

**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 30 août 2005

Held at:

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

Tuesday, August 30, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Tuesday, August 30, 2005

3 at 10:05 a.m. / L'audience débute le mardi

4 30 août 2005 à 10 h 05

5 THE REGISTRAR: Please be seated.

6 THE COMMISSIONER: Mr. Cavalluzzo?

7 MR. CAVALLUZZO: Thank you,

8 Commissioner.

9 Commissioner, before we commence
10 the examination of Mr. Martel, there are two
11 administrative matters that I would like to deal
12 with.

13 The first is, last week, I
14 mentioned that CSIS had considered an
15 investigation into an alleged leak in The Toronto
16 Star in the James Travers article of June 9th
17 of 2005, and that we received a letter from CSIS
18 stating that there was, in fact, a breach of
19 security, and that, unfortunately, because of the
20 expansive investigation assessing who may have
21 been involved in the leak, that CSIS would not
22 conduct an investigation.

23 I told you that we would file that
24 letter today, and I would like to file the letter
25 from CSIS, dated August 22nd of 2005.

1 THE COMMISSIONER: Should we mark
2 that as an exhibit?

3 MR. CAVALLUZZO: Yes, I think we
4 should.

5 THE COMMISSIONER: 241.

6 EXHIBIT NO. P-241: Letter
7 from CSIS stating breach of
8 security in The Toronto Star
9 leak, dated August 22, 2005

10 MR. CAVALLUZZO: The second matter
11 relates to a motion which will be brought on
12 behalf of Mr. El Maati and Mr. Almalki concerning
13 a chronology and biography. The scheduling of
14 that motion will be at the completion of
15 Mr. Martel's evidence, whenever that is. Probably
16 sometime tomorrow.

17 Now, before starting Mr. Martel's
18 examination, the procedure will be that I will ask
19 Mr. Martel the questions in English, and
20 apparently Mr. Martel will respond in French; and
21 I just want to explain the rationale behind me, as
22 lead counsel, doing this examination.

23 THE COMMISSIONER: As opposed to
24 Mr. David?

25 MR. CAVALLUZZO: As opposed to

1 Mr. David who, as you know, is fluently bilingual.

2 And the reason for that is that all of
3 Mr. Martel's in-camera evidence, which was
4 conducted by me -- the examination was conducted
5 by me -- was in English. Every document that we
6 will refer to today is in English, and as you may
7 recall, Mr. Martel was to testify last June 20th,
8 and it was going to be in English and, indeed, you
9 may recall his examination was adjourned for other
10 reasons on that day, and, as a result, I am fully
11 prepared to examine Mr. Martel, and that is why I
12 will be conducting his examination this morning.

13 THE COMMISSIONER: Okay. And I
14 take it that's satisfactory to Mr. Martel and his
15 counsel.

16 MR. CAVALLUZZO: Yes, I've spoken
17 to his counsel, and that's fine.

18 THE COMMISSIONER: Okay.

19 MR. CAVALLUZZO: Now, in respect
20 of Mr. Martel, obviously he doesn't have to be
21 sworn as he has already been a witness in these
22 proceedings.

23 At the outset, I would like to
24 file a Book of Documents, which are newly redacted
25 documents, for Mr. Martel.

1 THE COMMISSIONER: The book will
2 be 242.

3 EXHIBIT NO. P-242: Book of
4 Documents, newly redacted,
5 for Mr. Martel's testimony

6 PREVIOUSLY SWORN: LÉO MARTEL
7 EXAMINATION

8 MR. CAVALLUZZO: And for
9 Mr. Martel's examination, you should have that
10 book in front of you, as well as Mr. Pillarella's
11 book, which is exhibit 134.

12 Okay. Mr. Martel, initially, I
13 would like to deal with your employment history,
14 and we have your curriculum vitae, which is in
15 exhibit P-85, volume 5, tab -- I believe tab 37.
16 Yes, tab 37.

17 --- Pause

18 MR. CAVALLUZZO: And what I will
19 do in your examination is to summarize what we
20 find in this document.

21 I understand, Mr. Martel, that you
22 joined the public service in the Department of
23 Transport in 1960.

24 Is that correct?

25 MR. MARTEL: Yes, that's correct.

1 MR. CAVALLUZZO: In 1963 you were
2 transferred to DFAIT?

3 MR. MARTEL: Yes, through an
4 internal competition in the public service. I was
5 transferred from the Department of Transport to
6 the Department of External Affairs, which is what
7 it was called back then.

8 MR. CAVALLUZZO: Between 1963
9 and 1983, you held a number of telecommunications
10 positions in various posts, embassies, and
11 headquarters in DFAIT.

12 Is that correct?

13 MR. MARTEL: Yes, that's correct.
14 All of them were telecommunications positions in
15 -- either at headquarters or at various embassies,
16 as is stated here. That's correct, yes.

17 MR. CAVALLUZZO: Now, I would like
18 to review your employment experience in respect of
19 consular affairs, and I understand that between
20 1983 and 1984 you were an administrative trainee
21 with Foreign Affairs.

22 Is that correct?

23 MR. MARTEL: Yes, that's correct.
24 Again, as a result of an internal competition. I
25 won the competition when I was posted in Paris and

1 was brought back to headquarters for one year of
2 training.

3 MR. CAVALLUZZO: Between 1984 and
4 1987, you were the head of the administration
5 program, reporting directly to the Ambassador in
6 Haiti?

7 MR. MARTEL: Yes, that's correct.
8 The Third Secretary of Administration, reporting
9 directly to the Ambassador, but with the title of
10 Vice-Consul Attaché, with consular responsibility
11 resting with the Consul.

12 MR. CAVALLUZZO: Between 1987 and
13 1989, you were the Second Secretary of
14 Administration and the Vice-Consul in the Canadian
15 embassy in the Cameroon?

16 MR. MARTEL: Yes. That's also
17 correct.

18 With roughly the same
19 responsibilities, except that, with a system based
20 on points and years of service, the titles change
21 from third to second secretary.

22 MR. CAVALLUZZO: And you held a
23 similar position between 1989 and 1992 in the
24 Canadian Embassy in Senegal?

25 MR. MARTEL: Yes, that's correct,

1 except that there were more consular
2 responsibilities at that time.

3 MR. CAVALLUZZO: Okay. Between
4 1992 and 1994, you were the First Secretary
5 Administration and the Consul in the Ivory Coast?

6 MR. MARTEL: Yes, that's also
7 correct. And still with the advancement system in
8 the public service and at the Department, I was
9 now First Secretary, and I also had complete
10 consular responsibility.

11 That's why the title of Consul is
12 there.

13 MR. CAVALLUZZO: Okay. Between
14 1994 and 1998, you were the Counsellor
15 Administration and Consul at the Canadian embassy
16 in Egypt?

17 MR. MARTEL: That's correct. More
18 or less the same thing as before, except that the
19 embassy is bigger. So, the responsibilities were
20 bigger in scope.

21 MR. CAVALLUZZO: Between 1998 and
22 1999, you were a Special Project Officer in which
23 you were coordinating the embassy move from Bonn
24 to Berlin?

25 MR. MARTEL: Yes, that's also

1 correct. There was a short -- a short career
2 break at that time, in 1998, and then I was re-
3 integrated and offered this special project in
4 Berlin, which in fact consisted in moving the
5 embassy in Bonn to Berlin, obviously as a result
6 of geopolitical changes in the region.

7 MR. CAVALLUZZO: Between September
8 of 1999 and April of 2001, you were on retirement
9 status?

10 MR. MARTEL: That's correct.

11 MR. CAVALLUZZO: In May and June
12 of 2001, you were recalled by Foreign Affairs for
13 temporary duty at the Canadian Embassy in Berlin?

14 MR. MARTEL: Yes, that's also
15 correct. It was for a short period of about six
16 weeks, for an urgent replacement in Berlin.

17 MR. CAVALLUZZO: Between June of
18 2001 to August of 2002, you were the Counsellor
19 Administration and Consul at the Canadian Embassy
20 in Moscow?

21 MR. MARTEL: Yes, that's also
22 correct. The Department contacted me in Berlin
23 and told me there was an emergency in Moscow, a
24 position that was difficult to fill, and my status
25 was still temporary duty, not foreign transfer

1 status.

2 So, Moscow was supposed to be for
3 a few weeks. Unfortunately one of my colleagues
4 became seriously ill and -- and at that time of
5 year, we had great difficulty finding a
6 replacement to fill the position.

7 So I was asked to go for a few
8 weeks. The few weeks eventually turned into a few
9 months. I couldn't come back until August 2002.

10 MR. CAVALLUZZO: In September of
11 2002 until your recent retirement, I understand
12 that you were the Counsellor Administration and
13 Consul at the Canadian Embassy in Damascus, Syria?

14 MR. MARTEL: That's also correct,
15 and roughly the same thing happened. At a
16 conference in Ottawa in spring 2002, I was told
17 about the difficulties filling the position in
18 Damascus, and I was asked whether I'd go for a
19 year, but this time not on temporary duty, on
20 regular duty, but for a year.

21 And we know the rest. The
22 geopolitical situation in the Middle East, the war
23 in Iraq and all that, at the end of the year there
24 still wasn't anybody to replace me.

25 So I agreed to stay on for another

1 year, and after the second year, the person who
2 was supposed to come turned it down at the last
3 minute and chose another location.

4 We still didn't have anyone. So,
5 I agreed to stay on for a third year, until I was
6 able to leave recently.

7 MR. CAVALLUZZO: And finally, I
8 understand that you have received a number of
9 awards and certificates, and I just make a couple
10 of references here.

11 In 2005, you received the Foreign
12 Affairs Minister Pettigrew's Award for Consular
13 Excellence.

14 Is that correct?

15 MR. MARTEL: Yes, that's correct.

16 But I want to point out that it's the result of a
17 collective effort of many people.

18 I'm very flattered to have
19 received this award, or certificate. But I still
20 want to -- I want everyone to know that it really
21 was a collective effort.

22 MR. CAVALLUZZO: And secondly in
23 2005, you received a Recognition Certificate from
24 the Director General of the Security and
25 Intelligence Bureau, Foreign Affairs Canada, in

1 recognition of a valuable and unique contribution
2 to the work of the department and the Government
3 of Canada?

4 MR. MARTEL: Yes. I can say a few
5 things about that. That also, I'm very grateful,
6 and of course I wasn't expecting to receive any
7 form of certificate, but we had started a project
8 at our embassy in Damascus to improve security.
9 We were very concerned in the region and we saw
10 that there were many security weaknesses in our
11 building. We had to protect our employees and
12 ourselves as well as Crown property, and, as a
13 result, Ottawa decided to take the required steps.

14 I wasn't the security officer for the mission, it
15 was someone else, but there were many
16 administrative and financial tasks as part of that
17 project. So, I -- I agreed to take part in the
18 project, and I dedicated a lot of my time to it,
19 and then, at the end, a section of the Department
20 wanted to give me this certificate. Well, great,
21 but -- I'm very grateful, but I was just doing my
22 job.

23 MR. CAVALLUZZO: Now, we are going
24 to be reviewing with you, as you know, Mr. Arar's
25 stay in Syria from early October of 2002, until

1 his exit on or about October 5th of 2003.

2 Before we come to that, you had
3 several communications with Mr. Arar, which we
4 will be reviewing today, and I'm wondering whether
5 your communications with Mr. Arar were in English
6 or French.

7 MR. MARTEL: I'd say that about
8 90% of my conversations with Mr. Arar were in
9 English. About 10% were in French. He generally
10 chose the language, not me. For me, it's the
11 client who chooses which of our two official
12 languages to use, and if I'm spoken to in English,
13 I answer in English, if I'm spoken to in French, I
14 answer in the same language, except in situations
15 where we didn't have the choice, controlled
16 situations in which we both had to speak in
17 English.

18 MR. CAVALLUZZO: Before we come to
19 the Arar timeline, I would like to review with you
20 the organizational chart for the Embassy in
21 Damascus, which is Exhibit P-45.

22 --- Break

23 MR. CAVALLUZZO: I am going to
24 briefly highlight not only the structure but
25 particular names that we will be hearing

1 throughout your evidence.

2 The first is the general
3 organization chart for the Embassy in Damascus
4 which would have been in effect as of November
5 1st, 2002, which obviously is the period of time
6 at which you were employed in the Embassy and just
7 pointing out certain things. There are a number
8 of aspects to the Embassy, including immigration,
9 defence, consular, political, and so on and so
10 forth. As you know, we are going to be focusing
11 in on consular.

12 As we see, you are the Head of the
13 Consular Division or Bureau, and you report
14 directly to Franco Pillarella.

15 To your left, we see the name of
16 Tracy Reynolds, whose name we will see, on or
17 about October the 5th, who received some kind of
18 document from the Syrians to bring back to Canada.

19 And we also see the name of Ian
20 Shaw, who will be involved in approving a consular
21 report of April 22nd, 2003.

22 If we go to the next document,
23 Mr. Martel, we see the chart for Consular, and we
24 see you as the Head of Consular. And the names
25 that we will hear about today and tomorrow are,

1 first of all, the name directly below you, the
2 Secretary and Vice-Consul whose name is ...

3 MR. MARTEL: Mylene Kahalé.

4 MR. CAVALLUZZO: And reporting to
5 her is a consular officer by the name of Maha
6 Kotrache?

7 MR. MARTEL: Maha Kotrache.

8 MR. CAVALLUZZO: Finally, if we go
9 to the third page of that exhibit, we see the
10 organizational chart which was in effect as of
11 October 1st, 2003, and there has been a structural
12 change, that we need not deal with today, but we
13 see that you hold the same position.

14 However, we do have a new
15 Ambassador, whose name is Brian Davis, and I
16 understand that he came in September of 2003. And
17 there has been a change in respect of the
18 Political Officer. It is now Christopher Hull
19 rather than Ian Shaw. Is that correct?

20 MR. MARTEL: Yes, that's correct.

21 MR. CAVALLUZZO: I would like to
22 move on, just generally, if you can help us, to
23 what your duties and responsibilities were at the
24 Embassy in Damascus.

25 You can refer to your curriculum

1 vitae if it will be of assistance to you.

2 MR. MARTEL: Yes. Well, there are
3 two parts to the responsibility of officer,
4 manager of the embassy. About 80% of tasks are
5 management related, in other words human and
6 financial resources, property and equipment, and
7 the remaining 20% are related to consular
8 activities, either day-to-day or case-by-case.

9 But those percentages are on
10 paper. In other words, at any time, if for
11 example a consular case or consular client needed
12 my attention or if my employees told me they
13 needed my help, I had to get involved. Obviously
14 the other duties were put on the back burner and I
15 had to focus on consular activities as a priority.

16 That's more or less how it worked.

17 I had to pay attention to what was going on in
18 all areas of responsibility and ensure, for
19 example, that each day I was aware of what was
20 going on, and I also kept in touch with the people
21 who reported to me, who had to tell me what we had
22 that day, what was going on that morning, whether
23 we had cases or not. Those were my duties.

24 And I was also the liaison with
25 the Ambassador. We also had management committee

1 meetings and we had to go over what was happening
2 in each of our programs.

3 That's how we usually worked. We
4 were also in contact with headquarters, with
5 various offices, and -- those were my duties.
6 That's what it boils down to.

7 MR. CAVALLUZZO: In respect of
8 Mr. Arar's detention in Syria, there were nine
9 consular visits, and I understand that you were
10 the consular officer in respect of all of those
11 consular visits, other than the one on April 22nd,
12 2003, which was when two parliamentarians visited
13 Damascus. Isn't that correct?

14 MR. MARTEL: Yes, that's correct.
15 I'm the only person from the embassy who visited
16 my client, except, as you said, when the MPs
17 visited, I believe. So, they had access that
18 time. But apart from that, I was the only person
19 who saw him.

20 MR. CAVALLUZZO: Okay. And you
21 were the consular official that traveled back to
22 Canada from Damascus with Mr. Arar in October of
23 2003.

24 MR. MARTEL: Yes, that's correct,
25 and that issue had been discussed, who should come

1 back with Mr. Arar. As you saw earlier on the
2 organization chart, Tracy Reynolds was chargé
3 d'affaires at the time, and we hadn't decided yet
4 whether he should be chargé d'affaires or whether
5 I should be chargé d'affaires, and we knew there
6 were many activities at the time, and it had been
7 decided that it would be preferable if I wasn't
8 the chargé d'affaires for the simple reason that I
9 had to be available. As you know, chargés
10 d'affaires can't leave the country when they're
11 there. So, it takes a long time to try to make a
12 change.

13 And so, yes, I was appointed by
14 the mission and management of Consular Affairs in
15 Ottawa to accompany Mr. Arar.

16 MR. CAVALLUZZO: Now I would like
17 to focus now on any training which you received
18 when you came to the Embassy in Syria.

19 Obviously you had been a consular
20 officer for about 20 years up to that point. You
21 started in 1983. And I assume there would not
22 have been any training in respect to your consular
23 duties and responsibilities.

24 However, I would like to focus
25 on -- we can call it matters that focus on Syria

1 itself, so it would be something new for you.

2 Once again recognizing that you
3 came to Damascus in September of 2002, the first
4 question I would ask is when you came to the
5 Embassy in Damascus, did you receive any training
6 whatever in respect of the human rights conditions
7 of Syria?

8 MR. MARTEL: Generally, no. In
9 fact, from what I recall, when we got to the
10 embassy, we attended sessions that dealt with the
11 security of personnel, and many things had to be
12 taken into account. We were told about the
13 situation in the country.

14 But the question you're asking,
15 that is, was I informed of the human rights
16 situation in Syria, the answer is a categorical
17 no, not at that time.

18 However, I didn't get there not
19 knowing anything. I had worked for 11 years in
20 the Africa/Middle East region, also in a
21 neighbouring country for four years. I'd already
22 been in the region before the Six Days' War in
23 '66. I had worked in Lebanon for six weeks. I
24 had done a stint in Syria. I had learned about
25 Hafez Al Assad's regime, at the time, and the

1 country's reputation was already well established,
2 and because I was interested in working in that
3 part of the world for so many years, my interest
4 in what happens on the world scene and all that, I
5 read a lot and I always kept abreast of what was
6 happening, and when I was offered a position in
7 Damascus, right away I thought, yes, Damascus, but
8 -- but finally I was reassured.

9 So, the country's reputation was
10 already well established, and I was familiar with
11 it. It wasn't something I knew nothing about.

12 MR. CAVALLUZZO: Okay. Did you
13 receive any training in respect of the conditions
14 of detainees in prisons and detention centres in
15 Syria?

16 MR. MARTEL: No, not particularly.
17 I wasn't given any details on how people are
18 detained, except that, with my colleagues, in
19 discussions and at committee meetings, we mainly
20 addressed the issue of political detainees, that
21 is, that opponents of the regime, that people
22 could be arbitrarily arrested and imprisoned and
23 detained in conditions we didn't know about but
24 that we assumed were extremely difficult. But
25 this aspect mainly dealt with people whose

1 political opinions differed from those of the
2 government in power.

3 MR. CAVALLUZZO: Did you receive
4 any training whatever in recognizing torture,
5 abusive treatment, or inhumane prison conditions?

6 MR. MARTEL: No, we didn't receive
7 any, and I think -- I think that the Department
8 has implemented a program now. But at the time, I
9 couldn't say that there was a departmental program
10 telling us what we should look for to detect signs
11 of torture. There were no such courses or
12 sessions regarding this.

13 MR. CAVALLUZZO: You have
14 mentioned that the department has set up a
15 program, and no doubt you are referring to the
16 program which developed out of a task force study
17 that was done on consular affairs, and that was
18 published in November of 2004. Is that correct?

19 MR. MARTEL: A document has been
20 published, and to my knowledge, officers are now
21 given training before -- especially young
22 officers, before they go abroad. I don't know, I
23 couldn't tell you if it's that exact document. I
24 know there's something now.

25 There's also another document that

1 was prepared, and which I helped draft, entitled,
2 I think, "The New Consular Framework", and what we
3 do in cases of arrest and what we need to do to
4 detect torture, what we do in cases of arrest for
5 security reasons, what we do in cases of dual
6 nationality, and I specifically had been asked for
7 my input on this document, and that's what I did.

8 I never saw the final version, which was
9 published recently, but I helped draft a pretty
10 big document.

11 MR. CAVALLUZZO: Could you please
12 show the witness Exhibit 197, which is entitled
13 "Review of Consular Affairs, Final Report", from
14 the Office of the Inspector General, dated
15 November 2004.

16 MS EDWARDH: I wonder,
17 Mr. Cavalluzzo, if you could identify the other
18 document Mr. Martel referred to, the one dealing
19 specifically with arrest, detention and -- I'm not
20 aware of it.

21 MR. CAVALLUZZO: I will. I am
22 going to ask him that question after I am finished
23 with this.

24 MS EDWARDH: I'm sorry; thank you.

25 MR. CAVALLUZZO: This is, as I

1 told you, the document from the Office of the
2 Inspector General, and I'm going to make
3 references just to two portions of this document
4 which we have had produced and introduced in
5 evidence very recently.

6 If you would initially refer to
7 page 27 of the report, Mr. Martel, you will see,
8 under the title 4.4, "Countries Suspected of
9 Practising Torture" -- let me read that to you.

10 It states:

11 "Some countries are known or
12 suspected of practising
13 torture on prisoners. For
14 consular officers posted in
15 those countries, the problem
16 can be twofold: First, such
17 countries do not always
18 recognize the person's
19 Canadian citizenship, and
20 consular services can thus be
21 difficult to offer.
22 Secondly, respondents in
23 missions spoke of the
24 difficulty in recognizing
25 that a person they are

1 visiting in prison is being
2 submitted to physical or
3 mental torture. Consular
4 officers readily recognize
5 the difficulty they face,
6 given their lack of expertise
7 in directing such treatment.
8 Respondents spoke of the
9 need for training or
10 information on this matter.
11 The Consular Affairs Bureau
12 is reviewing this issue and
13 is planning on informing
14 and/or training officers once
15 the training is ready."

16 Is this the study to which you
17 were one of the respondents; in other words, you
18 gave your input?

19 MR. MARTEL: No, that's not the
20 document. I worked on another one. Maybe this
21 document was published later, but I worked on a
22 different document.

23 MR. CAVALLUZZO: Could you tell us
24 what document you are referring to? I just want
25 to make sure that we have it so that we might

1 review it.

2 MR. MARTEL: I think its entitled,
3 in English, "The New Consular Framework". That's
4 the new consular framework and the document exists
5 somewhere.

6 I don't know whether it was
7 published in its final form, but I know I gave my
8 input on that document, and I don't know where
9 they're at with it.

10 Specifically, I commented on the
11 difficulties in the project, because from the
12 point of view of someone in the field, I found
13 that the document had high expectations,
14 especially with respect to countries like Syria,
15 and with respect to access to people with dual
16 citizenship who are in their country of origin or
17 who are detained for security reasons, to whom
18 access is practically impossible.

19 Expectations were very high in
20 that document and I said that the Department had
21 to realize that, in the field, that's not the
22 reality. They couldn't -- they couldn't publish
23 something that didn't reflect the reality in the
24 field.

25 Either we change the reality in

1 the field and we publish the document or we
2 mention it in the document. So, that's it, they
3 waited and gave me another two or three weeks
4 because I was swamped. I couldn't give it to them
5 in the time they gave me, so they gave me another
6 week or two to let me continue working on a few
7 points in the document that specifically concerned
8 me, and I'm sure it can be found somewhere.

9 MR. CAVALLUZZO: I'm sure it will
10 be found. I wonder if Government counsel might
11 undertake to provide us with a copy of that
12 report, as well as the submissions made by
13 Mr. Martel.

14 MR. BAXTER: We will look for the
15 report and produce it.

16 MR. CAVALLUZZO: As well as the
17 submissions made by Mr. Martel.

18 MR. BAXTER: Certainly. We will
19 look for those too.

20 MR. CAVALLUZZO: Thank you.

21 When you come to this report
22 itself, the exhibit we are reviewing, would you
23 agree, if you had no input -- I didn't realize you
24 had no input into this. But would you agree --
25 and I'm reading now from the document -- that

1 consular officials in missions in these kinds of
2 countries suspected of practising torture, that
3 there is difficulty in recognizing that a person
4 you are visiting in prison has been submitted to
5 physical or mental torture?

6 MR. MARTEL: On which page,
7 please? I lost the page.

8 MR. CAVALLUZZO: Page 27 again.
9 And the question I would have -- and I'm referring
10 to the fourth line: Would you agree that consular
11 officials in missions, in countries suspected of
12 practising torture, that they have difficulty in
13 recognizing that a person they are visiting in
14 prison is being submitted to physical or mental
15 torture?

16 MR. MARTEL: Well, from what I see
17 here, my colleagues think that it's difficult to
18 detect this kind of treatment in light of their
19 lack of training.

20 But, again, you have to take the
21 context into account. That is, if we have access
22 to a detainee who is protected under the Vienna
23 Convention and who can be interviewed in private,
24 things are much easier then.

25 One, the detainee may speak and

1 say what he has to say and then the appropriate
2 measures can be taken.

3 But if you're in a situation where
4 the detainee isn't alone, where he has dual
5 citizenship and the country doesn't recognize the
6 other nationality and he is still under some form
7 of control and there may be some impact on what he
8 tells us, then, the officer takes this into
9 consideration and tries to obtain as much
10 information as possible.

11 My colleagues agree that they have
12 difficulty because they're not experts.

13 But now, I read the experts'
14 report, and they tell us that, with today's
15 torture methods, it's practically impossible, even
16 for someone who's been trained, to detect whether
17 someone has been tortured

18 Now I put myself in a position,
19 when I see a detainee and feel he is under some
20 form of control, what will I look for first? I
21 look at him in the eye and right away that tells
22 me whether he can see me and whether or not he's
23 been drugged. That's one element for me.

24 Then I try to find out more, but
25 if there are four or five more people around me

1 and the detainee doesn't want to talk or can't,
2 then I don't know.

3 So, I try to ask my questions and
4 I reformulate my sentences another way and I try
5 to find out more. If the detainee gets up and
6 walks normally, that's another sign that leads me
7 to believe that maybe yes, maybe no, but up to
8 then, it's fine.

9 Then, if the detainee can have a
10 coffee with me, if he can answer my questions,
11 even if he can't speak freely, it's important.

12 I must also look for signs of
13 violence. You don't need much training for that.
14 Field experience tells you.

15 If he's sitting in front of me and
16 his hands are moving or, in some cases, a leg is
17 twitching continuously, right away I think that
18 maybe my client has been mistreated, maybe even
19 subjected to electric shock, which may cause that.

20 So, those are signs I have to look
21 for and try to pick up, because I know that my
22 client can't talk to me or won't or doesn't want
23 to.

24 MR. CAVALLUZZO: You said that
25 your colleagues lacked expertise in detecting

1 torture because of the way it is conducted, the
2 sophisticated ways that it is conducted today.
3 Would you include yourselves in terms of the
4 reference to "colleagues lacking expertise"?

5 MR. MARTEL: Well, I can't speak
6 for my colleagues, obviously. My colleagues, the
7 ones I know, some of my colleagues have a great
8 deal of field experience and are at the same level
9 as me.

10 I have an assistant with me who is
11 only on her second posting. You can't compare our
12 experience. If I asked my assistant to go visit a
13 detainee, I don't know if she'd be able to detect
14 those kinds of things.

15 Everything depends on years of
16 experience and what you've seen in the past.

17 MR. CAVALLUZZO: What about
18 yourself? Listen to the question, please. What
19 about yourself? Do you feel at the material time
20 in 2002 and 2003 that you lacked the expertise to
21 recognize whether Mr. Arar was subjected to
22 torture?

23 MR. MARTEL: We don't have the
24 expertise. We don't have the expertise because we
25 haven't received the training. We don't have the

1 expertise, and I can't claim to be an expert.

2 MR. CAVALLUZZO: Okay. I would
3 like to move on now, Mr. Martel, and ask you
4 whether you were aware or whether you had read
5 certain documents, because we have documents in
6 evidence from the Department of State, from
7 Amnesty International, from Human Rights Watch and
8 other documents that are part of the public record
9 which describe human rights conditions, torture,
10 conditions in detention centres, in prisons, in
11 Syria.

12 I am wondering whether you read
13 those public records when you came on your job in
14 Damascus.

15 MR. MARTEL: No. As I've said in
16 the past, I didn't receive or read those documents
17 when I started, and they didn't come to my
18 attention immediately.

19 It was only later, much later, I'm
20 not sure when, that I sat down to read them. No,
21 I didn't read them when I arrived.

22 MR. CAVALLUZZO: And were you
23 aware of the public record, and I am referring now
24 to both the Department of State and the Amnesty
25 International record, and that is that there is

1 credible evidence that security forces in Syria
2 use torture and that torture may occur in prisons
3 but is more likely to occur at detention centres
4 which are run by security services, particularly
5 when they are attempting to acquire, obtain,
6 information or a confession?

7 Were you aware of that public
8 record in October and November of 2002?

9 MR. MARTEL: I wouldn't have had
10 that information. The information I was aware of
11 wasn't from those sources.

12 But still, everyone, including
13 myself, knows that security forces in that country
14 carry out arbitrary arrests, detain people where
15 they want for the amount of time they want, under
16 the law in force, martial law, which has been in
17 force for 22, 23 years, which gives them the power
18 to do practically anything they want.

19 I'm not the only one who knows
20 about it. Everyone at the embassy knows,
21 including my colleagues, that the authorities can
22 detain someone without even telling us about it,
23 even dual nationals, and not answer our enquiries
24 and keep them anywhere, at any time, for the
25 period of time they want, however long they

1 please.

2 That, yes, I knew that.

3 MR. CAVALLUZZO: Were you also
4 aware that these security services were prone to
5 hold somebody incommunicado, during which time
6 they extract whatever information they want, and
7 then might advise the other country that a
8 national is living in Syria with them?

9 MR. MARTEL: I already knew at
10 that time that someone had been arrested before my
11 arrival and that the embassy never had access, and
12 I don't even know whether the authorities had said
13 that this person was being detained.

14 So, yes, on my arrival, I knew
15 someone could be detained for weeks, months at a
16 time, in who knows what kind of conditions, and
17 without being able to obtain access to that
18 person, yes, of course.

19 MR. CAVALLUZZO: Let's use a very
20 concrete example. I would like to refer to
21 Mr. Ahmed El Maati.

22 The evidence we have is that
23 Mr. El Maati was in detention in Syria between
24 November of 2001 and the end of January of 2002,
25 which of course would have been before your

1 presence in Syria. The evidence also shows that
2 Mr. El Maati was transferred to Egypt at the end
3 of January of 2002 and in August of 2002 made
4 allegations that while he was in Syria in a
5 detention centre he was tortured.

6 I would like to show to you now
7 Exhibit P-192.

8 --- Break

9 MR. CAVALLUZZO: The question,
10 Mr. Martel, is that that document is dated about
11 two weeks before you got to Syria, and about two
12 months before you saw Mr. Arar for the first time
13 in Syrian detention, and I would ask you whether
14 anyone ever gave you a copy of that consular
15 report prior to Mr. Arar's first visit on October
16 23rd of 2002.

17 MR. MARTEL: No. When I got to
18 Damascus, I knew that a citizen by the name of
19 El Maati had been detained, but I think Foreign
20 Affairs told us that he had left the country and,
21 for us, that is, once a client has left the
22 country, the case is closed.

23 So, I had no details about
24 Mr. El Maati, and I wasn't given a copy of the
25 report.

1 MR. CAVALLUZZO: So whether you
2 were given a copy or not, did the person who told
3 you that there was once a Mr. El Maati in Syria
4 but had now left, did that person, or did any
5 person in DFAIT, advise you that Mr. El Maati had
6 alleged that he was tortured while he was in
7 detention in Syria?

8 MR. MARTEL: No. To my knowledge,
9 I don't think anyone in Damascus knew about what
10 you just mentioned.

11 MR. CAVALLUZZO: Okay. It might
12 be appropriate at this time as well if we dealt
13 with another Canadian citizen like Mr. El Maati
14 and Mr. Arar who was detained in Syria, and that
15 is Mr. Almalki. We understand from the evidence
16 that in or about September of 2002, there was a
17 discovery made that Mr. Almalki was in detention
18 in Syria; a diplomatic note was forwarded at that
19 time.

20 I am wondering whether you had any
21 consular access with Mr. Almalki while he was in
22 detention.

23 MR. MARTEL: No. We had -- we
24 were informed by headquarters, by Consular
25 Affairs, that it was believed that a citizen born

1 in Syria was being detained by the authorities,
2 who had been arrested, and a diplomatic note had
3 been sent.

4 In the meantime, Consular Affairs
5 had told us that the family did not want
6 Mr. Almalki's name to be published at the time.

7 I'm not sure when this happened,
8 it's definitely in the files, but we received a
9 response from the Minister of Foreign Affairs to
10 the effect that, yes, Mr. Almalki was being
11 detained, and I don't know for which reason, in
12 accordance with local law.

13 It seems to me it was also
14 mentioned that he had not done his military
15 service and that consular access was not permitted
16 or was not possible. I remember that.

17 MR. CAVALLUZZO: So that although
18 diplomatic notes were sent in respect of
19 Mr. Almalki, at no time during his detention in
20 Syria did the Embassy get consular access to him?

21 MR. MARTEL: No, no. Once, when I
22 visited another detainee, I took the opportunity,
23 because I'd heard from someone else that
24 Mr. Almalki was possibly in the same prison.

25 So, of course I tried to find out

1 at the same time, but I was up against a brick
2 wall, they evaded the question, and then I was
3 told that Almalki was such a common name that
4 there could have been dozens of them. I wasn't
5 allowed to see him.

6 MR. CAVALLUZZO: But I do
7 understand that when Mr. Almalki was -- I guess
8 it's like Smith in --

9 MR. MARTEL: Kind of, yes.

10 MR. CAVALLUZZO: But I understand
11 that when Mr. Almalki was released from detention
12 in Syria, that you did meet with him on occasion
13 afterwards.

14 MR. MARTEL: Mr. Almalki, when he
15 was released, I don't know. He didn't really
16 remember himself, but let's say seven, eight or
17 nine days after his release, I think, which
18 coincided with the arrival of the Minister's
19 representative, he suddenly showed up at the door,
20 just like that, unannounced, at the embassy, and
21 he asked to see me.

22 And that was -- that was my first
23 meeting with Abdullah. And then, from that point
24 on, we maintained contact, in spite of the fact
25 that the Syrian authorities forbade it.

1 MR. CAVALLUZZO: Okay. Okay,
2 Mr. Martel, I would now like to move to the Arar
3 time line, and perhaps if the witness can have
4 exhibit P-42, volume 1, while keeping those two
5 books with you because we're going to be referring
6 to those books throughout.

7 --- Break

8 MR. CAVALLUZZO: In fact, the
9 first document that we will refer you to is in
10 exhibit 134, which is the Pillarella book, because
11 it's a less redacted volume.

12 Keep those two books in front of
13 you, please. And if you refer to tab number 1,
14 which is an e-mail, which is of October 10th of
15 2002, and it is an e-mail from Mr. Daniel
16 Livermore, who is the Director General.

17 Do you have that, Mr. Martel?

18 MR. MARTEL: No, I'm sorry.

19 MR. CAVALLUZZO: It's the very
20 first tab.

21 MR. MARTEL: I'm sorry, but I
22 think --

23 Number 2?

24 MR. CAVALLUZZO: No, number 1.

25 MR. MARTEL: Number 1.

1 MR. CAVALLUZZO: If you look at
2 the bottom of the page you'll see Daniel
3 Livermore's name.

4 MR. MARTEL: Yes, I see it.

5 MR. CAVALLUZZO: Okay.

6 MR. MARTEL: No, it's because I
7 understood that it was an e-mail. So, it's a C-4.
8 Is that it?

9 MR. CAVALLUZZO: It's a C-4.

10 MR. MARTEL: Yes.

11 MR. CAVALLUZZO: And you'll see in
12 the second paragraph from the bottom, it says:

13 "At the direction of JPD --"
14 Who we know is Gar Pardy.
15 "-- JPE/Harris has contacted
16 Leo Martel and asked that he
17 make official inquiries about
18 Arar, as well as asking
19 immigration control officer
20 to use his contact to gather
21 information. Martel has also
22 been asked to locate Arar and
23 determine as quickly as
24 possible his condition and
25 situation."

1 Now, do you recall getting these
2 directions from Ms Harris?

3 MR. MARTEL: Yes. Helen Harris
4 called me at home on the Thursday evening, and
5 Thursdays were relatively short days. The embassy
6 closed at 1:30 p.m.

7 She reached me at home at 7:30 or
8 8:00 o'clock in the morning, local time, and she
9 expressed her concerns and asked me to make
10 enquiries about Mr. Arar.

11 I told her to send me something in
12 writing, and that's what she did.

13 And it was already the weekend,
14 and there was a holiday, I think it was
15 Thanksgiving, that year. There was some holiday.

16 So, on the first business day we
17 sent a diplomatic note to the authorities and --
18 asking whether they were detaining someone and
19 requesting the usual information.

20 I have to point out that Foreign
21 Affairs was our sole point of contact, and that we
22 had very strict instructions from the Syrians that
23 we should always contact Foreign Affairs.

24 We didn't -- we weren't allowed to
25 contact other departments or to talk to anyone

1 else.

2 MR. CAVALLUZZO: Now, in this
3 particular message, this C-4, in the next
4 sentence, Mr. Livermore states that:

5 "There are concerns that Arar
6 may be aggressively
7 questioned by Syrian security
8 services."

9 And I'm asking you what you
10 understood by the wording "may be aggressively
11 questioned."

12 MR. MARTEL: Yes, but I didn't see
13 this document. The document was addressed to the
14 Ambassador only, and it wasn't forwarded to me.
15 It was for the Ambassador's eyes. It's indicated
16 in bold, after Secret, For Canadian Eyes Only:

17 FOR HOM ONLY

18 It wasn't for me, and Ambassador
19 Pillarella used to -- keep what was for him to
20 himself and not share anything.

21 MR. CAVALLUZZO: So Mr. Pillarella
22 did not tell you that Ottawa is saying that they
23 are concerned that Arar may be aggressively
24 questioned --

25 MR. MARTEL: No.

1 MR. CAVALLUZZO: -- by the
2 security services?

3 MR. MARTEL: No, no.

4 MR. CAVALLUZZO: Okay. Then if we
5 move on then to -- if we go to volume 1?

6 And I assume that what you did is
7 you sent out feelers and so on looking for
8 Mr. Arar's location? You used whatever contacts
9 you could?

10 MR. MARTEL: Yes, of course. But,
11 you know, in these circumstances, they don't want
12 to cooperate.

13 It's practically a dead end, and
14 receiving a response from Foreign Affairs is
15 infrequent. It doesn't happen often.

16 Later, in a case like this one,
17 someone from higher up has to get involved, higher
18 up than my level.

19 And I think that's what happened.

20 MR. CAVALLUZZO: Okay. Now, I'd
21 ask you to refer to tab 80 of volume 1, which is a
22 CAMANT note of October 15, 2002, and ask whether
23 you would have received a copy of this CAMANT
24 note. You'll see at the top it says:

25 "Damascus has received a call

1 from JPE --"

2 Which, of course, is Harris.

3 "-- during last week end

4 11-12-13 of Oct to inform us

5 the below message ..."

6 And then it quotes three articles
7 of different newspapers, including the New York
8 Times, and The Globe and Mail, and the Ottawa
9 Citizen, and asked whether you would have received
10 a copy of these news articles by way of the CAMANT
11 note.

12 And the last page indicates that
13 you would have received a copy at least for
14 information.

15 MR. MARTEL: Yes, if -- if memory
16 serves -- we had these newspaper articles in
17 Damascus, and since this came right after the
18 call, and we see that's the first note that went
19 into the system, these newspaper articles came to
20 my attention, and I said -- I asked Kotrache to
21 put them in the file because it concerned an open
22 case.

23 So, I said -- and that's why I
24 said, "Maybe Ottawa hasn't read it either. So,
25 file it, send it to Myra Pastyr-Lupul and copy

1 everybody. That way at least we know that
2 something is happening and that there are theories
3 in the papers, and I want it to be placed in the
4 file."

5 That's why we have this note now.

6 MR. CAVALLUZZO: And did you read
7 the very first article, which is the article of
8 Anthony DePalma, who says -- he's quoting in the
9 fourth or fifth paragraph down from Riad Saloojee,
10 who was quoted as saying:

11 "There is a significant risk
12 that he --"

13 That is Mr. Arar.

14 "-- will be tortured and
15 punished in Syria"

16 And I'm wondering whether you read
17 this particular article?

18 MR. MARTEL: Of course I read -- I
19 read all the articles, because I'm the one who
20 gave instructions that they be placed in the file.

21 MR. CAVALLUZZO: Okay. And if you
22 refer to tab 81, we see that this is the
23 diplomatic note that was sent in a request for
24 finding out where Mr. Arar was located, and it's
25 dated October 15th as well -- or, excuse me, the

1 14th.

2 Is that correct?

3 MR. MARTEL: Yes, that's correct.

4 And it's the same date, October 14, October 15.

5 Yes, that's it.

6 MR. CAVALLUZZO: Okay. Now, if we
7 go back to exhibit 131, at tab 3 -- excuse me. In
8 fact, let us just continue on with the book of
9 documents. It would now be volume 2.

10 --- Break

11 MR. CAVALLUZZO: And this is a
12 note from Mr. Pardy --

13 THE COMMISSIONER: Which tab?

14 MR. CAVALLUZZO: One --

15 THE COMMISSIONER: -- thirty-one.

16 MR. CAVALLUZZO: One thirty-one.

17 THE COMMISSIONER: Thank you.

18 MR. CAVALLUZZO: This is a note
19 from Mr. Pardy, so it would appear that, and we've
20 heard evidence of this, that Mr. Pillarella was
21 advised by Syrian authorities that on or about
22 October 23rd -- or 22nd or 23rd -- that Mr. Arar
23 was, in fact, in Syria, had just shown up at the
24 border and was located in Syria, and what tab 31
25 is what appears to be a direction from Mr. Pardy,

1 who is the head of consular affairs, indicating
2 what you should presumably look for and do in
3 respect of your first consular visit with
4 Mr. Martel -- or, excuse me, with Mr. Arar?

5 Now, Mr. Martel, did you receive a
6 copy of this particular direction from Mr. Pardy?

7 MR. MARTEL: Yes, yes, of course.

8 I think it's an e-mail addressed
9 to the Head of Mission and myself -- addressed to
10 both of us. I received this e-mail. Yes.

11 MR. CAVALLUZZO: And in this
12 e-mail, Mr. Pardy is giving directions that, first
13 advising -- I'm looking at paragraph (b) now --
14 that Mr. Arar's:

15 "... situation and what has
16 happened has been a matter of
17 great public concern in
18 Canada. The government of
19 Canada will not rest until he
20 is back home and reunited
21 with his family."

22 And if you go to the next page,
23 the final paragraph, Mr. Pardy states that:

24 "... our objective is to try
25 and make arrangements for his

1 return to Canada but this may
2 take some time and in the
3 meantime we will do
4 everything to ensure that he
5 is provided with the
6 appropriate amenities. If
7 there is anything that is
8 needed please let us know."

9 And it is signed "Gar."

10 It would appear from this,
11 Mr. Martel, that certainly Mr. Pardy's direction,
12 right from the outset, right from the word "Go" is
13 the objective of the Government of Canada is to
14 get Mr. Arar's release from Syria as quickly as
15 possible.

16 Is that correct?

17 MR. MARTEL: Definitely. That's
18 always the case for every detainee. That's always
19 the objective.

20 We always want our citizens to be
21 released when allowed by local law, and we want to
22 get them back home to their families.

23 MR. CAVALLUZZO: Okay. Now, I'd
24 like to refer to your first consular visit with
25 Mr. Arar. If we could look to the Pillarella

1 book, or exhibit 134 at tab 3.

2 Now, before we come to this
3 consular visit, could you tell us how you were
4 told where Mr. Arar was and what you were to do in
5 order to get access to him.

6 MR. MARTEL: Well, it really
7 happened by surprise. When -- I think Ambassador
8 Pillarella had held discussions with senior
9 officials at Foreign Affairs and then, I think, he
10 had a discussion with the general in charge of
11 security.

12 And when he returned from his
13 discussions he told me, "The Syrian authorities
14 have confirmed to me that Mr. Arar is in Syria and
15 you can see him."

16 He gave me a telephone number and
17 said, "Call, someone will answer and make
18 arrangements with you for a consular visit."

19 I simply followed his
20 instructions. I called the number, someone
21 answered, and then we agreed on a time and how I
22 would get there, et cetera.

23 That's how it happened.

24 MR. CAVALLUZZO: So were you told
25 to meet this particular individual at a particular

1 location?

2 MR. MARTEL: Yes, of course.

3 When I called, I was told I would
4 be met at -- let's say, 11 a.m. at a specific
5 location.

6 If I have to tell the Commission,
7 I have no problem providing the details.

8 MR. BAXTER: If I could just
9 remind the witness to try to keep to the general
10 description but not to get into the operational
11 details that might otherwise compromise future
12 access to other detainees.

13 MR. CAVALLUZZO: Well, I assume
14 that what you told me before is that you were told
15 to go to a particular hotel.

16 Is that correct?

17 MR. MARTEL: Yes, that's correct,
18 and it hasn't changed.

19 I had to go to a particular hotel
20 with one of our cars and I met someone there, and
21 they took charge of me, and I was driven to
22 another location I was unfamiliar with in a state
23 vehicle.

24 MR. CAVALLUZZO: So you got out of
25 the Canadian car, you went into another car,

1 driven by Syrians.

2 Is that correct?

3 MR. MARTEL: Yes, that's correct.

4 The Syrians provided
5 transportation from the meeting point at the
6 hotel. That's it. Yes.

7 And then, the opposite. The same
8 thing.

9 MR. CAVALLUZZO: And the contact
10 in the Syrian car, was this a member of the Syrian
11 Military Intelligence?

12 MR. MARTEL: Well, he -- he told
13 me his name and said he was a colonel. He told me
14 he was an interpreter and so on, but he didn't
15 tell me specifically what he did.

16 Maybe I knew he was very close --
17 he said he was next door, that he had offices
18 there. But I don't know too many details about
19 him.

20 Someone had been provided, as is
21 customary, and which is what was done for three
22 years.

23 Generally, someone is provided to
24 accompany you, who serves as an interpreter and
25 who belongs to who knows which organization. And

1 their job is to accompany us and mainly to provide
2 interpretation.

3 MR. CAVALLUZZO: And this was
4 Colonel Saleh?

5 MR. MARTEL: That's correct.

6 MR. CAVALLUZZO: And Colonel
7 Saleh, in the Syrian car, then took you to a
8 location called the Palestine Branch?

9 MR. MARTEL: I didn't know at the
10 time where he was taking me. I didn't know then
11 where he was going to take me.

12 He took me to a place I didn't
13 know and then said that's where we were going. He
14 didn't talk much, and --

15 If you want to know right now what
16 happened, once we were there, he identified
17 himself at the gate, and it was one of the large
18 buildings -- windows that -- typically Syrian. I
19 didn't see anything out of the ordinary about the
20 buildings, those buildings.

21 And then I -- he took me to one of
22 the offices and I sat there and waited.

23 MR. CAVALLUZZO: Right. Now, did
24 you subsequently find out that this location is
25 called the Palestine Branch?

1 MR. MARTEL: Yes. We're always
2 curious to find out where we're going, where we're
3 being taken, et cetera.

4 So, some time later -- I was still
5 very new in town and I didn't know exactly where
6 it was, but after some time I asked some
7 questions, and I said, "I think this is where I
8 came. What's that? What's that called?" And so
9 on.

10 And I was able to come by further
11 information when I said, "So this here is security
12 services, and there's the Palestine Branch." And
13 so on. Yes.

14 But I think that the Ambassador
15 had already said -- had told me at the beginning
16 that Mr. Arar was being held by -- held by a
17 group, an anti-terrorist branch, which I didn't
18 know, of course.

19 MR. CAVALLUZZO: All right. Now,
20 when you subsequently found out that the location
21 was the Palestine Branch, did you also come to
22 know or learn the general reputation of the
23 Palestine Branch in Syria?

24 MR. MARTEL: The reputation of the
25 security services in general, and specifically the

1 Palestinian Branch, is known. What I mean is it's
2 not something that people are unaware of.

3 There is a sort of -- if I may
4 say, a -- there is a sort of terror among the
5 people; that's for sure. In other words, everyone
6 knows this. It's no mystery.

7 MR. CAVALLUZZO: And are terrified
8 by the -- is that what you're saying? Are
9 terrified by the Palestine Branch.

10 MR. MARTEL: Precisely.

11 MR. CAVALLUZZO: Okay.

12 MR. MARTEL: And not specifically
13 of the Palestinian Branch, but all security
14 services.

15 MR. CAVALLUZZO: Okay. Now, if we
16 come to the first consular visit, there are a
17 number of aspects to this. In the first
18 paragraph -- by the way, this is a report that was
19 drafted by you and approved by Mr. Pillarella on
20 its face, and I just want to ask you certain
21 questions about it.

22 First of all, in the first
23 paragraph, you identify, as you said earlier, that
24 Mr. Arar is being detained by the anti-terrorist
25 unit, which is a branch of the Syrian security

1 services, and you identify a Colonel Saleh, who
2 was present at this particular point in time.

3 You said in the second paragraph
4 that you arrived at 10 o'clock and you were
5 greeted by an officer who declined to give his
6 identity.

7 Is that correct?

8 MR. MARTEL: Yes, that's right, and
9 I still don't know his name to this day.

10 MR. CAVALLUZZO: Okay. Before Mr.
11 Arar comes into the room in the Palestine Branch,
12 how many Syrian officials were in the room at that
13 point in time?

14 MR. MARTEL: There were, I think,
15 two certainly, at least two officers and my
16 interpreter. And there were always a crowd of
17 subordinates, if we're being specific, comings and
18 goings, providing services, who came to the door
19 and left again. There was a continual stream of
20 people coming and going, but there was someone
21 behind a desk, a colonel, I think his rank was,
22 and another colonel who was sitting somewhere
23 else, plus another colonel who was my interpreter.
24 So there were at least, according to my
25 recollection now, at least three people.

1 MR. CAVALLUZZO: And how big was
2 the room? If you could just locate for us the
3 size in comparison for --

4 MR. MARTEL: It's surprising
5 because in a country, obviously, where standards
6 are not like ours, people in prominent positions
7 have much larger offices. Therefore, it's quite
8 difficult to say, but Maher will be able to help
9 me, perhaps.

10 I don't know, from here to there
11 perhaps, about that big. What would that be? That
12 would be perhaps 25 square metres, five by five.
13 Perhaps, a little less. Perhaps a little less than
14 that. I'm not exactly sure.

15 MR. CAVALLUZZO: Now, it would
16 appear that you arrived at 10 o'clock and Mr. Arar
17 arrived on the scene at 10:30. So for the first
18 30 minutes, you would have had a general meeting
19 with these three Syrian officials?

20 MR. MARTEL: That's the people's
21 custom in the region. I can't say where my client
22 was. I arrived, someone escorted me there, and I
23 had to wait for them. I had to talk with them,
24 have a coffee, I had to make small talk. I had to
25 listen to them and be patient.

1 At some point the door would open,
2 and there would be my client, but I didn't know
3 where he was, I didn't know where he came from, I
4 didn't know what they were doing; they didn't tell
5 me. So I had to be patient, listen to them and
6 wait. At that time, they were talking to me about
7 anything and everything.

8 MR. CAVALLUZZO: Mr. Arar arrived
9 at the room at 10:30 and, according to your note,
10 "was shown a seat at a distance".

11 What did you mean by that, "was
12 shown a seat at a distance"?

13 MR. MARTEL: When Maher Arar came
14 into the room, of course, I don't even know if he
15 knew that I was coming. So, he came in, and when
16 I saw him come in, I stood up, I went over to meet
17 him, I shook his hand, I introduced myself, I told
18 him who I was. I may even have then given him my
19 business card; I don't know if he was able to keep
20 it or not, I don't recall, but I know that I
21 introduced myself with: "Hello, I'm from the
22 Embassy. I'm the Consul." That's how things
23 happened.

24 Then, I went back and sat down at
25 the place I had been given beforehand, and they

1 told Maher Arar to sit down. I said that it was
2 at a distance, so it was some distance away.

3 MR. CAVALLUZZO: Did that concern
4 you?

5 MR. MARTEL: Well -- It was my
6 first visit. I didn't think that they would have
7 let him sit next to me, for the simple reason that
8 what we said was being watched very closely. It
9 seems reasonable in hindsight, even today, to
10 think that unlike other visits that I have now in
11 which a detainee is allowed to sit next to me, at
12 that time, I think that then, it was out of the
13 question. They said, "Okay, you sit there," and
14 that's where I stayed. Anyway, we were quite a
15 distance apart, but not so far apart that I
16 couldn't see him. I was still able -- when he
17 looked at me, and I could see his eyes move. So I
18 wasn't that far that I couldn't observe anything.

19 I could still see him and talk to him.

20 MR. CAVALLUZZO: You say in your
21 note that Mr. Arar was not free to answer all of
22 the questions and that the conversation took place
23 in English and was translated immediately into
24 Arabic and that the Syrians were taking notes of,
25 presumably, his answers. So that represents what

1 occurred there now, according to your note.

2 MR. MARTEL: That's right. Not
3 only were they writing down what he said, but they
4 were also writing down my questions. We'll come
5 back to that later, because I wanted to know more
6 about him, but obviously, there was pressure on
7 both Maher Arar and me not to ask any indiscreet
8 questions. Gar Pardy had instructed me by saying
9 "I know that you will only be able to ask the most
10 transparent of questions and that this will be
11 under very difficult circumstances, but just the
12 same, try to find out what you can."

13 So I tried, but the Syrians were
14 very determined not to let us to speak freely that
15 was for sure.

16 When I insisted, Maher grew pale,
17 and he was told to be quiet or not to answer. As
18 for me, I had to interrupt my questions too, and
19 change my approach. We still had to try to
20 understand each other, but, at the same time, we
21 knew that we were being closely watched, and we
22 couldn't say what we wanted.

23 MR. CAVALLUZZO: It would appear,
24 obviously, that this was a very controlled
25 meeting, not only a meeting in which Mr. Arar was

1 controlled but indeed you, the Canadian delegate,
2 was controlled as well by the exigencies of the
3 situation.

4 MR. MARTEL: You're perfectly
5 right. In other words, I was told that I could
6 not ask him any questions about the case; I could
7 only ask questions related to family, his
8 conditions, his wellbeing, that type of very
9 general question.

10 The Syrians had granted us a visit
11 for the first time in 14 years, which was actually
12 quite extraordinary. And I, well, Maher saw me and
13 understood me. He knew that I wanted to ask him
14 other questions, and he knew that he couldn't
15 answer either. We both looked at each other, and
16 I said, "They have agreed to let me visit you.
17 I'll be back next week." He understood right away.
18 I tried to establish some kind of privileged
19 relationship by saying: We must pay careful
20 attention. We must stick to certain questions and
21 answers. I would make detours, and so would he in
22 an effort to give me signals, to let me know.

23 You're perfectly right; they were
24 monitored interviews, but they said both in Ottawa
25 and at the Mission that a monitored interview was

1 better than no interview at all, as in the case
2 that you previously mentioned that I haven't seen
3 for 18 months. We can also see what is in the
4 press now.

5 MR. CAVALLUZZO: Right. And in
6 terms of the signals, you refer in your notes that
7 there were eye signals you were giving each other.

8 Is that correct?

9 MR. MARTEL: Maher Arar, I
10 understood from what I could read in his eyes,
11 "I'm not free to discuss this." Obviously, I knew
12 that he was in a very difficult situation, and I
13 also made him understand that he was in fact. He
14 understood that from the beginning. His situation
15 would be an extremely difficult case, and I knew
16 that he was going to endure great hardship from
17 the detention alone. Should he stay there for
18 months on end that would cause me considerable
19 concern.

20 I said to myself at that time, and
21 I saw it with him, he was asking when I was coming
22 back, and I answered as soon as I received
23 authorization. If it were in three days or a week,
24 I'd be back. But it was the Syrians who decided,
25 not me.

1 MR. CAVALLUZZO: You say in your
2 note that:

3 Although Mr. Arar appeared to
4 be healthy, it was difficult
5 to assess.

6 And then you said:

7 He looked resigned and
8 submissive.

9 MR. MARTEL: That's right. That's
10 how he appeared. The first time that I saw Maher
11 Arar; he came into the room, but one, I didn't
12 know how long he had been there for, because I
13 wasn't able to get the exact dates. They stopped
14 us before I succeeded in getting them. We were
15 almost there, and all I was able to get was "I
16 only stayed a few hours in Jordan." I've been here
17 for some time is what that meant. The Syrians
18 said, "He arrived three days ago, so there was
19 already a contradiction in this report.

20 Now then, if it had already been a
21 long time since he'd left, if he had been detained
22 in New York for seven, eight, or nine days, if he
23 had not been fed properly, if he'd travelled in
24 poor conditions, if he had gone to Jordan before,
25 if he arrived there, if no one had said anything

1 to him, and then suddenly, he found himself in
2 front of me, I would probably see someone who was
3 obviously surprised and perhaps even disoriented.
4 He might not even have known who I was. He had to
5 already realize that it was indeed me and that I'd
6 come to help him.

7 MR. CAVALLUZZO: But there was a
8 clear contradiction that you discovered at that
9 meeting, and that is that the Syrians said that he
10 had only been in Syria for a few days whereas Mr.
11 Arar said that he would have been there for 12
12 days or thereabouts because he only spent a few
13 hours in Jordan.

14 Isn't that correct?

15 MR. MARTEL: That's right, and
16 that's what I tried to figure out with Maher. I
17 said, "How long have you been here?" He couldn't
18 answer. "How long did you spend in Jordan?" When
19 he said to me "Only, not long, a few hours," in my
20 opinion, he wasn't kept for a long time in Jordan.
21 That meant that he would have arrived in Syria
22 well before the date we had been given. That's for
23 sure. That's why I indicated it in the report. We
24 were quite puzzled at that time, and there was
25 good reason to wonder about what was going on.

1 MR. CAVALLUZZO: Did it concern
2 you that the Syrians were not being candid as to
3 how long Mr. Arar had in fact been in Syria, if he
4 was correct?

5 MR. MARTEL: From the very
6 beginning, I had been told, the authorities had
7 told me, we had to constantly ask the question:
8 What are they telling me? Is it true? Are they
9 just telling me what I want to hear? Are they
10 trying to protect themselves by saying that?

11 It was always the same recurring
12 question. I could never be certain, never.
13 Sometimes, I didn't even know when Maher Arar
14 spoke to me. I also had to try to figure out
15 whether it came from him, or whether someone had
16 told him to tell me that, or whether he said
17 something to keep them happy. I always had to
18 analyse to try to understand if that was really
19 what he wanted to tell me. It was always very
20 difficult. Very difficult.

21 MR. CAVALLUZZO: Right. But the
22 question was: Did it concern you that the
23 Syrians, on the one hand, were saying that he had
24 just got to Syria a few days ago, whereas Mr. Arar
25 said, "I've been here for 12 or 14 days", whatever

1 it is.

2 MR. MARTEL: Yes, you're right. It
3 was a subject of concern. That was why I obviously
4 tried to find out. Now, there was a hole there.
5 Someone was not telling the truth, and it wasn't
6 Maher. Therefore, either the Americans, or the
7 Jordanians or the Syrians were not telling the
8 truth, but there was something amiss because he
9 said, "only a few hours," and he reconfirmed it to
10 me later, "a few hours." I wouldn't say that
11 someone was lying, but someone was withholding
12 information.

13 MR. CAVALLUZZO: Did it concern
14 you that perhaps the Syrians didn't want to
15 disclose his whereabouts for that length of time;
16 indeed, as the public record demonstrates, that
17 they were holding Mr. Arar incommunicado because
18 they wanted to extract whatever information they
19 could out of him, and when they got that then they
20 would disclose to Canadian authorities that he was
21 in Syria?

22 MR. MARTEL: I cannot speculate as
23 to the reason why the Syrians, if they concealed a
24 two-week detention from us, why they did it. It
25 was the first time that we had access to a

1 detainee. I don't know; I still don't know their
2 reason for letting us see him even today. First of
3 all, I have never understood it, and why they
4 concealed the truth for two weeks, so they could
5 save face and say "Yes, we have only had him for
6 three days, and we didn't waste any time. Out of
7 courtesy, we are going to let you see him
8 immediately." There are a number of explanations
9 for that, and as you've said, maybe it was in
10 their best interest to hide the fact from us that
11 they had had him for two weeks. I don't know, but
12 we can speculate about all kinds of reasons too.

13 MR. CAVALLUZZO: Okay. In
14 paragraph 8 you tell us, in the report that the
15 Colonel said that Mr. Arar had confessed to
16 knowing members of a terrorist group. I would ask
17 you that if he had only been there for a few days,
18 you would agree with me that that is a pretty
19 quick confession?

20 MR. MARTEL: Pardon? Which
21 paragraph?

22 MR. CAVALLUZZO: Paragraph 8, the
23 last sentence of paragraph 8.

24 MR. MARTEL: Yes, but once again,
25 my interpreter told me this, as a passing comment,

1 in the car at the beginning, because I asked him -
2 - my concern was well, it was my first visit. I
3 saw him, and I wanted to know what they had on
4 him, why they were detaining him. So I asked
5 Saleh, and he told me that he had confessed to
6 knowing some people from terrorist groups.

7 I put it in the report because
8 that is what he told me. That doesn't mean that I
9 believed what he told me.

10 I had a client, and my client was
11 just that. My client was innocent regardless of
12 what they were going to tell me; it wouldn't make
13 any difference to me. He was my client, I wanted
14 him to get out and be able to go home.

15 They'd tell me all kinds of
16 things. They could say whatever they wanted; it
17 wouldn't matter. In the end, we'd see how things
18 turned out because they would have to prove their
19 allegations.

20 MR. CAVALLUZZO: But
21 interestingly, Colonel Saleh told you that without
22 the presence of Mr. Arar. Indeed, he told you
23 that in the car --

24 MR. MARTEL: Yes. It was always
25 like that. I tried, before and after the visits,

1 to get information that I couldn't have asked for
2 in front of other officials.

3 Saleh had become, after some time,
4 someone whom I knew fairly well. In my opinion, he
5 was one of the nicest in the group. I don't know
6 whether Maher got to know him, perhaps not. He'd
7 only seen him. But I don't think that he was part
8 of this organization, in the same way as he knew
9 the others. But that didn't mean that he was well-
10 informed either.

11 Often in these circles, when we
12 make a good acquaintance, people don't always want
13 to say that they are not informed, or they don't
14 want to say no to us. Often they say what they
15 think we want to hear. That's part of Middle
16 Eastern culture. They don't say no to anyone. They
17 can't say no. They say "Yes, perhaps --
18 inshallah." It's always the case.

19 He told me, "You know, he's
20 already confessed to this or that" I really took
21 that with a grain of salt.

22 MR. CAVALLUZZO: Finally, in
23 respect of this first consular visit, Saleh tells
24 you in the car that Mr. Arar will be held at the
25 Palestine Branch until his interrogation is

1 completed.

2 Is that correct?

3 MR. MARTEL: It wasn't clear where
4 he was going to be detained. He said that he was
5 going to be detained here, in the city or
6 something like that. It didn't mean that exactly.
7 I never knew in fact where Maher was detained. He
8 was the one who informed me once he had been
9 released. Then he told me "You know ..." and I
10 said "Where were you being held"? Because there
11 were all types of reports circulating afterwards.
12 In the end, he said after he had been released.
13 "I've always been here, the place that you used to
14 come to." I had been unaware of that until then.

15 Even if Saleh had told me that he
16 was going to be detained there, it was vague. It
17 could have been anywhere. It wasn't exactly in
18 the building where I visited him. I didn't know
19 the exact location.

20 They made me wait a half an hour
21 before I could see him. Did they go and get him
22 from somewhere else to bring him to see me? All
23 that is speculation. I couldn't ask him where he
24 was being detained. He couldn't answer me.

25 MR. CAVALLUZZO: Mr. Commissioner,

1 it is 10:35. It may be an appropriate time to
2 break.

3 THE COMMISSIONER: It is 11:35.

4 MR. CAVALLUZZO: Or, excuse me,
5 11:35.

6 THE COMMISSIONER: All right. We
7 will rise for 15 minutes.

8 THE REGISTRAR: Please stand.

9 --- Upon recessing at 11:35 a.m./
10 Suspension à 11 h 35

11 --- Upon resuming at 11:55 a.m. /
12 Reprise à 11 h 55

13 THE REGISTRAR: Please be seated.
14 Please be seated.

15 MR. CAVALLUZZO: Mr. Martel, prior
16 to moving on to the next consular visit, what we
17 have learned from the first consular visit is that
18 there is a grave distinction or contradiction
19 between what Mr. Arar says on the one hand, that
20 is that he has been in Syria for 12 days or
21 thereabouts, what the Syrians say, that he only
22 got there a day or two before, and what Colonel
23 Saleh has now told you, that he has given a
24 confession that he has terrorist contacts, or
25 whatever Colonel Saleh stated to you.

1 I am putting it to you that there
2 is a real possibility that if Mr. Arar has been in
3 Syria for 12 days, he would have been held
4 incommunicado by the Syrian Military Intelligence,
5 and based on their public record there is a great
6 probability, there is a probability that he was
7 tortured during that time, and as a result of the
8 torture he gave the confession that Colonel Saleh
9 alleges that he has.

10 Isn't that correct?

11 MR. MARTEL: Well, what Colonel
12 Saleh told me was neither official nor formal.

13 He told me that in the car just in
14 passing. He might not even have been authorized to
15 tell me anything at all.

16 Maybe it came from him. Maybe it
17 didn't. I really have no idea.

18 But in any case, what he told me,
19 I didn't take it at face value. What I mean is, I
20 didn't believe what they told me.

21 Now there was a difference, of
22 course, in the dates between what the Syrians had
23 given us and what Maher had told me: he had spent
24 only a few hours in Jordan, and he'd arrived here
25 after.

1 As a result, we might assume that
2 the Syrians had kept him for some time before --
3 informing us of it, because in the beginning, I
4 think that they said that they didn't have him and
5 then later they -- they took back what they said
6 and said, "About, yes, we have him -- " and then
7 that's what they told the Ambassador.

8 For this time period, we could
9 have some questions, and that's why we raised the
10 fact that there was a difference -- between what
11 Maher had told us and what the Syrians had told
12 us. We might assume that he was kept there.

13 Now, how was he treated? If he had
14 been detained by the Syrians during this period of
15 time, there again was another issue and -- which
16 obviously left -- left us puzzled.

17 But the day on which I say Maher
18 Arar for the first time, that's what I was also
19 looking for. The first time that I saw him, I
20 wanted to know how he looked, whether he looked
21 well and whether -- there were signs, for example
22 of torture.

23 Obviously, it's always on our
24 minds, and it's always our biggest fear, our
25 greatest fear, to discover something. Not that --

1 not that we're going to hide it, but obviously its
2 horrible for our fellow citizens to end up in this
3 kind of situation.

4 This is always one of our fears.
5 We wonder about what are they going to show us,
6 and what we're going to discover.

7 So, if we happen to see someone
8 who appears to still look well ---

9 MR. CAVALLUZZO: Excuse me. I'm
10 not concerned about your general practice. The
11 question is very specific: In light of the fact
12 that Mr. Arar, if he was telling the truth, was in
13 Syrian custody for ten days longer than the
14 Syrians were willing to admit, in light of the
15 fact that the Syrians had told you that he had
16 given a confession, isn't a possible explanation
17 for the discrepancy in stories that they had
18 tortured him or mistreated him, and as a result,
19 he gave a confession?

20 MR. MARTEL: Based on what we know
21 of their practices, they detain people for some
22 time, as they wish, and they inform us afterwards
23 that they have someone.

24 That can last for days. That can
25 last for weeks, so we don't know. We don't know

1 what they are thinking.

2 What Saleh told me, was it the
3 truth that he told me? I can't guarantee that
4 either. I have absolutely no idea.

5 Did he have the authority to tell
6 me that? Where did he get his information from? I
7 didn't know that either.

8 Now, the fact that -- he was maybe
9 detained by the Syrians for much longer than what
10 they were telling us, is something concerning --
11 concerning to everyone. But at least, we had our
12 visiting privileges, and I could see him.

13 That's all I can tell you about
14 it.

15 MR. CAVALLUZZO: Did it ever cross
16 your mind, did you ever think that the explanation
17 for the discrepancy in terms of time was that it
18 was possible that the Syrian security services had
19 mistreated Mr. Arar and, as a result of that,
20 extracted a confession?

21 MR. MARTEL: They had their own
22 reasons to themselves -- if they'd kept him for
23 more days than they were willing to inform us of,
24 and I don't know what their reason was for this.

25 Maybe that -- there are two

1 possibilities, in my opinion.

2 Either they kept him. They didn't
3 want to tell us that they'd had him for such a
4 long time, or they didn't want to admit that
5 they'd had him for such a long time. One of the
6 two versions.

7 The other version, I think that he
8 knows it, not me. I can speculate and say, "Yes,
9 they kept him, and, yes, they may have tortured
10 him. Yes they didn't want to tell me. Yes, he was
11 not in any shape to be seen by anyone. Yes, they
12 concealed all that."

13 That -- in my view, that's -- if I
14 were to say that, it would be speculation, because
15 I don't have the answer for that. But anything is
16 possible.

17 MR. CAVALLUZZO: Do you think, if
18 you were aware that two months before then another
19 Canadian citizen had alleged that he was tortured
20 while in Syrian custody, that that may have
21 assisted you in terms of drawing any conclusions
22 as a result of this contradiction in time?

23 MR. MARTEL: I told you before that
24 the reputation of these services had already been
25 established -- and that was already clear in my

1 mind.

2 I was already familiar with the
3 reputation. There is -- every time there's an
4 arrest by the security services, it's always the
5 same thing. It's always been like that, before I
6 arrived, while I was there, even in the beginning.
7 And their reputation is known throughout the
8 world.

9 Anyone interested in this country
10 is going to know that. People are detained by the
11 thousands. And they have been killed by the
12 thousands as well. There's no doubt.

13 Opponents of the regime at a
14 certain point, around 1982, they were all -- there
15 were obviously horrific massacres.

16 We know that. The reputation had
17 already been established.

18 Once they have a detainee, and I
19 think that I have already explained it in the
20 past, in other sessions. Once we know that there
21 are -- there is someone being detained by a
22 certain section or service, we already have a good
23 idea of what is involved, what is at risk.

24 MR. CAVALLUZZO: I don't want to
25 know what the risks are. I want to know what you

1 considered at the material point in time.

2 From what I can understand from
3 your evidence, it is that you did not consider
4 whether Mr. Arar was tortured during that period
5 of time and gave that confession, because it would
6 appear you had no evidence of that.

7 Is that correct?

8 MR. MARTEL: Yes, it's true that
9 when I saw him and spoke to him, there was nothing
10 that led me to suggest that -- he had undergone
11 any kind of torture.

12 Now as you put it, if I knew about
13 another previous client who had said that he had
14 been tortured, I don't think that that would have
15 changed my approach because from one client to the
16 next that can also change.

17 At that time, I had to focus on
18 Maher Arar and see how he was being treated. He'd
19 disappeared for several days. Where did he go?

20 But what was important to me was
21 to see what kind of shape he was in on the day
22 that I saw him.

23 MR. CAVALLUZZO: Do you think it
24 might have helped you if you had read the Amnesty
25 International report of 2002, which specifically

1 said that at the Palestine Branch there is a
2 pattern of holding people incommunicado, during
3 which time they engage in mistreatment or torture
4 in order to extract confessions?

5 Do you think that information
6 might have helped you in assisting Mr. Arar in
7 October of 2002?

8 MR. MARTEL: I don't think so. One
9 way or another, the reputation of these services
10 had already been established, and it was very
11 clear to me, and what I saw, I had to see it in
12 front of me.

13 Interviews were controlled. I
14 could only ask certain questions. I could
15 entertain all kinds of suspicions as to whether
16 they might have tortured him, and it was on my
17 mind, and that's what I had to do.

18 I was not going to believe what
19 they had to tell me. I had to see him and ask him
20 as many questions as possible under the
21 circumstances I found myself in, and then I had to
22 draw some conclusions.

23 And my client obviously had to
24 work with me as best he could under the
25 circumstances. He was the one -- he also had to

1 provide me with information, but he wasn't always
2 able to either.

3 MR. CAVALLUZZO: Okay. I am going
4 to leave this point now with one question, and I
5 want to make sure I understand your evidence.

6 It would appear from what you are
7 saying that you did not consider or conclude that
8 Mr. Arar had been mistreated or tortured during
9 that period of time because you did not observe
10 any evidence of it?

11 MR. MARTEL: No, I did not -- I did
12 not see any signs of torture on him at that time,
13 except that Maher Arar spoke to me and told me
14 that -- he implied that he was not free to speak
15 about it. So ---

16 But he didn't have any visible
17 signs. In other words, he spoke to me coherently.
18 His eyes were normal. He could walk. Even though
19 he looked cowed, as I said before; I didn't know
20 why.

21 I couldn't draw the conclusion,
22 and say, for instance to the Department, "I
23 noticed one thing or another, and I believe that
24 he has been tortured."

25 MR. CAVALLUZZO: If Mr. Arar in

1 fact was tortured during this period of time and
2 gave his confession, it would seem to me two
3 things are clear: one, that you lacked the
4 expertise in order to assess whether a detainee
5 has been tortured.

6 You would agree with that?

7 MR. MARTEL: Well, I don't have any
8 training as such, but I have hands-on experience
9 in the area -- and they say that experience is
10 just as good, if not better than theoretical
11 training, obviously.

12 MR. CAVALLUZZO: Listen to the
13 question, Mr. Martel, and the question is:
14 Assuming that Mr. Arar was tortured during that
15 initial period, it would seem clear that you, as
16 the consul, lacked the expertise to assess whether
17 he was tortured?

18 MR. MARTEL: I don't have the
19 expertise. I have already said that. I have
20 already answered that question. I am not an expert
21 in the area of torture. I'm not a torture expert.

22 MR. CAVALLUZZO: Okay. Now, let
23 us move to the second consular visit, which
24 occurred on or about October 29th.

25 I assume it was the same procedure

1 to get there. Is that correct?

2 MR. MARTEL: Which tab --

3 MR. CAVALLUZZO: This is Tab 4 of
4 134, of the small book.

5 MR. MARTEL: Okay.

6 That's -- yes, that's right. It
7 was the same procedure.

8 MR. CAVALLUZZO: Okay. In terms
9 of the meeting itself, let me summarize the
10 meeting for you and then ask you a question or
11 two.

12 It would appear in paragraph 4 --
13 and this once again is a note that you drafted and
14 was approved by Mr. Pillarella.

15 It states in paragraph 4 that:

16 Syrians have briefly
17 indicated their investigation
18 was progressing but were not
19 prepared nor authorized to
20 provide details. Only
21 General Khalil was in
22 authority to do so and the
23 latter has assured Pillarella
24 that he would do so once the
25 investigation was completed.

1 You noticed two changes in
2 Mr. Arar's presentation, and one was:

3 He did not seem to be
4 disoriented anymore and he
5 seemed to be able to speak
6 freely and without fear.
7 Officials have agreed that
8 reading material such as
9 Canadian magazines could be
10 given to him.

11 And this point of "he seemed to be
12 able to speak freely", how many people were at
13 this particular meeting?

14 MR. MARTEL: I think that there
15 were the same number of officials present, so two
16 colonels and the translator and -- I believe that
17 it was the same -- the same thing.

18 There was nothing other mentioned
19 in this report to indicate that ---

20 MR. CAVALLUZZO: Is someone
21 keeping notes of his answers?

22 MR. MARTEL: They always wrote down
23 my questions and his answers. They always had
24 someone.

25 MR. CAVALLUZZO: And what gave you

1 the indication that he was freer to talk at this
2 particular meeting?

3 MR. MARTEL: Well, there was always
4 the feeling, when I asked him questions and then -
5 - if he looked at me and --

6 I always tried to figure out if
7 the answer came of his own free will or whether he
8 was limited in what he could say.

9 It's still very difficult to
10 analyse, but anyway, in an environment as
11 controlled as that, well, I know my client better
12 now, and I can see that he is able to answer me.

13 And obviously according to what
14 was said. We couldn't believe everything that he
15 said because I knew that he couldn't say freely
16 what he wanted.

17 I tried to figure out if it came
18 from him, or whether or not this was in fact what
19 he was telling me. That's what I tried to figure
20 out.

21 MR. CAVALLUZZO: It would appear
22 that what you talked about for this visit was
23 basically his family in Canada and what was going
24 on in Canada.

25 Isn't that correct?

1 MR. MARTEL: Yes, that's right.

2 And I -- certainly, Maher Arar was
3 always very concerned, and with reason, for his
4 family, and well, I tried to get information from
5 Ottawa about his family.

6 The authorities had agreed that I
7 could send him information about his family, and
8 vice versa. I was a liaison between the two, and I
9 brought information about his family, and Maher
10 also gave me messages to send.

11 MR. CAVALLUZZO: We know that the
12 next consular visit is on November 12th, and we
13 have heard evidence that before November 12th that
14 Mr. Pillarella, the Ambassador, brought back a
15 statement from Syria which was dated November 3rd.

16 He brought that back to Canada, and there was a
17 meeting in respect of that statement on
18 November 6th.

19 The question I have for you is
20 whether you saw that November 3rd statement
21 allegedly of Mr. Arar.

22 MR. MARTEL: May I see it, or is it
23 not allowed?

24 --- Pause

25 MR. CAVALLUZZO: It is a statement

1 wherein the Syrians state that Mr. Arar told them
2 that he had been in Afghanistan in 1993 --

3 MR. MARTEL: Was it, perhaps, a
4 document that was sent to the Ambassador by the
5 authorities?

6 Is that it?

7 MR. CAVALLUZZO: That's correct.
8 It was written to ---

9 MR. MARTEL: No, I didn't see it --
10 I did not take cognizance of -- of this
11 correspondence.

12 MR. CAVALLUZZO: Did
13 Mr. Pillarella advise you of the contents of that
14 statement?

15 MR. MARTEL: No, no.

16 There is -- there is a distinction
17 between my clients, the consular side, and there
18 is certainly another side that doesn't concern me
19 and which I didn't want to know any thing about
20 either, not now or ever, of course.

21 That wasn't my business. It wasn't
22 part of my mandate, and it wasn't my business to
23 know about that.

24 --- Pause

25 MR. CAVALLUZZO: Okay. Before we

1 come to the third consular visit, are you telling
2 me that you don't have to know any statements that
3 Mr. Arar has given to Syrian authorities in order
4 to fulfil --

5 MR. MARTEL: No. I said that --
6 this was not what I said.

7 I said that if the Syrian
8 authorities gave the Ambassador information about
9 the case, with respect to, say, the investigation
10 or the criminal aspect. This isn't my area.

11 The Ambassador is not going to
12 share this information with me.

13 MR. CAVALLUZZO: Then if we go to
14 the third consular visit, which is in book 2 of
15 exhibit P-42 at tab 192 -- this is 192.

16 This visit occurred. This is your
17 third consular visit, which occurred on November
18 12th of 2002, and let me summarize the note for
19 you from your words.

20 It states that you spoke with the
21 officials for approximately 30 minutes before
22 Mr. Arar came into the room. You handed over
23 reading material which you hoped that the Syrians
24 would give to Mr. Arar after they reviewed it.
25 Then Mr. Arar came in and you had a discussion

1 with him for approximately 15 minutes. Mr. Arar
2 expressed his appreciation for the visit. He
3 asked certain questions about politics, whether
4 the Prime Minister was going to intervene and
5 other matters.

6 And it says in that paragraph 3
7 that you, as the consul:

8 Martel kept to the lines that
9 are public knowledge as they
10 have appeared in the press.

11 And then it goes on in the next
12 paragraph and states that Mr. Arar:

13 ... spoke in Arabic (as
14 requested by the Syrians) and
15 Colonel Majed --

16 Or Colonel Saleh.

17 ... acted as interpreter.

18 Is that a situation where Mr. Arar
19 was attempting to speak in English to you and the
20 Syrians stopped him and said, "Speak in Arabic"?

21 MR. MARTEL: If -- if he spoke in
22 Arabic with me, it was because he was told to
23 speak Arabic. Of course, it wasn't out of choice
24 that he spoke Arabic, because he knew very well
25 that I couldn't understand what he was saying to

1 me.

2 MR. CAVALLUZZO: So you spoke very
3 little and understood very little Arabic?

4 MR. MARTEL: My vocabulary is
5 extremely limited. I mean I know enough to go to
6 the market and buy something, and numbers, but not
7 ---

8 MR. CAVALLUZZO: Right.

9 MR. MARTEL: No, I don't know the
10 language.

11 MR. CAVALLUZZO: Okay. And then
12 in the second-last paragraph, it would appear
13 that -- and this would have been after your
14 meeting with Mr. Arar. This would have been in
15 the car ride back with Colonel Saleh that you
16 attempted to obtain information on the progress of
17 the investigations, but the Syrians remained
18 silent. They said that Mr. Pillarella, the Head
19 of Mission, had been provided with a full report,
20 and they gave no indication that Arar would be
21 released any time soon.

22 And then finally you say that:

23 Authorities were very
24 cooperative and very much at
25 ease with the visit. It

1 seems they are willing to
2 continue the practice and we
3 are committed to doing so.

4 So is that a fair representation
5 of what occurred at the meeting and what you were
6 told?

7 MR. MARTEL: Yes, yes. I think that
8 it -- yes, that is what happened at that time.
9 Yes.

10 MR. CAVALLUZZO: Could we move now
11 to the next volume, book 3 of exhibit P-42?

12 --- Pause

13 MR. CAVALLUZZO: And at tab 228 we
14 have a CAMANT note which encaptures an e-mail
15 from -- in fact, it is from Mr. Pardy to you. In
16 this particular e-mail, Mr. Pardy is giving you
17 instructions through Myra Pastyr-Lupul as to, in
18 effect, what to look out for in respect of your
19 next visit with Maher, such as, does he have
20 medical problems or issues? And then they go on
21 to ask you what your overall assessment of his
22 wellbeing is.

23 Do you see any improvement in
24 his psychological state,
25 physical state, is he more

1 relaxed, less anxious than
2 your first visit or your last
3 visit?

4 And then gives you things like
5 bring photos of the family and what to discuss
6 with Mr. Arar.

7 Did you receive a copy of this
8 e-mail with these instructions?

9 MR. MARTEL: Yes, it was a note in
10 the CAMANT system in all events, and I was -- one
11 of the recipients. So yes. I received this
12 instruction, of course.

13 MR. CAVALLUZZO: Now, the fourth
14 consular visit is on November the 26th of 2002,
15 and we have heard evidence that between November
16 20th and November 24th, there was a visit to the
17 Syrian Military Intelligence by CSIS.

18 I am asking you whether you are
19 aware of the CSIS visit at that time?

20 MR. MARTEL: No, no. I had no
21 knowledge of such a visit, and I was not involved.
22 If they came and left, I wasn't aware of it.

23 MR. CAVALLUZZO: Your fourth
24 consular visit can be found at tab 229. Once
25 again, it is November 26th of 2002.

1 The portion that I would
2 summarize, after he dictated to you a letter for
3 Monia, his wife, which you took down and then
4 obviously would send off to her, is in paragraph
5 7.

6 It states that he:

7 ... appeared to be in good
8 physical and mental health.
9 Officials made him stand up
10 to show he was well being
11 taken care of.

12 Did that concern you, that they
13 would say to somebody, "Stand up to show
14 Mr. Martel how healthy you are"? Did that concern
15 you?

16 MR. MARTEL: Of course. Well, both
17 of us looked at each other, and I wondered what
18 they were going to make him do? We're not idiots,
19 and then if they said to him, Maher, stand up and
20 walk and show the Consul how well you are. So he
21 walks in front of me, and I don't know why they
22 are doing this. Did they have concerns? Were there
23 articles in the press? Did they want to show
24 something? Anyway, it is not very intelligent to
25 think that I won't realize what is going on. But

1 they did it. They did it, and Maher had to comply;
2 he had no choice.

3 MR. CAVALLUZZO: You go on in your
4 note and say that:

5 No change could be seen in
6 his state of health from that
7 of the last visit. Upon
8 being questioned on his
9 current health compared to
10 the day he was first visited,
11 he indicated he had been
12 afraid at the beginning as
13 the investigation was more
14 intensive.

15 Now, did he say this in front of
16 the Syrians?

17 MR. MARTEL: Yes, he said that in
18 front of them, and then I think that he chose his
19 words very carefully. He said "Yes." I asked him
20 how he was etc? And he replied that it had been
21 more difficult at the beginning because the
22 investigation had been more intense, and I
23 concluded, obviously, and I had to -- I wrote it
24 as I had to -- I put it in. But he told me that
25 it was easier now.

1 MR. CAVALLUZZO: Did that indicate
2 to you that he was sending you a signal, and that
3 is that in the initial period -- once again the
4 period that we are talking about where the Syrians
5 said he had been there for a couple of days and he
6 says 12 days. Does that indicate to you that he
7 is sending a signal saying, "In that initial
8 period, I was mistreated"?

9 MR. MARTEL: Well, he didn't say it
10 flat out like that. He told me that his situation
11 was better now compared to how it was in the
12 beginning because the investigation was more
13 intensive. He couldn't tell me anything further,
14 and I didn't want to jump to conclusions and say,
15 well! Aha! They really mistreated him in the first
16 two weeks then. He told me that it had been more
17 difficult in the beginning. I couldn't conclude
18 anything other than what I wrote, and I wrote what
19 he told me. Now, if someone else had thought
20 otherwise, nothing was said to me. So, I -- it's
21 what he told me.

22 MR. CAVALLUZZO: Right. Listen to
23 the question, Mr. Martel.

24 The question is: Do you think
25 that Mr. Arar is sending you signals? He couldn't

1 come out, presumably, and say, "I was mistreated
2 in the initial period; I was tortured in the
3 initial period." What he does say, though, is
4 that it was difficult in the first period.

5 And the question is: Do you not
6 think that he is sending you a signal? In light
7 of all the controls around him, he is sending you
8 a signal saying, "In the initial period, they
9 mistreated me"?

10 MR. MARTEL: We can speculate about
11 what exactly he wanted to tell me, but what he
12 told me was that, at the beginning of his
13 detention, it was more difficult for him because
14 the investigation had been more intensive.

15 Now, was he trying to tell me that
16 at the beginning they had mistreated him: they did
17 this and that to him? I couldn't ask him the
18 question nor could I draw the conclusion and say,
19 aha! They mistreated him at the beginning, really
20 mistreated him in the beginning. He simply said
21 that his conditions were more difficult before,
22 yes, especially at the beginning. That's all that
23 I could conclude.

24 But the rest, we could speculate,
25 we might think, we might say, yes, but at the

1 beginning he may have been mistreated. That was
2 possible. But, anyway, I asked him the question,
3 "How are you?" and he replied, "Compared to
4 before, it's much better now." That is what he
5 said to me.

6 MR. CAVALLUZZO: It sounds to me
7 like the only way in which you would have
8 concluded at this point in time that he had been
9 mistreated is for Mr. Arar to come out in front of
10 these three Syrian officials, in Arabic, with
11 notes being taken, that he was mistreated or
12 tortured, and that is the only way that you would
13 have concluded that.

14 Is that right?

15 MR. MARTEL: No. In English, he
16 should have -- he could have, if he'd wanted to,
17 because they could not prevent him from talking if
18 he decided to talk. In spite of the people
19 present, he was the one who had to decide.

20 But if it had happened in English,
21 and he had said to me, "In the first two weeks,
22 they really mistreated me," I would have written
23 it down, regardless of whether people were there,
24 they couldn't have closed his mouth and prevented
25 him from speaking, obviously. But he was the one,

1 then, who had to make the choice, because, if I'd
2 asked him the question, what would he have
3 answered?

4 If I'd said to him: did they
5 really mistreat you in the first two weeks, what
6 would he have said to me? Maybe he would have
7 said: No, I don't think so. Maybe I wouldn't have
8 believed it, or else he might have said: yes, and
9 then he was the one who made the choice, but I
10 forced him to give an answer.

11 But for starters, he was the one
12 in detention, not me. In a half an hour, I'd be
13 gone. He had to stay. Therefore, he was the one
14 who knew, at that time, what the consequences
15 would be for him, what he could say to me, what he
16 wanted to say to me too. That was what was
17 important, but I couldn't put words in his mouth.

18 But if he wanted to talk to me about it, if he
19 decided to, he could have done so.

20 MR. CAVALLUZZO: And if he talks
21 to you and tells you the truth, it sounds to me,
22 since he is going to be there after you are gone,
23 that something might happen to him?

24 MR. MARTEL: One could think that,
25 given the reputation of those people. Of course.

1 Of course one could think that.

2 MR. CAVALLUZZO: And, in fact, at
3 this meeting it would appear that not only did
4 Mr. Arar not say that he had been mistreated, or
5 wasn't being mistreated, but according to your
6 note it says:

7 He continued to say he was
8 being treated well and when
9 prompted by the officials he
10 said 'my brothers are
11 treating me very well.'

12 MR. MARTEL: That's a joke, of
13 course. I was looking at him, and he was saying
14 what he was told to say, and Maher knew very well
15 that I didn't believe a single thing he was
16 telling me. It was a farce, that's a sure thing.

17 But under the circumstances, what
18 could Maher do? If he was told, "Get up and tell
19 the Consul how well you are being treated; walk;
20 show him that you're comfortable; look how well
21 you're being treated, show him", he had no choice
22 but to do it, so he had to do it. I took note of
23 it, I reported it, but it didn't matter at all
24 because I knew that it wasn't up to him -- it
25 wasn't coming from him.

1 MR. CAVALLUZZO: And --

2 MR. MARTEL:

3 MR. CAVALLUZZO: And as you said,
4 if he did speak the truth, and that is if he did
5 tell you that he had been mistreated, that there
6 would have been very serious consequences to him
7 after you left?

8 MR. MARTEL: Possibly. One could
9 think so. He knows better than me. But there
10 could have been consequences. What might have
11 worried me the most in that case -- it would have
12 been his choice, of course -- but we were both
13 very afraid that the visits would stop, that is,
14 that I would not be allowed to see him, and if I
15 didn't see him for a spell, we really would have
16 wondered about his health.

17 So, it was -- in the end, it was
18 up to him to decide and to assess the conditions.
19 He knew his guards better than I knew them. He
20 knew what would happen after I left. I didn't
21 know what went on after I left. After each visit,
22 I didn't know. I didn't know what they told him
23 before each visit, either. So he was in a better
24 position than me to know what he could or couldn't
25 tell me.

1 MR. CAVALLUZZO: By the way, when
2 you visited and conducted these consular visits
3 and wrote these reports, would you discuss what
4 happened with Mr. Pillarella?

5 MR. MARTEL: Yes; after each
6 meeting, of course, except when the Ambassador was
7 away on a trip, but after each meeting, that was
8 the first thing I did when I got back to the
9 Embassy.

10 If my visit had been at 11:00 and
11 I came back at 1:00, and if the Ambassador was
12 there at that moment, I would go directly to his
13 office and give him a summary of the visit, what
14 condition Maher was in, if there were any changes
15 and all that, and then, of course, I had to sit
16 down and prepare a report the same day, because
17 the report was always impatiently awaited in
18 Ottawa. So, I would sit down and start preparing
19 a report.

20 MR. CAVALLUZZO: And in any of
21 these discussions with Mr. Pillarella, on any
22 occasion between October 2002 and October of 2003
23 did either of you gentlemen ever discuss the
24 possibility that Mr. Arar had been tortured or
25 mistreated in the initial period that he was held

1 in detention by the Syrian Military Intelligence?

2 MR. MARTEL: No, I don't think so.
3 To my knowledge, as far as I can remember, I don't
4 recall that he and I discussed whether he was
5 tortured in the first two weeks of his detention.
6 I think the Ambassador relied on the content of
7 the visits and the fact that I was seeing him, and
8 of course, that -- I imagine that he and I both --
9 in any case, I always had that possibility in
10 mind, I was always worried about my client.

11 But we didn't sit down and discuss
12 whether there was a possibility that he was
13 tortured in the first two weeks. We didn't have a
14 conversation of that type.

15 MR. CAVALLUZZO: Were you aware at
16 any time that any of your consular reports were
17 going to the RCMP or CSIS?

18 MR. MARTEL: No; never. That is,
19 there was an established procedure. If you read
20 the C-4, for instance, it is quite limited. It
21 goes to some divisions in Foreign Affairs, and
22 that's it. Later, I received instructions from
23 senior management that I had to send it to more
24 people, and I did, but always inside the
25 department.

1 MR. CAVALLUZZO: Now, the next
2 visit, the fifth consular visit, is on December
3 10th of 2002. It would appear from your report
4 that you spent 30 minutes with Mr. Arar and the
5 Syrians. You delivered letters and photos, and
6 you observed that he appeared to be in good
7 physical condition and no change had been noticed
8 since the last visit. Indeed, you took down from
9 him a letter to Monia, which no doubt you would
10 have taken down -- in fact, if you look at tab
11 277, the very last page of 277, you will see your
12 notes.

13 The last page, do you see that at
14 the top, 10/12/02, and this is the "Dear Monia"
15 letter?

16 MR. MARTEL: Right.

17 MR. CAVALLUZZO: So this is the
18 letter you took down:

19 I hope the kids are doing
20 fine.

21 And so on and so forth.

22 I am looking at the top, and it
23 looks like you are sending a copy of this letter
24 to Pardy, who is JPD. MJM, who is this?

25 MR. MARTEL: This was the

1 Assistant Deputy Minister, John McNee.

2 MR. CAVALLUZZO: Okay. We know
3 who GMD is; we know who GMR is.

4 Could you tell us why you are
5 sending this personal letter from a husband to his
6 wife, talking about their children, to ISD, who
7 was head of security and intelligence, and ISI,
8 who are the foreign intelligence people in DFAIT?

9 MR. MARTEL: These are lists of
10 addresses that are sent to me, and we usually
11 respond, or I respond to the same addresses. A
12 system is set up, and I'm given a list of
13 addresses. So from one report to the next, we try
14 to maintain all these addresses.

15 If the letter was part of the
16 message sent in COSMOS, I think, or in C-4 -- I
17 don't remember which, you have to go back to the
18 message itself. I wrote those addresses by hand.
19 After I took the letter, once I got to the
20 Embassy, I said whom should I send the report to
21 and put this in front. That's the normal
22 procedure. It's within Foreign Affairs.

23 MR. CAVALLUZZO: Right.

24 If we move on to tab 254, we have
25 a message to you from Myra Pastyr-Lupul, and she

1 tells you that she has spoken to Mr. Arar's
2 brother. And what she tells you -- and this is
3 now December the 12th, after your fourth visit, or
4 fifth visit.

5 She says that the brother:

6 ... is concerned that Maher
7 Arar is being kept
8 underground in the prison and
9 is not allowed to see natural
10 light, except when he comes
11 out for the meetings.

12 The brother:

13 ... stated that he and his
14 brothers are providing
15 support to Monia. They are
16 in contact by telephone on a
17 daily basis.

18 And then it goes on to say:

19 He is concerned about the
20 "human rights" treatment of
21 his brother. I assured him
22 that we are as well and would
23 express our concern if we had
24 reason to believe that he was
25 not being treated in a

1 humanitarian way. He hopes
2 that we have a visit next
3 week.

4 Did you read this particular
5 message from Myra Pastyr-Lupul?

6 MR. MARTEL: Yes, I did. That
7 message is addressed to me, so naturally, I read
8 it --

9 MR. CAVALLUZZO: And you would --

10 MR. MARTEL: -- and her brother's
11 concerns were also noted.

12 MR. CAVALLUZZO: You would agree
13 with me that if it's true that Mr. Arar was being
14 kept underground in a prison and was not allowed
15 to see natural light except when he comes out for
16 your meetings, that that is a very troubling
17 concern.

18 MR. MARTEL: Of course. It was a
19 very troubling concern, and I imagine that on my
20 next visit, I would see what was up. I would have
21 kept it in mind, that's certain.

22 MR. CAVALLUZZO: And when you went
23 to the next visit, did you raise with Colonel
24 Saleh, did you say something like, "Colonel, is it
25 true that Maher is being kept underground in the

1 prison and he is not allowed to see natural light
2 except when he sees me every three or four weeks?
3 Is that true, Colonel Saleh?"

4 MR. MARTEL: No. Saleh wasn't my
5 contact. I think we have to look at the next
6 meeting. That is, Saleh was my interpreter, so he
7 could say whatever he wanted. Even if I asked him
8 the question, he would say no, that's not the
9 case, or whatever. I had to wait for the next
10 meeting to see how my client was doing and try to
11 find out if he was being detained in good
12 conditions or if her brother's fears, Monia's
13 brother, were founded.

14 MR. CAVALLUZZO: Did you ask the
15 Syrians on the next visit whether Mr. Arar was
16 being kept underground in the prison and was not
17 allowed to see natural light except when he came
18 out for your visits? Did you ask that question?

19 MR. MARTEL: Can we move on to the
20 next visit?

21 MR. CAVALLUZZO: Certainly. If we
22 go to Tab 275 or 276, it is January the 7th.

23 Probably the better one to look at
24 is 276. It is easier to read. This is the sixth
25 consular visit, January 7th, 2003.

1 --- Pause

2 MR. MARTEL: Okay, during that
3 visit, I obviously had that in mind and I talked
4 about various newspaper articles. I certainly
5 didn't want to say to the authorities, "Monia's
6 brother said that..." So I said that there was some
7 negative press, and the authorities spent a
8 considerable amount of time -- you can see it in
9 paragraph 9 -- discussing the detention
10 conditions.

11 But even when I saw Maher that
12 time, I couldn't say, "It appears that you're
13 being kept underground, or according to your
14 brother-in-law, you're being kept underground,
15 etc". He wouldn't have been able to answer me
16 anyway in a controlled environment; he couldn't.

17 So, I had to see him, see how he
18 was and see if he was giving me any signs that
19 things had changed, but the visits seemed the same
20 as usual. He seemed to be in good health, and
21 there weren't any changes.

22 But I couldn't ask him that
23 question directly, so I told the authorities that
24 the press in Canada was saying negative things
25 about the country.

1 They told me not to worry, as you
2 can see a little further on, but now, of course,
3 knowing what we know, when they said he was being
4 held in a separate room and wasn't with the other
5 inmates and all that, after what Maher told us
6 later, in that context, it doesn't jive.

7 But at that time, I had no reason,
8 or no obvious one, I couldn't see, and Maher
9 wasn't telling me under what conditions he was
10 really being detained.

11 MR. CAVALLUZZO: So here you have
12 Mr. Arar's brother telling you that he is
13 concerned that he is being held underground,
14 without access to natural light except for your
15 visits every three weeks or month or so, and you
16 conclude that this isn't the case because you have
17 no proof of it.

18 Is that what you are telling us?

19 MR. MARTEL: No. I'm saying I
20 didn't know one way or another. I couldn't reach
21 any conclusion. Maybe he was being detained under
22 bad conditions.

23 His brother was worried, but when
24 I saw him, he still looked well, he didn't say
25 anything more to me, and the authorities told me

1 that he was being detained in good conditions.
2 So, I couldn't ask him the question directly.

3 Consequently, his brother-in-law's
4 information couldn't be verified; I couldn't
5 verify that information. If I had asked the
6 authorities, the answer would have been "no, his
7 brother-in-law is a liar"; that's what they would
8 have said to me.

9 I would have been no further ahead
10 with that; I wouldn't have made any progress on my
11 client's case. If he was in a position to say
12 something to me at that time, he should have said
13 it.

14 But maybe he couldn't or didn't
15 want to. It was an extremely difficult situation.
16 I had to think of his well-being, I had to think
17 about my next visits, and I was trying to do the
18 best thing under circumstances that were
19 absolutely intolerable and stressful for him and
20 for me too, because we were never left alone.

21 Everything was being controlled,
22 and we were told what they wanted us to be told;
23 we were practically being told what we wanted to
24 hear.

25 MR. CAVALLUZZO: So what you are

1 telling us is that Mr. Arar couldn't tell you
2 about the prison conditions because if he did,
3 there could be dire consequences after you left.

4 You would agree with that?

5 MR. MARTEL: Yes; there could have
6 been consequences for him, but more importantly, I
7 think, and Maher Arar had already concluded and
8 decided this a long time before, he was being very
9 careful about what he said to me, not so much
10 because of the consequences for him, but to keep
11 our visits going, because he needed to see me to
12 get news of his family. That was essential for
13 him.

14 MR. CAVALLUZZO: And you would
15 agree with me that not only would the Syrians not
16 tell you the truth, but they went out of their way
17 and they said that he was receiving special
18 treatment?

19 MR. MARTEL: Yes, naturally.

20 MR. CAVALLUZZO: Listen to the
21 question, please. He is receiving special
22 treatment. He is being held in a separate room
23 and not mixed with other inmates.

24 Now, did that concern you, that
25 maybe -- maybe -- they are holding him in

1 seclusion, without access -- let alone light,
2 without access to other human beings? Did that
3 concern you?

4 MR. MARTEL: Possibly, but you
5 know, detention conditions in Syria are such that
6 in a cell like the one we were talking about now,
7 two people fit in. Cells like that can hold two
8 people.

9 There could also be a cell half
10 that size, it's a known fact, or the inmates could
11 be with others; I've had other clients with 25 to
12 50 people.

13 So from their standpoint, maybe
14 they were trying to reassure me by telling me that
15 he was being held alone and wasn't mixed with
16 other inmates, and I'm telling you, being mixed
17 with other inmates, I've seen that and it's
18 horrible too.

19 So, it's horrible one way and it's
20 horrible the other. One way or the other, there's
21 no getting around it, it's horrible.

22 MR. CAVALLUZZO: So what you are
23 saying is that you didn't confront the Syrians
24 with this possibility that he was living in a hell
25 hole, that is, a cell by himself without access to

1 light? You exercised your judgment by saying that
2 if I asked him that question, it would be worse
3 for Mr. Arar?

4 MR. MARTEL: Not necessarily, but
5 I let them know that there was a lot of negative
6 press, and they're not stupid, they read the
7 papers, so they knew what I was talking about at
8 that moment.

9 What I'm saying is I think they
10 let me stay longer than usual, reassuring me by
11 saying, "don't worry, Mr. Consul, Mr. Arar is
12 indeed being held in good conditions, he's alone
13 and not mixed with the other inmates, etc., etc".

14 That's what they wanted me to
15 understand, and that's what I reported.

16 Now, we found out what the real
17 detention conditions were, but much later, much
18 later, and some of them were horrible, including
19 his. That can't be denied.

20 MR. CAVALLUZZO: Okay. If we move
21 on to the next tab, we see the notes that you took
22 at this meeting. The first page is a letter to
23 Monia.

24 THE COMMISSIONER: Sorry. What
25 tab is that?

1 MR.CAVALLUZZO: This is the very
2 next ---

3 THE COMMISSIONER: Oh, 277.

4 MR. CAVALLUZZO: Two hundred and
5 seventy-seven, yes.

6 This is your handwriting of the
7 meeting of January the 7th of 2003?

8 MR. MARTEL: Yes, all those pages
9 are by me, yes.

10 MR. CAVALLUZZO: What I would like
11 to ask you about is page 2.

12 The first line says -- well, I
13 assume it says "CSIS" and it is struck out.

14 Do you see there is a line through
15 there?

16 ... should tell (somebody).

17 Could you tell us what that line
18 is? What does that read? How does that read?

19 MR. MARTEL: I think it's a
20 conversation I had with Saleh later on in the car,
21 and I was trying to find out what the situation
22 was with my client and, of course ---

23 MR. CAVALLUZZO: What does it say?
24 It looks like initially you had CSIS ---

25 MR. MARTEL: Yes, that's what

1 Saleh told me. He said, "security service", so I
2 wrote down "CSIS", I suppose, and after that, I
3 said to myself that I don't talk to security
4 services, so later I crossed it out and wrote "The
5 Department".

6 That's what I wrote, and he said -
7 --

8 MR. CAVALLUZZO: Right.

9 MR. MARTEL: He said, "You should
10 tell the press those stories."

11 MR. CAVALLUZZO: Okay. Never mind
12 the press. The question is: What did he say
13 about CSIS? Tell us exactly what he said about
14 CSIS.

15 MR. MARTEL: He said the security
16 service should tell the press the whole truth.
17 That's it.

18 And after the press, he said, "not
19 the press, we should tell Monia". So I crossed
20 out "the press" and wrote "Monia" and "the whole
21 story".

22 At that point, Saleh was
23 intimating that there were facts about her husband
24 that she didn't know. So, what Saleh said was,
25 "Monia doesn't know the whole story".

1 That was Saleh's position or maybe
2 not the Syrian position, but that was the message
3 he gave me. He said,

4 She doesn't know the whole
5 story, so the Department
6 should tell her the story,
7 maybe she doesn't know it.

8 MR. CAVALLUZZO: Now, on January
9 15th, if you go to -- why don't we go to Exhibit
10 134, the Pillarella book, at Tab 14.

11 And if you go to the second page
12 of Tab 14, you will see that there is a C-4 dated
13 January the 15th of 2003, and you will see what it
14 says is that,

15 I met this morning with ...

16 And the name is redacted. We know
17 who it is, though.

18 ... to discuss the possible
19 visit of Mrs. Arar to
20 Damascus to meet with her
21 husband. Léo Martel
22 accompanied me.

23 And then it says,

24 True to his word, General
25 Khalil's office called ...

1 And so on.

2 The question I have relates to the
3 third paragraph, paragraph 3.

4 It is Tab 14, the second page.

5 Do you see the top paragraph
6 there? It says,

7 I met this morning with
8 (redacted) to discuss the
9 possible visit of Mrs. Arar
10 to Damascus to meet with her
11 husband. Léo Martel
12 accompanied me.

13 Do you see that?

14 MR. MARTEL: Mm-hmm.

15 MR. CAVALLUZZO: And in paragraph
16 number 3, it refers to the conversation, and there
17 were two points that were rather curious. I would
18 like to refer to the second point.

19 It says,

20 The second, again according
21 to his information, was that
22 CSIS would have indicated to
23 (somebody) that they have no
24 wish to see Arar return to
25 Canada and they were quite

1 content with the way things
2 were.

3 That statement there, were you a
4 party to that conversation at which that statement
5 was made?

6 MR. MARTEL: I was at that
7 meeting.

8 If I remember correctly, the names
9 have been redacted, but I think -- it says that I
10 was with Mr. Pillarella, so I was obviously there,
11 and I remember a conversation; I was with the
12 Ambassador more as a witness, if you will.

13 And there was a conversation
14 involving that official from Foreign Affairs, who
15 in fact made that statement in front of me, too.

16 MR. CAVALLUZZO: Who made the
17 statement?

18 MR. MARTEL: The official.

19 MR. CAVALLUZZO: And who was the
20 official?

21 MR. MARTEL: It's been redacted.

22 MR. CAVALLUZZO: Well, we do have
23 unredacted names. One is General Khalil.

24 MR. MARTEL: No, General Khalil
25 wasn't involved, it was at the Department of

1 Foreign Affairs.

2 M^e BAXTER: Apparently, Mr.
3 Martel, you are free to reveal the name.

4 MR. MARTEL: Yes. So, if I
5 remember correctly, it was Haddad, who was Deputy
6 Minister.

7 MR. CAVALLUZZO: Of Foreign
8 Affairs in Syria?

9 MR. MARTEL: That's right.
10 Exactly.

11 MR. CAVALLUZZO: And so he told
12 you that --

13 MR. MARTEL: No; he told the
14 Ambassador.

15 MR. CAVALLUZZO: But you were
16 there?

17 MR. MARTEL: I was there.

18 MR. CAVALLUZZO: Now, did anyone
19 else in the Syrian Government, apart from
20 Mr. Haddad, the Vice-Minister of Foreign Affairs,
21 tell you the same thing, that CSIS did not want
22 Mr. Arar's return to Canada and were quite content
23 with the way things were?

24 MR. MARTEL: No. To the best of
25 my knowledge, I don't think so. But to the best

1 of my knowledge, it was the only occasion upon
2 which an important person from the Department of
3 Foreign Affairs made such a statement in my
4 presence.

5 I even interrupted at that point,
6 even though I was just accompanying, and said,
7 "Listen, that isn't what Mr. Arar told me or said
8 in his letters to his wife".

9 I believe he said something like,
10 "If I understand correctly, Mr. Arar doesn't want
11 to go back to Canada".

12 MR. CAVALLUZZO: Mr. Martel, you
13 are confusing two aspects there.

14 The first aspect said that
15 Mr. Arar did not want to return to Canada. It is
16 the second consideration that I am talking about,
17 and that is that CSIS ---

18 MR. MARTEL: Yes, yes.

19 MR. CAVALLUZZO: --- did not want
20 Mr. Arar's return to Canada.

21 MR. MARTEL: Well, I don't
22 remember the exact words, but I think the person
23 we were speaking to said, "But I thought that
24 Canada didn't want him". I think those were the
25 words he used at the time, if my memory is

1 accurate, but I didn't ---

2 MR. CAVALLUZZO: Did anyone other
3 than Mr. Haddad, in the Syrian Government, from
4 the President down to the foot soldier, did anyone
5 other than Mr. Haddad give you the same
6 information, that the Government of Canada or CSIS
7 did not want Mr. Arar's return to Canada?

8 MR. MARTEL: No, no.

9 MR. CAVALLUZZO: So this is the
10 only occasion upon which you heard that?

11 MR. MARTEL: It's the only time an
12 official said in my presence, "I thought -- or I
13 understood that Canada didn't want him", or
14 something like that.

15 MR. CAVALLUZZO: Okay. Now I
16 would like to move -- just before we move, you say
17 you didn't hear it. Did you hear anyone else --

18 MR. MARTEL: No.

19 MR. CAVALLUZZO: Listen to the
20 question.

21 Did you hear anyone else, from
22 Mr. Pillarella or anybody else, that this
23 statement, or a statement similar to that, that
24 CSIS or the Government of Canada did not want his
25 return, did you hear that said by anybody else?

1 MR. MARTEL: No, I didn't hear
2 anything like that; in fact, the person we were
3 speaking to didn't mention CSIS. He said, "I
4 didn't think Canada wanted him".

5 MR. CAVALLUZZO: Your seventh
6 visit is on February 18th, if you go to Exhibit
7 134, the Pillarella book, at Tab 17.

8 --- Pause

9 MR. CAVALLUZZO: This note was
10 drafted by you and was approved by Mr. Pillarella,
11 and just let me summarize it for you.

12 In the second paragraph, you state
13 that Arar was and appeared to be in good health
14 and that you had not noticed any changes since his
15 last visit.

16 In the fourth paragraph, in
17 paragraph (b), you state:

18 As previously indicated we
19 had no indication that
20 charges had been laid against
21 Arar and security services
22 confirm that fact.

23 It went on in paragraph (c) to
24 state that:

25 Investigation is ongoing and

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

8 And then finally, in the last
9 paragraph, in terms of how long he will remain in
10 Syria, you state in the third line that,

11 As long as they consider that
12 their investigation is
13 ongoing, the Syrians will not
14 release Arar. We suspect
15 that the only possibility of
16 a return to Canada could
17 happen only at the end of an
18 investigation that could not
19 justify the laying of charges
20 against Arar. For the
21 moment, this remains an open
22 question.

23 And this consular note fairly
24 captures what happened and what was said at this
25 meeting on the 18th of February, Mr. Martel.

1 Is that correct?

2 MR. MARTEL: Yes, that's right.

3 Obviously some comments were
4 provided by -- my interpreter. So there is a lot
5 of information in that report that comes from
6 Saleh.

7 So, as usual, it has to be treated
8 with caution; also, paragraph 6 was written by the
9 Ambassador.

10 So, although I wrote the report,
11 it was approved by him.

12 Maybe this was already specified,
13 but it needs to be specified again, because he was
14 the only one who knew the information in the 6th
15 paragraph.

16 MR. CAVALLUZZO: Finally, before
17 we break for lunch, I would like you to refer once
18 again to Exhibit 134, the Pillarella book, at Tab
19 18.

20 This is dated March 24th. It is a
21 C-4 and it is from Damascus, drafted by you,
22 approved by Pillarella.

23 It states that,

24 Military Intelligence Col
25 Saleh Majed returned Martel's

1 phone call today and
2 indicated there was a change
3 of procedure. Embassy would,
4 in future, have to obtain
5 Ministry of Foreign Affairs'
6 concurrence for consular
7 access to Arar.

8 And then it refers in the next
9 paragraph to the situation in Iraq.

10 This new procedure of having to go
11 through the Ministry of Foreign Affairs I
12 understand was bad news because whenever you sent
13 a diplomatic note or any other notice to the
14 Ministry of Foreign Affairs, you would never hear
15 back from them.

16 Isn't that correct?

17 MR. MARTEL: That's quite correct.
18 It was the worse thing that could have happened.

19 In our experience, even if you
20 went back 14 years into the corporate memory,
21 Foreign Affairs was totally inefficient in these
22 cases.

23 In my client's case, they never
24 answered any of the notes. There were about eight
25 in all.

1 So, the fact that -- of being told
2 that over the phone by my contact, "Oh! I'm sorry,
3 but there has been a change in procedure, and in
4 future you have to go through Foreign Affairs" was
5 the same as saying, "I'm sorry, but you can't see
6 your client any more". It was the same thing to
7 me.

8 He didn't need to explain it in
9 detail.

10 MR. CAVALLUZZO: Mr. Commissioner,
11 it is 1 o'clock. It may be an appropriate time to
12 break for lunch.

13 THE COMMISSIONER: Shall we break
14 to 2:15, Mr. Cavalluzzo?

15 MR. CAVALLUZZO: Yes, 2:15 would
16 be fine.

17 THE COMMISSIONER: Okay; 2:15.

18 THE REGISTRAR: Please stand.

19 --- Upon recessing at 1:03 p.m. /

20 Suspension à 13 h 03

21 --- Upon resuming at 2:17 p.m. /

22 Reprise à 14 h 17

23 THE REGISTRAR: Please be seated.

24 Veuillez vous asseoir.

25 MR. CAVALLUZZO: Mr. Martel, we

1 are now in early 2003, and we reviewed with you
2 the consular visits both of January 7th and
3 February 18th.

4 But before doing that, you had
5 made reference in respect of a question I had
6 asked you relating to a letter that you had taken
7 from Mr. Arar, the "Dear Monia" letter, and there
8 were a number of offices that received copies.
9 You remember JPD, and in particular I asked you
10 about ISD and ISI receiving copies of that letter.

11 The question that I have for you
12 is: In response, you said that at a certain point
13 in time the number of recipients of your notes or
14 memos expanded to include other people, and I am
15 wondering if you can help us, if you can recall,
16 when that expansion occurred; and, second, who
17 directed you to expand the number of recipients in
18 respect of your notes and memos?

19 MR. MARTEL: I don't remember
20 exactly when I expanded the number of recipients,
21 but often -- this is often triggered by a
22 communication from headquarters that has -- in
23 which there are new names or acronyms.

24 It was always usual for us to --
25 to respond to -- to the same -- the same acronyms.

1 And I imagine that the further
2 along we got, the list might have grown bigger
3 until a certain point when I received very
4 specific instructions from Ottawa saying, "Listen,
5 we understand that you want to limit the number of
6 recipients, but this is subject to how interested
7 everyone is. Consequently, here's the list of
8 people to whom you must address your
9 communications". And it arrived a little later
10 on.

11 So at some point, and I would have
12 to go back to see when those names were added. It
13 was after I received correspondence on the same
14 topic, which contained the list of addresses. We
15 were also in the habit of replying the same way.
16 It was common practice.

17 MR. CAVALLUZZO: And in regard to
18 the reason as to why the number of recipients was
19 amended or increased, you are telling us that the
20 reason was that these other offices would be
21 interested in Mr. Arar's case as well as Consular?

22 MR. MARTEL: Yes. That was my
23 understanding, and I remember very clearly a
24 directive I received at some point, which came
25 from MJM, namely, John McNee, saying, "We

1 understand your concern" etc., etc., "but there
2 are a number of people here who need to be kept
3 informed. For instance, we don't want the
4 Minister to be caught unawares with questions
5 about which he knows nothing or the Minister's
6 office to be left out of the loop".

7 So, at some point they established
8 a procedure saying, "When you have a case like
9 that, this is the list of addresses you must use".

10 But the addition of ISI and ISD, I
11 would have to look -- I would have to go back to
12 see at what point that was done. I don't remember
13 offhand.

14 MR. CAVALLUZZO: You said that you
15 recall the directive would have come from Mr. John
16 McNee, who is, as you said before, the Assistant
17 Deputy Minister of Foreign Affairs.

18 MR. MARTEL: But that was much
19 later. Much later. I remember, I received a
20 directive saying, "Here is the list of addresses
21 for cases likely to be in the media or cases where
22 torture might be suspected. This is the list of
23 addresses you must use".

24 And I always kept that list,
25 afterwards.

1 MR. CAVALLUZZO: But you are
2 saying that that expanded list from Mr. McNee
3 happened after there were discussions of whether
4 torture occurred, which would have been in later
5 2003, which we are coming up to?

6 MR. MARTEL: It was later, but I
7 couldn't tell you from memory exactly when it
8 occurred.

9 MR. CAVALLUZZO: The final
10 question in respect of this: Do you remember
11 when, coming back to when ISD and ISI were
12 included in the number of recipients, do you
13 recall specifically who gave the direction? Was
14 it Mr. Pardy, was it Mr. McNee, or was it somebody
15 else?

16 MR. MARTEL: No, I don't think
17 there were any -- any specific instructions on
18 that subject.

19 If I added that it was -- it was a
20 direction -- it's that I definitely received a
21 communication on the same topic, which included
22 the addresses.

23 So, we just replied to all, as we
24 usually did with e-mails. It's just about the
25 same. That's how it works.

1 MR. CAVALLUZZO: Okay. We are
2 moving along. As far as the eighth visit is
3 concerned, that is the visit of April 22nd, 2003,
4 which was the visit of the two parliamentarians.
5 As we said earlier, that is the one visit that you
6 did not attend because the politicians saw
7 Mr. Arar themselves. We have heard evidence of
8 that meeting, so I would like to move on from that
9 particular meeting.

10 I would like to now come to the
11 question of torture, and we can go now to Tab 478.
12 --- Pause

13 MR. CAVALLUZZO: Now we
14 understand -- did you get 478?

15 MR. MARTEL: Yes, that's it.

16 MR. CAVALLUZZO: This is a report
17 from the Syrian Human Rights Committee, which came
18 out in 2003, and our evidence is that it was
19 published sometime -- at least to DFAIT -- in or
20 about June or July of 2003.

21 If you refer to page 4 of the
22 report, you will see that there is specific
23 reference to Mr. Arar, and it states that:

24 Security Forces continue to
25 hold Maher Arar, who is also

1 a Canadian national, and who
2 was forcibly deported by
3 American Immigration
4 Authorities to Syria whilst
5 passing by a Transit lounge
6 on his way back to Canada.
7 The Syrian Human Rights
8 Committee had received
9 confirmed reports that
10 Mr. Arar has been subject to
11 severe torture and intensive
12 interrogation and charged
13 with cooperating with
14 al-Qaeda.

15 So that is the reference to
16 Mr. Arar in the Syrian Human Rights report.

17 I am wondering whether you
18 received a copy of this report or you received
19 information that the Syrian Human Rights Committee
20 had published this report with allegations that
21 Mr. Arar had been tortured?

22 MR. MARTEL: I think that report
23 was brought to my attention when it was produced.

24 I know I saw it, and I probably
25 saw it when it was produced, that is, on July 24,

1 2003.

2 Someone undoubtedly brought it to
3 my attention. That strikes me as completely
4 reasonable.

5 MR. CAVALLUZZO: If you go to
6 Tab 489, you will see that there is an exchange of
7 e-mails about the appropriate press lines that the
8 Department or the Government should come up with
9 in terms of responding to the Syrian Human Rights
10 report, and the press line that we see for the
11 Q&A's is at the top of page 1. I am reading the
12 quotation.

13 It says:

14 We are equally troubled by
15 the statements regarding use
16 of torture as noted in the
17 report of the Syrian Human
18 Rights Committee and are very
19 concerned that we have not
20 had consular access to
21 Mr. Arar since April despite
22 repeated efforts by our
23 Embassy in Damascus to obtain
24 access. We will not relent
25 in our efforts to seek

1 consular access to Mr. Arar.

2 I notice that Mr. Pillarella is a
3 part, as well as you, of receiving copies of this
4 string of e-mails, so that you are obviously aware
5 at this point in time that the Department was very
6 concerned about these allegations about Mr. Arar
7 having been tortured while in Syrian custody?

8 MR. MARTEL: I was copied on that
9 message from JPO, yes.

10 MR. CAVALLUZZO: And we see as
11 well in the next tab, at Tab 490, that questions
12 have been developed by the Department for the
13 Minister.

14 We see, for example, on the first
15 page of that tab, the anticipated question is:

16 What is the Canadian
17 Government response to the
18 reports of the Syrian Human
19 Rights Committee that
20 Mr. Arar is being tortured?

21 And it goes on:

22 During previous Consular
23 visits we saw no evidence of
24 torture or abuse. The
25 Canadian Government is

1 troubled by these reports, as
2 we cannot confirm nor deny
3 them.

4 And then it goes on:

5 We are also concerned that we
6 have not had consular access
7 to Mr. Arar since April.

8 Were you party to the development
9 of these questions and answers for the Minister in
10 respect of these allegations that Mr. Arar had
11 been tortured?

12 MR. MARTEL: No, I don't think so.

13 I don't think I was consulted.
14 That isn't the usual procedure, except once the
15 documents have been published; we're usually
16 copied or it goes into the system.

17 But I don't remember having been
18 consulted for the development of the document
19 itself.

20 MR. CAVALLUZZO: In terms of what
21 is going on in Damascus, I assume that you and
22 Mr. Pillarella are meeting to deal with these
23 allegations of torture.

24 Is that correct?

25 MR. MARTEL: Well, at that precise

1 moment, of course the Ambassador was aware of that
2 document. He was copied on a message from Ottawa,
3 and I think he received separate instructions in
4 one that followed.

5 I think -- I think that's what
6 happened. And I think that headquarters
7 instructed the Ambassador to take certain
8 measures, maybe to re-establish access or
9 something.

10 I think we have to look at what
11 happened next.

12 MR. CAVALLUZZO: But the question
13 was: Did you meet with Mr. Pillarella saying,
14 "We've got this situation now in Canada. There
15 are allegations from the Syrian Human Rights
16 Committee that Mr. Arar is being tortured."

17 Did you meet as to what you were
18 going to do in respect of this serious allegation?

19 MR. MARTEL: I don't remember us
20 meeting specifically for that. I think the
21 Ambassador received separate instructions at the
22 same time, regarding a procedure to follow, and I
23 think the idea was to re-establish access so that
24 I could see Mr. Arar.

25 But we -- I don't remember sitting

1 down with him and saying, "There are some very
2 disturbing documents being published by human
3 rights organizations. There's also a message from
4 JPO expressing concern".

5 I read the same report. He read
6 it. But I don't remember us sitting down to
7 discuss it, as such.

8 MR. CAVALLUZZO: Okay. Then we
9 can move on then to the next volume, to Tab 502.
10 --- Pause

11 MR. CAVALLUZZO: We have heard
12 evidence about this e-mail from Mr. Pillarella,
13 and just let me read it to you. This is from
14 Mr. Pillarella to Graeme McIntyre, copies going to
15 John McNee and others, and he states:

16 Shortly after sending my last
17 message, my "parliamentarian"
18 contact called informing me
19 that our consul will be able
20 to meet with Arar and that I
21 should discuss the
22 arrangements with our "common
23 friend" when I meet him on
24 Thursday morning. If this is
25 confirmed on Thursday, a

1 meeting with Arar should help
2 us to rebut the recent
3 charges of torture. This may
4 not represent all we would
5 wish to obtain in the case,
6 but given the circumstances
7 and the difficulties
8 encountered, to be able to
9 meet with Arar after so many
10 weeks of silence can be
11 considered as a small
12 break-through. I will keep
13 you informed.

14 Now, from this e-mail it would
15 appear, at least from the language, that
16 Mr. Pillarella is expecting or wanting a visit
17 with Mr. Arar which he says, to use his words,
18 "should help us rebut the recent charges of
19 torture".

20 I am asking you whether you had
21 any discussions with Mr. Pillarella concerning
22 attempts to rebut these charges of torture?

23 MR. MARTEL: It's -- to my
24 recollection, anyway, I wasn't copied on that
25 correspondence.

1 The Ambassador must then have told
2 me that he was taking steps and that he hoped that
3 the consular visits would be possible again. But
4 if not, we didn't discuss anything else.

5 I see that he sent this message by
6 e-mail, and it's addressed to GMR and I wasn't
7 copied. Consequently, I didn't -- I didn't see
8 it.

9 MR. CAVALLUZZO: But you see that
10 the language used by Mr. Pillarella is that he is
11 attempting to "rebut the recent charges of
12 torture". Did you feel that it was your role as
13 well, in terms of the next visit to Mr. Arar,
14 which would take place in two days from then, that
15 it was your job as well to help the Department
16 rebut the charges of torture which had been made
17 by the Syrian Human Rights Committee?

18 MR. MARTEL: Okay, Ambassador
19 Pillarella used that word. My goal, on each visit
20 to my client, was to see what state he was in;
21 whether he was well or not.

22 What the international
23 organizations have to say -- of course, there were
24 all kinds of articles from all over the place.

25 The issue was that we could not

1 ignore those articles. We had to take them into
2 account.

3 On the other hand, I couldn't say,
4 "I'm going to go see my client now and I'll show
5 these international organizations that they're
6 mistaken".

7 That isn't -- that isn't the right
8 attitude and it wasn't our mandate. Our mandate
9 -- my mandate, in any case, was to see my client
10 and see how he was.

11 I had to report the facts as best
12 -- as best I could given our working conditions.
13 To the best of my knowledge.

14 But I couldn't take a stance and
15 say, "Yes, I'll go see my client and I'll show
16 those organizations that they're mistaken".

17 That's the wrong attitude because
18 maybe those organizations knew something we didn't
19 know. It was quite possible.

20 So, I saw no -- no reason and had
21 no thoughts about, I think the word is
22 "countering," countering those allegations.

23 No, that wasn't it. Not at all.
24 I had to go see my client, and I had to find out
25 what was going on.

1 Maybe they were right in saying
2 what they said. It was possible.

3 MR. CAVALLUZZO: Did you meet with
4 Mr. Pillarella prior to you going to see Mr. Arar
5 on August 14th?

6 MR. MARTEL: Yes; we certainly met
7 beforehand, because he told me that he was taking
8 steps to try to re-establish the consular visits.

9 But the Ambassador was not in the
10 habit of consulting me on his texts. It was
11 rather the opposite.

12 It was -- I reported to him and he
13 was my superior. I'm not the one who would review
14 his texts.

15 And the words he chose, I can't
16 contest those either. They're his words.

17 MR. CAVALLUZZO: Did
18 Mr. Pillarella meet with you and say that, "When
19 you go on this ninth consular visit on August the
20 14th, you should ask these questions or you should
21 look for these things"?

22 MR. MARTEL: I already knew about
23 -- Ottawa's concerns regarding these reports.

24 So naturally, I don't believe we
25 visited for a while. I was still supposed to look

1 as hard as I could for any signs that could show
2 me that my client wasn't being held in good
3 conditions or that my client was being mistreated.
4 Naturally.

5 That doesn't change the
6 fundamental story. That is, some publications
7 were saying, "Attention! According to some human
8 rights groups, it appears that ... or we've heard
9 that ... or we have evidence that ..."

10 It was our job then to -- not to
11 ignore them. But we had to go there, if possible,
12 and see what was really going on.

13 But we had -- it wasn't our place
14 and we had no reason to say "Those organizations
15 don't know what they're talking about".

16 They had their own information
17 sources, and they were often better than ours, and
18 in my opinion, that's how we were supposed to take
19 it.

20 MR. CAVALLUZZO: Well, let's see
21 what in fact you did at this meeting on August the
22 14th.

23 Could you go to Exhibit 134, which
24 is the Pillarella Book of Documents at page 3.

25 THE COMMISSIONER: Tab 3?

1 MR. CAVALLUZZO: Tab 24.

2 We understand that Mr. Pillarella
3 met General Khalil that morning and was told that
4 Mr. Martel, that is, you, could meet with Mr. Arar
5 that very day.

6 Is that correct?

7 MR. MARTEL: Yes, that's right.
8 That's what he said here. The good news; yes,
9 that's it.

10 MR. CAVALLUZZO: If we go to the
11 third page, which is your recounting of the visit
12 itself, did we go through the same procedure to
13 get to the Palestine Branch; that is, meeting
14 Saleh at a particular corner and you would change
15 cars and then you would get into his car and he
16 would take you to the Palestine Branch?

17 Was it the same procedure as
18 before?

19 MR. MARTEL: Yes, exactly. It had
20 always been the same procedure up to that point,
21 yes.

22 MR. CAVALLUZZO: And this was the
23 first occasion upon which you had met General
24 Khalil?

25 MR. MARTEL: I think so, because I

1 saw him twice, I think. And the second occasion
2 was later on.

3 MR. CAVALLUZZO: According to the
4 note, for the first 30 minutes you met alone with
5 General Khalil?

6 MR. MARTEL: No; I was never alone
7 with the General. The General was surrounded by a
8 number of officials, colonels, and the General
9 spoke in Arabic. So I always had an interpreter
10 with me.

11 MR. CAVALLUZZO: So you had no
12 brief meeting beforehand like you did on the other
13 occasions where you would discuss certain matters
14 before Mr. Arar appeared?

15 MR. MARTEL: No. I sat down with
16 the General and we spoke for a while before Arar
17 was brought in, before and afterwards, of course.

18 MR. CAVALLUZZO: And then if we go
19 to paragraph 2 -- how many people were at this
20 meeting before we come to Mr. Arar's appearance or
21 entrance at the meeting?

22 MR. MARTEL: It seems to me that
23 the General was there and my interpreter, and I
24 think there were two officials, two colonels.

25 MR. CAVALLUZZO: You say in your

1 note that Mr. Arar was pleased to see you and
2 thanked all concerned, including the Syrian
3 authorities.

4 Then you go on and say:

5 We have questioned Arar as
6 much as possible on his
7 detention conditions and
8 asked him whether he needed
9 anything from us.

10 Now, by that statement are you
11 saying that in the past you had asked him as much
12 as possible about detention conditions, or did you
13 ask him about detention conditions at this
14 particular meeting?

15 MR. MARTEL: No. At every visit,
16 that question was always asked, maybe worded
17 differently, that is, "How are you? How are you
18 being treated? etc.," without going into greater
19 detail. But now it was obvious that there had
20 been reports indicating that there was some
21 concern. So I tried to question him as much as I
22 could, under the circumstances.

23 MR. CAVALLUZZO: You say in
24 paragraph 3:

25 He was able to express

1 himself freely at times...

2 What do you mean by that:

3 He was able to express
4 himself freely at times...

5 MR. MARTEL: It's as I said
6 before. Under those circumstances, at that time,
7 surrounded by officials, I had to determine
8 whether what Mr. Arar was saying to me was
9 credible, that is, that he was free to talk to me,
10 and try to determine if it was coming from him or
11 if he was saying things that, in my opinion,
12 weren't really credible, or were said to please
13 the Syrians or because he couldn't say anything
14 else. It was always quite difficult to know if he
15 was telling the truth or if it was his own words.

16 So that's why sometimes I found
17 that -- it seemed that he could express himself
18 freely, and other times, it didn't make any sense
19 to me. So, I said, "Sometimes he could and other
20 times, no, he couldn't".

21 MR. CAVALLUZZO: Did you raise the
22 issue in this meeting that in Canada we have seen
23 the report of the Syrian Human Rights Committee
24 which states that he was tortured?

25 Did you raise that report in the

1 course of this meeting?

2 MR. MARTEL: I mentioned, just
3 before the next sentence, that there had been some
4 press reports that caused us concern and all that,
5 and in my opinion, everyone already knew about it.

6 If we read articles and reports, so do other
7 people. That's why I don't know if he was free to
8 say what he said to me, but he said that he didn't
9 want any negative publicity because it could only
10 harm his case. Should I take that as the truth,
11 was he freely saying that to me, or did someone
12 prompt him to say it? But he said it, so I wrote
13 it down.

14 MR. CAVALLUZZO: You also say that
15 he said:

16 The Press will know the truth
17 when I return home.

18 MR. MARTEL: I think that came
19 directly from him. The Syrians had nothing to
20 gain by suggesting that to him. So at that
21 moment, I gave him a lot of credibility when he
22 said, "I can't talk to you now, but when I get
23 home, the press will know everything".

24 MR. CAVALLUZZO: You go on to say
25 that:

1 He confirmed he had not been
2 beaten nor tortured.

3 How did that come up? Was that
4 made in response to a question that you put to
5 him, such as, "Have you been beaten or tortured?"

6 MR. MARTEL: I mentioned to him
7 that there had been articles in the media that
8 spoke of treatment that was somewhat disturbing,
9 and in my opinion, he was -- what he said was
10 dictated to him before my arrival. He said, "No,
11 I wasn't beaten. No, I wasn't tortured". But I
12 don't think those words were of his own accord,
13 even though he said them like that.

14 So it always comes back to the
15 context of ---

16 MR. CAVALLUZZO: Let me stop you
17 there. This is very important. You are saying
18 that the words that, "I have not been beaten nor
19 tortured", your view was that those were not his
20 words but were prompted by the Syrian authorities?

21 MR. MARTEL: I don't know. It's
22 speculation. I don't know. I can't say. I think
23 only he knows that. I don't know. I can't say.
24 Even today, I don't know. He told me he wasn't
25 beaten, he wasn't tortured, but were those his

1 words or not? It's very difficult.

2 MR. CAVALLUZZO: You agreed with
3 me earlier on that if he said something like that,
4 that he had been beaten or tortured, that that
5 could jeopardize him in the sense that after you
6 left, they might do something to him that was not
7 pleasant.

8 MR. MARTEL: I don't know. He's
9 the one who knew that. What I knew was that I
10 might be prevented from seeing him. But he was
11 there; he knew how people were treating him; he
12 knew what the risks were in talking to me; but I
13 had no idea. We could -- I mean, knowing the
14 system and knowing the reputation, we could always
15 think that, but he's the one who really had the
16 answer. What worried me and what I thought was
17 certain was that they could stop me from seeing
18 him in the future.

19 MR. CAVALLUZZO: If he had said
20 that, if he had said he had been beaten or
21 tortured, they would have forbidden you from
22 seeing him again?

23 MR. MARTEL: Possibly, probably.

24 MR. CAVALLUZZO: So is it fair to
25 say that what you are saying is that in terms of

1 his statement that, "I haven't been beaten nor
2 tortured", that you treated that with a great deal
3 of scepticism because of the circumstances in
4 which Mr. Arar found himself?

5 MR. MARTEL: Naturally, and he
6 also said, "The press and the media will know the
7 truth when I return home". So he was giving me a
8 mixed message. On one hand, he said, "I wasn't
9 beaten, I wasn't tortured", but on the other, he
10 said, "I'm going to tell the truth to the press
11 when I return home".

12 MR. CAVALLUZZO: And he also says
13 something like -- and I'm using the words:

14 He also said that he had not
15 been paralysed.

16 Which is a very troubling
17 expression, you would agree?

18 MR. MARTEL: Yes. I specifically
19 asked him what he meant. I don't know if it was a
20 translation from the Arabic. I took it as -- or
21 thought that maybe he was referring to electric
22 shock or means of torture that are known
23 throughout the area. I asked him to give me a
24 synonym, and he said, "I can't think of another
25 word or a better word".

1 MR. CAVALLUZZO: He went on to say
2 that:

3 ... his long detention had
4 destroyed him mentally.

5 Do you see that? Do you recall
6 him saying that?

7 MR. MARTEL: Yes, and I think he
8 said that. He said it himself. So there are some
9 plausible sentences. He said, "My long detention
10 has destroyed me to such an extent". It's certain
11 that no one prompted him to say that.

12 MR. CAVALLUZZO: You would agree
13 with me that mental or psychological harm caused
14 by a State in terms of their treatment of an
15 individual can amount to torture? You would agree
16 with that?

17 MR. MARTEL: Well, there are many
18 degrees of torture. I'm not an expert in torture,
19 but anyone in detention, as he told me right then,
20 and he had been there for maybe eight months -- he
21 said, "My long detention has affected me mentally
22 and it has destroyed me". Should I immediately
23 have concluded that he was being tortured? I
24 still didn't know under what conditions he was
25 being held.

1 Of course today, we know
2 differently, but at the time, I couldn't come to
3 that conclusion and tell Ottawa -- until Ottawa
4 saw that sentence and thought that it amounted to
5 torture. Then they should ask questions or warn
6 us about it. But I didn't come to the conclusion
7 that his long detention amounted to torture, not
8 with those words.

9 MR. CAVALLUZZO: But you just said
10 that you weren't aware of the conditions of his
11 detention. In fact, you were. He told you at
12 that meeting what the conditions were, did he
13 not -- the size of the cell?

14 MR. MARTEL: Yes, he told me a
15 little later on. We're getting there. But there
16 too, when he told me the size of his cell ---

17 MR. CAVALLUZZO: No, no.

18 MR. MARTEL: --- he didn't give me
19 any details.

20 MR. CAVALLUZZO: But he gave you
21 that information at this meeting on August 14th.

22 MR. MARTEL: Yes. At the same
23 meeting, he told me at one point -- when he was
24 talking to the General in Arabic, he turned to me
25 and said, "But you know, my cell is very small.

1 It measures only three by six by seven" -- he
2 certainly said that -- "And I sleep on the floor"
3 -- but he didn't give me the other details that
4 would have made all the difference now. He didn't
5 say ---

6 MR. CAVALLUZZO: But ---

7 MR. MARTEL: --- as we now know,
8 "I'm underground, there are rats, I'm in the dark,
9 there are cockroaches". He didn't say anything about
10 that. Naturally, if he had said that at the time ---

11 MR. CAVALLUZZO: One step at a
12 time. One step at a time.

13 In terms of whether there was
14 light, you certainly heard from the brother
15 through Myra, months before, saying that he was
16 concerned that he was in a cell where he did not
17 have access to natural light; right?

18 MR. MARTEL: The brother had
19 indicated that to Myra, yes, much earlier, yes.

20 MR. CAVALLUZZO: Yes. So did that
21 not come to your mind in terms of -- in fact,
22 let's look at exactly what he told you, because
23 you took notes of this meeting.

24 Let's go to Tab 508.

25 --- Pause

1 MR. CAVALLUZZO: Do you have that?

2 MR. MARTEL: Yes. I have it, yes.

3 MR. CAVALLUZZO: Could you just
4 read that for us? You have taken your notes down
5 in English, so could you read that to us, your
6 notes? We have trouble reading it.

7 MR. MARTEL: "New York Times
8 article."

9 MR. CAVALLUZZO: Right. Go on.

10 MR. MARTEL: Myra does not
11 wish adverse publicity on the
12 case, this case. Present
13 conditions, I will tell you
14 the truth. I'm asking Syria
15 to release me or to see a
16 judge. Which Syrian law I
17 broke. My present condition.
18 I have not been paralysed,
19 not beaten, not tortured.

20 And the notes say:

21 Very beginning, very little.

22 MR. CAVALLUZZO: Just stopping
23 there, "Very beginning, very little". What did
24 you mean by that?

25 MR. MARTEL: This was in response

1 to one of my questions.

2 At that point, Maher was in a,
3 let's say, fairly negative frame of mind because
4 he hadn't had any visitors for a long time. So,
5 when he said that he hadn't been paralysed, beaten
6 or tortured, it's a cause for some concern, that
7 along with some of the publicly available reports
8 I had read.

9 So I asked him, "Did they -- did
10 they cause problems for you, are they making your
11 life difficult, etc.," that type of question,
12 because I couldn't ever ask if he had been
13 tortured, for instance. The Syrians would never
14 have agreed to my asking such a question, and he
15 would not have been able to answer.

16 But I was trying to tiptoe around
17 the question, and that's when I asked him, "Did
18 they cause problems for you, are they making your
19 life difficult, did they make your life
20 difficult", and this is what he answered, in
21 English:

22 At the very beginning, but
23 very little.

24 That's the actual question I asked
25 him, and I think that ---

1 MR. CAVALLUZZO: Are you sure that
2 that doesn't relate back to, "Not beaten, not
3 tortured"?

4 MR. MARTEL: No. I'm certain.
5 The problem is that I was there with a group of
6 people. I couldn't write down my questions,
7 naturally. I was trying to take notes so I could
8 write a report when I got back. I couldn't write
9 everything down. Sometimes, I wrote a few -- like
10 here, he said, "three, six, seven" and I wrote it
11 down. And he said, "sleeping on the ground" and I
12 wrote that down.

13 MR. CAVALLUZZO: Can you just --

14 MR. MARTEL: But it was in
15 response to my question.

16 MR. CAVALLUZZO: So what you are
17 saying is the words "Very beginning, very little -
18 --"

19 MR. MARTEL: Were in response to
20 my question.

21 MR. CAVALLUZZO: What was that
22 describing, "Very little, very beginning"?

23 MR. MARTEL: I asked, "Did they
24 cause problems for you, are they making your life
25 difficult", and as he had already said before, at

1 first the interrogation was more intense and his
2 conditions were more difficult. I took it as his
3 repeating, "At the beginning, they caused problems
4 for me, but now -- very little".

5 MR. CAVALLUZZO: And you are sure
6 that he wasn't referring to getting beaten?

7 MR. MARTEL: No. But he couldn't.
8 He couldn't under any circumstances.

9 MR. CAVALLUZZO: And then he goes
10 on and he describes his cell: three feet ---

11 MR. MARTEL: Yes, because ---

12 MR. CAVALLUZZO: Listen to the
13 question.

14 Three feet by six feet by
15 seven feet.

16 MR. MARTEL: That's right. He was
17 talking to the General, not to me. He was talking
18 to the General in Arabic, and I couldn't
19 understand the meaning of the conversation, but I
20 know he was discussing -- and the discussion --
21 he struck me as very brave. He was talking to the
22 General for the first time, in my presence, and he
23 said something to him, and after conversing for
24 four or five minutes, or between the two of them,
25 he turned to me and said, "My cell is very small.

1 It's only three by six by seven, and I'm sleeping
2 on the ground". And then he continued in Arabic.

3 So I let him finish what he was
4 saying to the General, and afterwards, I asked him
5 the question, if you want to hear it now.

6 MR. CAVALLUZZO: But your notes --
7 what I want to talk about are your notes.

8 I'm in a cell 3 by 6 by 7,
9 sleeping on the ground.

10 And then he says:

11 I'm mentally destroyed.

12 Right?

13 MR. MARTEL: Right.

14 MR. CAVALLUZZO: You would agree
15 with me, I would think, that by forcing someone to
16 be in a cell that is three by six by seven, which
17 is virtually the size of a coffin, and forcing
18 that person to sleep on the ground in those
19 conditions, with no light, natural light, that
20 that would mentally destroy most people?

21 You would agree with that?

22 MR. MARTEL: I didn't know there
23 was no light, for starters.

24 MR. CAVALLUZZO: You didn't know
25 there was no light?

1 MR. MARTEL: No, I didn't know
2 there was no light. Nothing indicated that he
3 wasn't in an ordinary cell. Of course, the size
4 of cell, three by six by seven, wasn't big, but
5 that's standard over there. And sometimes two
6 people share a cell like that, in that country.
7 That can certainly be checked.

8 Then, "sleeping on the ground".
9 Sleeping on the ground, everyone sleeps on the
10 ground. I don't know of a single inmate in any
11 prison in the entire country who didn't sleep on
12 the ground. So for me, that wasn't particularly
13 striking; everyone sleeps on the ground. There
14 are no beds.

15 A cover, or two or three covers,
16 and a small mattress. If one of my clients tried
17 to improve things by placing a piece of cardboard
18 under his cover, it was taken away. That was par
19 for the course in that country.

20 I considered that and asked him,
21 "How are the others?" He answered, "As far as I
22 know, we are all the same". So right away, I saw
23 that everyone was being treated the same way. I
24 didn't know he was underground. I didn't know all
25 those conditions because he didn't continue.

1 Maybe he couldn't tell me the rest. But he said,
2 "As far as I know, I'm not being treated any worse
3 that the other inmates". So, the first thing I
4 did, I think, was refer to my consular guidelines:
5 Should I ask for special treatment for my Canadian
6 client? The answer in my guidelines is no.
7 Canada doesn't do that. That's what I was
8 thinking.

9 What we know now, of course, is
10 totally different. With hindsight, we know that.

11 MR. CAVALLUZZO: So what you
12 didn't know then -- or what you didn't know ---

13 MR. MARTEL: He asked me a bunch
14 ---

15 MR. CAVALLUZZO: Listen to the
16 question, please.

17 What you are telling us you didn't
18 know then is that he didn't have natural light --
19 however, months before, his brother had raised
20 that possible problem with you -- that cats were
21 peeing on him; that his neighbours were rats,
22 physical rats, walking by? You didn't know that?

23 But what you are saying is what
24 you did know is that he had a cell 3 by 6 by 7,
25 was sleeping on the ground.

1 And what you appear to be saying,
2 Mr. Martel, if I understand you correctly, is that
3 that is the going rate in Syria. That is the way
4 prisoners are treated in Syria. He was treated
5 just like everybody else.

6 Is that what you are saying?

7 MR. MARTEL: What I'm saying is
8 that the conditions I was apprised of at the time
9 didn't enable me to conclude that he was being
10 kept in a cell under such inhumane conditions. I
11 didn't get enough information to come to that
12 conclusion.

13 The size of the cell? Of course,
14 three by six by seven is very small. And of
15 course, sleeping on the ground is unacceptable to
16 us, but that's how it is in that country. I'm
17 sorry, but that's the situation there. That's how
18 it is. It certainly doesn't mean we accept it. It
19 doesn't mean we should put up with it and do
20 nothing.

21 If we had known all the details as
22 we know them now and as he related them to us
23 afterwards, we would have had to intervene; that's
24 certain.

25 MR. CAVALLUZZO: What you have

1 just said, Mr. Martel, is that based on you
2 discovering that a Canadian citizen was forced to
3 sleep on the ground for a period of -- by that
4 time we are talking about ten months; him being
5 forced to sleep on the ground in a cell three by
6 six by seven was not inhumane conditions?

7 That is what you said? Do you
8 really think that?

9 MR. MARTEL: Well, if you look at
10 what could be visualized at the time, the client
11 said, "But my cell is very small". But I didn't
12 know he was in the dark.

13 The cell was very small, okay.
14 But if he had a window or a grate, even if he was
15 sleeping on the floor, I couldn't at the time
16 conclude that it was inhumane. It was small, yes,
17 but that didn't mean it was inhumane. Hundreds of
18 people are in that situation. That's what I mean.

19 MR. CAVALLUZZO: Okay. Let's go
20 back to Exhibit 134 and staying with the final
21 consular visit, Tab 24. It's the same book.

22 MR. MARTEL: Tab?

23 MR. CAVALLUZZO: Twenty-four.

24 MR. MARTEL: Twenty-four.

25 MR. CAVALLUZZO: And the only

1 other portion here is in paragraph 4 we see that
2 Khalil confirms that Arar is going to be going to
3 the civilian court within a week. Isn't that
4 correct?

5 MR. MARTEL: Yes, that's what he
6 said.

7 MR. CAVALLUZZO: And in paragraph
8 5, we see that:
9 "When asked about the possibility of future visits
10 the General indicated he had to seek higher
11 authority before providing us with a response."

12 And the question that I have for
13 you, Mr. Martel, is: You would agree with me that
14 these consular reports should be as fulsome as
15 possible so that headquarters has a good idea as
16 to how this Canadian is being treated in a foreign
17 detention centre?

18 You would agree with that?

19 MR. MARTEL: Of course, within the
20 context of what we're permitted and according to
21 local conditions, with the limitations, etc. We
22 still have to do our best to prepare reports that
23 are as complete as possible, naturally.

24 MR. CAVALLUZZO: Could you tell us
25 why, in the consular report, you didn't insert

1 what I think is an important fact, and that is
2 that he is living in a cell three by six by seven?

3 MR. MARTEL: Yes. As I said
4 earlier, at that precise moment, while I was
5 visiting him and he said that to me, I visualized
6 a cell like that, and I made the connection
7 between my guidelines and the fact that everyone
8 else was being treated the same way.

9 When I sent the report, naturally,
10 you look at it today and say, "Yes, those numbers
11 could have been useful to headquarters." I agree
12 with you completely. It should have been in the
13 report. I can't explain why those numbers weren't
14 in the report. It's simply that my interpretation
15 of his conditions at the time conformed to our
16 guidelines. But the numbers were there, so they
17 should have -- if I had to redo the report, the
18 numbers would be in it, that's certain.

19 MR. CAVALLUZZO: Could you tell us
20 why you didn't include in your consular report the
21 fact that Mr. Arar was sleeping on the ground for
22 his period of detention?

23 MR. MARTEL: Because there isn't a
24 single inmate in the country who sleeps in a bed.
25 Obviously, when you're accustomed to dealing with

1 inmates -- and I have one who has been there for
2 two years, and he has been sleeping on the ground
3 for two years. That hasn't changed. He can't
4 improve his situation.

5 MR. CAVALLUZZO: So if it's how
6 they treat Syrians, then whether they treat
7 Canadians the same way really doesn't --

8 MR. MARTEL: Excuse-me, but there
9 are no facilities in that country that provide
10 inmates with, for instance, a bed as we know it.
11 Everyone sleeps on the ground.

12 So, if we were to say to the
13 Syrians, "Listen --" Even if the Minister were to
14 intervene by saying, "Listen, you have one of my
15 citizens sleeping on the ground in prison," what
16 would they reply? "You have your prisons and we
17 have ours. It is customary here for everyone to
18 sleep on the ground."

19 MR. CAVALLUZZO: But the concern
20 that I have, Mr. Martel, is at this point in time
21 you are not advising the Syrians. You were
22 advising, ultimately, your Minister, Minister
23 Graham, and I think that Mr. Graham -- I think --
24 on August the 14th when he held a press
25 conference, which we will come to, I bet Mr.

1 Graham would dearly have loved to have known that
2 Mr. Arar was in a cell that was three by six by
3 seven and that he was forced to be sleeping on the
4 ground. I would say that Mr. Graham, knowing Mr.
5 Graham, would want to have known that before he
6 held a press conference.

7 Do you agree with that?

8 MR. MARTEL: Yes. I said earlier
9 that if I had to redo the report, I would include
10 both the size of the cell and the fact that he was
11 sleeping on the ground, even though everyone
12 sleeps on the ground.

13 MR. CAVALLUZZO: Are you aware
14 under your standards as a consular officer that
15 you cannot rely on the fact that a particular
16 country treats everybody in an inhumane way? Your
17 responsibility is to ensure that your client, a
18 Canadian citizen, is treated in accordance with
19 international law. Are you aware of that?

20 MR. MARTEL: Yes, of course.

21 MR. DÉCARY: I would be very
22 prudent on the way that question is framed. I
23 don't know what is established before this
24 Commission, but having spoken to experts on that,
25 I would just caution the Commission that there is

1 a matter for dispute on this very subject and, I
2 mean, it's just the tone.

3 You can get the facts from the
4 witness, what has happened, but I don't think that
5 it is appropriate that anyone, any consular at
6 this stage be blamed for -- any nation -- for not
7 taking into account in its judgment local
8 conditions and acting on the basis of his
9 knowledge of local conditions, and particularly
10 with on the ground.

11 It is a sad state of affairs,
12 certainly, especially viewed from here this
13 afternoon, but it is the condition prevalent in a
14 large number of countries ---

15 THE COMMISSIONER: If I can
16 interrupt, Mr. Décary, you are not giving
17 evidence; you are making an objection to a
18 question. Do I have that right?

19 MR. DÉCARY: I've made my
20 objection.

21 THE COMMISSIONER: Yes, I think
22 you had.

23 MR. CAVALLUZZO: I would like to
24 refer then, in response to that objection, to
25 Exhibit 11. This is the Book of Documents of Mr.

1 Sigurdson, Konrad Sigurdson, who was the head of
2 Consular Affairs, at Tab 22, page 8 of 75.

3 MS EDWARDH: Could you give the
4 cite again?

5 MR. CAVALLUZZO: It is Exhibit 11,
6 Tab 22, page 8 of 75.

7 Do you have that, Mr. Martel?

8 MR. BAXTER: Could you identify
9 the document, please, Mr. Cavalluzzo? Is it the
10 Manual of Consular Instructions?

11 MR. CAVALLUZZO: Yes, it is:
12 Manual of Consular Instructions.

13 MR. BAXTER: Thank you.

14 MR. CAVALLUZZO: Do you have Tab
15 22? Okay.

16 If you go to page 8 of 75, the
17 page number is at the top of the page. Do you see
18 that?

19 MR. MARTEL: Yes. Absolutely.

20 MR. CAVALLUZZO: And 2.4 is
21 "Intervention with Local Authorities". It says in
22 2.4.1, "Principle of international law", and I'm
23 reading it to you:

24 The right of a consular
25 officer to intervene with

1 local authorities on behalf
2 of a Canadian who appears to
3 have been the victim of
4 unlawful (under domestic or
5 international law)
6 discrimination or denial of
7 justice is well established
8 in international law.
9 Consistent with Canada's
10 commitment to fundamental
11 human rights, consular
12 officers do what they can to
13 protect Canadians against
14 violation of these rights.
15 It is a basic principle of
16 international law that
17 whatever a state's treatment
18 of its own subjects, aliens
19 must be accorded an
20 international minimum
21 standard of treatment,
22 including freedom from
23 arbitrary arrest, due process
24 in the determination of legal
25 rights, and respect for human

1 rights generally. The
2 movement for international
3 protection of human rights
4 has produced a number of
5 conventions and instruments
6 to which Canada is a party.

7 And then that is referred to.

8 So you see here, Mr. Martel, under
9 your manual, the Manual of Consular Instructions,
10 that the fact that a state happens to treat its
11 own citizens in a perverse, arbitrary, or inhumane
12 way does not mean that a Canadian consular officer
13 should not protest and assert the international
14 law rights of the Canadian citizen.

15 THE COMMISSIONER: Just before you
16 answer the question, I take it that there is an
17 objection to the question?

18 MR. DÉCARY: Yes, Mr.
19 Commissioner. The objection is based on the fact
20 that this applies to Canadian citizens. There is
21 another section, I believe, which applies to dual
22 nationals, and the Convention, first of all, is
23 silent. Dual nationals are a very particular
24 problem, and we are dealing here with a case of
25 dual nationals.

1 And just another comment, in
2 passing, is that obviously everyone realizes that
3 this is drafted sometime after the affairs we are
4 dealing with, but nevertheless ---

5 MR. CAVALLUZZO: I don't like to
6 interrupt my friend but ---

7 MR. DÉCARY: In law the problem of
8 dual nationals is not covered, I submit, by this
9 section.

10 THE COMMISSIONER: The copy I have
11 was published in 1993 and last amended in 2003.

12 You are telling me, Mr. Décary,
13 that the portion that Mr. Cavalluzzo read was
14 added in 2003. Is that what you are asserting?

15 MR. DÉCARY: No, I'm not.

16 THE COMMISSIONER: That's what I
17 understood.

18 MR. DÉCARY: I'm not sure ---

19 THE COMMISSIONER: Please be
20 careful if you are making that type of statement
21 of fact to me. I wouldn't want to be misled.

22 MR. DÉCARY: I was misled on this
23 one, I'm sorry.

24 THE COMMISSIONER: Okay. So your
25 objection now is that the principle that Mr.

1 Cavalluzzo read is only true for Canadian citizens
2 but does not apply to consular authorities when
3 the Canadian is a dual national? Is that the
4 point you are making?

5 MR. DÉCARY: Yes. It's a
6 difficulty raised by dual citizenship.

7 THE COMMISSIONER: But your point
8 is that there is a different principle, you say a
9 lower standard that applies when the Canadian
10 citizen happens to be a dual citizen?

11 I just want to understand your
12 objection.

13 MR. DÉCARY: No, I wouldn't frame
14 it that way.

15 THE COMMISSIONER: Okay.

16 MR. DÉCARY: It is just that in
17 the context, the rules that govern dual citizens
18 are different and are applied differently by this
19 state. They do not recognize the Convention.
20 They do not feel obliged to give consular ---

21 THE COMMISSIONER: We are not
22 going to get into an argument now.

23 Your objection is that Mr.
24 Cavalluzzo, in posing his questions, should alert
25 the witness to the fact that Mr. Arar is a dual

1 citizen and whether or not, in fairness, that
2 would change this principle of law in the witness'
3 mind?

4 That is your objection?

5 MR. DÉCARY: Yes.

6 THE COMMISSIONER: Thank you.

7 MS EDWARDH: Sorry, Mr.

8 Commissioner. The objection also said there was
9 another portion of this manual that dealt with
10 dual citizens and distinguished the rights they
11 were entitled to receive from the Canadian
12 Government as something different than Canadian
13 citizens.

14 I would like to have that pointed
15 out because, with the greatest of respect, there
16 is no such section that I can find.

17 THE COMMISSIONER: Thank you, Ms.
18 Edwardh. That's why I asked the question, if that
19 is what the assertion is, that dual nationals have
20 lesser rights when it comes to consular visits.

21 That is your assertion then, Mr.
22 Décary? Well, that will be ---
23 --- Off microphone / Sans microphone

24 THE COMMISSIONER: That will be
25 something we can deal with in argument.

1 If you can point to what you said
2 was in this consular manual, where it sets that
3 out, that would also be of assistance to me.

4 MR. DÉCARY: No, but I made a
5 mistake.

6 THE COMMISSIONER: Oh. Thank you.

7 Mr. Cavalluzzo, do you want to
8 proceed? I think the point that comes out of all
9 of that is simply that the witness should be
10 alerted to the fact that Mr. Arar was a dual
11 national.

12 MR. CAVALLUZZO: Right.

13 And let me put the question this
14 way, Mr. Martel: Is it your understanding that
15 because a Canadian citizen is a dual national --
16 in this case Mr. Arar is a Canadian citizen and
17 the Syrians are claiming that he is a Syrian
18 citizen as well.

19 Is it your understanding that your
20 obligations to him, as I read to you in terms of
21 2.4.1, are different in the sense that he is owed
22 less of an obligation because he happens to be a
23 dual citizen rather than a Canadian citizen alone?

24 MR. MARTEL: No, not at all.
25 That's not what we're saying.

1 We have always proclaimed loudly
2 and clearly that there is only one group of
3 Canadians, and that every Canadian abroad is
4 entitled to the same protection, and when citizens
5 with dual nationality or dual citizenship, as it's
6 called, who are in their country of origin are
7 involved, we have to provide them with the same
8 services. Naturally.

9 But that is always -- to -- we
10 also say to the extent that the State concerned
11 will allow us to do so.

12 So, naturally -- if we discover
13 that one of our citizens is being treated
14 inhumanely, whether he's a dual national or not,
15 that doesn't change anything.

16 If we know about it, we have to
17 say it, and, in cases like this, we can protest,
18 for example, as the Minister did recently.

19 But our ability, as consular
20 officers, to change the situation is -- is another
21 matter.

22 But the rights are the same for
23 us. From our point of view.

24 MR. CAVALLUZZO: And what you told
25 us is that you did not protest with the Syrians

1 that Mr. Arar was subjected to inhumane treatment
2 because you didn't think he was in light of the
3 information that you had at the time?

4 MR. MARTEL: That's what I said.

5 If -- if I had had the facts that
6 led me to conclude that my client was being
7 treated inhumanely, I would not have been able to
8 protest immediately to the Syrians, of course, but
9 I would have mentioned my concerns to the
10 Ambassador and to headquarters, who then should
11 have taken action.

12 It's then up to them, senior
13 management, to make a decision.

14 MR. CAVALLUZZO: In any event, you
15 reported up -- if you go to Tab 511 in volume 6,
16 you sent a message on August 14th to Myra
17 Pastyr-Lupul --

18 MR. MARTEL: Tab 11?

19 MR. CAVALLUZZO: Tab 511. Do you
20 have that?

21 Let me read it. This is to Myra
22 from you.

23 I have not indicated so in my
24 C4 report but except for what
25 Maher has indicated when he

1 referred to his mental
2 condition, I have found him
3 pretty much in the same
4 condition as when I last saw
5 him. This has to be taken in
6 the context of anyone being
7 detained for a long time. He
8 looked physically normal and
9 I have seen no trace of
10 violence on the parts of his
11 body that can be seen. He
12 was wearing trousers and some
13 kind of T-shirt. He walked
14 normally and his eyes looked
15 normal. He was mentally
16 alert.

17 So that is the message that you
18 sent to Myra Pastyr-Lupul, who was a desk officer
19 responsible at that point in time.

20 And as a result of that
21 information that you sent, are you aware that
22 Minister Graham held a press conference for the
23 Canadian people on August the 14th of 2003?

24 MR. MARTEL: I don't know if it
25 was following this message or following the other

1 one beside it, which is the same date.

2 What I remember about that message
3 is that, if you look at the time, 12:13 p.m.,
4 Ottawa time, so it was already 7:13 p.m. where I
5 was.

6 And often, after having sent
7 something, another detail comes to mind, and I
8 thought, "I didn't -- Oh! I should have told Myra
9 that -- about his apparent health and all that."

10 So I sent that e-mail from my
11 home, telling her, "I forgot to tell you this, but
12 I have a few sentences to add."

13 And this wasn't someone asking me
14 to complete a report. I did it myself as an
15 appendix to the first report.

16 MR. CAVALLUZZO: Let's look at
17 what Mr. Graham in fact said.

18 If you go to Tab 506, we have a
19 transcription of the press statement, or news
20 conference, that he gave that day.

21 THE COMMISSIONER: Five hundred
22 and six?

23 MR. CAVALLUZZO: Excuse me, 505.

24 I think that is the one where
25 there is a mistake in the document.

1 Is it 405? I think it's 405 in
2 everyone else's documents.

3 --- Pause

4 MR. CAVALLUZZO: It's 405 in
5 everyone else's documents.

6 Do you have that, Mr. Martel?

7 You will see that Mr. Graham, who
8 was the Minister of Foreign Affairs at the time,
9 initially talks about Mr. Sampson, William
10 Sampson, which is another case at that time, and
11 he goes on about ten lines up from the bottom and
12 he says:

13 I'd like also to address
14 another case I know you're
15 all interested in: the case
16 of Mr. Arar who is in jail in
17 Syria. I've just been
18 speaking to my officials in
19 Ottawa, who have been on the
20 phone to Damascus this
21 morning. Mr. Arar has been
22 visited by our consular
23 officials in jail. Our
24 consular officials have
25 assured us that he's in good

1 physical condition. He
2 personally, totally rejects
3 all allegations of torture.
4 He was interviewed
5 independently by our consular
6 officials and he has stated
7 that his condition is better
8 than it was before we started
9 to intervene on his behalf.

10 Leaving aside the fact that he
11 says he was interviewed independently and we have
12 examined him -- we had cross-examination on that
13 and Mr. Graham agreed that there is no evidence
14 that Mr. Arar was ever independently met.

15 But it would seem to me,
16 Mr. Martel, that this is sort of a good news story
17 that Mr. Graham is telling Canadians, and indeed,
18 if you look at in fact what you found out on the
19 very same day about the conditions of the prison,
20 that the man says that he has been mentally
21 destroyed, the three by six by seven, and he is
22 sleeping on the ground, I think Canadians, and you
23 would agree with me, likely, that they would be
24 horrified to have learned that, rather than this
25 good news story that Mr. Graham seems to be

1 suggesting.

2 Would you agree with that?

3 MR. MARTEL: It says -- it says
4 here, of course, the size -- the size of the cell
5 is missing and that he is sleeping on the ground.

6 But I don't know who gave the
7 Minister this briefing. I imagine that it was
8 based on the notes I sent.

9 And in the notes I sent, even
10 though it says that he has been mentally
11 destroyed, someone didn't say so to the Minister
12 at that point.

13 So, it isn't -- in my opinion, it
14 isn't complete. You have to strike -- a balance
15 between the reports we sent that weren't -- they
16 had the positive aspects and the negative aspects.

17 But the Minister wasn't told here
18 that -- that there were negative aspects. He was
19 told only that all was well.

20 So naturally, the Minister said
21 that. But the Minister didn't know.

22 However, the report did not
23 indicate that all was well. It contained some
24 positive things and some negative things.

25 The Minister should have been

1 told, "Yes, we were in touch with the Embassy.
2 There are some good things and some bad things.
3 These are the good things. These are the bad
4 things. Our -- our client, our citizen, over
5 there, said that he was mentally destroyed."

6 If the Minister already knew that,
7 he certainly would have taken precautions, and I'm
8 sure that when he was here, he was certainly upset
9 by that.

10 MR. CAVALLUZZO: To put it mildly.

11 MR. MARTEL: Pardon?

12 MR. CAVALLUZZO: Yes, he was
13 surprised.

14 MR. MARTEL: Yes, I can imagine.
15 And he was right to be.

16 I don't know who gave him that
17 information, but it wasn't complete.

18 And there was -- as you mentioned,
19 there was a mistake about -- the independent
20 interview, which never took place.

21 And he was only given the good
22 news. Where was the bad news? There was bad news
23 in that.

24 MR. CAVALLUZZO: Yes, there is
25 some bad news.

1 MR. MARTEL: There was a lot. A
2 lot.

3 MR. CAVALLUZZO: Yes, a lot of bad
4 news.

5 Now, let us move on. After this
6 visit with Mr. Arar, which turned out to be the
7 last visit that you had with Mr. Arar, after that
8 time you were engaged in a number of areas.

9 You were trying to ensure that
10 there was a -- if Mr. Arar was going to court, you
11 were trying to ensure that there was going to be a
12 lawyer retained on his behalf.

13 Is that correct?

14 MR. MARTEL: Yes, that's right.

15 With your permission, I'd like to
16 expand a little on that period, or would you
17 rather ask me specific questions?

18 MR. CAVALLUZZO: Well ---

19 MR. MARTEL: But on that period,
20 yes.

21 MR. CAVALLUZZO: No. You are
22 going to have a full opportunity to do that. I've
23 spoken to my friend, Ms Edwardh, and she is going
24 to take you through that period of time ---

25 MR. MARTEL: Very good.

1 MR. CAVALLUZZO: --- of retaining
2 a lawyer; not only a lawyer, a Canadian observer.
3 Mr. Lockyer was going to be involved. There were
4 a number of lawyers that were discussed. There
5 was access to the meetings between the lawyers and
6 the State attorney and so on and so forth, and
7 Ms Edwardh will deal with that.

8 In particular, for counsel's
9 benefit, that will be Tabs 519 to 584 that my
10 friend will take the witness through.

11 --- Pause

12 MR. CAVALLUZZO: Eventually, after
13 a great deal of dealing with lawyers and charges
14 and different courts, and so on and so forth,
15 eventually Mr. Arar is acquitted, if we can put it
16 that way, and you are notified that Mr. Arar is
17 going to be set free on October the 5th.

18 Is that correct?

19 MR. MARTEL: I wasn't notified. I
20 think that at the time, Tracy Reynolds, who was
21 chargé d'affaires, got a call from the
22 authorities.

23 I don't know from whom. I think
24 it came from -- maybe from the General's office,
25 asking us, him and me, to come to his office at

1 such a time the same day.

2 So that's when ---

3 MR. CAVALLUZZO: Who went to
4 General Khalil's office?

5 MR. MARTEL: We went to General
6 Khalil's office, Tracy Reynolds and I. Yes,
7 that's right.

8 MR. CAVALLUZZO: We saw Tracy
9 Reynolds is the chargé d'affaires?

10 MR. MARTEL: Chargé d'affaires.

11 MR. CAVALLUZZO: Okay.

12 Did you have a meeting with the
13 General prior to the release of Mr. Arar?

14 MR. MARTEL: Yes. The General
15 asked us in -- I don't remember now what time it
16 was. Maybe about 11:00 a.m. I think our
17 appointment was at 11:00, yes. I'm not sure about
18 the time. You'd have to look at the document.

19 We -- for the first time, we were
20 able to go there with our chauffeur, the Embassy
21 car, right to -- right to the General's office.
22 That was the first time we were able to go there
23 without making a detour through the hotel and all
24 that.

25 And the General greeted us. We

1 still didn't know -- we still didn't know why he
2 had asked us to come, but we suspected that there
3 had been some major developments.

4 MR. CAVALLUZZO: And what did the
5 General advise you in respect of Mr. Arar?

6 MR. MARTEL: As was customary, it
7 took a long time before we got to the purpose of
8 the visit.

9 So Tracy Reynolds and I sat down
10 and the General gave us his usual lecture, which
11 we had to listen to patiently, and even if we had
12 objected, we would have had to have some coffee,
13 etc.

14 Then all of a sudden, when --
15 about 15 or 20 minutes later, I began to look
16 beyond my immediate surroundings; there was a
17 space between the offices, I think, and I saw my
18 client on the other side and he seemed to be
19 dressed and ready to go.

20 That's when the General said, "He
21 is yours. I'm giving him to you".

22 And that's how it finally started,
23 and then I asked, "Really, you're serious?" And
24 he said, "Yes, yes".

25 I said, "Well, when can we leave?"

1 He said, "Whenever you want".

2 I said, "Are you sure I can leave
3 -- we can leave whenever we want?" He said, "Yes,
4 yes. You can leave. He is yours".

5 And the rest, well -- I made -- I
6 started to make travel arrangements the same day.
7 We were panicking because we had to find seats and
8 ---

9 MR. CAVALLUZZO: Well, before we
10 get to the airplane, I would ask you: Did General
11 Khalil tell you why Mr. Arar was being released?
12 Did he tell you why he is yours?

13 MR. MARTEL: I have to look over
14 my notes. Or Tracy's notes.

15 I don't know. I think that -- the
16 General simply said, "He is yours. He is yours.
17 I'm giving him to you". And then I added
18 something, it's in camera. I don't know if I can
19 say it here.

20 MS. EDWARDH: If there is no
21 objection, I would like the witness to give his
22 full evidence.

23 THE COMMISSIONER: All right.

24 MR. BAXTER: I don't remember what
25 was said in camera, Mr. Commissioner. Maybe ---

1 MR. MARTEL: I remember.

2 MR. BAXTER: I'm sure you do.

3 --- Laughter / Rires

4 MR. BAXTER: I'm sure you
5 remember, but there may be an objection.

6 MR. MARTEL: It concerns the
7 client. So that's why I don't want to say it.

8 THE COMMISSIONER: Let me suggest
9 you deal with it at the break, Mr. Baxter. If you
10 want to speak to the witness, that would be fine,
11 and then you can let us know your position.

12 Thank you.

13 MR. CAVALLUZZO: Let's go to
14 Exhibit 242, which is your Book of Documents,
15 Mr. Martel -- it should be a small book in front
16 of you -- to Tab 12.

17 --- Pause

18 MR. CAVALLUZZO: This is your
19 handwriting? These are your notes?

20 MR. MARTEL: These are my notes,
21 yes.

22 MR. CAVALLUZZO: And that says
23 1325, October 5th, 2003:

24 Meeting General Hassam
25 Khalil.

1 Then it says:

2 Passport, flight bookings,
3 hotel bookings.

4 And then it says:

5 Acquitted by the judge, free.

6 Do you see that?

7 MR. MARTEL: Yes. I see it, yes.

8 MR. CAVALLUZZO: So General Khalil
9 told you that Mr. Arar was acquitted by the judge
10 and that he was free.

11 MR. MARTEL: That's what he told
12 me and that's what I wrote. Yes.

13 MR. CAVALLUZZO: And then it goes
14 on -- what is the next line? Once again, this is
15 in English. Could you read it to us because it is
16 in your handwriting and it is difficult to read.

17 The next one is "Under" something.

18 MR. MARTEL: It says:

19 Terrorist activities.

20 And then:

21 Under ... surveillance.

22 MR. CAVALLUZZO: What is that?

23 Under surveillance for terrorist activities?

24 MR. MARTEL: I think that's when
25 he told me that he had been detained -- or he had

1 been acquitted and that he was released, and that
2 he had been detained for terrorist activities.

3 I don't know if he was under
4 surveillance or if he was giving me an
5 instruction.

6 These are only notes, and I don't
7 think we -- we made a report anywhere.

8 MR. CAVALLUZZO: And then it goes
9 on and it says:

10 Documents related to him
11 released in November

12 MR. MARTEL: Yes. That's what
13 Khalil said.

14 He said that there were some
15 documents dealing with my client, and he wasn't
16 talking to me. He was talking to the senior
17 official, who was the chargé d'affaires. But I
18 took those notes while he was talking.

19 He told me that some documents
20 would be returned in November.

21 MR. CAVALLUZZO: And then it goes
22 on:

23 Criminality related documents
24 will be released later to the
25 Embassy

1 MR. MARTEL: That's what Khalil
2 said, yes.

3 MR. CAVALLUZZO: Okay. And then
4 it goes on. What is the next word?

5 MR. MARTEL: Computer returned.

6 MR. CAVALLUZZO: His computer was
7 returned? And the next line, if you could help
8 us?

9 MR. MARTEL: Arar is leaving with
10 all of his belongings.

11 MR. CAVALLUZZO: And then finally,
12 the last three lines?

13 MR. MARTEL: Gen. ordered him
14 transferred to better prison
15 45 days ago. Says he has
16 really been treated well.

17 That -- that didn't come from the
18 General. That was when we were sitting in the
19 car.

20 So it was my client who -- who was
21 making these statements.

22 MR. CAVALLUZZO: It's Mr. Arar who
23 said that 45 days ago that he has been transferred
24 to Sednaya.

25 MR. MARTEL: Yes, yes.

1 MR. CAVALLUZZO: Okay. You have
2 Mr. Arar ---

3 MR. DÉCARY: Mr. Commissioner,
4 just for the record I believe that the line
5 "General ordered" also comes from Mr. Arar. You
6 may ask the witness that, but seeing as we are
7 passing on this subject ---

8 THE COMMISSIONER: I missed the
9 point, Mr. Décary.

10 The point is that the last line
11 that says: "General ordered him transferred to a
12 better prison", that came from Mr. Arar?

13 MR. DÉCARY: Also, yes.

14 THE COMMISSIONER: Thank you.

15 MR. CAVALLUZZO: Now you have
16 Mr. Arar, you have his belongings, his computer.
17 Khalil says that he is going to give a document to
18 the Embassy, and I assume we understand in the
19 evidence that a document was given to the chargé,
20 Tracy Reynolds, who received it, and then
21 presumably transferred that back to Canada?

22 You have no knowledge of that?
23 That was her responsibility and not yours?

24 MR. MARTEL: His, Tracy.

25 MR. CAVALLUZZO: What happens

1 then? Presumably you leave the -- is it the
2 Palestine Branch that we are at now, where Khalil
3 is? Is this ---

4 MR. MARTEL: Khalil's office is
5 still in the same place, and since I knew the
6 Section, he was in the Palestine Branch, yes.

7 MR. CAVALLUZZO: Where do you go
8 from the Palestine Branch? I assume you have a
9 van or a car, and you are with Tracy Reynolds and
10 Mr. Arar?

11 MR. MARTEL: Yes, we went to the
12 Embassy.

13 MR. CAVALLUZZO: And I understand
14 that you got Mr. Arar something to eat prior to
15 going to the Embassy. Is that correct?

16 MR. MARTEL: No; afterwards.

17 MR. CAVALLUZZO: After?

18 MR. MARTEL: First, we went to the
19 Embassy.

20 MR. CAVALLUZZO: And then later on
21 you went to buy him some shoes?

22 MR. MARTEL: Yes, later in the
23 afternoon. Actually, we went to have a snack and
24 then we went back to the Embassy and made our
25 travel arrangements, and once all that was done

1 and we had everything we needed in order to leave,
2 later that afternoon, maybe around 4:00 p.m.,
3 Maher said that he really needed to buy some
4 shoes, that he couldn't travel like that.

5 I said, "Okay, we'll go to my
6 place and on the way, we'll stop and get what you
7 need," and that's what we did.

8 MR. CAVALLUZZO: After purchasing
9 the shoes, you brought him back to your house in
10 Damascus where he had a meal and he was given the
11 opportunity to shower?

12 MR. MARTEL: He didn't eat. We
13 offered him some food, but he didn't want to eat;
14 he took -- he went to get ready, showered, etc.,
15 yes, but I don't think he wanted to eat.

16 We had eaten something at around
17 2:00 p.m., and he said, "No thanks, I'm not
18 hungry".

19 MR. CAVALLUZZO: And while at your
20 house, we understand that Mr. Arar tried to access
21 his computer on a couple -- or a number of
22 occasions. Is that correct?

23 MR. MARTEL: Yes, and for fairly
24 long periods. We had been trying to locate his
25 computer for a long time and I had gone back to

1 New York to ask Maureen Girvan if she could try to
2 locate it, because the Syrians weren't answering
3 me.

4 So, Monia was looking for his
5 computer, and I didn't know whether or not he had
6 arrived with it, or whether or not the Syrians had
7 it, but when we finally left, I saw that it was
8 indeed there, and once we got to my place, Maher
9 wanted to access his computer, so I said, "Look,
10 it hasn't been used for so long, we have to start
11 by connecting it and then, we'll see.

12 So that took a while, and once the
13 computer was ready to operate, he tried over and
14 over again, but it still didn't work, and I could
15 see that he was becoming impatient.

16 I tried to calm him down, saying,
17 "Look, it doesn't work, it doesn't work. You can
18 take care of that when you get to Canada. We're
19 leaving tonight, so you can see to it later."

20 MR. CAVALLUZZO: And you left
21 Damascus Airport that night?

22 MR. MARTEL: Yes. We left my
23 place around 9:30 p.m. and arrived at the airport
24 at around 10:00 p.m. I wanted to be early because
25 I didn't believe what Khalil had told me.

1 Khalil had told me, "Yes, you can
2 leave with him, there's no problem", but I still
3 had my doubts and knowing the bureaucracy, I
4 thought it would be better to arrive at the
5 airport early if we wanted to get on that plane,
6 and that's exactly what happened. They made it
7 very difficult for us.

8 MR. CAVALLUZZO: You flew back to
9 Mirabel Airport in Montreal through, initially, a
10 short stop in Jordan, then through Paris, and then
11 on to Montreal from there.

12 And during the course of this long
13 plane trip, I understand that you had a
14 conversation with Mr. Arar as to his treatment
15 while he was in detention.

16 Is that correct?

17 MR. MARTEL: Yes, that's correct,
18 although Maher Arar was hardly willing to talk at
19 all, practically, and I could see that he had
20 suffered tremendously, it was obvious, and I
21 didn't want to push him with my questions; it
22 wasn't an interrogation.

23 My mandate was to accompany him,
24 give him some support and take him home. So it
25 didn't seem right to start asking him questions

1 that he wasn't willing to answer.

2 So I didn't take any notes on the
3 trip, and that certainly suited him, and when we
4 did talk a little, he would say, "I'm not ready to
5 talk, not now, later".

6 So, in fact, he didn't tell me
7 much on the return trip, and what he did say, I
8 reported from memory twice.

9 MR. CAVALLUZZO: We will come to
10 that. But you had asked him whether -- you said
11 that there were press reports of electrical shocks
12 and being put in a tire.

13 Do you remember asking him ---

14 MR. MARTEL: Yes. I was very
15 concerned about that because I had read somewhere
16 that he had been tortured by electric shock, and I
17 already knew the story about the tire; someone had
18 told me about it.

19 He had always told me no when I
20 saw him, but once he had been released and was
21 free and could talk to me, I said, "Look, I've
22 been thinking about this and it worries me
23 tremendously, did they really do that to you?" He
24 said no, that there was no basis for the story
25 about the electric shocks and the tire, but they

1 had other methods.

2 MR. CAVALLUZZO: Okay. Did
3 Mr. Arar indicate how he was treated in the first
4 two weeks of his detention in Syria?

5 MR. MARTEL: I don't think so. He
6 said, "I had a difficult time in the first two
7 weeks", but I think he also said, "they hit me
8 from time to time" or something of the sort, "but
9 nothing really serious". That's what he told me
10 on board, and he didn't seem to attach much
11 importance to it.

12 For him, the issue was really the
13 conditions of his detention until he was moved or
14 transferred to the prison; the conditions were
15 appalling, and it was staggering to hear what he
16 was saying; emotionally, it was absolutely
17 atrocious.

18 MR. CAVALLUZZO: What did he
19 say about those conditions before he ---

20 MR. MARTEL: No. He said, "I was,
21 you know --". First of all, as soon as we got in
22 the car, he told me, "You know, I was always here
23 when you came to see me, I was here and I didn't
24 know it".

25 And at the same time, he said,

1 "You know, the General kept his promise, but ---"
2 and I said, "What promise?" And he said, "Six
3 days after the last visit, I was moved to
4 Sednaya". I didn't know that either.

5 But then he described the
6 conditions, that he was there, under ground, in
7 that cell he had already described and, of course,
8 he told me that there was no light, he was in
9 darkness, there was just a small opening, and he
10 had to go to the bathroom so many times a day, and
11 --

12 In fact, the details were even
13 more horrible, the way he related his inhumane
14 detention was unimaginable, that's certain.

15 MR. CAVALLUZZO: He talked about
16 rats walking --

17 MR. MARTEL: I think he said that
18 there were rats in the hallways, but I don't think
19 he told me there were rats in his cell. But there
20 were certainly rats on the premises.

21 MR. CAVALLUZZO: And did he talk
22 about an animal, either a cat or a rat, walking on
23 top of his cell and peeing ---

24 MR. MARTEL: He talked about cats
25 doing their business in the opening. He told me

1 the whole story, yes.

2 MR. CAVALLUZZO: Right. And he
3 also told you that 45 days before his release but
4 after that last meeting on August the 14th that he
5 was transferred to Sednaya Prison, which I think
6 he may have described as a paradise compared to
7 what he was subjected to earlier?

8 MR. MARTEL: I didn't know about
9 that because it happened in the conversation with
10 General Khalil, in my presence, and Maher had been
11 very brave and acted very intelligently in
12 choosing the moment to tell the General that he
13 was unhappy with his detention conditions.

14 That's what happened, and
15 apparently the General then told him not to worry,
16 that he would improve his detention conditions;
17 this was something that I didn't understand.

18 So, when he told me later, "I was
19 very surprised", it was because he didn't believe
20 it. He said that they were always telling him all
21 kinds of things.

22 But when he said to me, "I was
23 surprised that the General kept his promise", I
24 said, "What promise?" And he said, "He kept his
25 promise, he said that he was going to improve my

1 detention conditions, and he did". So, I said,
2 "I'm very surprised".

3 MR. CAVALLUZZO: Commissioner, it
4 is now an hour and a half or so into the
5 afternoon. It may be an appropriate time for a
6 break.

7 THE COMMISSIONER: All right. We
8 will take a 10-minute break.

9 THE REGISTRAR: Please stand.

10 --- Upon recessing at 3:50 p.m. /

11 Suspension à 15 h 50

12 --- Upon resuming at 4:06 p.m. /

13 Reprise à 16 h 06

14 THE REGISTRAR: Please be seated.

15 THE COMMISSIONER: Mr. Baxter?

16 MR. BAXTER: Mr. Commissioner, we
17 have taken instructions, and there are no NSC
18 concerns if Mr. Martel wants to relate the full
19 discussion from October 5th.

20 THE COMMISSIONER: Mr. Martel, I
21 will let Mr. Cavalluzzo lead it.

22 MR. CAVALLUZZO: Mr. Martel, you
23 have just heard there are no national security
24 concerns in respect of what you were advised on
25 October the 5th by General Khalil. Is there

1 anything else that General Khalil said to you that
2 we haven't captured, either in your notes or
3 through our questioning?

4 MR. MARTEL: There is -- there is
5 one item that I've already related in camera.
6 It's that when I was there with the General and he
7 said, "He is yours. I give him to you. But watch
8 him".

9 So the words "but watch him".
10 That struck me as a negative thing about my
11 client.

12 And I didn't even -- I don't think
13 I reported that anywhere, except in camera. So, I
14 didn't take it into consideration. That's all.

15 MR. CAVALLUZZO: One other aspect,
16 before we move on, of Mr. Arar's prison
17 conditions, and that is that as of at least
18 January of 2003, you were aware that Mr. Arar was
19 kept alone, away from other prisoners.

20 I am wondering if you would agree
21 with me that that fact, if it's true -- and you
22 were advised that this was the case by the Syrians
23 themselves -- that if someone is held in solitary
24 confinement for an extensive period of time, that
25 is inhumane treatment?

1 MR. MARTEL: Well, without --
2 without knowing his detention conditions, that is,
3 even if he was being detained alone and not with
4 other inmates, I didn't have enough information at
5 that point to come to the conclusion that he was
6 in solitary confinement or that the treatment was
7 inhumane.

8 I needed more information, which
9 my client didn't want to or couldn't tell me.

10 MR. CAVALLUZZO: But let us look
11 at what you learned on August 14th. I'm just
12 adding another fact, and that is that you are
13 aware that Mr. Arar, since October of 2002, has
14 been held in a cell that is three by six by seven.
15 He is sleeping on the floor, and he is alone. He
16 is in solitary -- some people call it solitary
17 confinement.

18 Now, with that added fact, would
19 you not agree that that is inhuman treatment?

20 MR. MARTEL: As I said earlier, I
21 was missing key information that would enable me
22 to come to the conclusion that he was being
23 treated inhumanely. There wasn't enough
24 information.

25 The cell was very small, but I

1 didn't have any other details. He slept on the
2 floor on a very thin mattress. I didn't have
3 other details about his detention conditions and
4 he wasn't in a position to tell me more.

5 So, if I had concluded that he was
6 being treated inhumanely and made a report to that
7 effect -- I had already been asked, "But on what
8 grounds are you basing yourself in saying that he
9 is being treated inhumanely?"

10 I would -- I would say, "Yes, but
11 you know his cell is only so big and he sleeps on
12 a mattress on the ground." I had no other
13 information at that point.

14 MR. CAVALLUZZO: Your statement,
15 that in Syria all prisoners sleep on the floor, I
16 have some information that that is not the case.
17 I am wondering where you got that information
18 from, that in Syria all prisoners sleep on the
19 floor?

20 MR. MARTEL: That's -- that's what
21 I was told. That's what I was told and that's
22 what was known by the public and my employees.

23 That's the information I gathered,
24 that everyone sleeps on a little mattress.

25 I have an inmate now, whom I was

1 seeing regularly, and his mother confirmed again
2 recently that even though he is in the best prison
3 in the country, I think, he also sleeps on the
4 ground.

5 MR. CAVALLUZZO: And what prison
6 is that?

7 MR. MARTEL: Sednaya.

8 MR. CAVALLUZZO: Okay.

9 MR. MARTEL: And that's the best
10 prison.

11 MR. CAVALLUZZO: Well, I
12 understand -- and perhaps if we have to lead
13 evidence, we will -- that the only two prisons in
14 Syria where people sleep on the ground is Sednaya
15 and the Palestine Branch.

16 MR. MARTEL: Then I don't know. I
17 spoke to many former inmates, not necessarily my
18 clients, and what they told me was that it was
19 always the same conditions.

20 So, if you have information that
21 differs from mine, I'm not aware of it.

22 MR. CAVALLUZZO: In respect of
23 Mr. Arar, you were aware that he prepared a
24 chronology, and I understand that that chronology
25 was sent to you for your comment.

1 I am referring in particular to
2 Exhibit P-85, volume 5, Tab 38.

3 --- Pause

4 MR. MARTEL: Tab?

5 MR. CAVALLUZZO: Well, there are
6 two documents I'm going to ask you to look at, but
7 they are the same document. One is Tab 38 of
8 volume 5, P-85. Do you have that chronology?

9 MR. MARTEL: Mm-hmm.

10 MR. CAVALLUZZO: Okay. And the
11 other is -- this is Exhibit 242, your newly
12 redacted documents, at Tab 17.

13 --- Pause

14 MR. CAVALLUZZO: In particular, if
15 we could refer to page 9 -- the pagination is in
16 the top right-hand corner.

17 --- Pause

18 MR. CAVALLUZZO: On the document
19 which is Exhibit 242, you will see that there is
20 handwriting on the sides of the text on page.

21 Is that your handwriting?

22 MR. MARTEL: Where it says

23 "correct"?

24 MR. CAVALLUZZO: Yes.

25 MR. MARTEL: Yes, it's mine.

1 MR. CAVALLUZZO: And what were you
2 referring -- if you could read in English now,
3 what were you referring to in this paragraph as
4 being correct in Mr. Arar's own chronology?

5 MR. MARTEL: I wrote "correct"
6 here; I'll say it in English:

7 Arar has decided he cannot
8 survive living in these
9 conditions anymore, and that
10 it is worth risking more
11 physical torture to stop the
12 ongoing psychological torture
13 of remaining in the "grave".

14 MR. CAVALLUZZO: Okay.

15 MR. MARTEL: I believe this
16 document was published when? In November, right?

17 MR. CAVALLUZZO: In November, yes,
18 I believe.

19 MR. MARTEL: So that -- I wrote
20 "correct" because Maher Arar described his
21 detention. And obviously, I believed what he told
22 me. And when I saw that in his report, I said --

23 And this isn't a report I was
24 asked to complete or to comment on. This is a
25 report I received. I took the liberty to take a

1 few notes for myself and simply place it in the
2 file. That's all.

3 So, yes. I wrote "correct"
4 because that is what he had told me on the return
5 trip.

6 MR. CAVALLUZZO: You have written
7 notes on the other side, and let me read to you,
8 because you can't read the script in Exhibit 242.

9 It says:

10 The Consul asks if he has
11 been tortured, and Arar
12 replies, "Yes, of course, at
13 the beginning." After the
14 meeting Arar conceded that
15 his captors are very angry
16 and he is terrified that he
17 will be physically tortured
18 again, but he is not.

19 Now, in respect of that particular
20 statement, you have written on the right side,
21 could you read your writing -- once again, it's in
22 English, if you could just read it to us.

23 MR. MARTEL: Yes. I wrote, "Not
24 so. Said conditions had improved. No electrical
25 shocks. No torture."

1 And when I marked "Not so", I was
2 referring to the question that says,

3 The Consul asked if he had
4 been tortured ...

5 Under no circumstances could I
6 have asked that question. And if Maher were to
7 tell me today that I asked that question and that
8 he answered, "Yes, of course"; for me, it was
9 forbidden to ask such a question.

10 So I couldn't. I could ask, "How
11 are you being treated? How were you treated? Are
12 they -- are they causing problems for you?" etc.

13 But I could never, never have
14 asked, "Are you being tortured?"

15 MR. CAVALLUZZO: Do I understand
16 from your evidence that he didn't say that he was
17 beaten but he wasn't paralysed, words to that
18 effect?

19 MR. MARTEL: He wasn't beaten. He
20 wasn't tortured. He wasn't paralysed.

21 That's what he said during one of
22 the visits. But I explained earlier that I didn't
23 know if he was being forced to say that or if he
24 was speaking freely.

25 In my opinion, I think that if he

1 was being mistreated, I doubt that he would freely
2 have told me. That's certain.

3 MR. CAVALLUZZO: Following this,
4 there was a request from Mr. Sigurdson on November
5 the 4th.

6 If you go to Exhibit P -- I did
7 skip something.

8 I am wondering if you could go
9 to -- this is October 7th -- your book, Exhibit
10 242, Tab 1. It is right in front of you.

11 No, it is that one there -- and if
12 you go to Tab 1.

13 Now, I understand that on October
14 the 7th, which was the day after you returned back
15 to Canada, you had a meeting with representatives
16 at the DFAIT headquarters to give them a briefing
17 of Mr. Arar and his treatment in Syria.

18 Is that correct?

19 MR. MARTEL: When I got back and
20 was met in Montreal, I was told, "We're expecting
21 you tomorrow for a meeting with some people", and
22 at that meeting, I was asked to relate what
23 happened during the trip.

24 MR. CAVALLUZZO: We have asked the
25 Department for the production of notes of any

1 attendees at this meeting, and what Tab 1 contains
2 are the notes of three or four people.

3 Let me just read to you what they
4 say.

5 First of all, dealing with
6 Mr. Peter McCrae, what position does he hold in
7 DFAIT?

8 MR. MARTEL: I think he was
9 Director of the geographical region at the time.

10 MR. CAVALLUZZO: Okay. If you go
11 to the very first page, about two-thirds of the
12 way down, it says:

13 What he told me, 3 by 7 by 6.
14 Thin mattress. Military
15 Intelligence Centre,
16 headquarters underneath. Not
17 a jail. In the dark. Eight
18 months there. Then Sednaya
19 paradise. Torture. Tire not
20 true. Beating with wires not
21 true. Mental torture.
22 Beaten occasionally. Stopped
23 interrogating after two
24 weeks.

25 That is what Mr. McCrae said that

1 you related on October the 7th at the DFAIT
2 headquarters.

3 If we go to the next individual
4 whose notes we have, it's Mr. John McNee, who we
5 have heard -- this is at page 5 of 14, if you go
6 to the bottom right-hand side. And we have heard
7 that John McNee is an Assistant Deputy Minister.

8 If we pick up what he says halfway
9 down, it says:

10 Sednaya Prison equals cell
11 equals paradise. Definition
12 of torture. Legal - PCO.

13 And then on page 2:

14 Syria close to turning him
15 mental cruelty. Beaten
16 occasionally. Angry.
17 Slapped around first two
18 weeks. Interrogation in
19 first two weeks. Then
20 nothing till Sampson
21 questions.

22 Then if you go down two lines:

23 Jordan not CIA, but Jordan
24 military did interrogation.
25 Slapped around there.

1 Just stopping after these two
2 gentlemen, are they capturing what you said at
3 this meeting on October the 7th in terms of how
4 Mr. Arar was treated by the Syrians and the
5 Jordanians?

6 MR. MARTEL: The people who were
7 there, not all of them, taking -- some of them
8 were taking notes, and certainly, I was trying to
9 remember what was said or the detention
10 conditions, what Maher Arar was willing to tell me
11 en route, and of course, I was speaking from
12 memory, after two days of travel and all that.

13 I was trying -- they insisted on
14 holding that meeting and they wanted to know more.
15 So, I tried to remember the essential points that
16 I was told during the trip.

17 MR. CAVALLUZZO: Is it fair to say
18 that your memory of what Mr. Arar told you would
19 have been better on October 7th of 2003, than it
20 is on August 30th of 2005?

21 MR. MARTEL: I didn't understand
22 the difference in the dates. Can you repeat,
23 please?

24 MR. CAVALLUZZO: I am putting it
25 to you that it's more likely that your memory is

1 better shortly after the event, either a day or
2 two after he told you, than it is today, which is
3 August 30th of 2005?

4 MR. MARTEL: Yes, of course. One
5 would think that even after two days of travel, it
6 would be normal at that point for me to remember
7 more of what was said to me during the trip than
8 two years later. That's certain.

9 MR. CAVALLUZZO: Okay. Then let's
10 go to see what Mr. Mark Bailey says, and that can
11 be found at page 8 of 14.

12 Can you tell us who Mr. Mark
13 Bailey is?

14 --- Pause

15 MR. CAVALLUZZO: Do you know who
16 he is, Mr. Martel, Mark Bailey?

17 MR. MARTEL: Mark Bailey is also
18 one of the directors, but ---

19 MR. CAVALLUZZO: Okay.

20 MR. MARTEL: --- I think he's in
21 the Political Section.

22 MR. CAVALLUZZO: If we go five or
23 six lines down, he says:

24 Conditions of detention poor
25 but not actual physical

1 abuse. Occasionally beaten
2 during interrogation. Did
3 (somebody) give Syrians
4 Arar's name? Went to Jordan
5 because Syrians refused
6 plane. Interrogated six
7 hours in Jordan by
8 Jordanians, started mild
9 abuse but stopped when warned
10 under Jordan min --

11 That should be Jordanian Minister.
12 There are two others I would ask
13 you to refer to.

14 Mr. David Dyet, this is at page 10
15 of 14. We understand from previous testimony that
16 Mr. Dyet was in the Consular Affairs Division and
17 assisted Mr. Pardy, at least in June of 2003.

18 At page 10 of 14, about halfway
19 down, he says:

20 Moved to prison where it was
21 "paradise". No tires or
22 beatings with wires. Brain
23 has been destroyed. He was
24 beaten occasionally and
25 especially in the first two

1 weeks.

2 And then the final is Mr. Robert
3 Fry, who is the Ministerial Assistant to
4 Mr. Graham at that time.

5 If you go to page 12 of 14, he
6 says six lines down from the top:

7 Moved to Sednaya after MPs'
8 visit. Sednaya was much
9 better. Could walk. Speak
10 to people. Tire not true or
11 electric shocks. Beating
12 with wires --

13 I assume that's electric shock,
14 beating with wires.

15 Was mental torture. Brain
16 destroyed. Beaten
17 occasionally but nothing too
18 serious. Slapped for first
19 two weeks. Stopped
20 interrogating him.

21 Can you read that?

22 MR. MARTEL: Yes.

23 --- Pause

24 MR. CAVALLUZZO: Yes. Just on the
25 first page of Mr. Fry's notes, at page 11 of 14,

1 he also talks about Sednaya. Then if you go to
2 the bottom of the page, about four lines up, he
3 says:

4 Stayed in transit for 7
5 hours. Was in business
6 upgrade. 3 by 6 by 7. Thin
7 mattress. No lights. No
8 toilets. No water.

9 And then it says:

10 Why did they --

11 I can't read the rest. And then
12 it goes on:

13 Three times a day. Toilet
14 water. Wash once a week. In
15 the dark. Also couldn't read
16 until April.

17 So these notes would indicate,
18 Mr. Martel, that you told these members of DFAIT
19 that Mr. Arar had told you that he was beaten --
20 occasionally, some say -- in the first two weeks
21 of his stay in Syria during the intensive
22 interrogation.

23 In light of the fact that we have
24 these notes, would you agree that in fact you said
25 that?

1 MR. MARTEL: People took notes;
2 many people took notes. I think Mr. Fry is very
3 clear here. We understand what he wrote.

4 After the trip, I related what
5 Maher Arar told me. As it says there, he told me
6 that during the first two weeks he had
7 occasionally been beaten, but it wasn't too
8 serious, it wasn't something to which he gave much
9 importance, and that after that, it stopped.

10 So the people took notes, and if
11 you were to compare them, you couldn't -- you
12 couldn't say that I didn't say that. I said what
13 he told me at the time, to the best of my
14 knowledge and memory, of course. So I related as
15 best I could and as much as I could remember, what
16 had been said during those two days of travel.
17 But in fact, not much had been said, because Maher
18 didn't feel like talking.

19 MR. CAVALLUZZO: If you used those
20 words, I am wondering if you might help us. Could
21 you tell us what it means to be beaten not very
22 seriously, though?

23 MR. MARTEL: Well, that's what he
24 said to me. He said, "In the first two weeks,
25 they hit me from time to time, but nothing really

1 serious". That's how he worded it.

2 MR. CAVALLUZZO: Okay. On October
3 the 31st, there is a note, and if you go to
4 Exhibit ---

5 MR. DÉCARY: I have to make a
6 point, with your permission. It's just for the
7 record, and the record will say, on page 1 of 14,
8 you will note under the transcriptions of Peter
9 McCrae, page 2: "Torture. Tire not true".

10 Now, if we turn to page 4 -- 12 of
11 14 ---

12 MS. EDWARDH: I am going to
13 object, Mr. Commissioner. I don't mind my friend
14 making an objection and obtaining a ruling, but I
15 think there is a time for submissions and it's not
16 when the witness is here before you giving
17 testimony.

18 If you were inclined to let
19 counsel proceed, I would ask that Mr. Martel
20 excuse himself.

21 THE COMMISSIONER: I think ---

22 MR. DÉCARY: I deliberately waited
23 for the witness to be -- for the examination to be
24 completed on this section.

25 THE COMMISSIONER: You understand

1 that you will have an opportunity to examine the
2 witness at the end?

3 MR. DÉCARY: But you will
4 understand that there is a contradiction.

5 You will note on page -- this is
6 the point -- 12 of 14, and maybe it is appropriate
7 that the witness leave the room if we ---

8 THE COMMISSIONER: All right.
9 Let's do it that way.

10 MR. DÉCARY: I think we should do
11 that.

12 THE COMMISSIONER: Please step
13 out, Mr. Martel. You can go in the room right
14 across the hallway, and there will be staff there.
15 --- Witness withdrew

16 MR. DÉCARY: You will note on page
17 12 of 14, the third paragraph: "Tire not true, or
18 electric shock".

19 And then the following line --
20 anyway, "with wires".

21 MR. CAVALLUZZO: "Beating with
22 wires".

23 MR. DÉCARY: That's correct. And
24 I just want to note that there is a conflict; that
25 this may be "No beating with wires" as opposed to

1 "Beating with wires". That is what I wanted to
2 caution you about and not bring the witness to
3 admit that he stated at that time, during those
4 meetings, that there was beating with wires.
5 That's my point.

6 THE COMMISSIONER: That is your
7 point.

8 MR. CAVALLUZZO: That is your
9 point. I would agree with that point. I thought
10 that I had said that to the witness; that it was a
11 negative, that there was no beating with wires.

12 THE COMMISSIONER: That is as I
13 understood the evidence, but I may have
14 misunderstood. But I had the idea that's what he
15 was saying.

16 MR. DÉCARY: That's the way I
17 understood it also.

18 THE COMMISSIONER: So we are all
19 on the same page.

20 Thank you, Mr. Décary.

21 Yes, please go get the witness.

22 --- Witness returns

23 MR. CAVALLUZZO: I wonder if you
24 would give the witness now volume 7 of P-42,
25 please.

1 At Tab 634 we have a C-4 message
2 dated October 31st of 2005, and you will see what
3 that is about. If I could summarize it for you,
4 Mr. Martel, it is that the Minister and DFAIT
5 officials had met Mr. Arar and his family on
6 October the 29th, and then consular officials and
7 other DFAIT officials came into the meeting and
8 there were discussions as to what occurred and
9 there was a concern that he would be making a
10 public statement the next week, which he did on
11 November the 4th.

12 You will see in the bottom line of
13 paragraph 2 that:

14 Media are already claiming
15 that he was tortured during
16 the first two weeks of his
17 detention in Syria.

18 And then it goes on in the next
19 paragraph and it says:

20 Torture allegation is
21 inconsistent with statements
22 made by Arar to Martel during
23 meeting of August 14th in
24 Damascus ... and on October
25 6th while en route to Canada.

1 Please confirm information in
2 referenced messages and
3 Arar's comments during travel
4 back to Canada following his
5 release. It would also be
6 helpful to have your
7 assessment of the conditions
8 of detention, which could be
9 considered as "degrading" or
10 "inhumane," e.g., small size
11 of prison cell, long periods
12 of darkness and any other
13 relevant information. Please
14 provide your notes of this
15 meeting, as requested by
16 MINA/Fry.

17 The Minister's Assistant.

18 And you respond, if you go to 647.

19 Do you see that?

20 Your response can be found at the
21 bottom page. It is dated November 3rd of 2003,
22 and the body of the response can be found at page
23 2.

24 You will see on the next page it
25 is drafted by Léo Martel and approved by Mr. Brian

1 Davis, who at that time is the Head of Mission.

2 And what I would refer you to,
3 Mr. Martel, is starting at the second paragraph.

4 It states:

5 We confirm torture allegation
6 is inconsistent with
7 statements made by Arar on
8 August 14 and as reported in
9 our (previous note) and email
10 to Myra Pastyr-Lupul also on
11 August 14. This being said,
12 we have always indicated the
13 statements were made in the
14 presence of Syrian officials
15 and the nature of
16 conversations has to be taken
17 within a context of only
18 apparent freedom of speech.

19 So that you seem to be fairly
20 pointing out there that even though Mr. Arar may
21 have said something, we have to look at the
22 context: and that is, it was a controlled
23 atmosphere and that there may not be meaningful
24 freedom of speech.

25 Is that correct?

1 MR. MARTEL: Yes, yes; that's
2 correct. The interviews were always controlled.

3 MR. CAVALLUZZO: Okay. In the
4 next paragraph, if we go about halfway through, we
5 see:

6 Our own assessment is that we
7 should give more credibility
8 to what Arar has said
9 immediately after his release
10 than what he said in the
11 presence of Military
12 Intelligence officers. After
13 his release we did spend some
14 time at the chancery and at
15 Martel's staff quarter.
16 During that time and on the
17 flights Arar often talked
18 about his detention
19 conditions.

20 And then this is where you
21 describe them.

22 You say:

23 After his release Martel
24 pressed Arar for answers on
25 the question of torture.

1 Arar confirmed he had not
2 been beaten nor electric
3 shocks used on him.

4 That statement there I want to ask
5 you about, where it says, "Arar confirmed he had
6 not been beaten".

7 That of course is certainly
8 contrary to what you told the DFAIT officials on
9 October 7th, about three weeks before then, and
10 I'm asking you why you are, in this memorandum,
11 saying that Arar confirmed he had not been beaten
12 when you had stated otherwise at that meeting in
13 front of 15 or 20 DFAIT officials?

14 MR. MARTEL: Now we're talking
15 about a report I prepared from memory. It was
16 about a month after what I said at the meeting.

17 And, of course, what I said at the
18 meeting in Ottawa a month earlier, or almost a
19 month, was also from memory, and he had certainly
20 told me at that moment, because everyone wrote it
21 down, that he had been hit at the beginning, at
22 the start of his detention, but that it wasn't
23 very -- very serious.

24 So, a month later, it wasn't
25 something that struck me. Or I didn't remember it

1 exactly. To my recollection, at the time when I
2 wrote it, I said, "He confirmed that they hadn't
3 beaten him or used electric shocks on him".

4 But the question of having been
5 beaten, he told me that, because everyone wrote it
6 down. If I dig into my memory, it's certain that
7 at the very start of his detention, he was often
8 hit by disgruntled guards or people like that.

9 So, there's -- there's a
10 difference between that report, which was written
11 a month later, and what I said at the meeting.

12 But a month later, I didn't have
13 any notes from that meeting. No one sent me
14 anything to complete. So I had to try to remember
15 it, and it was very urgent.

16 They wanted an answer the same
17 day. So when I arrived in the morning and found
18 that request, I had to spend time preparing the
19 report and send it to Ottawa before 3 o'clock our
20 time, for the opening at 8 o'clock in Ottawa.

21 So, of course, there may -- there
22 may be some inaccuracies in the -- that's normal,
23 I think. It's human memory.

24 MR. CAVALLUZZO: So you have given
25 us the -- it was incorrect, but it was a faulty

1 memory at that time.

2 And it goes on:

3 He stated "they have other
4 means" but refused to
5 elaborate. He, however,
6 described the several months
7 of solitary confinement at
8 the Military Intelligence
9 Detention Centre ... which,
10 he said, had mentally
11 destroyed him. He stated his
12 cell was measured by 3x6x7
13 (feet) and that he was kept
14 in complete darkness. He
15 also mentioned he slept on a
16 thin mattress laid on the
17 cell floor. Toilets were
18 located outside the cell and
19 also kept in darkness. He
20 was allowed to use the
21 facilities three times a day.
22 He mentioned he could do his
23 laundry in the same toilet
24 area once a week and always
25 in darkness. He mentioned

1 the guards used to take him
2 outdoor about two hours prior
3 to a consular visit so he
4 would get used to the
5 daylight. That was the only
6 time he saw daylight or any
7 light, for that matter.

8 And you go on:

9 You will understand we are
10 unable to verify the accuracy
11 of this information as access
12 to cells is not authorized.

13 Just in terms of that, you are not
14 able to verify the accuracy, does that indicate
15 that you don't believe Mr. Arar, or are you saying
16 that I just can't verify the accuracy?

17 MR. MARTEL: No. I believe him --
18 I believe him entirely. My client was so -- so
19 perturbed during the trip and -- emotionally
20 disturbed and all.

21 I had no reason to believe that he
22 wasn't telling the truth, and it was a very
23 important fact for him, and I think he repeated it
24 many times. It is truly imprinted on my memory.

25 I think that I was finally able to

1 - even a month later, it still -- I still
2 remembered it and I was able to repeat what he
3 said quite accurately.

4 But before I was asked if the
5 facts were true, I anticipated the question and
6 said, "I can't verify these facts, however,
7 because I don't have access and neither does the
8 Red Cross or anyone."

9 MR. CAVALLUZZO: Is it fair to say
10 that you believe what Mr. Arar said in terms of
11 how he was treated by the Syrians?

12 MR. MARTEL: Totally.

13 MR. CAVALLUZZO: Totally?

14 MR. MARTEL: Totally. I didn't
15 have any doubts.

16 At that time, with my client, and
17 when we made the trip together to come home, he
18 couldn't tell me anything but the truth.

19 Everything he told me was true. I
20 have never doubted what he said, because we were
21 alone then. He could say what he wanted to say.

22 And I had no reason to doubt what
23 he said. Knowing the -- let's say, the
24 reputation -- the better part of year has passed
25 and I am now starting to have other clients and,

1 well, I ask questions and I have no reason to
2 doubt what he told me.

3 I'm sure he experienced what he
4 said. That's certain.

5 MR. CAVALLUZZO: Now, to be fair
6 to you, I'm going to be referring to a document
7 tomorrow morning, and I will ask the witness at
8 that time -- there are two documents,
9 Commissioner, that counsel will be reviewing this
10 evening in terms of fewer redactions, and there is
11 one document in particular relating to
12 Mr. Martel's view of Mr. Arar's veracity, and I
13 can't confront him now with it, but I will
14 certainly refer to it tomorrow.

15 THE COMMISSIONER: Okay.

16 MR. CAVALLUZZO: Mr. Martel, this
17 report that you have just completed was in
18 response to a number of questions that were coming
19 from the Minister's office, and the Minister's
20 office in effect was saying, "What is going on
21 here? Arar says this happened, and I got reports
22 and I relied upon reports from Mr. Martel, which
23 are inconsistent with what he has told me".

24 I'm wondering if you left out the
25 reference to beatings because you were concerned

1 that the Minister would have been concerned that
2 you had not advised Ottawa that Mr. Arar had been
3 beaten?

4 MR. MARTEL: No, no. Not at all.

5 If I didn't use that word in the
6 text, it's a matter of memory. It was never my
7 intention to conceal anything whatsoever.

8 Mr. Arar was my client. He was my
9 client for a year. What happened to him is
10 absolutely unthinkable. I never would have wanted
11 to conceal the facts from the Department to
12 protect the Syrians, for instance. I had nothing
13 to gain by doing that.

14 So I reported what I reported. If
15 I forgot things, I forgot them. But I wasn't
16 trying to protect a foreign government.

17 MR. CAVALLUZZO: I'm not talking
18 about protecting the Syrians. I'm talking about
19 protecting yourself.

20 MR. MARTEL: No. I didn't even
21 think of that. That was in the notes that were
22 taken by people before. There were 14 or 15
23 people there when I said it.

24 So maybe those people already made
25 reports. I don't know. But I didn't take notes.

1 I just talked to those people.

2 And I wasn't asked to write a
3 report afterwards, either. I was asked to do so
4 much later on.

5 MR. CAVALLUZZO: We understand
6 that -- I won't take you to this, but Ambassador
7 Davis, in Exhibit P-42, Tab 704, sent a note to
8 the Syrians, asking them to investigate the
9 allegations of torture relating to Mr. Arar, and
10 by this time, Almalki.

11 Are you aware of that?

12 MR. MARTEL: I saw the -- the note
13 and several appendices in which Ambassador Davis,
14 I think, asked for an inquiry; is that it?

15 MR. CAVALLUZZO: Yes.

16 MR. MARTEL: Yes, there were
17 several appendices, I think, to all that, and ---

18 MR. CAVALLUZZO: Tab 704, if you
19 look at it.

20 Right.

21 You can see he gives instructions
22 to Chris, and this of course is Chris Hull, who is
23 the political officer?

24 MR. MARTEL: Yes; that's right.

25 MR. CAVALLUZZO: At Tab 725, this

1 is 18th of November, 2003.

2 --- Pause

3 MR. CAVALLUZZO: Once again the
4 Minister's office is in effect asking for some
5 information on the question of the discrepancy
6 between what is said in the reports and what
7 Mr. Arar has now stated in a press conference of
8 November 4th.

9 And if we start at the bottom
10 e-mail, this is from you to Graeme McIntyre, the
11 GMR at the Middle East desk, and the subject, of
12 course, is "Arar Chronology".

13 This is the chronology that we
14 referred to before, Mr. Arar's chronology, and it
15 states that:

16 The chronology of events
17 September 26, 2002 to October
18 5, 2003 ... which seems to
19 have been issued by Amnesty
20 International describes the
21 August 14, 2003 visit from
22 the Canadian consul. We wish
23 to point out one important
24 inaccuracy reported on that
25 date which states "The consul

1 asks if he has been tortured
2 and Arar replies yes, of
3 course -- at the beginning".
4 We have reported details of
5 this entire visit in the past
6 but for ease of reference we
7 are transmitting the accurate
8 details of this particular
9 conversation. Arar said:
10 "Prison conditions have been
11 more difficult in the past
12 than they are now". "I have
13 not been beaten nor tortured,
14 I have not been paralysed.
15 My detention has destroyed me
16 mentally".

17 And then it goes on and Mr. Robert
18 Fry, the Minister's Assistant, says:

19 Thank you, Léo.
20 Unfortunately, there seems to
21 be a difference of opinion of
22 what Mr. Arar said in that
23 meeting.
24 Was the question of "Have you
25 been tortured?" asked by us

1 in those words or did it come
2 out as Mr. Arar was speaking
3 about his prison conditions?

4 Finally, you go on to say that:

5 The question "have you been
6 tortured?" could not have
7 been asked as such in the
8 presence of officials. I
9 said his case was receiving a
10 lot of media attention in
11 Canada and press articles
12 were indicating alleged
13 torture. Arar then said he
14 did not wish to have adverse
15 media publicity as he felt
16 this would only harm his
17 case. He then confirmed he
18 had not been beaten nor
19 tortured. I must also
20 mention that after his
21 release and on the way back
22 home he never mentioned he
23 had been beaten during the
24 first two weeks of his
25 detention. When prompted on

1 this question he simply said
2 "they have other means."

3 Once again, Mr. Martel, you are
4 clearly mistaken ---

5 MR. MARTEL: Yes.

6 MR. CAVALLUZZO: --- it would seem
7 to me in terms of what you are reporting back to
8 the Minister.

9 Isn't that correct?

10 MR. MARTEL: Yes. It was a matter
11 of -- that was in November, and it was the same
12 memory lapse again, of course, because he said to
13 me, "They hit me at the beginning, but it wasn't
14 -- it wasn't serious" and people made a note of it
15 at the meeting, but no one showed me their notes.

16 Consequently, I -- I forgot about
17 it. And I wrote that report on the basis of
18 another report. It was simply a matter of memory.

19 It wasn't -- it wasn't a matter of
20 my wanting to conceal a fact. It wasn't -- it
21 wasn't that.

22 MR. CAVALLUZZO: Then if we move
23 on to Tab 734, this is coming from the Minister's
24 office and they are obviously interested in -- if
25 we go to the second page of that exhibit or tab,

1 we see what the Minister's office is interested
2 in.

3 It says:

4 The Minister's office would
5 like to request, on an urgent
6 basis, a briefing note which
7 will report back to the
8 Minister on two issues
9 involving Mr. Arar:
10 1. An official response to
11 the Minister on what took
12 place at the August 14th
13 meeting between our consular
14 people and Arar in Syria.
15 2. A response to criticism
16 directed at the consular
17 assistance we provided
18 Mr. Arar in New York.

19 So obviously we are not interested
20 in the second point which relates to New York but
21 the first point which relates to Damascus.

22 And if we go to Tab 740, we see an
23 information memorandum for the Minister of Foreign
24 Affairs. It is dated November 21st, 2003, and the
25 purpose of the memorandum is to clarify what took

1 place on August the 14th in New York City.

2 And in respect of what happened in
3 Damascus, if we go to the second page, at
4 paragraph 4, it talks about the conditions, that
5 is:

6 An interpreter and two aides
7 were present. Mr. Arar was
8 pleased to see the Consul and
9 thanked all concerned,
10 including the Syrian
11 authorities, for making this
12 visit possible. The Consul
13 requested Mr. Arar on the
14 conditions of his detention
15 and asked whether he needed
16 anything. Mr. Arar made no
17 special requests but was
18 pleased that reading material
19 was brought for him.

20 Just that point there, "he was
21 pleased that reading material was brought for
22 him", I am wondering why he would be happy because
23 he never got to read any of it.

24 MR. MARTEL: They were perfectly
25 right. Since he was in darkness and I could never

1 directly bring him anything to read. But I still
2 continued to bring it.

3 MR. CAVALLUZZO: Right. And then
4 it goes on:

5 He expressed himself freely
6 at times ...

7 And then you make six points:

8 - prison conditions had been
9 more difficult in the past
10 than now;

11 - he did not want adverse
12 media publicity in Canada as
13 this would only harm his
14 case, and he added that "the
15 press will know the truth
16 when I return home".

17 - he had not been beaten,
18 tortured or paralysed (asked
19 to explain the latter term,
20 he could not find another
21 word);

22 - his long detention had
23 destroyed him mentally; and

24 - as far as he knew, he was
25 not being treated worse than

1 other prisoners.

2 Now, what I find lacking here,
3 although -- first of all, it deals with the August
4 14th meeting, and as I said before, there is no
5 reference here to the size of the cell or the fact
6 that he was sleeping on the ground, and we have
7 certainly dealt with that.

8 But I would have thought that, in
9 regard to whether he had been beaten, even though
10 it may not have been stated on August the 14th,
11 that there may have been a clarification to the
12 Minister saying, "Although he may have said that
13 he wasn't beaten in front of the Syrian captors,
14 the fact is that when we flew home together on
15 October the 5th, he did tell me that he was beaten
16 in the first couple of weeks of interrogation".

17 And once again, I assume the
18 answer is the same; that you just didn't recall
19 it, you didn't think of it?

20 MR. MARTEL: Well, it's not just
21 that. That memo was written on November 21, and
22 look, the people who prepared the memo were at --
23 at the meeting.

24 I was asked to report what
25 happened on August 14. I wasn't asked about what

1 was said to me afterwards in the plane.

2 So, I reported practically the
3 same text we saw earlier, that is, the meeting
4 that -- the consular visit that I had had that
5 day. What we're seeing again here is almost
6 exactly the same thing.

7 Obviously, if this were extended
8 to a later period and to the plane ride home, that
9 would be another story.

10 MR. CAVALLUZZO: Commissioner, it
11 is 5 o'clock and I have reached the point now
12 where I just have questions relating to two
13 documents that are going to be reviewed by counsel
14 this evening in terms of -- one counsel has not
15 seen them before, and what I propose is that we
16 commence early tomorrow, at 9 o'clock, and I will
17 complete my examination of Mr. Martel at that time
18 with respect to those two documents.

19 MS. McISAAC: Mr. Commissioner?

20 THE COMMISSIONER: Yes.

21 MS. McISAAC: Perhaps the witness
22 should be excused, but I have a very important
23 submission to make to you with respect to stopping
24 at this point in time.

25 THE COMMISSIONER: Thank you.

1 You may be excused, Mr. Martel.

2 --- Witness excused

3 MS McISAAC: Mr. Commissioner, I'm
4 concerned about the unfairness to this witness.

5 The documents that are to be put
6 to him tomorrow morning are very important
7 documents. They were put to him during the
8 in-camera part of his testimony, and they deal
9 with his assessment of Mr. Arar's credibility.

10 One of the documents is already in
11 the Book of Documents. It is available to the
12 media. We were only asked today to do a further
13 redaction, which we have agreed to do. As a
14 result of that, though, we have also asked that an
15 additional document be put to the witness to help
16 explain. There is an explanation for this.

17 My concern is that because the
18 document sits there unexplained, it will be in the
19 media as a story tonight.

20 I know this is a public inquiry,
21 but we have to be fair to the witness, and there
22 is an explanation, which I would hope the witness
23 has an opportunity to give.

24 I know it is late, but my
25 submission to you would be that the fair way to

1 proceed would be to take half an hour, if that's
2 what it takes, have counsel review the document,
3 and then proceed with Mr. Martel's examination.

4 THE COMMISSIONER: Who are the
5 counsel that haven't read the document?

6 MR. CAVALLUZZO: Well, I had put
7 this suggestion forward because I talked to
8 Mr. Martel's counsel, and that's the way he wanted
9 to proceed.

10 THE COMMISSIONER: He wanted to
11 proceed by putting it over until tomorrow?

12 MR. CAVALLUZZO: Yes. Now I have
13 Government counsel objecting to it. So I don't
14 know who's on first on this one.

15 MR. DÉCARY: Well, I don't know if
16 we could -- all I need is 10 minutes. It's just
17 that I never spoke -- the witness and I never
18 reviewed one of the two documents; and the other
19 one, the second, I never saw in total. I saw it
20 only in part.

21 If 10 minutes would help, then 10
22 minutes would be fine, because the rest ---

23 MR. CAVALLUZZO: I have no problem
24 with that. I thought I was accommodating ---

25 MR. DÉCARY: No.

1 Mr. Cavalluzzo ---

2 MR. CAVALLUZZO: Commission
3 counsel never gets any respect.

4 --- Off microphone / Sans microphone

5 THE COMMISSIONER: We are not
6 suggesting you are not, Mr. Décary.

7 The initial suggestion was that we
8 do what Ms. McIsaac is now suggesting.

9 Mr. Décary, you are now content.

10 Ms. Edwardh, I see you are
11 slightly perturbed, but your cross-examination
12 wouldn't be until tomorrow in any event.

13 Yes, Ms. Jackman?

14 MS JACKMAN: We do have a bit of a
15 problem. One of the documents relates to one of
16 my clients, and I haven't had a chance to talk to
17 my client about whether or not he is prepared to
18 release it.

19 I don't know if I can even reach
20 him at this point. I'm going to try. But I
21 certainly would prefer to have until tomorrow
22 morning in order to be able to reach him tonight.

23 THE COMMISSIONER: But certainly
24 any questions you would want to ask would be
25 tomorrow for sure.

1 MS. JACKMAN: No. It is a
2 question of releasing, having my client's
3 permission to release the documents in public.

4 THE COMMISSIONER: I'm at a
5 disadvantage. I haven't seen the document.

6 Is there an issue, Ms McIsaac,
7 about ---

8 MS McISAAC: The only issue is
9 that, as you know, certain documents were
10 redacted, not for any national security concerns
11 but simply because we were concerned that there
12 may be privacy interests about individuals who are
13 not a part of this inquiry.

14 You, of course, sir, are at
15 liberty to say that this document, if it is
16 important, it is not up to Ms. Jackman's client as
17 to whether it is released or not. Of course, it
18 is up to this Commission to decide whether it is
19 relevant to the Commission's inquiries.

20 That is where the issue comes in,
21 though, of course, Ms. Jackman's client should be
22 alerted to the fact that this will be made public.

23 THE COMMISSIONER: I think what we
24 should do is take a break. We will stay as late
25 as is necessary to deal with this.

1 Perhaps you could try to contact
2 your client, Ms. Jackman, to see if he would
3 agree, from his standpoint, to the release of the
4 document.

5 Mr. Décary should be given an
6 opportunity to discuss the new documents with his
7 client, and we can resume and finish the
8 examination hopefully this evening.

9 We will rise until that occurs.

10 THE REGISTRAR: Please stand.

11 --- Upon recessing at 5:04 p.m. /

12 Suspension à 17 h 04

13 --- Upon resuming at 5:29 p.m. /

14 Reprise à 17 h 29

15 THE REGISTRAR: Please be seated.

16 MR. CAVALLUZZO: Mr. Commissioner,
17 we have agreed, after discussions with counsel, to
18 proceed on the basis that we will ask Mr. Martel
19 certain questions about Tab 21 of his book, and
20 tomorrow we will be introducing three new
21 exhibits.

22 One is a less redacted version of
23 Tab 21, and two other exhibits that we will ask
24 Mr. Martel about to conclude my examination of
25 him.

1 So I will ask him certain
2 questions tonight relating to the first paragraph
3 of Tab 21, and then tomorrow complete his
4 examination after we refer to these three other
5 documents.

6 THE COMMISSIONER: And this
7 responds to Ms. McIsaac's point, does it?

8 MR. CAVALLUZZO: Yes.

9 THE COMMISSIONER: Thank you.

10 MR. CAVALLUZZO: Mr. Martel, if
11 you have before you Exhibit 242, Tab 21, we have a
12 two-page document which I would like to ask you
13 about this evening, in particular about paragraph
14 1.

15 There are a number of National
16 Security Confidentiality claims in respect of this
17 document. However, in order to give context to
18 it, I understand that this was a conversation
19 between yourself and another Canadian official,
20 which occurred on or about February 8th of 2004.

21 Let me read the portions that I
22 would like to ask questions about. In fact, let
23 me just read the paragraph to you.

24 It states that:

25 Martel --

1 And, once again, just to give
2 complete context, this memorandum or note are the
3 notes or memorandum of the Canadian official to
4 whom you were having this conversation on February
5 the 8th of 2004, and it reads in paragraph 1:

6 MARTEL stated that he has
7 written quite extensively on
8 ARAR and that the (redacted)
9 can access his reports on
10 ARAR from DFAIT Ottawa.

11 Is that portion correct, that you
12 said to the Canadian official that he could access
13 Arar's reports from DFAIT Ottawa?

14 MR. MARTEL: Regarding the
15 question of discussing consular cases, even what
16 is now edited out, but just before that, my
17 colleague had asked me a question, and I said that
18 I couldn't discuss my cases and that I had written
19 extensively on the present cases, including Mr.
20 Arar's, and that if he wanted to access those
21 reports, he had to ask Ottawa; I had no authority.

22 MR. CAVALLUZZO: It goes on and it
23 states that:

24 MARTEL said that the
25 information ARAR provided to

1 him during interviews, just
2 prior to his release from
3 prison, is contradictory to
4 the information that he is
5 now providing to the media.

6 Do you recall saying that to the
7 Canadian official?

8 MR. MARTEL: No, no. That's
9 inaccurate, because my client -- the information
10 he gave me during the interviews before his
11 release, obviously was controlled and very
12 limited, as we have already seen.

13 So that's inaccurate.

14 MR. CAVALLUZZO: But you would
15 agree with me that a lot of the DFAIT memoranda
16 talk about the discrepancy between the meeting on
17 August the 14th and what Mr. Arar is saying to the
18 media? Doesn't this ring true?

19 MR. MARTEL: At the time, it was a
20 matter of -- I wasn't talking about the media.
21 There was a civil suit on my desk and I was
22 stating facts related to the civil suit. That's
23 all I was saying.

24 And what the civil suit was saying
25 at that point didn't match what I already knew or

1 what Mr. Arar had told me. That was all I wanted
2 to point out.

3 MR. CAVALLUZZO: Right. Well, at
4 least the Canadian official certainly was not
5 comparing the suit to the information given at the
6 prior interview but was talking about what was
7 said at the prior interview and the media.

8 But in any event, we will leave
9 that for others to deal with.

10 It goes on to state:

11 MARTEL believed that his
12 information received from
13 ARAR was likely more accurate
14 as it was "fresher" and it
15 was not tainted by the
16 spectre of big money and
17 lawsuits. MARTEL went as far
18 as calling ARAR a liar and
19 that if he was asked to
20 attend an Inquiry, he would
21 gladly tell about the
22 inconsistencies and
23 irregularities relating to
24 ARAR.

25 I am asking you whether, first of

1 all, you made the statement that you believed that
2 the information received from Arar "was likely
3 more accurate as it was fresher and was not
4 tainted by the spectre of big money and lawsuits".

5 MR. MARTEL: The question I was
6 asked and in examining the civil suit, was: "Why
7 is your client now changing his story?"

8 So, I answered: "Ask the client;
9 it's possible, on speculation, that money is at
10 issue here". We don't know what lies behind civil
11 suits and it may not even be coming from him; it's
12 a legal process. I checked it out afterwards and
13 it turned out to be true.

14 So, it's just speculation. You
15 cannot contend that someone said something like my
16 client did and then why he is changing the story
17 now; you would have to ask him, not me.

18 So I had nothing to say to my
19 colleague about that.

20 MR. CAVALLUZZO: Well, did you
21 refer to the lawsuit, because you told us that the
22 lawsuit was there?

23 MR. MARTEL: Yes, of course, it
24 was there in front of me, and he saw it; it was a
25 public document and I was being accused.

1 MR. CAVALLUZZO: Mr. Arar was
2 suing you as well as other members of the Canadian
3 government? Mr. Arar was suing you and other
4 members of the Canadian government for the way you
5 represented him?

6 MR. MARTEL: Yes, exactly. That
7 was the Federal Court lawsuit, I think, which has
8 now been replaced by another lawsuit, and, of
9 course, at the time, I was really disappointed
10 because I ---

11 MR. CAVALLUZZO: Why were you
12 disappointed?

13 MR. MARTEL: I was disappointed to
14 see that lawsuit. I'm not very familiar with the
15 judicial process; I'm not a lawyer.

16 So, I didn't understand at the
17 time that it was a legal thing, and when I came
18 here last time, Mr. Arar and I were still close,
19 we were together for a long while and I was here
20 with him.

21 I asked him the question, but I
22 said, "I can't believe that you're accusing me of
23 these things, Maher," and he said, "Look, you
24 know, we were in a hurry and my lawyers had to
25 close this file quickly, so they told me that the

1 only way to get you to testify was to sue you, and
2 that's all.

3 So we talked to each other for 15
4 minutes; there's no animosity between us. It's
5 simply a legal question. That's all. And when I
6 see him now, it's the same.

7 As for me, I've forgotten about it
8 because, now I'm working with a group that's in
9 the field, I understand the system better. There
10 was nothing to any of this.

11 MR. CAVALLUZZO: Well, calling
12 somebody a liar is not a legal question, and it
13 says here that -- the Canadian official says that:

14 MARTEL went as far as calling
15 ARAR a liar.

16 MR. MARTEL: But be careful, in
17 the lawsuit, they accused me of certain things,
18 they tried to tarnish my reputation, but it's a
19 big lie. I'll say it again today, as I said I
20 would repeat it before any commission of inquiry.
21 It's still a big lie. Especially where it says in
22 the lawsuit that I was too busy to see him more
23 often. This commission of inquiry will prove that
24 that's totally inaccurate. I never would have
25 missed an opportunity to see him. Never. It was

1 always the Syrians who decided when I could see
2 him, and when they decided to stop me from seeing
3 him, they did just that.

4 But I never would have postponed a
5 visit. I saw my client at every opportunity.
6 That was my priority.

7 MR. CAVALLUZZO: We are not asking
8 you about how often you met with Mr. Arar. The
9 question is whether you called Mr. Arar a liar, to
10 this Canadian official?

11 MR. MARTEL: No. He says I said
12 that; I say that -- I had the lawsuit on my desk,
13 and I said that what was in the lawsuit was a big
14 lie. That's what I said.

15 MR. CAVALLUZZO: Sorry, that you
16 didn't call Mr. Arar a liar?

17 MR. MARTEL: But I don't even know
18 if he's the one who said that. How can I say that
19 someone lied? I don't know. It's a civil
20 lawsuit, so I have the document in front of me.
21 To my knowledge, at least for the entire time that
22 I knew him and spent time with him, he never lied
23 to me.

24 MR. CAVALLUZZO: And you were
25 quite disappointed that he sued you.

1 Did Mr. Arar also sue Mr.
2 Pillarella?

3 MR. MARTEL: I think he sued
4 everyone, yes. Everyone, including the Prime
5 Minister, I believe.

6 MR. CAVALLUZZO: Right. So in any
7 event, what you are saying is that you never
8 called Mr. Arar a liar because you don't believe
9 he is a liar. What you may have said is that the
10 lawsuit is a big lie?

11 MR. MARTEL: It's still today. It
12 is a big lie, on that particular point.

13 MR. CAVALLUZZO: Okay.

14 Commissioner, that would complete
15 the questioning in relation to this aspect of the
16 document.

17 THE COMMISSIONER: All right.

18 What is the schedule for tomorrow?

19 You will be about how long, Mr. Cavalluzzo?

20 MR. CAVALLUZZO: I will be perhaps
21 15 minutes to no longer than half an hour; closer
22 to 15 minutes.

23 THE COMMISSIONER: I just want to
24 do the schedule because we want to finish this
25 witness tomorrow.

1 Do you have any idea, Ms. Edwardh,
2 how long you will be? You will be next.

3 MS. EDWARDH: I would have said,
4 Mr. Commissioner, that I am going to be the better
5 part of the day. I am going to go home and review
6 the areas Mr. Cavalluzzo has covered and try and
7 shorten it up, but there are many areas I wish to
8 cover with this witness and some that Mr.
9 Cavalluzzo adverted to earlier ---

10 THE COMMISSIONER: I recall that.

11 MS. EDWARDH: --- but did not
12 himself pursue but should be a matter of record.

13 I would be better to answer the
14 question with more precision tomorrow, but in an
15 ordinary court day I would have said it would be
16 the better part of the day.

17 THE COMMISSIONER: Let me check
18 with others who will examine.

19 Ms. Jackman, do you have questions
20 of this witness?

21 MS. JACKMAN: I may have a few
22 questions but not very long.

23 THE COMMISSIONER: Mr. Baxter?

24 MR. BAXTER: Perhaps 15 minutes at
25 the tops.

1 THE COMMISSIONER: Mr. Décary, do
2 you have any idea at this point?

3 MR. DÉCARY: Not quite. But at
4 least, I would say, half an hour.

5 THE COMMISSIONER: Well, I think
6 that is workable.

7 Is 9 o'clock the wise time to
8 start?

9 MR. CAVALLUZZO: Yes, I think we
10 should start at 9 o'clock, unless there are
11 objections.

12 MR. BAXTER: We will do our very
13 best to get the versions of the documents that my
14 friend has adverted to to you by 9 o'clock. If it
15 appears that that is going to be difficult, we
16 will try to advise as soon as possible.

17 THE COMMISSIONER: If it is going
18 to be a difficulty, those are the documents that
19 are necessary for Mr. Cavalluzzo to finish up.
20 Why don't we start with Ms. Edwardh's
21 cross-examination and we will deal with them when
22 we get the documents and carry on.

23 MR. CAVALLUZZO: That's fine.

24 THE COMMISSIONER: Ms. Jackman?

25 MS. JACKMAN: One thing before we

1 close.

2 Mr. Cavalluzzo said this morning
3 that I was going to request that Mr. Almalki and
4 Mr. El Maati's chronologies be put into the
5 record. I just wanted to clarify that that is
6 also for Mr. Nureddin. I'm going to request for
7 all three of them.

8 THE COMMISSIONER: So that request
9 will come at the end of the evidence tomorrow.

10 MS. JACKMAN: At the end of the
11 day.

12 THE COMMISSIONER: That's great.
13 Thank you, Ms. Jackman.

14 We are adjourned until 9 o'clock
15 tomorrow.

16 THE REGISTRAR: Please stand.

17 --- Whereupon the hearing adjourned at 5:45 p.m.,
18 to resume on Wednesday, August 31, 2005,
19 at 9:00 a.m. / L'audience est ajournée
20 à 17 h 45, pour reprendre le mercredi 31 août
21 2005 à 9 h 00

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Lynda Johansson,
C.S.R., R.P.R.