING: He was a much
16 greater threat.

17 MR. CAVALLUZZO: Just two final
18 questions.

19 You told Mr. Fothergill that you
20 were under the impression, as of October the 8th,
21 that the process relating to Mr. Arar was going to
22 take a long time in the United States before
23 anything happened to him.

24 MR. FLEWELLING: No, that that
25 might be a possibility in the back of my mind.

1 MR. CAVALLUZZO: Right. But
2 certainly as far as A-OCANADA is concerned, they
3 thought it was going to happen quickly because
4 they were setting up surveillance teams --

5 MR. FLEWELLING: Yes.

6 MR. CAVALLUZZO: -- on October the
7 9th. So they knew something was going to happen
8 like that, at least they thought something was
9 going to happen.

10 MR. FLEWELLING: Actually I shared
11 the same thought, but also in the back of my mind
12 knowing immigration --

13 MR. CAVALLUZZO: But it was way
14 back in your mind because I hope we are not
15 wasting taxpayers' dollars by setting up
16 surveillance teams on a remote possibility.

17 MR. FLEWELLING: I would share
18 that.

19 MR. CAVALLUZZO: And finally, in
20 regard to the handwritten notes you took on
21 October 5th, and your e-mail of October the 6th,
22 if you can help us, I assume that the notes of the
23 telephone call on October the 5th, that you made
24 those notes right after the telephone
25 conversation?

1 MR. FLEWELLING: October the 5th,
2 yes.

3 MR. CAVALLUZZO: You did. Thank
4 you. I have no further questions.

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

7 That completes your evidence,
8 Sergeant. Let me thank you for the time and
9 effort -- it has been a long day and a half -- and
10 the very patient way that you have answered the
11 questions. I appreciate the time and effort you
12 put into it.

13 MR. FLEWELLING: Thank you.

14 THE COMMISSIONER: Thank you very
15 much.

16 I will just say a couple things to
17 the group and then we might take a short break.

18 There are three further witnesses
19 scheduled. They are each relatively short. It
20 would be my preference, if possible, to complete
21 them today, so that we stick to our schedule this
22 week. The estimate I have from counsel is that if
23 we are going to do that, it is probably going to
24 take us until 6:30 to do it. I'm prepared to do
25 it.

1 During this break, if any of the
2 people who are essential to this carrying on have
3 other thoughts or other difficulties, could they
4 please speak to Commission counsel. And I include
5 in that the interpreters, the sound people, the
6 people who operate the cameras, and counsel.

7 We will go as long as we can and
8 hopefully be able to complete these witnesses.

9 So right now we will take a
10 10-minute break, and we will resume then.

11 MR. FOTHERGILL: Commissioner,
12 before we rise, may I raise one issue that
13 pertains to the third of our three remaining
14 witnesses, Mr. Lauzon?

15 THE COMMISSIONER: Yes.

16 MR. FOTHERGILL: I have discussed
17 with Commission counsel a concern that he has,
18 which is that he will shortly be embarking on an
19 undercover operation and he doesn't wish his image
20 to be publicized.

21 There's no objection to his name
22 being broadcast or his voice or his words, but we
23 do not wish his image to be broadcast, or for him
24 to be photographed, and I understand that
25 arrangements have been made with the television

1 crew, but I'm wondering if a direction from you
2 could be made respecting the still photography?

3 THE COMMISSIONER: Right. Does
4 anybody else have other submissions with respect
5 to that?

6 The request, just so that we're
7 clear, as I understand it, Mr. Fothergill, is that
8 there be no photographs taken of this witness
9 because of the undercover concern.

10 But his evidence will be given in
11 public, his name would be known, it would simply
12 be no publication of his pictures?

13 Anybody else have any submissions
14 as to why that shouldn't happen?

15 Okay. No, I think it makes sense,
16 and I think it's a reasonable approach to the
17 issue, Mr. Fothergill, so that I will direct that
18 there be no photographs taken of this witness,
19 either in the hearing room or as he approaches the
20 hearing room, and I'm sure with cooperation that
21 shouldn't be a difficulty.

22 Go ahead. Yes, Mr. Cavalluzzo?

23 MR. CAVALLUZZO: One other aspect,
24 and that is, if this proceeding is being
25 televised, that the camera will not project his

1 image so that the camera would be on you rather
2 than the witness throughout the questioning?

3 --- Laughter / Rires

4 THE COMMISSIONER: Especially late
5 in the day, that's dangerous.

6 MR. CAVALLUZZO: That should be
7 part of the order as well.

8 THE COMMISSIONER: Okay.

9 --- Laughter / Rires

10 THE COMMISSIONER: I didn't hear
11 the last comment. I'm not sure I want to. Okay.
12 We'll rise for ten minutes.

13 THE REGISTRAR: Please stand.

14 --- Upon recessing at 4:20 p.m. /

15 Suspension à 16 h 20

16 --- Upon resuming at 4:28 p.m. /

17 Reprise à 16 h 28

18 THE COMMISSIONER: Good afternoon,
19 Senator.

20 TECHNICIAN: Mr. Commissioner, I
21 just want to ensure the system is working
22 properly.

23 THE COMMISSIONER: Okay. We
24 should be on number two. Is that right?

25 TECHNICIAN: Yes.

1 THE COMMISSIONER: All right.

2 Thank you.

3 Mr. David?

4 PREVIOUSLY SWORN: PIERRE DE BANÉ

5 EXAMINATION

6 MR. DAVID: Good afternoon, Mr.

7 Commissioner.

8 We once again have the pleasure of
9 having with us Senator De Bané. The Senator is
10 here essentially to clarify one point in his
11 testimony, Mr. Commissioner.

12 I would remind you that the
13 Senator has already testified before you, on June
14 1 this year, and gave exhaustive testimony.

15 We simply need to go over one
16 point, as I said.

17 Senator, let me remind you that
18 when you testified on June 1, you revealed that
19 you had been present at a meeting in the offices
20 of the Department of Foreign Affairs on July 11,
21 2003 in preparation for your trip, one of your
22 stops being in Syria to deliver a letter signed by
23 our Prime Minister to the President of Syria
24 concerning Mr. Arar.

25 This is the context in which I

1 would briefly like to review one aspect of your
2 testimony.

3 At the time, you explained to the
4 Commissioner that Mr. Pardy, who chaired that
5 meeting in preparation for your trip, had made a
6 revelation.

7 Your testimony - and it has been
8 revisited three times, once in examination-in-
9 chief, then in the questions put by Mr. Waldman
10 and Mr. Baxter.

11 It concerns information that Mr.
12 Pardy imparted to you to the effect, more or less,
13 that the RCMP had received a call from a US agency
14 while Mr. Arar was detained in the United States,
15 as you understood it.

16 The Americans were allegedly
17 wondering, or were asking the RCMP: "Are you in a
18 position to arrest or to charge and detain Mr.
19 Arar?"

20 You explained exactly what Mr.
21 Pardy had said in that connection.

22 We all understood from your
23 testimony, Senator, that essentially the RCMP had
24 replied, had answered that because they had
25 insufficient evidence they would not be able to go

1 along with such a scenario or accede to such a
2 request from the Americans.

3 Does that fairly reflect your
4 testimony of June 1, 2005?

5 HON. PIERRE DE BANÉ: Indeed so.
6 That's it exactly.

7 And that information had struck me
8 so forcefully that when you asked me: "What do you
9 recall of the briefing that you had?" that's the
10 point that stood out most strongly in my mind.

11 MR. DAVID: Thank you.

12 I will refer you to - there's no
13 need to turn to the page in question - but on page
14 4611 of your testimony, I asked you: "Senator, did
15 you take notes, personal notes during that
16 meeting?"

17 You replied as follows: "Yes, I
18 did take notes. Unfortunately, I have been unable
19 to trace the notebook in which I took those
20 notes."

21 That was your testimony of June 1,
22 2005.

23 Would you tell us, in the light of
24 your testimony of June 1, what happened and what
25 you did?

1 HON. PIERRE DE BANÉ: Gladly.

2 Well, first, over the course of
3 the year before I appeared, I had several meetings
4 with my lawyer in my Senate office to discuss my
5 involvement in this matter.

6 And naturally, I have in my Senate
7 office a filing system that is very, very
8 comprehensive.

9 And I said to him: "I've been
10 looking for these papers, but with no luck."
11 Because I remember as clearly as if it were
12 yesterday that I had had a notebook. I had taken
13 notes throughout - during the entire meeting. But
14 I said: "I can't find my notebook."

15 And that's why when you asked me:
16 "Did you take notes?" I said: "Absolutely, I did
17 take notes."

18 When you asked me: "Where are
19 these notes?" I told you: "Unfortunately, I have
20 searched my Senate office in vain, and I cannot
21 find my notes."

22 When I was giving my testimony, my
23 wife, Élisabeth(ph), was in attendance, and she
24 said to herself: "When he was there it was summer;
25 Parliament was not in session, so maybe the papers

1 are at home."

2 That took me by surprise, because
3 I had not even thought of looking at home.

4 That evening, as we were heading
5 home, I listened to the news on the radio, and
6 someone in authority was casting doubt on the
7 veracity of what I had said, the accuracy of my
8 recollection, and so on.

9 Then we arrived home, and
10 Élisabeth(ph) didn't say anything to me, but she
11 searched the house, because she knew it very well.

12 And so the next morning at seven
13 o'clock she said: "There you are, I've found your
14 notes."

15 I looked and said: "That's exactly
16 it."

17 MR. DAVID: So, it was the next
18 day, June 2 --

19 HON. PIERRE DE BANÉ: June 2, at
20 seven in the morning.

21 MR. DAVID: -- when you found your
22 notebook --

23 HON. PIERRE DE BANÉ: Absolutely,
24 absolutely.

25 MR. DAVID: And you found - you

1 were able to locate the notes you had taken --

2 HON. PIERRE DE BANÉ: Exactly.

3 MR. DAVID: -- at your briefing
4 with Mr. Pardy.

5 HON. PIERRE DE BANÉ: Exactly.

6 And most of those notes,
7 obviously, I had forgotten. But the most
8 important thing, which remained fresh in my memory
9 - there were two points - what I had been told on
10 this matter, on my "talking points" with the
11 Syrian Deputy Minister of Foreign Affairs, since I
12 had myself written out the arguments that I
13 intended to develop with him.

14 Because, as we say in English, "I
15 knew I would have only one kick at the can, I'd
16 better do it right to win his release."

17 MR. DAVID: So, with your
18 permission, Senator, at this point we will file an
19 excerpt, a photocopy, from your notes.

20 Mr. Commissioner, I can tell you
21 that your counsel have read and reviewed the
22 Senator's notes in full, and we have identified
23 five pages which we deem relevant to your mandate.

24 I would therefore like to file the
25 Senator's notes at this point.

1 EXHIBIT P-229: Notes of the
2 Hon. Pierre De Bané
3 THE COMMISSIONER: Two
4 twenty-nine (229).

5 MR. DAVID: Thank you.
6 Senator, if I may refer you to
7 page 19 of 34.

8 This is actually the excerpt, I
9 believe, that is most relevant to the testimony
10 you have already given.

11 Would you please read the first
12 paragraph?

13 HON. PIERRE DE BANÉ: Gladly. But
14 if you don't mind, just one sentence.

15 MR. DAVID: Yes.

16 HON. PIERRE DE BANÉ: So, my wife
17 found it at seven in the morning. At eight
18 o'clock I phoned a senior counsel in the Justice
19 Department and said: "We've just found the
20 document," and he said: "Perfect. We can get
21 together and discuss it at about nine thirty."

22 And then I immediately called the
23 Senate's legal counsel and said: "Look, I've just
24 found these documents. Please come to my office."

25 And so we held a conference with

1 the lawyer from the Justice Department at which,
2 obviously, I told him all about it. There you
3 have it.

4 Thus, having found the documents,
5 I waited until eight, an hour later, to make my
6 calls. That is what happened.

7 Now, if I may read from page 19, I
8 said:

9 "(A certain US agency) asked
10 the RCMP: 'If we hand him
11 over, can you keep him in
12 custody?' and the RCMP said
13 no."

14 And so - and the other sentence
15 that really took me aback is this one:

16 "CSIS allegedly told the
17 Syrians to keep him."

18 "Keep Mr. Arar."

19 So there are two statements which
20 I heard, obviously, which - which are in my notes
21 and which --

22 I had forgotten the second one.
23 That's why I did not mention it in my testimony.

24 But the first one took me aback
25 when I heard it.

1 MR. DAVID: To keep the record
2 quite clear, Senator, these were obviously notes
3 you had taken, verbatim, uttered by Mr. Pardy?

4 HON. PIERRE DE BANÉ: Yes, yes,
5 yes. Exactly.

6 MR. DAVID: Thank you, sir.

7 HON. PIERRE DE BANÉ: I jotted down
8 what I heard, I took --

9 The greater part of the briefing
10 dealt with the Sampson case, but there were a
11 number of -- a good part of the meeting, not as
12 much as for Sampson, covered the Arar case.

13 That's it.

14 MR. DAVID: Thank you, Senator.
15 Those are my questions. Thank you.

16 HON. PIERRE DE BANÉ: Not at all;
17 thank you.

18 THE COMMISSIONER: Is there any
19 cross-examination? There is nothing new other
20 than the notes tend to confirm the earlier
21 evidence so...

22 Anybody have any questions?

23 Okay. Well, thank you very much,
24 Senator, for coming. We appreciate your coming
25 back and bringing the notes to our attention.

1 HON. PIERRE DE DANÉ: Thank you,
2 Your Lordship. Thank you very much, And I'm very
3 embarrassed I didn't have those notes prior.

4 THE COMMISSIONER: It's fully
5 understandable. That's not something you should
6 concern yourself with.

7 HON. PIERRE DE DANÉ: But I never
8 thought that they were at home. I was looking in
9 vain in my office.

10 THE COMMISSIONER: I understand.
11 Don't you worry about that. And thank you very
12 much for your assistance.

13 HON. PIERRE DE DANÉ: Thank you.

14 THE COMMISSIONER: Should we take
15 a break?

16 MR. DAVID: Perhaps -- I know that
17 Mr. Cavalluzzo is outside so ...

18 THE COMMISSIONER: Okay. We'll
19 take a five-minute break and we'll have the next
20 witness.

21 MR. DAVID: Thank you.

22 THE REGISTRAR: Please stand.

23 --- Upon recessing at 4:40 p.m. /

24 Suspension à 16 h 40

25 --- Upon resuming at 4:46 p.m. /

1 Reprise à 16 h 46

2 THE REGISTRAR: Please be seated.
3 Veuillez vous asseoir.

4 MR. CAVALLUZZO: Mr. Commissioner,
5 we have now Mr. Gregg Williams.

6 THE COMMISSIONER: Mr. Williams,
7 would you like to be sworn or affirmed? Would you
8 like to swear on the Bible or just take an
9 affirmation?

10 MR. WILLIAMS: I can swear on the
11 Bible, sir.

12 THE COMMISSIONER: Would you stand
13 and take the Bible in your right hand and I will
14 administer the oath.

15 SWORN: ALEXANDER GREGGORY WILLIAMS

16 THE COMMISSIONER: Your full name?

17 MR. WILLIAMS: Alexander Gregory
18 Williams.

19 THE COMMISSIONER: Thank you. You
20 may be seated.

21 Mr. Cavalluzzo?

22 MR. CAVALLUZZO: Thank you, sir.

23 EXAMINATION

24 MR. CAVALLUZZO: Mr. Williams, you
25 are currently employed by the RCMP?

1 MR. WILLIAMS: That's correct.

2 MR. CAVALLUZZO: What position do
3 you presently hold?

4 MR. WILLIAMS: I'm a regional
5 planner in the "O" Division which is located in
6 London, Ontario.

7 MR. CAVALLUZZO: I understand that
8 you have been employed by the RCMP for 32 years.

9 MR. WILLIAMS: That's correct.

10 MR. CAVALLUZZO: And during the
11 period of time that we are talking about, and that
12 is in September and October of 2002, I understand
13 that you were employed in the immigration and
14 passport branch at the RCMP headquarters in
15 Ottawa.

16 MR. WILLIAMS: That's correct.

17 MR. CAVALLUZZO: And how long were
18 you employed in the immigration and passport
19 branch?

20 MR. WILLIAMS: Fifteen years.

21 MR. CAVALLUZZO: And in October of
22 2002, could you tell us what your position was in
23 the immigration and passport branch?

24 MR. WILLIAMS: I was a senior
25 reviewer analyst and my area of responsibility was

1 Western Canada.

2 MR. CAVALLUZZO: Now, on October
3 4, 2002, I understand that you were working and
4 you were working the day shift.

5 MR. WILLIAMS: I would have to
6 look at a calendar, but if that's a day during the
7 week, very possibly I was.

8 MR. CAVALLUZZO: Okay. It's
9 Friday, October the 4th in 2002.

10 MR. WILLIAMS: According to my
11 shift, normally I would be working that day, yes.

12 MR. CAVALLUZZO: And your shift
13 was Monday to Friday, 7:30 to 4:30?

14 MR. WILLIAMS: I was off every
15 second Monday. It was a compressed work week.

16 MR. CAVALLUZZO: But your hours of
17 work on the Friday, if you were working, would be
18 between 7:30 a.m. and 4:30 p.m.?

19 MR. WILLIAMS: Correct.

20 MR. CAVALLUZZO: Briefly, if you
21 could tell us, what is your job? What are your
22 duties and responsibilities as being the senior
23 reader in this particular branch?

24 MR. WILLIAMS: Again, like I said,
25 I was responsible for Western Canada, and I would

1 monitor any high-level investigations that were
2 taking place in Western Canada. Also, I was a
3 manager of fairly high-profile files such as the
4 Canada-China working group, which was a result of
5 the illegal Chinese ships that arrived on the West
6 Coast of Canada in 1999. Also the trafficking in
7 human beings, and particularly sexual exploitation
8 of women and children. I was dealing with that as
9 my major file.

10 MR. CAVALLUZZO: Now, in October
11 of 2002, were there other readers or senior
12 readers in the branch?

13 MR. WILLIAMS: Yes, I would
14 imagine most staff would be there except for the
15 ones that were working compressed or be off for
16 holidays.

17 MR. CAVALLUZZO: And how many
18 employees would there be in this branch?

19 MR. WILLIAMS: Ten to twelve, I
20 guess? I'm not sure.

21 MR. CAVALLUZZO: And who would be
22 the supervisors or manager of the branch?

23 MR. WILLIAMS: It would be an
24 officer at the rank of superintendent.

25 MR. CAVALLUZZO: And who was that?

1 MR. WILLIAMS: At that time I
2 believe it was Superintendent Ray Lang.

3 MR. CAVALLUZZO: Superintendent
4 Ray Lang?

5 MR. WILLIAMS: Yes.

6 MR. CAVALLUZZO: And did you
7 report directly to anybody before Mr. Lang?

8 MR. WILLIAMS: This is at a time
9 of transition and downsizing. At one point I was
10 reporting directly to Staff Sergeant Roger Paris,
11 now whether at that particular time whether it was
12 through Roger Paris or was directly to Ray Lang, I
13 can't say for certain.

14 MR. CAVALLUZZO: Now, in October
15 of 2002, I understand there was also a Roger Paré
16 who retired in April of 2005, but he was working
17 in the branch in October of 2002?

18 MR. WILLIAMS: Yes.

19 MR. CAVALLUZZO: Okay. And we've
20 tracked down through RCMP records as to two people
21 that would have been there perhaps having lunch at
22 a desk at or around noontime on Friday, October
23 4th, and the two individuals would be you and
24 Mr. Roger Paré. Do you know Mr. Roger Paré?

25 MR. WILLIAMS: Yes, very well.

1 MR. CAVALLUZZO: And would it be
2 usual or not unusual, if I could put it that way,
3 for you and he to be sitting down at a desk having
4 lunch?

5 MR. WILLIAMS: Oh, very common.

6 MR. CAVALLUZZO: Okay. Now, do
7 you know Mr. Rick Flewelling?

8 MR. WILLIAMS: I know him now, or
9 I know him to see him, but I didn't know him back
10 then.

11 MR. CAVALLUZZO: Now, you saw him
12 or you met him a couple of days ago?

13 MR. WILLIAMS: Yes.

14 MR. CAVALLUZZO: Okay. Did you
15 remember Mr. Flewelling?

16 MR. WILLIAMS: When I saw his
17 face, it looked familiar. I had seen him around
18 headquarters, but I had not recalled meeting him.

19 MR. CAVALLUZZO: So you never
20 recalled meeting him before. Do you ever recall
21 speaking to him before while you were in the
22 immigration and passport branch?

23 MR. WILLIAMS: No, not that I can
24 recall.

25 MR. CAVALLUZZO: So that you do

1 not recall any occasion upon which Mr. Flewelling
2 would have come up to the fourth floor, to the
3 immigration and passport branch, and asked a
4 question of both you gentlemen sitting there
5 having lunch?

6 MR. WILLIAMS: No, I do not recall
7 it.

8 MR. CAVALLUZZO: Okay. Then let
9 me give you a hypothetical, and that is, if
10 Mr. Flewelling came upstairs and wanted to know
11 about a Canadian who had been detained in New York
12 City, an airport in New York City, and was seeking
13 information about what he referred to as the
14 removal process in New York City, you don't recall
15 that question, I understand, but would you have
16 answered that question if it had been put to you?

17 MR. WILLIAMS: Not likely, because
18 I don't have any knowledge of the removal process
19 that would take place in another country.

20 MR. CAVALLUZZO: What if someone
21 was to ask you a question of a Canadian who was a
22 dual national detained in New York City and asked
23 you about the removal process of that particular
24 Canadian from New York City? Would your answer be
25 the same?

1 MR. WILLIAMS: It would be the
2 same. It wouldn't have any bearing.

3 MR. CAVALLUZZO: What about if the
4 question was put to you that, we have a Canadian
5 who has flown in to New York City. The Americans
6 have refused him entry into the United States.
7 And what happens if they refuse him entry? What
8 will they do?

9 MR. WILLIAMS: From my previous
10 experience dealing with CIC, Citizenship &
11 Immigration Canada, and the process that's
12 involved there, it is my understanding that the
13 airline that flew that person to the country to
14 which they were not admissible is responsible to
15 return them from which -- from whence he came.

16 MR. CAVALLUZZO: So, in other
17 words, if this Canadian had been flown to New York
18 City from Switzerland, you're saying in that
19 circumstance, your understanding from your
20 experience at CIC, that if he was refused entry
21 into the United States, he would be sent back to
22 Switzerland at the airline's expense?

23 MR. WILLIAMS: That's my
24 understanding of the procedure, yes.

25 MR. CAVALLUZZO: Right. And the

1 CIC procedure, now, that would -- that -- of
2 course we're talking about a situation in the
3 United States, but you feel that you might answer
4 that question even though it is an American act
5 which would be sending the individual back?

6 MR. WILLIAMS: If I knew the
7 person was coming from another country, I don't
8 know how I would have answered the question
9 because I don't think I've ever dealt with that
10 before. I don't know if I would have been given
11 that information, to say that they were coming in
12 from somewhere else. Now, if someone told me that
13 there was a person, a Canadian arriving at a port
14 of entry in the U.S. of A. and was refused entry,
15 well, it's just standard procedure that they would
16 be going back to Canada because they came from
17 Canada. Now, when you throw Europe into the mix,
18 I don't think I would have answered that.

19 MR. CAVALLUZZO: So you would have
20 answered the question, if the person going to New
21 York was coming from Canada?

22 MR. WILLIAMS: Yes.

23 MR. CAVALLUZZO: And you were
24 saying your response would be, well, he would be
25 coming back to Canada, but you wouldn't proffer an

1 opinion if a European country was mentioned as the
2 point of departure?

3 MR. WILLIAMS: No, I can't see --
4 I would have said it's the responsibility of the
5 airline to have the documentation for immigration
6 purposes required in the country to which they are
7 arriving, and if they don't have that, they would
8 be returned.

9 MR. CAVALLUZZO: But in any event,
10 you do not recall any such questions being put?

11 MR. WILLIAMS: You mean the
12 conversation?

13 MR. CAVALLUZZO: Yes.

14 MR. WILLIAMS: No.

15 MR. CAVALLUZZO: Do you recall any
16 mention of Mr. Arar? You know who Mr. Arar is,
17 obviously?

18 MR. WILLIAMS: Oh, I know now,
19 yes.

20 MR. CAVALLUZZO: But you don't
21 recall anybody coming up and asking a question
22 about Mr. Arar?

23 MR. WILLIAMS: No.

24 MR. CAVALLUZZO: Or a few days
25 later, saying, "Holy god, that must have been

1 Mr. Arar that he was talking about"?

2 MR. WILLIAMS: No, I don't recall
3 that --

4 MR. CAVALLUZZO: You don't recall
5 anything like that?

6 MR. WILLIAMS: No.

7 --- Pause

8 MR. WILLIAMS: For someone to
9 come -- just to follow up -- for someone to come
10 to our office and ask, that is a fairly routine
11 question, so I wouldn't have given it a whole lot
12 of thought, just to ask what the standard
13 procedure was.

14 MR. CAVALLUZZO: But just to be
15 fair, I want to be sure that it is -- even though
16 you didn't know Mr. Flewelling and you just
17 recognized him a couple of days ago, it is
18 possible that you may have spoken to
19 Mr. Flewelling in the past --

20 MR. WILLIAMS: Oh, yes. I didn't
21 say I didn't do it. I just don't recall it.

22 MR. CAVALLUZZO: I have no further
23 questions. Thank you.

24 THE COMMISSIONER: Thank you.

25 Cross-examination?

1 Okay, Mr. Waldman.

2 EXAMINATION

3 MR. WALDMAN: Just to make sure
4 that you and I are on the same page on one thing.
5 Is it not fair, based upon your understanding of
6 Canadian immigration law that, at any time, a
7 country has the right to remove a person to a
8 country of citizenship, that's pretty basic,
9 right? In other words, if I'm a Canadian
10 travelling in Europe, any European country that
11 refuses me admission, Canada has an obligation to
12 take me back if I'm a Canadian citizen; is that
13 your understanding of the law?

14 MR. WILLIAMS: To take you -- to
15 accept you back into the country. Absolutely.
16 You're a Canadian citizen.

17 MR. WALDMAN: And that applies to
18 any other country as well. In other words, the
19 basic principle of international law and
20 immigration law is the country of citizenship must
21 take you back?

22 MR. WILLIAMS: Yes, that's my
23 understanding.

24 MR. WALDMAN: So in the case of a
25 dual national like Mr. Arar, in Canada, in any

1 event, Canada would be legally entitled to send a
2 dual national, Syrian-American citizen, either to
3 the United States or to Syria?

4 MR. WILLIAMS: That's my
5 understanding of the law.

6 MR. WALDMAN: The country of
7 citizenship is basic.

8 And with respect to the question
9 about return to other country from which he came,
10 that would depend upon the circumstances; is that
11 fair?

12 MR. WILLIAMS: Yes, I guess. Like
13 I say, the standard procedure, the airline has the
14 ultimate responsibility when they're taking --

15 MR. WALDMAN: But that's if it's
16 done at the port of entry. If the person's
17 admitted --

18 MR. WILLIAMS: That's right.
19 That's the difference, if he's admitted or if he
20 was refused entry.

21 MR. WALDMAN: Right. So if he's
22 refused entry he can be sent back to the country,
23 and once he's inside ...

24 Okay. Thank you, those are my
25 questions.

1 THE COMMISSIONER: Mr. Boxall, any
2 questions?

3 MR. BOXALL: No questions.

4 THE COMMISSIONER: Mr. Fothergill?

5 MR. FOTHERGILL: Briefly. Perhaps
6 I can do it from here.

7 EXAMINATION

8 MR. FOTHERGILL: Mr. Williams, you
9 agree with Mr. Cavalluzzo that although you don't
10 recall speaking with Mr. Flewelling on this date,
11 it's possible that you did?

12 MR. WILLIAMS: Oh, absolutely.

13 MR. FOTHERGILL: And is it also
14 possible that you had some sort of discussion with
15 Mr. Flewelling about removal and the obligation of
16 the airline to return an individual to the point
17 from which they departed?

18 MR. WILLIAMS: Oh, it's very
19 possible, yes.

20 MR. FOTHERGILL: Those are my
21 questions, thank you.

22 THE COMMISSIONER: Thank you.
23 Mr. Cavalluzzo?

24 MR. CAVALLUZZO: I have no
25 questions.

1 THE COMMISSIONER: Thank you very
2 much, Mr. Williams. That completes your evidence.
3 Thank you for coming.

4 Should we take a break before the
5 next witness?

6 --- Off microphone / Sans microphone

7 MR. CAVALLUZZO: I guess the
8 cameras -- yeah. Perhaps a five-minute break and
9 we'll work out the mechanics.

10 THE COMMISSIONER: Okay. We'll
11 rise for five minutes.

12 THE REGISTRAR: Please stand.

13 --- Upon recessing at 5:00 p.m. /

14 Suspension à 17 h 00

15 --- Upon resuming at 5:06 p.m. /

16 Reprise à 17 h 06

17 MR. CAVALLUZZO: Commissioner, we
18 have Mr. Ron Lauzon with us.

19 THE COMMISSIONER: All right.
20 Would you like to be sworn or affirmed?

21 MR. LAUZON: I'll swear.

22 THE COMMISSIONER: Would you stand
23 and take the Bible in your right hand and I'll
24 administer the oath?

25 SWORN: JOSEPH RONALD LAUZON

1 THE COMMISSIONER: Your full name?

2 MR. LAUZON: Joseph Ronald Lauzon.

3 THE COMMISSIONER: Thank you. You
4 may be seated.

5 MR. CAVALLUZZO: Mr. Commissioner,
6 just before we begin the questioning of
7 Mr. Lauzon, just to apprise counsel that in
8 respect of Mr. Paré, Mr. Roger Paré who was the
9 other person who worked in Immigration and
10 Passport Section, we are not calling him because
11 his recollection of events was even less than that
12 of Mr. Williams and it was assessed between
13 counsel that if anyone would have answered the
14 question, it would have been Mr. Williams rather
15 than Mr. Paré. So we will not be calling
16 Mr. Paré.

17 THE COMMISSIONER: Thank you.

18 EXAMINATION

19 MR. CAVALLUZZO: Mr. Lauzon, you
20 are employed by the RCMP?

21 MR. LAUZON: Yes.

22 MR. CAVALLUZZO: And what is your
23 position?

24 MR. LAUZON: I'm a Sergeant, and I
25 am presently attached to the Integrated Proceeds

1 of Crime section of Montreal, working on a special
2 project.

3 MR. CAVALLUZZO: And you have been
4 employed by -- let's first circulate your résumé,
5 or curriculum vitae, and then we'll briefly take
6 you through that.

7 THE COMMISSIONER: 230.

8 EXHIBIT NO. 230: Curriculum
9 vitae of Ron Lauzon

10 MR. CAVALLUZZO: Now, it looks
11 like you joined the RCMP in 1987, you graduated
12 with a Bachelor of Commerce degree from the
13 University of Toronto in June of 1987?

14 MR. LAUZON: Yes.

15 MR. CAVALLUZZO: As I say, you
16 joined the RCMP in August of 1987, and you're
17 going to have to say "Yes" to this because it has
18 to be on the record.

19 MR. LAUZON: Yes.

20 MR. CAVALLUZZO: Okay. Rather
21 than taking you through everything, there are just
22 a couple of highlights that I'd like to deal with.

23 Between October 1988 to February
24 1990, you worked as an investigator in the
25 Immigration and Passport Section?

1 MR. LAUZON: That's correct.

2 MR. CAVALLUZZO: Between March
3 1990 and September 1996, you worked in covert
4 operations?

5 MR. LAUZON: That's correct.

6 MR. CAVALLUZZO: Were you involved
7 in terrorism, or was this organized crime, or was
8 it a combination of both?

9 MR. LAUZON: It was not involved
10 in terrorism, it was involved in organized crime.

11 MR. CAVALLUZZO: Between October
12 of 1996 and March 2002, you worked with the
13 Integrated Proceeds of Crime Section as an
14 investigator in Montreal?

15 MR. LAUZON: That's correct.

16 MR. CAVALLUZZO: Between April --
17 and this is the period, of course, we're concerned
18 about -- between April of 2002 and March of 2003,
19 you were with the National Security Offences
20 Section as a Team Leader / Sunni Islamic Extremism
21 at headquarters?

22 MR. LAUZON: That's correct.

23 MR. CAVALLUZZO: Subsequent to
24 that, you went and became an NCO policy and
25 project development, national security program,

1 between April 2003 to June of 2005; is that at
2 headquarters?

3 MR. LAUZON: That's correct,
4 that's at headquarters.

5 MR. CAVALLUZZO: And then you've
6 told us what your present position in Montreal is.
7 Now, just a couple of questions in respect of your
8 training that is not on the résumé or CV.

9 Did you take the national security
10 investigation course -- it's a ten-day course that
11 is given in Regina?

12 MR. LAUZON: No, I did not.

13 MR. CAVALLUZZO: Have you taken
14 any terrorism-related courses at the RCMP?

15 MR. LAUZON: Yes, I had the C-36
16 workshop.

17 MR. CAVALLUZZO: Okay. That's
18 Bill C-36 workshop?

19 MR. LAUZON: That's correct.

20 MR. CAVALLUZZO: Now, the only
21 other question in respect of your training is
22 whether you have taken any tutorial seminars,
23 workshops, or whatever, in respect of Muslim
24 culture, values, or traditions?

25 MR. LAUZON: No, I have not.

1 MR. CAVALLUZZO: Okay. Then let
2 us focus in on when you were at the NSOS in -- I
3 guess it started in April of 2002, and I
4 understand that your responsibility was in a
5 supervisory capacity?

6 MR. LAUZON: That's correct.

7 MR. CAVALLUZZO: And who would you
8 supervise and how many officers would you be
9 supervising?

10 MR. LAUZON: I initially
11 supervised eight to ten members, and then, if my
12 memory serves me correctly, in June there was
13 another sergeant that came on board and we split
14 up the members. I took five or six and he took
15 five or six members.

16 MR. CAVALLUZZO: Okay. Now, as of
17 June 2002, the five or six members over which you
18 had supervisory responsibility included Rick
19 Flewelling?

20 MR. LAUZON: That's correct.

21 MR. CAVALLUZZO: And I understand
22 that in respect of your office that you would have
23 reported directly to Superintendent Wayne Pilgrim.

24 MR. LAUZON: That's correct.

25 MR. CAVALLUZZO: Throughout that

1 whole period of time that you were there?

2 MR. LAUZON: Until Superintendent
3 Pilgrim's retirement, yes.

4 MR. CAVALLUZZO: Okay. Now, can
5 you give -- I had forgotten that fact, but can you
6 ballpark that, when Mr. Pilgrim retired?

7 MR. LAUZON: He retired in the
8 spring of -- I believe it was in the spring of
9 2004.

10 MR. CAVALLUZZO: But didn't you
11 leave NSOS in March of 2003?

12 MR. LAUZON: Yes, but I still
13 reported to Superintendent Pilgrim when I was
14 heading up the Policy and Project Development
15 Section.

16 MR. CAVALLUZZO: Right. But I'm
17 just concerned about that period between -- when
18 you're in the NSOS as the Non-Commissioned Officer
19 in Charge between April of 2002 and March of 2003;
20 then you would have reported to Mr. Pilgrim
21 throughout that whole time period?

22 MR. LAUZON: That is correct,
23 during that whole time period, yes.

24 MR. CAVALLUZZO: And I understand
25 that when you left NSOS in March of 2003, that you

1 had nothing to do with Project A-OCANADA after
2 that time? You went on to do other things?

3 MR. LAUZON: That's correct.

4 MR. CAVALLUZZO: Okay. Now,
5 before we come to the specific situation of
6 Mr. Arar, I would like to ask you a question about
7 information-sharing, and we've heard certain
8 evidence that as a result of 9/11, that there
9 was -- it's been described in many ways, the
10 impact being that you didn't have to put caveats
11 on documents which were being shared with partner
12 agencies, it's been described that caveats are
13 down, the no-caveats rule, free flow of
14 information, open-book investigation -- whatever
15 way you want to characterize it.

16 Now, during your period that you
17 were in NSOS, were you aware of such a rule, that
18 caveats were down, so to speak?

19 MR. LAUZON: No.

20 MR. CAVALLUZZO: Your view was
21 that existing policy continued to apply?

22 MR. LAUZON: That's correct.

23 MR. CAVALLUZZO: Now, if we come
24 to the Arar chronology, I understand that if we go
25 to your notes now, and I'd like to perhaps

1 introduce two exhibits. Now, one would be your
2 statement to Mr. Garvie, which is dated January
3 15th of 2004.

4 THE COMMISSIONER: That would be
5 231.

6 EXHIBIT NO. P-231: Statement
7 given by Ron Lauzon to Brian
8 Garvie on January 15, 2004

9 MR. CAVALLUZZO: Okay. The next
10 document that I would ask to be introduced would
11 be your redacted personal notes, which is a
12 green-covered document.

13 THE COMMISSIONER: 232.

14 EXHIBIT NO. P-232: Personal
15 notes of Ron Lauzon
16 (redacted)

17 THE COMMISSIONER: Do you have
18 another document?

19 MR. CAVALLUZZO: Yes, these are
20 additional personal notes, so we should make these
21 a separate exhibit as well.

22 THE COMMISSIONER: 233.

23 EXHIBIT NO. P-233:
24 Additional personal notes of
25 Ron Lauzon

1 MR. CAVALLUZZO: Okay. Now,
2 that -- I would like to now refer to your personal
3 notes, the green-covered document or Exhibit 232,
4 and if we go to page 10, we see what appears to be
5 an entry for October 3rd. Now, Mr. Lauzon, I have
6 done a very careful assessment, and I have
7 concluded that your handwriting is perhaps the
8 worst of any of the witnesses that we have had so
9 far, so you're going to have to be very helpful in
10 this regard.

11 --- Laughter / Rires

12 MR. CAVALLUZZO: Perhaps if you
13 could just start on page 10 and read whatever you
14 have there. I believe it says October 3rd, 2002.

15 MR. LAUZON: Yes, it says October
16 3rd, 2002, Thursday, shift 730 to 1530.

17 MR. CAVALLUZZO: Then it goes on?

18 MR. LAUZON: Nine -- some of it is
19 in French (French) "A" Division, CROPS, Project
20 A-OCANADA.

21 MR. CAVALLUZZO: Now at this
22 meeting here on October 3rd at "A" Division
23 dealing with Project A-OCANADA, was Mr. Arar's
24 situation discussed at this particular meeting?

25 MR. LAUZON: Very briefly.

1 MR. CAVALLUZZO: Okay. And was
2 this the first occasion upon which you became
3 aware of Mr. Arar's situation?

4 MR. LAUZON: According to my
5 notes, it was the first occasion that I had heard
6 that Mr. Arar was actually -- and my note here is,
7 "Arar detained, New York."

8 MR. CAVALLUZZO: And that can be
9 found at page 10?

10 MR. LAUZON: Twelve.

11 MR. CAVALLUZZO: Or, excuse me,
12 page 12, correct.

13 And just if you could share with
14 us, do you recall who was at this particular
15 meeting at "A" Division?

16 MR. LAUZON: Yes, it was a meeting
17 hosted by the CROPS officer of "A" Division. It
18 included the OIC, INSETs of all three, "O," "A,"
19 and "C" INSET.

20 MR. CAVALLUZZO: Right.

21 MR. LAUZON: And it also involved
22 members in those respective divisions that
23 attended, as well as members from headquarters.

24 MR. CAVALLUZZO: And were you
25 given much information about Mr. Arar? Obviously,

1 at page 12, it says that he's detained in New
2 York. But were you given other information about
3 Mr. Arar?

4 MR. LAUZON: No. That's it.

5 MR. CAVALLUZZO: Were you -- and
6 before I ask you some questions about that, let's
7 look at what you said to Mr. Garvie. This can be
8 found at Exhibit 231. This is the statement given
9 to Mr. Garvie on January 15th, and around line 30,
10 Mr. Garvie says:

11 "Now, did you become aware
12 that information about an
13 individual by the name of
14 Maher Arar came to be shared
15 with U.S. authorities and at
16 the very least Arar was a
17 person of interest in the
18 A-OCANADA investigation?"

19 And your response apparently was:

20 "Yes, I became aware of that.
21 I have here in my notes dated
22 October 3rd where I attended
23 a meeting with 'A' Division
24 with all the heads of the
25 projects 'A' and OCANADA,

1 with the respective CROPS
2 and, among other things, were
3 the fact that Arar was
4 detained in New York, and
5 that's all I have in my notes
6 on that day."

7 So that -- and it goes on on the
8 next page. Mr. Garvie says:

9 "Now, during that meeting on
10 October 3rd, was there any
11 discussion, to your
12 recollection, of why Arar had
13 been detained in New York or
14 any comments from any of the
15 people attending the meeting
16 above that?"

17 And you said:

18 "I don't remember, but I
19 don't think so. I would have
20 had it in my notes if that
21 was the case."

22 So it would be fair to say that as
23 of this date -- this would be the first time that
24 you became aware of Mr. Arar's situation?

25 MR. LAUZON: That's correct.

1 MR. CAVALLUZZO: And that on this
2 occasion you were given very limited information
3 regarding Mr. Arar's situation?

4 MR. LAUZON: That's correct.

5 MR. CAVALLUZZO: Was it discussed
6 at this particular meeting, for example -- let me
7 throw out a couple of things -- as to whether
8 Mr. Arar was a dual national, he was a Syrian and
9 a Canadian citizen?

10 MR. LAUZON: Not to my knowledge.

11 MR. CAVALLUZZO: Was it discussed
12 at this meeting whether Mr. Arar had consular
13 access or whether DFAIT was involved?

14 MR. LAUZON: Not to my knowledge.

15 MR. CAVALLUZZO: Had you had any
16 dealings with Inspector Richard Roy at this point
17 in time as to Mr. Arar's situation?

18 MR. LAUZON: No, I did not.

19 MR. CAVALLUZZO: And, once again,
20 you told us that you became responsible in June of
21 2002 for a number of people, including Mr. Rick
22 Flewelling.

23 Now, Mr. Rick Flewelling, around
24 that point in time, told us that he was, in
25 effect, given instructions to oversee, liaise,

1 whatever you want to call it, Project A-OCANADA?

2 MR. LAUZON: Monitor, coordinate
3 the project, and make sure that the project
4 adheres to policy.

5 MR. CAVALLUZZO: And that's what
6 he told us. He said he was given instructions by
7 Mr. Pilgrim, and perhaps you, and that one of his
8 goals was to -- one of his objectives would be to
9 bring policy back to the fray in terms of Project
10 A-OCANADA; in other words, get them working with
11 the policy, in accordance with the policies again.

12 MR. LAUZON: And that was a
13 direction that came not only from Superintendent
14 Pilgrim but it came from higher up, from senior
15 management.

16 MR. CAVALLUZZO: Do you know how
17 high up that went?

18 MR. LAUZON: I wouldn't be
19 surprised if it went all the way up to the DCO,
20 because there was a movement at that point in time
21 to centrally coordinate our investigations.

22 MR. CAVALLUZZO: Right. And by
23 "DCO," you're talking about Mr. Loepky?

24 MR. LAUZON: That's correct.

25 MR. CAVALLUZZO: Okay. Now, were

1 you aware at this time, when you assume this
2 responsibility in June of 2002, that in April of
3 2002, that Project A-OCANADA had shared with a
4 couple of American agencies their whole SUPERText
5 file, the whole investigative file?

6 MR. LAUZON: Yes, I became aware
7 of that.

8 MR. CAVALLUZZO: Were you aware of
9 it at the time, in April of 2002, or did you
10 become aware of it after you assumed the
11 responsibility in June?

12 MR. LAUZON: Subsequent to April
13 2002, I definitely became aware of that.

14 MR. CAVALLUZZO: Now, did you --
15 was it your view that that -- some people have
16 been calling it that data dump was inconsistent
17 with policy?

18 MR. LAUZON: It was my
19 understanding that that data dump, as you refer to
20 it, was shared with our U.S. partners for
21 analytical purposes.

22 MR. CAVALLUZZO: Right. But the
23 question is whether that was consistent with
24 policies. In other words, if the information went
25 down without caveats, without people looking at

1 what information was going -- to assess the need
2 to know the information, to assess whether there
3 was confidential or national security information
4 that should be going, and to assess, for example,
5 whether information from other organizations that
6 had caveated information; do you agree that that
7 should have been done before the data was shared
8 with the Americans?

9 MR. LAUZON: In order to adhere to
10 policy, for sure, yes.

11 MR. CAVALLUZZO: But you don't
12 have specific information as to what, in fact, was
13 entailed in that sharing of information; you just
14 were told, presumably, that the whole SUPERText
15 file went downtown?

16 MR. LAUZON: That's correct.

17 MR. CAVALLUZZO: Now, if we can
18 move, then, in terms of the time. Now, we've
19 dealt with October the 3rd, when you become -- and
20 that was a Thursday. The next day, obviously, is
21 Friday, October 4th, and the question that I would
22 have would relate to whether you had any
23 recollection of any direct dealings with the Arar
24 file on October the 4th. I could find no entry in
25 your notes.

1 MR. LAUZON: That's correct.

2 MR. CAVALLUZZO: Now, I do want to
3 show you, though, to give you a chance to comment
4 on it, Exhibit P-225, which is a fax.

5 Let me explain to you what this
6 is. We've heard evidence that on the late
7 afternoon of October the 3rd, that Mr. Flewelling
8 received an urgent request from an American
9 requesting information on an urgent basis to
10 support criminal charges in respect of Mr. Arar
11 who was at that time being detained in New York,
12 and he tasked Project A-OCANADA with answering a
13 number of questions, and you will see on the
14 second page of that document, he was faxing this
15 to Project A-OCANADA, and it would appear it at
16 the bottom, it says, "Approved by Sergeant Ron
17 Lauzon," and I want to give you the opportunity to
18 comment on that.

19 This, Mr. Flewelling told us, was
20 faxed about eight o'clock in the morning on
21 October the 4th, and I ask if you have any
22 recollection of approving this request that was
23 sent to Project A-OCANADA?

24 MR. FOTHERGILL: To be fair to the
25 witness, before he answers, Mr. Flewelling told us

1 that the second page is a standard upload form for
2 SCIS, and I think that's where Mr. Lauzon's name
3 appears, as opposed to the first page which is the
4 facsimile transmission.

5 MR. LAUZON: If I could just go
6 further on that? The uploads to SCIS are not
7 necessarily done that day. They could be done a
8 week after. He might keep several documents and
9 do it all at once, and then my name would appear
10 on the bottom, I would initial it, and then it
11 would be uploaded to SCIS.

12 MR. CAVALLUZZO: So the question
13 is then, just so you have an opportunity to
14 address this, you don't recall approving this on
15 October the 4th. It may have been done after in
16 terms of the procedures relating to the uploading
17 of SCIS?

18 MR. LAUZON: That's correct.

19 MR. CAVALLUZZO: Okay then. Let
20 us move on.

21 We'll move now to Saturday,
22 October 5th, and on this day the evidence is that
23 Mr. Flewelling was at home, and around six o'clock
24 in the evening, he received a call from his normal
25 contact, American contact, who was engaged at the

1 Embassy in Ottawa and was employed by a particular
2 agency, American agency, and if I could just
3 summarize the phone call for you.

4 It was to the effect that the
5 Americans do not have enough evidence or
6 sufficient evidence to criminally charge and
7 convict Mr. Arar, and it went on to say that, in
8 light of his dual nationality, Mr. Arar has
9 preferred or has decided that he wants to go to
10 Canada, and then the telephone conversation went
11 on with a couple of questions, and that is: What
12 is the status of Mr. Arar with you? Can you
13 criminally charge him? And the second question
14 was: If we send him to Canada, must you accept
15 him, or can you refuse entry? And the evidence is
16 that Mr. Flewelling responded that there wasn't
17 enough evidence to charge him criminally in Canada
18 and that, secondly, that Mr. Arar, as a Canadian
19 citizen, cannot be refused entry into Canada. And
20 that, I think, fairly captures the telephone call
21 which occurred on Saturday, October the 5th.

22 Now, Mr. Flewelling has also
23 testified that he made a telephone call that
24 weekend to advise his superior of that telephone
25 call, and he told us that he called you, and I'm

1 wondering if you recall that conversation?

2 MR. LAUZON: I don't have a
3 recollection of that conversation; however, my
4 subordinates do call me on the weekends to advise
5 me if there's anything particular that may be
6 going on with a file. It's important for me to be
7 apprised of the investigations as they go on so I
8 can inform my own supervisors of what's going on
9 in these national security investigations.

10 MR. CAVALLUZZO: Now, I would
11 venture to say that Mr. Arar's file is the most
12 notorious file that you dealt with, "notorious" in
13 the sense that it was highly publicized file that
14 you dealt with probably during your stay in NSOS,
15 and I'm putting it to you that in light of the
16 highly -- the high visibility or public nature of
17 the Arar file, that that is a telephone
18 conversation that you would have remembered?

19 MR. LAUZON: I don't remember the
20 telephone conversation, and I also -- I was
21 involved in several other investigations at that
22 time where my subordinates were also involved in
23 several other national security investigations
24 that were of probably equal importance or more at
25 the time.

1 MR. CAVALLUZZO: But could you
2 tell us, were you involved in any that were as
3 politically sensitive or as highly public as
4 Mr. Arar's case?

5 MR. LAUZON: Obviously, in the
6 aftermath -- at that point in time, probably not.
7 But obviously now ...

8 MR. CAVALLUZZO: Right. Well,
9 let's look at that in terms of timing, because we
10 heard that shortly thereafter, on October 15th,
11 Americans were publicly saying that the Canadians,
12 in particular law enforcement, Canadian law
13 enforcement, knew why Mr. Arar was deported to
14 wherever, to Syria, and we also know that because
15 of this information, that on October the 16th that
16 Mr. Pilgrim was called over to DFAIT, and DFAIT
17 gave him a number of questions relating to the
18 sharing of information, and as a result of that,
19 on October the 18th, RCMP, through Mr. Pilgrim,
20 prepared a memorandum, sending it back to DFAIT.

21 Are you aware of that process?
22 Were you involved in that process with
23 Mr. Pilgrim?

24 --- Pause

25 MR. LAUZON: I'm not sure of the

1 exact date, but I remember that Superintendent
2 Pilgrim did attend a meeting at DFAIT, and
3 subsequent to that meeting I was called in to his
4 office and I was told that Rick had to prepare a
5 briefing package --

6 MR. CAVALLUZZO: Right.

7 MR. LAUZON: -- with respect to
8 the time lines, et cetera, involving the Arar
9 file.

10 MR. CAVALLUZZO: I wonder if the
11 witness might be shown Exhibit 137, which is the
12 memorandum that we're referring to, of October
13 18th, 2002.

14 MR. FOTHERGILL: Commissioner, I
15 think there's also a reference in his hand notes
16 which have just been filed, pages 16 and 17, which
17 is his entry for October 16th of 2002.

18 THE COMMISSIONER: Thank you,
19 Mr. Fothergill.

20 MR. LAUZON: There's also in my
21 statement to Superintendent Garvie that I did have
22 a notation in my notebook on October 16th, where
23 Corporal Flewelling and myself met Superintendent
24 Pilgrim.

25 MR. CAVALLUZZO: It says "re

1 Arar," if we go on to page 17, and then it says
2 "DFAIT," if you could read that, sent something, a
3 diplomatic note? This is at page 17 of your
4 notes?

5 MR. LAUZON: Page seventeen of my
6 notes?

7 MR. CAVALLUZZO: Yeah. If you
8 could just read that for us just to give context.
9 If you go back to 16 and just read from the
10 bottom. This is for October 16th. Okay? If you
11 can just read that for us?

12 MR. LAUZON:
13 "Rick Flewelling et moi
14 rencontrons Wayne..."

15 MR. CAVALLUZZO: That means you
16 met Wayne?

17 MR. LAUZON: That's correct.

18 MR. CAVALLUZZO: See? I'm
19 bilingual. Go on.

20 MR. LAUZON:
21 "...re Arar."

22 MR. CAVALLUZZO: Okay.

23 MR. LAUZON:
24 "DFAIT sent diplomatic note
25 to Syrians asking what status

1 is on Arar."

2 Then this is Wayne asking:

3 "We need to know what
4 information has been shared
5 with the U.S., what triggered
6 U.S. to deport him to Syria.
7 Was Canada involved in that
8 decision? What level of
9 threat did Arar pose to
10 Canada? Is there a mistaken
11 identity? Need a complete
12 briefing package. What have
13 we given to U.S.? Rick and
14 ... will take care of this.
15 Wayne needs package ASAP."

16 MR. CAVALLUZZO: Now, during this
17 meeting, was there -- you and Rick and Wayne
18 Pilgrim were meeting. You don't recall any
19 discussion of Rick saying, "You know what?
20 Remember that call I got on October the 5th from
21 the Americans." You don't recall that?

22 MR. LAUZON: No, I do not.

23 MR. CAVALLUZZO: And in terms of
24 the -- in terms of Exhibit 137, you'll see that
25 one of the responses at the bottom of the page

1 really mirrors that telephone call where it says.
2 "U.S. authorities requested
3 RCMP to provide information
4 that might assist in the
5 filing of criminal charges
6 against Arar. U.S.
7 authorities made inquiries as
8 to the level of interest the
9 RCMP had in pursuing Arar
10 criminally. They also made
11 inquiries regarding the
12 RCMP's ability to refuse
13 Arar's entry into Canada.
14 They were advised that the
15 RCMP was interested in
16 Arar from a criminal
17 perspective. They were also
18 advised that where Arar is a
19 Canadian citizen, the RCMP
20 could not refuse his entry
21 into Canada."

22 So that when you saw that, and I'm
23 assuming you would have read this memorandum, that
24 didn't bring to mind -- or did you read this
25 memorandum?

1 THE COMMISSIONER: It's at the
2 bottom of page 515.

3 --- Pause

4 MR. LAUZON: Oh, 515.

5 --- Pause

6 MR. LAUZON: I don't remember.

7 MR. CAVALLUZZO: So that didn't
8 raise any question in your mind saying, "Oh, yeah,
9 that was the phone call that we talked about"?

10 MR. LAUZON: I don't remember.

11 MR. CAVALLUZZO: Now at page 4 of
12 the Garvie statement you were asked at line 13 by
13 Mr. Garvie:

14 "Are you aware of anyone else
15 asking any U.S. authority at
16 any time to deport Maher Arar
17 to Syria or implying that
18 such actions should be
19 taken?"

20 And your answer is "no". And then
21 it goes on.

22 "Were you, or was anyone else
23 to your knowledge contacted
24 by any U.S. authority asking
25 if Maher Arar should be

1 returned to Canada or
2 conversely deported to
3 Syria?"

4 And your answer is "no". And I
5 assume that is still your answer today.

6 --- Pause

7 MR. LAUZON: My answer is still
8 no.

9 MR. CAVALLUZZO: Moving in terms
10 of time, if we go back to your notes for October
11 7th, which as you can see from the calendar is the
12 Monday --

13 THE COMMISSIONER: Which page in
14 the notes, Mr. Cavalluzzo?

15 MR. CAVALLUZZO: This is page 5.
16 This is typed.

17 THE COMMISSIONER: In the typed
18 notes; okay.

19 MR. CAVALLUZZO: No. It is page 5
20 of this package. There is some typescript.

21 THE COMMISSIONER: All right.

22 MR. CAVALLUZZO: This says that on
23 October 7th your shift was, once again, 7:30 to
24 3:30, and it says at 9:25:

25 "Briefing from Rick

1 Flewelling with respect to
2 article in the National
3 Post..."

4 By Stewart Bell. We have heard
5 testimony on that already.

6 "... alluded to information
7 that was pertinent to the
8 OCANADA investigation;
9 therefore..."

10 That should be Ben Soave and Mr.
11 McQuarrie:

12 "...authorized ... to speak
13 with Bell."

14 And then it goes on down the page
15 and it says "Note A1 (see below)".

16 Can you tell us what that means?

17 MR. LAUZON: Yes. I made an error
18 in my notes with respect to the date here. What
19 in fact happened is that that briefing I did have
20 with Rick Flewelling did occur on Monday morning.
21 However, at 1420 I went to "A" Division to meet
22 with investigators with the Project A-OCANADA and
23 also with an American partner.

24 However, this was not on Monday.
25 It was actually on Tuesday the 8th, at 20 after

1 2:00.

2 MR. CAVALLUZZO: How did that
3 mistake occur? We only have the typescript and we
4 have your handwritten notes. It appears to be on
5 the same page for October 7th.

6 I am wondering how that occurred.
7 Did you just continue on on October 7th in your
8 notebook, or how did that occur?

9 MR. LAUZON: There is a very
10 simple explanation. A lot of times I will do my
11 notes at the end of the day of what transpired
12 during the day. On this occasion here, I made
13 some notes when I met with Rick that morning.

14 Then on Tuesday, I didn't finish
15 my notebook that day. On the following day I was
16 working at the office and all of a sudden, around
17 2 o'clock, I received a call from one of the
18 investigators from Project A-OCANADA telling me
19 that he was meeting with the American partner. I
20 had basically five minutes to get there because
21 the person was on the way there. So I grabbed my
22 notebook as is and I left. I attended the meeting
23 and made notes at the meeting.

24 MR. CAVALLUZZO: So you are sure,
25 though, that it is October 8th. I notice in your

1 statement to Mr. Garvie that you refer to it as
2 October 7th.

3 When did you discover that you
4 made a mistake in your notes?

5 Let me show you the Mr. Garvie --

6 MR. LAUZON: I discovered that I
7 made a mistake in my notes on April 27, 2004.

8 My next entry was Wednesday,
9 October 9th. So there was a time period that was
10 missing out of my notes. So I am absolutely
11 positively sure that this meeting occurred on
12 October 8th at 20 after 2:00.

13 MR. CAVALLUZZO: That explains, in
14 respect of your statement to Mr. Garvie, you were
15 talking in terms of it occurring on October 7th.
16 That statement was given in January of 2004, so
17 you had not discovered the mistake at that point
18 in time.

19 MR. LAUZON: That is correct.

20 Also in my notes my pen is
21 different on those two days.

22 MR. CAVALLUZZO: Then let us come
23 to the notes. That explains the discrepancy.

24 You are telling us that you are
25 sure that the meeting occurred on October 8th.

1 MR. LAUZON: That is correct.

2 MR. CAVALLUZZO: And it occurred,
3 you told us, at "A" Division?

4 MR. LAUZON: Yes.

5 MR. CAVALLUZZO: You can't tell us
6 the agency, but there was an American partner at
7 the meeting?

8 MR. LAUZON: That is correct, and
9 several members of Project A-OCANADA.

10 MR. CAVALLUZZO: What your notes
11 say -- and I am just picking it up after 14:20.
12 It says:

13 "Syrian/Canadian --"

14 That is obviously Mr. Arar's dual
15 nationality.

16 And then it says:

17 "Where will he go, Syria /
18 Canada?"

19 What does that entry mean: "Where
20 will he go, Syria / Canada"?

21 MR. LAUZON: This was a
22 hypothetical conversation we were having with
23 respect to Mr. Arar.

24 MR. CAVALLUZZO: What was the
25 discussion; that it is because he is a dual

1 national he could end up going to Canada or he
2 could end up going to Syria?

3 MR. LAUZON: That is correct.

4 MR. CAVALLUZZO: Do you know how
5 this possibility of Syria came to the attention of
6 Project A-OCANADA?

7 MR. LAUZON: The fact that he was
8 a dual citizen made that a possibility, period.

9 MR. CAVALLUZZO: So you would say
10 the fact that he was a dual citizen, because of
11 the ramification or implications of dual
12 citizenship, meant that right from September 28th
13 that Syria was a possibility.

14 MR. LAUZON: And there was also a
15 third possibility: that he would have been
16 returned to Switzerland.

17 MR. CAVALLUZZO: Right. But on
18 October 8th it would appear that just two
19 possibilities are being discussed: Syria and
20 Canada.

21 MR. LAUZON: Yes. But the other
22 one was always understood as well.

23 MR. CAVALLUZZO: You don't note it
24 on this. It doesn't appear.

25 MR. LAUZON: That is correct.

1 MR. CAVALLUZZO: It looks like it
2 wasn't discussed on the 8th.

3 MR. LAUZON: No, it wasn't
4 discussed on the 8th.

5 MR. CAVALLUZZO: From Project
6 A-OCANADA, I understand that there were members
7 from Project A-OCANADA. There was this American
8 partner. Was there anybody else from CID at this
9 meeting?

10 MR. LAUZON: No, just myself. I
11 was replacing Corporal Rick Flewelling because he
12 was on holidays.

13 MR. CAVALLUZZO: Then it goes on
14 and your note is:

15 "What's he in custody for?

16 What has he said?"

17 We have heard evidence that on
18 this day, October 8th, there was still a request
19 for an interview on the table and that because of
20 the possibility that he may be deported to Syria
21 there was a discussion or concern that if the RCMP
22 went down there to interview Mr. Arar prior to a
23 deportation to Syria that this would cause
24 embarrassment for the RCMP.

25 As a result of that, they said

1 before we get an interview we want to find out
2 what is he in custody for, what has he said and,
3 finally, where are you going to send him before an
4 interview would take place.

5 Do you recall discussions to that
6 effect?

7 MR. LAUZON: Those questions were
8 definitely raised during the conversation, during
9 that meeting in the conversation that we had with
10 respect to Mr. Arar, yes.

11 MR. CAVALLUZZO: We see that there
12 is a discussion about possible embarrassment to
13 the RCMP in front of the American partner.

14 Did anybody --

15 MR. LAUZON: I never said that
16 there was a possible embarrassment.

17 MR. CAVALLUZZO: Let's look at the
18 timeline.

19 MR. LAUZON: I don't think that
20 was discussed that day.

21 --- Pause

22 MR. CAVALLUZZO: Could you show
23 the witness Exhibit 226, please.

24 This is a timeline that was
25 created by Mr. Mike Cabana, who as you know was

1 the project manager of A-OCANADA.

2 If you look at the entry for 12
3 o'clock, it says -- this is a member of A-OCANADA.

4 "... met with Insp. CABANA
5 and discussed the interview.
6 We discussed a concern that
7 if the US was only holding
8 ARAR so that we could
9 interview him and that if
10 there was any suggestions
11 that he did not cooperate
12 with Canadian investigators
13 and would be sent to Syria,
14 then the perception would be
15 very damaging to the --"

16 I'm sorry?

17 MR. LAUZON: What page?

18 MR. CAVALLUZZO: This is page 5,
19 at the very bottom, the entry for 12 o'clock.

20 MR. LAUZON: All right.

21 MR. CAVALLUZZO: Somebody within

22 A-OCANADA:

23 "...met with Insp. CABANA and
24 discussed the interview. We
25 discussed a concern that if

1 the US was only holding ARAR
2 so that we could interview
3 him and that if there was any
4 suggestions that he did not
5 cooperate with Canadian
6 investigators and would be
7 sent to Syria, then the
8 perception would be very
9 damaging to the RCMP. We
10 agreed to speak with
11 [somebody, an American] and
12 advised him of our concerns
13 up front and await a
14 response."

15 Then if we go to 14:15 on the next
16 page, we see that you attended and it goes on.

17 Do you see Sgt. Ron LAUZON on the
18 second line there?

19 "We discussed issues
20 concerning the interview of
21 ARAR. We indicated that we
22 need to know why ARAR is
23 being held, where he would be
24 sent once we had interviewed
25 him and what has he already

1 said --"

2 And so on.

3 That is what Mr. Cabana captures
4 took place at that meeting.

5 MR. LAUZON: And I agree with what
6 happened at this meeting. However, the question
7 of embarrassment never came up at this meeting.

8 MR. CAVALLUZZO: Actually, he uses
9 a more pejorative word. He doesn't say
10 embarrassment. He said it would be very damaging
11 to the RCMP.

12 MR. FOTHERGILL: Commissioner, it
13 is clear from this document that the meeting in
14 which the question of perception arose took place
15 at 12 noon, whereas the meeting that Mr. Lauzon
16 attended took place at 2:15.

17 MR. CAVALLUZZO: But the meeting
18 at 2:15 said that they discussed the issues
19 relating to the possible interview.

20 I assume what that meant is that
21 Cabana may have told you why he was imposing these
22 three conditions prior to an interview.

23 MR. LAUZON: He wasn't at the
24 meeting.

25 MR. CAVALLUZZO: Well, whoever was

1 at the meeting for A-OCANADA.

2 Who was at the meeting? You told
3 us that Mr. Callaghan was there.

4 MR. LAUZON: That is correct.

5 MR. CAVALLUZZO: You can also tell
6 us that the chief investigator was there.

7 MR. FOTHERGILL: He can identify
8 Cabana, Callaghan or Corcoran if they were there.
9 Otherwise, I think we would assert NSC.

10 MR. LAUZON: Yes. Kevin Corcoran
11 was there.

12 MR. CAVALLUZZO: All right. And
13 there was a third person that was there.

14 You don't have to mention the
15 name, but the person who always swears the
16 affidavits.

17 Do you know that person?

18 MR. LAUZON: Yes.

19 MR. CAVALLUZZO: And he was there?

20 MR. LAUZON: Yes.

21 MR. CAVALLUZZO: I am putting it
22 to you that obviously Cabana had made the decision
23 around 12 o'clock that before an interview would
24 take place, these three conditions had to be met.

25 I am putting it to you that if

1 they are discussing those three conditions, they
2 also would have said to you the reason why we are
3 imposing these conditions now is that it would be
4 damaging to the RCMP if he was sent off to Syria
5 after we interviewed him, words to that effect.

6 MR. LAUZON: I don't disagree with
7 that.

8 What I am telling you is that at
9 the meeting that I attended, there was no
10 discussion with respect to damaging the RCMP's
11 reputation, nor embarrassing ourselves.

12 MR. CAVALLUZZO: Did you question
13 why they wanted to impose these three conditions
14 before interviewing Arar?

15 MR. LAUZON: No, I did not.

16 MR. CAVALLUZZO: You didn't.
17 Didn't it seem strange to you, since they wanted
18 to interview Mr. Arar, that they were coming up
19 with these three conditions?

20 MR. LAUZON: No.

21 MR. CAVALLUZZO: All right.

22 The question I have relates to one
23 very simple one. You are at this meeting at 2:15.
24 You are with Corcoran, Callaghan and another
25 person from Project A-OCANADA. You have an

1 American partner there; right?

2 The possibility of Syria is
3 mentioned. The question that I have is: Did
4 anyone at that meeting raise with this American
5 partner that you guys better not send this guy,
6 this Canadian citizen, to Syria because if you do,
7 there are going to be grave ramifications, or
8 words to that effect?

9 MR. LAUZON: Are you asking me if
10 somebody said that at the meeting?

11 MR. CAVALLUZZO: Yes.

12 MR. LAUZON: No, because it was
13 nobody's belief that he was actually going to
14 Syria. Everybody that was sitting at that table
15 believed that he would probably be coming back to
16 Canada.

17 MR. CAVALLUZZO: But there was the
18 possibility of Syria.

19 MR. LAUZON: The mere fact that he
20 is a Syrian citizen, yes. But if Mr. Arar would
21 have the choice of going to Syria or Canada -- and
22 I believed at one point that he probably would
23 have the choice -- then he would choose Canada
24 over Syria.

25 MR. CAVALLUZZO: I think the

1 answer to the question is that, for whatever
2 reason, nobody objected to the possibility of him
3 going to Syria.

4 MR. LAUZON: Because it was never
5 a possibility for any of those people that were
6 actually attending that meeting that he would --

7 MR. CAVALLUZZO: Why would Cabana
8 impose those three conditions if it wasn't a
9 possibility?

10 MR. LAUZON: I'm not sure.

11 MR. CAVALLUZZO: You never
12 questioned it.

13 MR. LAUZON: No, I didn't question
14 it.

15 MR. CAVALLUZZO: All right.

16 At this point in time, on October
17 8th when this meeting occurred, did you have any
18 idea of extraordinary rendition, what that
19 American policy was?

20 MR. LAUZON: No, I did not.

21 MR. CAVALLUZZO: Did you have any
22 idea at this point in time that just a month and a
23 half before a Canadian, whose name was Mr. El
24 Maati, had made allegations that he had been
25 tortured while he was in Syrian detention, in

1 particular as of August 15th of 2002?

2 MR. LAUZON: I may have read a
3 SITREP to that effect. When, I don't remember.

4 When I came across that, I don't
5 remember for sure.

6 MR. CAVALLUZZO: The only other
7 questions -- we have dealt with October 16th and
8 18th -- is in regard to your additional notes,
9 Exhibit 233.

10 Just so that you can identify
11 certain things very quickly, on the first page is
12 a meeting on September 26th. We have heard
13 evidence of that.

14 This is a meeting in respect of
15 A-OCANADA and their contacts with foreign agencies
16 and a resolution to that.

17 Is that correct?

18 MR. LAUZON: That is correct.

19 MR. CAVALLUZZO: Did you attend
20 that meeting or did you just get information about
21 the meeting?

22 MR. LAUZON: No, I did not.

23 MR. CAVALLUZZO: You didn't
24 attend.

25 MR. LAUZON: I called Rick

1 Flewelling and I asked him what was the results of
2 the meeting.

3 MR. CAVALLUZZO: If we go to the
4 next page, to the entry for Friday, February 28,
5 2003, it says:

6 "1530 DFAIT with Insp. Rick
7 Reynolds"

8 What is the first entry? It says
9 "D-E-C". What is that "D-E-C"?

10 MR. LAUZON: It says "DEC".

11 MR. CAVALLUZZO: What is that?

12 MR. LAUZON: As in a presentation.

13 MR. CAVALLUZZO: So that DEC would
14 be presented to DFAIT:

15 "... to demonstrate that
16 there is coherence in the
17 gov't when these issues
18 arise."

19 That is with Arar and other.

20 So somebody at DFAIT make a DEC
21 presentation about these particular issues?

22 MR. LAUZON: Either they made or
23 they were planning to make one.

24 MR. CAVALLUZZO: Then it goes on
25 and it says:

1 "ARAR - minister has approved
2 visit 11-14 March to Syria.
3 Easter --"

4 Who, of course, was the Solicitor
5 General at the time.

6 "... gave green light on
7 visit. Easter apparently
8 spoke with CSIS & RCMP
9 - see ARAR & gov't of Syria
10 humanitarian plea
11 - will ask Syrians for Visas
12 - Ms Catterall & MP
13 ASSEDORIAN (familiar with
14 Syrian community in Canada)"

15 The question I have is: Is this
16 reference here to a visit to Syria, "minister has
17 approved visit", does that mean that Solicitor
18 General Easter had approved a visit of the RCMP to
19 Syria?

20 MR. LAUZON: I am not sure is this
21 entry means that the minister has approved the
22 RCMP to go to Syria or if it means that he has
23 approved the ministerial visit by Ms Catterall and
24 Mr. Assadourian.

25 MR. CAVALLUZZO: Certainly

1 Assadourian and Catterall would not need Solicitor
2 General Easter's okay to go to Syria.

3 We have heard evidence that around
4 this time the RCMP had agreed to delay their visit
5 to Syria as a result of the politicians -- i.e.,
6 Catterall and Assadourian -- going over.

7 Do you recall that discussion?

8 MR. LAUZON: Then it would mean
9 that CSIS and the RCMP would go to Syria after the
10 ministerial visit. That is what my notes would
11 imply.

12 MR. CAVALLUZZO: What this is
13 recognizing is that there was going to be an RCMP
14 visit and it would be deferred or delayed until
15 such time as the politicians went.

16 MR. LAUZON: That is correct.

17 MR. CAVALLUZZO: Do you recall who
18 was at this meeting for that discussion?

19 MR. LAUZON: There was inspector
20 Rick Reynolds and myself.

21 Who else was there, I don't know.

22 MR. CAVALLUZZO: So that would be
23 the people from the RCMP, you and Reynolds?

24 MR. LAUZON: Yes.

25 MR. CAVALLUZZO: Okay. There may

1 be one final question.

2 --- Pause

3 MR. CAVALLUZZO: Just to be fair,
4 finally, could you please show the witness
5 Exhibit P-183?

6 --- Pause

7 MR. CAVALLUZZO: This is an e-mail
8 from Anthony Ritchie to Lawrence Dickenson, both
9 people being in the PCO. You will see the subject
10 matter is "DFAIT Det Consular Services Relating to
11 Terrorist Cases". Then it says:

12 "Attended a meeting at DFAIT
13 on Friday to discuss the
14 above. The RCMP were
15 present." (As read)

16 Then it goes on:

17 "Dan Livermore, DFAIT,
18 chaired the meeting. The
19 purpose of the meeting was to
20 get more clarify from RCMP
21 concerning ... to talk to
22 Maher Arar ..." (As read)

23 Et cetera.

24 At the meeting that you
25 attended -- you will note it goes on in the second

1 paragraph. It says:

2 "Discussions with Arar will
3 be in the context of him as a
4 witness." (As read)

5 Then it goes on:

6 "In the case of Arar,
7 Catterall will also be
8 visiting him from a
9 humanitarian perspective. It
10 was agreed that RCMP would
11 delay their visit until two
12 weeks after the Catterall
13 visit." (As read)

14 So this is obviously the meeting
15 at which you attended?

16 MR. LAUZON: That is correct.

17 MR. CAVALLUZZO: And it was Dan
18 Livermore who chaired that meeting you recall?

19 MR. LAUZON: I don't recall.

20 MR. CAVALLUZZO: Okay.

21 Okay, Mr. Lauzon, I have no
22 further questions. Thank you.

23 THE COMMISSIONER: Mr. Waldman, do
24 you have any questions?

25 EXAMINATION

1 MR. WALDMAN: I just want to
2 clarify a few points on information-sharing.

3 If there was going to be a
4 decision to disclose without caveats, who would
5 have the authority to make that decision,
6 according to your understanding?

7 MR. LAUZON: It could be the
8 Assistant Commissioner of CID, it could be the
9 Deputy Commissioner of Operations.

10 MR. WALDMAN: So it has to be
11 very senior?

12 MR. LAUZON: I would think so.

13 MR. WALDMAN: So you wouldn't have
14 the authority yourself to waive caveat?

15 MR. LAUZON: No.

16 MR. WALDMAN: Someone at the level
17 of Inspector Cabana wouldn't have the authority to
18 waive caveats either?

19 MR. LAUZON: No.

20 --- Pause

21 MR. WALDMAN: I'm just trying to
22 get some understanding here of your knowledge of
23 the A-OCANADA investigation.

24 I gather Sergeant -- Corporal
25 Flewelling at the time was the coordinator for CID

1 and he was reporting to you. You had several
2 other files on your desk, right, so the A-OCANADA
3 was one of several for you.

4 Is that correct?

5 MR. LAUZON: That is correct. I
6 had five or six members under my supervision who
7 also had five or six files each of major national
8 security importance.

9 MR. WALDMAN: Did Corporal
10 Flewelling have other files besides A-OCANADA then
11 as well?

12 MR. LAUZON: He did. At one
13 point I redistributed some of Rick's work to
14 other members to strictly concentrate on
15 Project A-OCANADA.

16 MR. WALDMAN: Right. So I am just
17 trying to get some idea of how "au courant" you
18 were of what was going on with the A-OCANADA
19 investigation.

20 I just want to clarify one point.
21 Mr. Arar's name, was the first time you heard that
22 on October 3rd at the meeting at A-OCANADA or had
23 you heard his name before?

24 MR. LAUZON: That's correct. No,
25 October 3rd where I have in my notes that I heard

1 his name.

2 MR. WALDMAN: You never heard
3 Mr. Arar's name prior to that time?

4 MR. LAUZON: I may have, I don't
5 remember.

6 MR. WALDMAN: Okay. So based upon
7 your best recollection October 3rd would be the
8 first time?

9 MR. LAUZON: That is correct.

10 MR. WALDMAN: But you had heard
11 the name Almalki before that? You were familiar
12 with his name I assume?

13 MR. LAUZON: Yes, I did.

14 MR. WALDMAN: And Mr. El Maati's
15 name, you would have been familiar with that name?

16 MR. LAUZON: That is correct.

17 MR. WALDMAN: But Mr. Arar's name
18 hadn't come up?

19 MR. LAUZON: Not to my knowledge.

20 MR. WALDMAN: Okay. Now,
21 according to Sergeant Flewelling, he first found
22 out about the possibility of Mr. Arar -- well,
23 Mr. Arar's detention in the United States from
24 Inspector Roy on October 2nd?

25 MR. LAUZON: Right.

1 MR. WALDMAN: Was that something
2 that he should have reported to you immediately
3 that day, given the importance of the fact that
4 there was a Canadian citizen detained in the
5 United States who was the subject of an A-OCANADA
6 investigation?

7 MR. LAUZON: Not necessarily.

8 MR. WALDMAN: So it wouldn't be
9 that important that he would have been expected to
10 report something like that to you immediately?

11 MR. LAUZON: I imagine if we had a
12 water cooler talk that day that he might have
13 given me that information. Other than that, no.

14 MR. WALDMAN: With respect to the
15 October 5th phone call that we know that Sergeant
16 Flewelling had with one of his American colleagues
17 from the U.S. Embassy, isn't that the type of
18 conversation that you would have expected being
19 told about right away? It was pretty important,
20 Americans --

21 MR. LAUZON: Yes, and I'm glad
22 and -- I don't remember the phone call, but as a
23 matter of practice my subordinates do call me on
24 the weekends to apprise me of any developments
25 with respect to their investigations. Whether I

1 make a notation of that in my notebook or not
2 would depend if I even had my notebook at home at
3 that point in time.

4 But no, I don't remember the
5 phone call.

6 MR. WALDMAN: But it could have
7 happened?

8 MR. LAUZON: Absolutely.

9 MR. WALDMAN: Right. But it
10 wasn't so significant in your mind at that time
11 that you have a recollection of it as of today?

12 Correct?

13 MR. LAUZON: Can you pose --

14 MR. WALDMAN: You don't have a --

15 MR. LAUZON: Can you pose the
16 question again?

17 MR. WALDMAN: It is not so
18 significant that you would have -- it didn't
19 strike you at the time as being so significant
20 that you recall it now or that you are sure that
21 you had it? You don't recall whether you --

22 MR. LAUZON: I don't recall the
23 conversation. I'm not denying that it didn't
24 happen.

25 MR. WALDMAN: Right. Do you

1 recall a conversation you had with Corporal
2 Flewelling on Monday, because he went on personal
3 leave on Tuesday?

4 According to Corporal Flewelling,
5 he had a conversation with you on Monday.

6 MR. LAUZON: Yes, that is correct.
7 We had a briefing. According to my notes, I think
8 it was about 20 after 9:00 in the morning where we
9 discussed an article that was in the newspaper.

10 MR. WALDMAN: Right. But the
11 thing that surprises me about the briefing is
12 there is absolutely no mention of Mr. Arar in that
13 briefing.

14 Could I ask you to go to page 5 of
15 your notes?

16 --- Pause

17 MR. WALDMAN: It says:

18 "9:25 briefing with Rick
19 Flewelling with respect to
20 article National Post
21 October 5th. Back on
22 September 21st. ... Post
23 alluded to info ... This
24 article is as a result of
25 that meet. In return ...

1 Bill ...

2 Note: This is why we
3 shouldn't go to Interpol.
4 Rick will provide a full
5 report." (As read)

6 Is there any mention of Mr. Arar
7 in these notes?

8 MR. LAUZON: No, there isn't.

9 MR. WALDMAN: So do you have any
10 recollection of being briefed by Sergeant
11 Flewelling about Mr. Arar on that day?

12 MR. LAUZON: No.

13 MR. WALDMAN: Sergeant Flewelling
14 seems to say that he did, but you don't have any
15 recollection of that either?

16 MR. LAUZON: He may have, I just
17 don't remember now.

18 MR. WALDMAN: Is it not true that
19 you put into your notes the information that you
20 think is significant, right? So if you had a
21 briefing from Mr. Flewelling obviously it didn't
22 strike you as being significant enough at that
23 time to include it in your notes, correct, or else
24 it would be here?

25 --- Pause

1 MR. LAUZON: That's fair.

2 MR. WALDMAN: Right. I just
3 asked you, Corporal Flewelling told us that he
4 gave you a briefing in which he related to you
5 again the conversation he had had over the weekend
6 about this Canadian citizen subject to this
7 A-OCANADA investigation involving an alleged
8 al-Qaeda sleeper cell and the Americans asking
9 whether -- considering whether they could deport
10 him back to Canada and whether there is enough
11 information for criminal charges, and you are
12 telling me that wasn't significant enough to be
13 put into your notes?

14 MR. LAUZON: It wasn't in
15 my notes.

16 MR. WALDMAN: Do you have any
17 explanation why it wouldn't have been?

18 MR. LAUZON: No, I don't have an
19 explanation.

20 MR. WALDMAN: So you don't recall
21 anything about any conversation you have with
22 Corporal Flewelling on the 7th because it is not
23 in your notes?

24 MR. LAUZON: That is correct.

25 MR. WALDMAN: Now, you told us

1 that at this meeting on the 8th that you went to
2 at 1420 which had investigators from A-OCANADA and
3 yourself representing -- Corporal Flewelling was
4 away -- there was an American partner there.

5 Did the presence of an American
6 partner cause you any concern in terms of sharing
7 of information, caveats and things like that?

8 MR. LAUZON: Not at all. The
9 reason I was there is because the American partner
10 was there.

11 MR. WALDMAN: Was it routine for
12 American partners to come to meetings where
13 operational details about a Canadian investigation
14 were discussed?

15 MR. LAUZON: I think in this
16 context, yes, it was normal, especially the
17 relationship with Project A-OCANADA and this
18 particular American partner. However, the deal
19 was if there was an American partner at a meeting
20 with the members for Project A-OCANADA that there
21 would be a member of CID present. It should be
22 Rick Flewelling, however he was on holidays so I
23 attended in his place.

24 MR. WALDMAN: I think we heard
25 some evidence that this was an arrangement that

1 came -- a deal you called it -- that came about as
2 a result of negotiations because of concerns about
3 caveats not being put in place. So there was an
4 arrangement where someone from CID would be
5 present whenever an American partner is there.

6 Is that correct? That was how
7 that happened?

8 MR. LAUZON: I don't think it has
9 anything to do with caveats per se. It just has
10 to do with being at the table when there is an
11 American partner at a meeting with Project
12 A-OCANADA.

13 MR. WALDMAN: I gather your notes
14 would have reflected the discussions that took
15 place between the group that was there, including
16 the American partner.

17 Is that correct?

18 MR. LAUZON: Yes.

19 MR. WALDMAN: The American
20 partner, I assume, would have participated in the
21 meeting as well?

22 MR. LAUZON: Yes.

23 MR. WALDMAN: I find it a bit
24 surprising that we have an American partner at a
25 meeting where we are speculating about the actions

1 of the Americans and someone just didn't turn to
2 your American partner and say, "Well, what are you
3 guys going to do"?

4 Did that happen? Did one of you
5 go and talk to the American partner and say, "What
6 are you going to do with Arar?"

7 Was that discussed or that
8 question posed to the partner?

9 MR. LAUZON: Not to my knowledge.

10 MR. WALDMAN: If you are
11 speculating about what the Americans are going to
12 do about a Canadian citizen sitting in jail in the
13 United States, wouldn't it make sense to ask the
14 American partner?

15 You may not be able to tell me if
16 the American partner gave you an answer, but I
17 think I can ask if you asked the question.

18 Wouldn't it have made sense to ask
19 the American what plans they had for Mr. Arar?

20 MR. LAUZON: I think the plan that
21 they had is he was scheduled for an immigration
22 hearing the following day.

23 MR. WALDMAN: But at this point
24 you are speculating, "Where are we" -- your note
25 says:

1 "Arar Syrian-Canadian.

2 Where will he go ?

3 Syria?

4 Canada?" (As read)

5 Clearly Syria and Canada are on
6 the table. Why don't you just turn to the
7 American partner and say, "Well, what are you guys
8 going to do? Are you going to send him to Syria
9 or send him to Canada?" That might have helped us
10 resolve the issue at that time.

11 That question wasn't asked,
12 though, as far as you recall?

13 MR. LAUZON: No.

14 MR. WALDMAN: In terms of the RCMP
15 proposed trip to Syria, which I gather got
16 approval, right, but didn't -- from your notes it
17 seems that the Minister approved the trip that was
18 going to happen, but I gather it never happened,
19 as far as you know.

20 MR. LAUZON: No, that trip
21 never occurred.

22 MR. WALDMAN: But it was approved
23 to go ahead? That's what the notes say, Minister
24 approval and that it was postponed because of the
25 MPs visit.

1 MR. LAUZON: I would say yes.

2 MR. WALDMAN: So this decision to
3 send the RCMP to Syria to interview Mr. Arar, were
4 you involved in any way in the discussions about
5 how this -- the approval for the trip?

6 We are told that there is a
7 process in place where there are consultations
8 inside the RCMP and you look at a series of
9 factors and it would be done by the national
10 security group.

11 Did you participate in any way in
12 the discussions that led up to the approval for
13 the trip?

14 MR. LAUZON: I don't remember.

15 MR. WALDMAN: You don't remember.

16 Were you aware of the human rights
17 record of Syria at the time, sir?

18 MR. LAUZON: Perhaps not with this
19 detention in New York, but certainly afterwards,
20 yes.

21 MR. WALDMAN: So by the time we
22 are discussing an RCMP trip to Syria, which is
23 March of 2003, by that time you would have a
24 pretty good idea that Syria has a bad human rights
25 record.

1 Correct?

2 MR. LAUZON: That's correct.

3 MR. WALDMAN: And that conditions
4 in the prison are very bad and that torture is
5 used in interrogations.

6 Right?

7 MR. LAUZON: I wasn't aware that
8 torture was being used in interrogations in Syria.

9 MR. LAUZON: I'm not saying in
10 Mr. Arar's interrogation, but generally it is part
11 of the practice. That is what the Department of
12 State report says.

13 You weren't aware that they use
14 torture when they question people in Syria?

15 MR. LAUZON: I realized that they
16 didn't have a human rights record or standard that
17 was the same as Canada, but no, I didn't realize
18 that they use torture as a means of treating their
19 prisoners.

20 MR. WALDMAN: So knowing that
21 Mr. Arar was in detention in Syria, in a country
22 that didn't have a very good human rights record,
23 and given your position as a supervisor of the
24 A-OCANADA project, did you at any time say to any
25 of the people that were discussing this trip to

1 Syria, "Hey, I don't think this is a good idea.
2 We have a Canadian citizen sitting in jail in a
3 country that doesn't respect human rights and I
4 don't think we should be sending our officers
5 there to question him in that context."

6 Did you ever make that kind of
7 statement, sir?

8 MR. LAUZON: No.

9 MR. WALDMAN: What do you think,
10 do you think it is a good idea to send people to
11 interrogate Canadian citizens detained in foreign
12 jurisdictions with poor human rights record?

13 MR. LAUZON: In furtherance of a
14 criminal investigation, yes.

15 MR. WALDMAN: How reliable would
16 you think the information you could obtain under
17 those circumstances would be?

18 MR. LAUZON: The information is
19 only as reliable as you can corroborate it, right.

20 MR. WALDMAN: Right. Wouldn't you
21 be concerned that in the context of providing
22 information or trying to obtain information in
23 such a context you might put the Canadian citizen
24 at risk of having his human rights abused?

25 Wouldn't that be a concern to you?

1 MR. LAUZON: Would it be not the
2 concern of Foreign Affairs perhaps?

3 MR. WALDMAN: But the RCMP are the
4 people that are going. They are the ones that are
5 going to be asking the questions. They are the
6 ones that are going to be in the jail with the
7 Canadian citizen. I would suggest it to be the
8 concerns of the RCMP as well.

9 You are the ones -- Mr. Pardy told
10 me, and I hope I am not misstating his evidence,
11 but he told me that at the end of the day the RCMP
12 were the ones who made the decision about whether
13 to go over the objections of DFAIT.

14 So you were the ones who would
15 make the decision. You decided to go. Don't you
16 think there is a problem about sending inspectors
17 to countries that violate human rights to question
18 Canadian citizens?

19 MR. LAUZON: In furtherance to a
20 national security criminal investigation I think
21 that we have a duty to get as much information as
22 possible to complete our investigation, to have a
23 fulsome, wholesome investigation and the
24 information that would be provided would have to
25 be obviously corroborated elsewhere.

1 MR. WALDMAN: But in Canada before
2 a person gives a statement he has a choice, he has
3 a right to a lawyer and you can't compel -- except
4 now under the Criminal Code in exceptional
5 circumstances -- you can't compel a person to give
6 a statement.

7 Right? Is that correct?

8 MR. LAUZON: That is correct.

9 MR. WALDMAN: So do you think that
10 we should apply a different standard to Canadian
11 citizens sitting in jails in terrible conditions
12 overseas where you go there and you show up and
13 force them to give statements because they are in
14 detention in Syria and ignore their Charter rights
15 to not give statements?

16 MR. LAUZON: Are you getting a
17 statement from that person? Are you merely
18 getting information? Are you getting information
19 that will be used eventually for evidence in a
20 court of law? What --

21 MR. WALDMAN: Well, the RCMP,
22 according to the information we have, says it was
23 approval of a trip to get information and to
24 question Mr. Arar. That is what the notes say.

25 So the intent, it would seem, was

1 to question Mr. Arar while he is sitting in jail
2 in a country where he didn't have access to a
3 lawyer and in deplorable conditions.

4 You think that is all right to
5 further an investigation?

6 MR. LAUZON: Yes, I do.

7 --- Pause

8 MR. WALDMAN: Thank you.

9 THE COMMISSIONER: Mr. Fothergill?

10 --- Pause

11 MR. FOTHERGILL: Commissioner,
12 I'll be brief. But I think it's still easier for
13 me to speak from here than my desk.

14 THE COMMISSIONER: Sure.

15 EXAMINATION

16 MR. FOTHERGILL: Mr. Lauzon, if I
17 can ask you to turn to your notes for October 8th.
18 This is exhibit 232. It's the green-covered one.
19 And it's page 5, if you're going by the
20 handwritten page numbers in the lower right hand
21 corner.

22 Do you have that in front of you?

23 MR. LAUZON: Yes, I do.

24 MR. FOTHERGILL: Now, your note
25 reads:

1 "ARAR: - Syrian / CDN
2 - where will he go,
3 Syria / Canada"

4 Did you believe that Mr. Arar had
5 some choice in where he would be sent?

6 MR. LAUZON: Yes, I did.

7 MR. FOTHERGILL: Can you elaborate
8 on that in any way? What your think was about the
9 role of Arar's own volition in the outcome?

10 MR. LAUZON: There were several
11 factors.

12 It was my understanding that he
13 was facing an immigration hearing on -- on the
14 9th. Subsequent to that hearing if
15 he -- I thought that he might have a choice of
16 where to go, you know, so...

17 And obviously, if his two choices
18 are Syria or Canada, he would choose Canada over
19 Syria.

20 MR. FOTHERGILL: Now there was an
21 American official present at this meeting.

22 Correct?

23 MR. LAUZON: That's correct.

24 MR. FOTHERGILL: You can't tell us
25 the organization he was affiliated with and you

1 can't tell us his name, but was he somebody who is
2 employed at the U.S. Embassy here in Ottawa?

3 MR. LAUZON: Yes, he is.

4 MR. FOTHERGILL: Can you tell us
5 in general terms what his function in the embassy
6 was? What did he do there?

7 MR. LAUZON: Somewhat the same
8 role as what Corporal Rick Flewelling was doing at
9 that same time, was monitoring, coordinating...

10 MR. FOTHERGILL: This might
11 help -- and I don't know if you know the answer to
12 this, but we've heard some evidence about
13 Mr. Flewelling's dealings with a certain American
14 official on October 4th and October 5th.

15 Is it the same American official
16 who attended this meeting? Do you recall?

17 MR. LAUZON: I'm not a hundred per
18 cent sure, but in all likelihood.

19 MR. FOTHERGILL: All right.

20 But regardless, it's somebody who
21 fulfills the same sort of function?

22 MR. LAUZON: Yes.

23 MR. FOTHERGILL: Again I'm going
24 to ask you to speculate, and if you're not
25 prepared to answer, say so, but can you comment on

1 to what extent this individual who was in the room
2 with you would be able to determine or tell you
3 where Arar would be sent following this October
4 9th hearing you mentioned?

5 Would he know?

6 MR. LAUZON: I don't think he
7 would have a clue.

8 MR. FOTHERGILL: Okay.

9 Can I then ask you to turn to the
10 other set of your notes. This is the loose one.

11 It's -- I don't think I noted the
12 exhibit number.

13 --- Off microphone comment / Remarque hors
14 microphone

15 MR. FOTHERGILL: Two
16 thirty-three (233). Thank you.

17 I'd like to ask you about the
18 meeting you attended on February 28th, I think.
19 This is on page 2 of 2 of the transcript, of the
20 typewritten version.

21 So if you have exhibit 233 in
22 front of you and if you turn two pages in you
23 should see an entry for February 28th of 2003.

24 Do you see that?

25 MR. LAUZON: Yes.

1 MR. FOTHERGILL: In the right hand
2 corner you see first 121 and 129. It's the
3 portion there the others have asked you about that
4 I'd like to speak to you about.

5 "ARAR: - minister has
6 approved visit"

7 Do you see that?

8 MR. LAUZON: Yes.

9 MR. FOTHERGILL: Now Mr. Waldman
10 put to you, and I think you agreed with him, that
11 this meant that the minister, Solicitor General
12 Easter, had in fact approved a visit by the RCMP
13 to travel to Syria.

14 Do you know for certain whether in
15 fact Minister Easter approved of such a trip?

16 MR. LAUZON: No. I was just
17 taking notes at that meeting.

18 MR. FOTHERGILL: Mr. Waldman asked
19 you some questions about the propriety of
20 Canadians interviewing people in other countries.

21 Do you know -- if Canadian
22 officials, members of the RCMP, interview somebody
23 who is detained in another country, do they take
24 the Charter with them in the sense that, is it
25 RCMP policy to apply Charter standards when they

1 are abroad?

2 --- Pause

3 MR. LAUZON: I would tend to think
4 so, that you would apply the same judicial
5 principles as you would in another country.

6 However I'm not sure if you can do
7 that or not. I'm not sure of the process.

8 But it would seem prudent to
9 certainly try and apply the Charter, for what it's
10 worth, when you're in fact interview somebody in a
11 foreign country.

12 MR. FOTHERGILL: Do you know
13 whether the consent of the person interviewed
14 would be required before he could be interviewed
15 by the RCMP?

16 MR. LAUZON: I think that's a
17 standard procedure that if you're going to
18 interview somebody, that there's some element of
19 consent.

20 MR. FOTHERGILL: All right, thank
21 you. Those are my questions.

22 THE COMMISSIONER: Mr. Cavalluzzo?

23 MR. CAVALLUZZO: Now, in terms of
24 the element of consent, do you think it would be
25 an informed and viable consent if I'm a Canadian

1 languishing away in a cell that's six by eight by
2 seven and I have a Canadian agency coming to see
3 me and saying "We'd like to interview you" -- what
4 do you think the Canadian would say?

5 MR. LAUZON: Yes.

6 MR. CAVALLUZZO: Do you think that
7 would be a voluntary expression on their part, or
8 do you think circumstances would dictate that they
9 would love to see a Canadian agency?

10 MR. LAUZON: Can you ask the
11 question again?

12 MR. CAVALLUZZO: Yes, okay.
13 I'm a Canadian, right?

14 MR. LAUZON: Yes.

15 MR. CAVALLUZZO: I have been in
16 Syria for six months. My cell is six by seven by
17 six. Known as the grave, because I never get to
18 see the sunlight. Right? A Canadian agency comes
19 over and says "We would like to interview you."

20 What do you think the Canadian in
21 those circumstances would say?

22 MR. LAUZON: He would jump at the
23 opportunity.

24 MR. CAVALLUZZO: Absolutely.

25 And you don't think that that's an

1 informed consent within the meaning of the Charter
2 of Rights, do you?

3 MR. LAUZON: It would be a
4 hard -- consent is a state of mind. So how --

5 MR. CAVALLUZZO: -- believe it.

6 MR. LAUZON: I don't know how you
7 would be able to ascertain whether it was -- if he
8 was just -- if he was truly consenting to the --
9 the questioning or not.

10 MR. CAVALLUZZO: We'll leave that
11 to the average Canadian as to what their view
12 would be as to whether that's an informed consent.

13 MR. FOTHERGILL: Better yes, we
14 would leave it to a court because it's a legal
15 decision, and it's something that would be argued
16 if such a statement were ever to be entered in
17 evidence.

18 THE COMMISSIONER: Go ahead.

19 MR. CAVALLUZZO: I would prefer to
20 leave it to the average Canadian.

21 --- Laughter / Rires

22 MR. CAVALLUZZO: The only other
23 question is, you said that the United States rep
24 present at this meeting -- and once again you
25 can't tell us which agency he or she came from,

1 but you said, you used the words "this U.S. rep
2 wouldn't have a clue where he would be sent",
3 referring to Mr. Arar.

4 That's not the case, is it?

5 MR. LAUZON: What I meant to say
6 is that he would have no more knowledge than we
7 would have into where -- what happened to him at
8 that point in time.

9 MR. CAVALLUZZO: I guess the other
10 question that I would have, since you're dealing
11 and you keep referring to the deportation hearing
12 that was going to take place the next day on
13 Wednesday October the 9th, did anybody in the RCMP
14 seek any kind of expert legal advice as to what
15 might happen to Mr. Arar on October the 9th?

16 MR. LAUZON: Not to my knowledge.

17 MR. CAVALLUZZO: Okay.

18 MR. LAUZON: And I was referring
19 to it as an immigration hearing --

20 MR. CAVALLUZZO: An immigration
21 hearing or whatever.

22 MR. LAUZON: I don't think I was
23 using the word deportation.

24 MR. CAVALLUZZO: Okay, Mr. Lauzon,
25 I have no further questions.

1 Thank you.

2 THE COMMISSIONER: That completes
3 your evidence, Sergeant.

4 Thank you very much for coming,
5 for answering questions and the time you spent
6 preparing and coming to give evidence.

7 Thank you.

8 MR. LAUZON: You're welcome.

9 THE COMMISSIONER: That completes
10 a long day.

11 Let me just express my thanks to
12 everybody who was involved in allowing us to
13 maintain our schedule: counsel and particularly
14 the translators, the camera crew, sound, court
15 reporter, all the administrative staff.

16 There are a lot of people involved
17 in this inquiry proceeding, and it takes a good
18 deal of cooperation and hard work. So I'm
19 indebted to everybody for that.

20 Hopefully we don't have very many
21 more net days to go, and hopefully we won't have
22 any more days that are as long as today.

23 So we'll rise and we'll resume
24 tomorrow morning at 9 o'clock.

25 --- Whereupon the hearing adjourned at 6:30 p.m.,

1 to resume on Wednesday, August 24, 2005
2 at 9:00 a.m. / L'audience est ajournée à
3 18 h 30 pour reprendre le mercredi
4 24 août 2005 à 9 h 00

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Lynda Johansson,
C.S.R., R.P.R.