

**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 mercredi 31 août 2005

Held at:

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

Wednesday, August 31, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Wednesday, August 31, 2005

3 at 9:15 a.m. / L'audience débute le mercredi

4 31 août 2005 à 9 h 15

5 THE REGISTRAR: Please be seated.

6 THE COMMISSIONER: Good morning,

7 Mr. Martel.

8 MR. MARTEL: Good morning,

9 Commissioner.

10 MR. CAVALLUZZO: Good morning,

11 Commissioner. I'm going to proceed on the

12 following basis.

13 I referred to three documents

14 yesterday, and I will be asking the witness

15 questions about those three documents.

16 I was also going to ask him a

17 question concerning the Statement of Claim that

18 was referred to. I understand the Government is

19 attempting to retrieve another document in respect

20 of that. I will stand down those questions

21 relating to the claim until such time as that

22 document is retrieved. So that I will complete my

23 questions on these three documents and then defer

24 questioning on the claim till later.

25 THE COMMISSIONER: Okay.

1 MR. CAVALLUZZO: I would ask the
2 clerk to file the three documents that I have
3 left.

4 Just to explain, while the clerk
5 is distributing these documents --

6 THE COMMISSIONER: P-243.

7 EXHIBIT NO. P-243: Document
8 relating to what a Canadian
9 official said that Mr. Martel
10 told him about Mr. Arar in a
11 conversation on
12 February 8, 2004

13 MR. CAVALLUZZO: These three
14 documents will -- or the first two documents will
15 recount a meeting between Mr. Martel and a
16 Canadian official. The Government has taken the
17 position that we cannot disclose who the Canadian
18 official is or from where he comes or she comes.

19 The first document is a report of
20 that official, relating to the conversation he had
21 with Mr. Arar on February the 8th of 2004 -- or,
22 excuse me, Mr. Martel, and it relates to what the
23 official said that Mr. Martel told him about
24 Mr. Arar.

25 The second document --

1 THE COMMISSIONER: The first one
2 is the same one we looked at yesterday, isn't it?

3 MR. CAVALLUZZO: That's correct,
4 except paragraph 2 is now unredacted.

5 THE COMMISSIONER: I see. Okay.
6 Then the second one is 244.

7 EXHIBIT NO. P-244: Document
8 relating to a conversation on
9 February 8, 2004, between a
10 Canadian official and Mr. Léo
11 Martel, in respect of what
12 Mr. Léo Martel told this
13 official about Mr. Nureddin

14 MR. CAVALLUZZO: The second
15 document relates to a conversation on the same
16 day, between the same official and Mr. Martel, in
17 respect of what Mr. Martel told this official
18 about Mr. Nureddin.

19 And the final document is a C-4
20 from Mr. Martel, which is a report to head office
21 of DFAIT concerning Mr. Nureddin.

22 THE COMMISSIONER: That's 245.

23 EXHIBIT NO. P-245: C-4 from
24 Mr. Léo Martel to Head Office
25 concerning Mr. Nureddin

1 PREVIOUSLY SWORN: LÉO MARTEL

2 EXAMINATION

3 MR. CAVALLUZZO: Mr. Martel, we
4 asked you questions yesterday about paragraph 1,
5 where you told us that in referring to Mr. Arar as
6 a liar you were referring to the Statement of
7 Claim that you had on your desk in front of you,
8 and you were referring to the allegations he had
9 made in that claim.

10 Is that correct?

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

12 MR. CAVALLUZZO: I'm going to come
13 back to that. I would like to ask you some
14 questions about paragraph 2.

15 Let me read it to you. This is
16 the same official that we talked about yesterday,
17 and it relates to this conversation that was held
18 on February 8th of 2004.

19 I understand that the conversation
20 took place in your office. Isn't that correct?

21 MR. MARTEL: Yes. That's right.

22 MR. CAVALLUZZO: Paragraph 2
23 reads:

24 Concerning irregularities and
25 stories, Martel said that

1 Arar told him that during his
2 first two weeks in Syrian
3 custody, they got everything
4 and then they left me alone.
5 Arar explained to Martel that
6 the Syrians had used some
7 physical punishment on him,
8 namely, beatings to the soles
9 of his foot, elbows and
10 places where there would be
11 no scarring with a thick,
12 black plastic cable. Arar
13 was very clear that the
14 Syrians appeared to be
15 satisfied with his answers
16 and did not do any more
17 physical punishment or
18 interrogations after this.
19 Martel pointed out that Arar
20 is now saying that he was
21 tortured for longer periods
22 and more brutally. This
23 change in story is likely
24 linked to lawsuits or certain
25 pressure groups which have

1 political agendas, according
2 to Martel.

3 And the question that I have for
4 you, Mr. Martel, is whether you told this Canadian
5 official this information about Mr. Arar?

6 MR. MARTEL: No. My answer is no.
7 This paragraph two -- is 90% inaccurate, and it
8 referred to -- and I believe that my colleague or
9 the official made a mistake - with respect to the
10 report, and he confused it with another case that
11 I had to work on.

12 MR. CAVALLUZZO: And you are
13 talking about Mr. Nureddin as being the other
14 dossier?

15 MR. MARTEL: That's right and --
16 That's it.

17 MR. CAVALLUZZO: Did you say that
18 paragraph 2 is 90 per cent correct or 90 per cent
19 incorrect?

20 MR. MARTEL: No, 90 per cent
21 incorrect.

22 MR. CAVALLUZZO: Oh, 90 per cent
23 incorrect or wrong.

24 Let me take you through each
25 sentence.

1 It says:

2 Concerning irregularities in
3 stories, Martel said that
4 Arar told him that during his
5 first two weeks in custody,
6 they got everything and then
7 they left me alone.

8 Does that relate to Mr. Arar, and
9 did you say that to him about Mr. Arar?

10 MR. MARTEL: Yes. It's possible
11 that I said that to my colleague, and that's what
12 I'd understood from my client: they got everything
13 they wanted from him in the first two weeks, and
14 then after they'd left him alone.

15 MR. CAVALLUZZO: Mr. Nureddin
16 never made such a claim, did he?

17 MR. MARTEL: Mr. Nureddin, no. Mr.
18 Nureddin said something else.

19 Mr. Nureddin, we see further on in
20 the report what he said.

21 MR. CAVALLUZZO: Okay. Let us
22 leave out the next sentence, and I will come back
23 to the next sentence that deals with physical
24 punishment.

25 It goes on to say, in the third

1 sentence:

2 Arar was very clear that the
3 Syrians appeared to be
4 satisfied with his answers
5 and did not do any more
6 physical punishment or
7 interrogations after this.

8 Did Mr. Arar tell you this as
9 well?

10 MR. MARTEL: No.

11 That -- to my knowledge -- based
12 on both what I recall and reports that I prepared
13 at the time, this sentence did not come from Mr.
14 Arar.

15 MR. CAVALLUZZO: Do you not
16 recall, Mr. Martel, in his August 14th meeting,
17 where he told you that the investigation was
18 intensive in the beginning?

19 MR. MARTEL: Yes, I remember, but
20 what is said in this report is a year after Mr.
21 Arar's release, and after Mr. Nureddin's release.

22 MR. CAVALLUZZO: So what?

23 MR. MARTEL: In other words, at
24 that time, there was information that was -- had
25 been sent to me, and as you rightly mentioned, at

1 the August 14 meeting, I didn't have this
2 information.

3 MR. CAVALLUZZO: But listen to the
4 question, Mr. Martel. This is February the 8th of
5 2004.

6 At this point in time, you have
7 the information that Mr. Arar stated on the August
8 14th meeting. You have the information that he
9 gave you on the flight back to Canada on October
10 the 5th. We see what you told the DFAIT officials
11 on October the 7th in Ottawa.

12 And it certainly looks very
13 familiar to that particular sentence, where
14 Mr. Arar is saying, early on, they were rough with
15 him and after that they left him alone.

16 It looks very similar to what you
17 told us he told you, Mr. Martel.

18 MR. MARTEL: Yes, perhaps it's
19 similar. But according to my recollection, to
20 what I recall, this part was from Mr. Nureddin.

21 You will have to check in later
22 reports to see if this text is almost identical to
23 what I wrote on Mr. Nureddin.

24 MR. CAVALLUZZO: Okay. Well, let
25 us look to your report on Mr. Nureddin, which is

1 Exhibit 245, and maybe you can help us and tell us
2 where you say that about Mr. Nureddin.

3 --- Pause

4 MR. MARTEL: Yes, I can't find the
5 reference.

6 MR. CAVALLUZZO: And where is it?

7 MR. MARTEL: No, I can't find the
8 reference. In the document regarding Mr.

9 Nureddin --

10 MR. CAVALLUZZO: In your four-page
11 report to Ottawa, you find no reference similar to
12 that?

13 MR. MARTEL: No. That's right, yes.

14 MR. CAVALLUZZO: I didn't think
15 so.

16 MR. MARTEL: Yes, I don't see it,
17 in any case, in this report right now.

18 MR. CAVALLUZZO: Let's look at
19 what you told your DFAIT colleagues.

20 If you go to your Book of
21 Documents, tab 1 -- this is Exhibit 242 -- the
22 first person, Peter McCrae. This is what Peter
23 McCrae writes that you told him at this meeting,
24 or told the group.

25 If you go five lines up from the

1 bottom:

2 Beaten occasionally

3 Stopped interrogating after
4 two weeks

5 Next one is Mr. John McNee at page
6 5 of 14. After [page 2] reference, at page 5 of
7 14 at the bottom.

8 Under [page 2]:

9 Mental cruelty

10 Then it says:

11 Beaten occasionally - angry,
12 Slapped around in first two
13 weeks

14 - interrogation in first two
15 weeks, then nothing till
16 Sampson questions.

17 I could go on with the three
18 others, Mr. Martel, and I'm putting it to you that
19 in Exhibit 243, where the Canadian official said
20 that you said Arar was very clear that the Syrians
21 appeared to be satisfied with his answers and did
22 not do any more physical punishment or
23 interrogations after this, I'm putting it to you,
24 Mr. Martel, that you told this Canadian official
25 that about Mr. Arar and not Mr. Nureddin?

1 MR. MARTEL: I can't recall this
2 circumstance exactly. This official wrote that,
3 and now it's being said that I said it.

4 Today, or even six months ago, I
5 can't recall having said this to my colleague.

6 What I learned from Mr. Arar was
7 mainly after his detention and when -- and as you
8 refer to it here, what I said at the meeting in
9 Canada.

10 But what my -- this official has
11 written and attributed to Mr. Arar comes from him.

12 I can't -- I can't say anything
13 further about what he wrote at that time.

14 My understanding ---

15 MR. CAVALLUZZO: Okay. Then we
16 will rely on what you said to others in terms of
17 whether this was said or not, unless you can help
18 us any further.

19 MR. MARTEL: No, I can't help you
20 any further. What I said is there.

21 MR. CAVALLUZZO: Then let's go to
22 the next sentence in that paragraph.

23 It said that:

24 Martel pointed out that Arar
25 is now saying that he was

1 tortured for longer periods
2 and more brutally.

3 Now, Mr. Martel, did the Canadian
4 official capture this correctly? In other words,
5 did you say this to the Canadian official about
6 Mr. Arar?

7 MR. MARTEL: Well, either I said it
8 or my colleague learned about it in the -- from
9 the press.

10 I can't recall at that time. But
11 it's the truth.

12 MR. CAVALLUZZO: Do you normally
13 have colleagues lying about what you say?

14 MR. MARTEL: My colleagues can
15 interpret or construct things. Now, if they want
16 to say that I had these conversations, they can do
17 that.

18 That doesn't mean that they are
19 lying, but they're making up the texts themselves.

20 But if they say or believe that
21 that's what I said, they're going -- they going to
22 write it.

23 MR. CAVALLUZZO: And you would
24 agree with me that that question that I just read
25 to you clearly does not apply to Mr. Nureddin?

1 MR. MARTEL: I don't know -- This -
2 - this sentence that reads ---

3 MR. CAVALLUZZO: You don't know?

4 MR. MARTEL: Just a second please.
5 Let me read it.

6 Martel pointed out that Arar
7 is now saying ...

8 I think that my colleague saw
9 public reports, and then -- that say the contrary
10 to what was said before. That's all.

11 MR. CAVALLUZZO: So you deny that
12 you told this Canadian official ---

13 MR. MARTEL: No, I -- I can't deny
14 it because it's already very old. Maybe, I told
15 him that there were reports right now, in the
16 press -- that indicate that the situation is now
17 different.

18 MR. CAVALLUZZO: Oh, I see. Okay.

19 MR. MARTEL: --- That indicate that
20 the situation is different now.

21 MR. CAVALLUZZO: I see. Right.
22 You may have said it, you may not have.

23 MR. MARTEL: But it's public.

24 They're in the public files. It's
25 the press.

1 MR. CAVALLUZZO: Right.

2 Now I note that I should tell you,
3 by the way, that this report from this Canadian
4 official was made shortly after this conversation
5 and was submitted to his superior shortly
6 thereafter, and I'm wondering if you have any
7 notes of this conversation.

8 MR. MARTEL: No, no. This
9 conversation took place ---

10 MR. CAVALLUZZO: Okay. Let's ---

11 MR. MARTEL: It was in August in my
12 view.

13 MR. CAVALLUZZO: Now, let us look
14 to the last sentence of that paragraph that you
15 said 90 per cent of which is incorrect.

16 It says,

17 This change in story is
18 likely linked to lawsuits or
19 certain pressure groups which
20 have political agendas
21 according to Martel.

22 Do you recall saying that to this
23 Canadian official?

24 MR. MARTEL: Not in those terms.
25 Those aren't my words. My colleague composes his

1 owns texts.

2 And of course at that time, I had
3 a civil suit before me. And I think that he asked
4 me why there was a change in the story, and I told
5 him that people could speculate about anything.

6 And I even remember that I said at
7 that time that Maher had a memory. Maybe his
8 memory had since changed. He could perhaps recall
9 things now that he couldn't recall before.

10 And then there's this civil suit
11 anyway. So people can speculate about whatever
12 they like.

13 MR. CAVALLUZZO: And certainly
14 that last sentence does not apply to Mr. Nureddin?

15 MR. MARTEL: No. The last sentence
16 certainly applies to Mr. Arar.

17 MR. CAVALLUZZO: And if you go
18 through every other paragraph of this document,
19 you will see that it clearly relates to Mr. Arar.
20 And let me take you through it.

21 Paragraph 3 refers to how he was
22 rendered from the United States into Jordan and
23 then on to Syria. That clearly doesn't apply to
24 Mr. Nureddin. You would agree?

25 MR. MARTEL: No, of course, that's

1 Mr. Arar.

2 MR. CAVALLUZZO: Paragraph 4 talks
3 about ten consular -- let me just read this to
4 you:

5 Martel said that he made a
6 number of consular visits to
7 Mr. Arar.

8 That clearly is Mr. Arar, not
9 Nureddin, because you never had a consular visit
10 with Nureddin. Isn't that correct?

11 MR. MARTEL: That's right.

12 MR. CAVALLUZZO: It goes on. It
13 goes on and states:

14 ... and that the first visit,
15 which was much longer than
16 ten days after his arrival in
17 Syria ---

18 Do you recall saying that to the
19 Canadian official?

20 MR. MARTEL: Possibly, because
21 there it -- it's still the issue of when Mr. Arar
22 had arrived.

23 And until now, I had Maher's
24 version that indicated that he had simply spent a
25 few hours in Jordan.

1 Therefore, we could deduce that he
2 had been in Syria for a longer period of time.

3 MR. CAVALLUZZO: And by this point
4 in time -- we are now at February the 8th of
5 2004 -- had you made a conclusion in your own mind
6 whether this was correct, that Mr. Arar had been
7 in Syria for a number of days prior to the Syrians
8 giving disclosure of that fact?

9 MR. MARTEL: Well in my view, Maher
10 told me that he had spent a few hours in Jordan,
11 and I had no reason to doubt his word.

12 If he spent seven or eight hours
13 in Jordan, in my view, he spent seven or eight
14 hours in Jordan. He spoke to me, and that's what
15 he told me, and I believe it.

16 MR. CAVALLUZZO: And then the
17 final paragraph that isn't redacted is paragraph
18 6, and that clearly applies to Mr. Arar, not
19 Mr. Nureddin.

20 That says that you were annoyed at
21 suggestions that Canada didn't do enough to
22 release Mr. Arar.

23 You never said that about
24 Mr. Nureddin, I assume.

25 MR. MARTEL: No. That applies to

1 Mr. Arar and the civil suit.

2 MR. CAVALLUZZO: Let us come back
3 to paragraph 2, to that sentence I left out. And
4 that is the second sentence, where the Canadian
5 official is advising his superiors that this is
6 what you told him on February the 8th of 2004:

7 Arar explained to Martel that
8 the Syrians had used some
9 physical punishment on him,
10 namely, beatings to the soles
11 of his foot, elbows and
12 places where there would be
13 no scarring with a thick,
14 black plastic cable.

15 Do you recall telling this
16 Canadian official --

17 MR. MARTEL: No. No. No.

18 This official is completely wrong.

19 MR. CAVALLUZZO: Okay. And you
20 said before that you think he was confusing this
21 with another matter, the Nureddin matter?

22 MR. MARTEL: In my opinion, he
23 confused two separate cases.

24 MR. CAVALLUZZO: Then let us look
25 at what this same Canadian official reported back

1 to his superiors about what you told him about
2 Mr. Nureddin.

3 This is Exhibit 244.

4 And if you go to the second page
5 of this report, the second page at paragraph
6 number 2 at the top there, it says:

7 Once under Martel's custody
8 [somebody] spoke openly about
9 his incarceration.

10 And we understand -- can we
11 mention the name of this individual?

12 MS. JACKMAN: Yes, you can.

13 MR. CAVALLUZZO: Thank you.

14 Let me read it again.

15 Once under Martel's custody,
16 Nureddin spoke openly about
17 his incarceration. He said
18 he was not segregated but was
19 with other prisoners in a
20 large cell. He believed that
21 he was not in serious
22 trouble, otherwise he would
23 have been in a solitary cell.
24 Nureddin told Martel that "I
25 was not treated too badly. I

1 was beaten but not that
2 much." According to Martel,
3 Nureddin said that he was
4 doused with cold water and
5 the soles of his feet were
6 beaten with thick black
7 plastic-covered cables.
8 Nureddin told Martel that he
9 did not consider this
10 punishment to be serious.

11 Are you telling us today that you
12 believe the Canadian official confused Nureddin's
13 treatment with Mr. Arar's treatment described in
14 paragraph 2?

15 MR. MARTEL: That's absolutely
16 right. Exactly.

17 MR. CAVALLUZZO: You are sure of
18 that?

19 MR. MARTEL: I'm certain. I'm
20 positive.

21 MR. CAVALLUZZO: Positive?

22 MR. MARTEL: Yes.

23 MR. CAVALLUZZO: Let's see what
24 you said in your report Nureddin told you. This
25 is Exhibit 245, on the second page at page 8,

1 starting with "The Syrians".

2 If you go six lines down, it says
3 Interrogators did not believe
4 his story and ordered him to
5 undress, except for his
6 underwear. They then poured
7 cold water on his body while
8 he stood. They repeated the
9 same interrogation. When
10 Nureddin did not provide
11 additional or new
12 information, they asked him
13 to lay down on his stomach on
14 a dry section of the floor.
15 They then poured cold water
16 on his back. They focused a
17 fan on his body. They asked
18 him to raise his legs from
19 the knee part and they
20 starting beating him with the
21 rubber black cables on the
22 soles of his feet.

23 This is how you describe the
24 treatment that Nureddin told you.

25 MR. MARTEL: This is the treatment

1 that Nureddin described to me and that was sent.

2 MR. CAVALLUZZO: So coming back to
3 Exhibit 243, which is what the Canadian official
4 said you said about Arar, and wherein he says that

5 There were beatings to the
6 soles of his foot, elbows and
7 places where there would be
8 no scarring with a thick,
9 black plastic cable.

10 You believe that with those words
11 he was confusing what you told him about --

12 MR. MARTEL: I'm sure of it.

13 It has nothing to do with it. He
14 simply mixed up the two cases.

15 MR. CAVALLUZZO: All right. There
16 is no reference to cold water, which I would have
17 thought was an important event.

18 MR. MARTEL: What did he use, which
19 word?

20 He was doused in water.

21 That's not one of my words.

22 MR. CAVALLUZZO: Where does he use
23 that?

24 MR. MARTEL: In his report.

25 My colleague used this word

1 somewhere.

2 MR. CAVALLUZZO: Yes, in his
3 report about Nureddin. If you compare his report
4 about Nureddin and your report about Nureddin,
5 it's very similar. You both talk about dousing or
6 pouring of cold water and dousing with cold water,
7 and you both talk about cables on the feet.

8 MR. MARTEL: The entire issue --
9 the entire issue of being hit on the feet, on the
10 soles of the feet, with cables, and all that,
11 Nureddin reported that to me; it applied to
12 Nureddin.

13 I am 100% convinced that my
14 colleague confused the two cases. He attributed
15 this case to Mr. Arar, when it was not Mr. Arar,
16 but Mr. Nureddin.

17 They are two completely different
18 cases. The two did not receive the same treatment.
19 And Nureddin was very specific.

20 I'm saying again today that my
21 colleague mixed up the two cases.

22 MR. CAVALLUZZO: Let's see how
23 confused he was.

24 You would agree with me that in
25 Exhibit 243, which is the Arar report, there is no

1 mention whatever of cold water?

2 MR. MARTEL: No, I don't think so.
3 There is no mention of it.

4 MR. CAVALLUZZO: You would agree
5 with me that there is mention of cold water in
6 both your report of what happened to Nureddin and
7 the Canadian official's report about what you told
8 him happened to Nureddin?

9 MR. MARTEL: Yes. It indicated the
10 treatment, water poured on the individual, who was
11 lying on the floor. Yes.

12 MR. CAVALLUZZO: You would agree
13 with me that in your report about what Nureddin
14 told you happened, or the report of the Canadian
15 official about what you told him happened to
16 Nureddin, there is no reference to beatings on the
17 elbows and "places where there would be no
18 scarring"?

19 You would agree with that?

20 MR. MARTEL: I'd have to read it.
21 Where is it mentioned? It's my colleague's report,
22 right?

23 MR. CAVALLUZZO: Your colleague's
24 report is, once again, 244, in the second
25 paragraph, and he refers to the dousing of cold

1 water and the soles of his feet being beaten.

2 There is no reference to elbows or
3 other places of the body where it doesn't show,
4 right?

5 MR. MARTEL: Yes. I see. I see.

6 MR. CAVALLUZZO: Let's look at
7 your report, 245. You refer to beatings with a
8 rubber cable on the soles of his feet. You make
9 no reference to his elbows or parts of the body
10 where it doesn't show.

11 You would agree with that?

12 MR. MARTEL: That's right.

13 MR. CAVALLUZZO: Right. But in
14 243, there is reference to that.

15 MR. MARTEL: Yes, but it's a report
16 that my colleague prepared. He's the one who
17 prepared it, not me.

18 MR. CAVALLUZZO: Right. Perhaps
19 it may be useful if we refer to what Mr. Arar
20 said, if you go to your Book of Documents,
21 Exhibit 242 at tab 17.

22 --- Pause

23 MR. CAVALLUZZO: Do you have that,
24 Mr. Martel?

25 MR. MARTEL: Yes, I have it.

1 MR. CAVALLUZZO: If you go to page
2 5 of 9 at tab 17, for the period October 11 to 16,
3 2002, it says:

4 Early the next morning Arar
5 is taken upstairs for intense
6 interrogation. He is beaten
7 on his palms, wrists, lower
8 back and hips with a shredded
9 black electrical cable which
10 is about two inches in
11 diameter. He is threatened
12 with the metal chair,
13 electric shocks, and with the
14 tire, into which prisoners
15 are stuffed, immobilized and
16 beaten.

17 I'm putting to you, Mr. Martel,
18 that what Mr. Arar stated happened to him in his
19 chronology is much closer to what is said in
20 paragraph 2 of Exhibit 243, what the Canadian
21 official said you said about Mr. Arar than
22 anything relating to Mr. Nureddin.

23 As a result of that, I'm putting
24 to you, Mr. Martel, that paragraph 2 in
25 particular, the reference to "physical punishment,

1 namely beatings to the soles of his feet, elbows
2 and places where there would be no scarring" is
3 exactly what you told this Canadian official
4 Mr. Arar told you happened to him in Syria.

5 Isn't that correct?

6 MR. MARTEL: No. I categorically
7 deny it.

8 Never at any time did Mr. Arar
9 speak to me about -- about these acts of violence
10 inflicted on him.

11 These acts of violence -- these
12 texts came out much later, and until these
13 documents were published, I was unaware of them,
14 and Maher never spoke to me about them, either
15 during his detention or after his detention.

16 Therefore, what my colleague wrote
17 I don't know where he got it from.

18 MR. CAVALLUZZO: So you are saying
19 that your colleague, the Canadian official, who is
20 reporting to his superiors shortly after this
21 conversation, he got it wrong?

22 MR. MARTEL: Well, he's the one who
23 must know what he wrote and what was his
24 information source. I don't know.

25 But certainly not from me in any

1 case.

2 MR. CAVALLUZZO: Well, Mr. Martel,
3 he says you are the source of that information,
4 and I'm putting it to you that you are saying he
5 got it wrong?

6 MR. MARTEL: Exactly.

7 MR. CAVALLUZZO: He got it wrong.

8 MR. MARTEL: This isn't -- I
9 couldn't have told him that. He's got it
10 backwards.

11 MR. CAVALLUZZO: Right. Because
12 you never make mistakes?

13 MR. MARTEL: I'm human just like
14 everybody else.

15 MR. CAVALLUZZO: I have no further
16 questions, Mr. Commissioner, subject to questions
17 relating to the claim I want to speak to this
18 witness about.

19 THE COMMISSIONER: Right, I
20 understand.

21 Thank you.

22 Ms Edwardh?

23 MS EDWARDH: Mr. Commissioner,
24 before I begin, I would like to just make one
25 observation.

1 The documents Mr. Cavalluzzo has
2 filed this morning, Exhibits 245 and 244, are
3 documents I have never seen before, and Exhibit
4 243 is one that was given to me late in the day
5 yesterday, and I want to make this observation.

6 When I say it was given to me late
7 in the day yesterday, it was given to me in the
8 sense of the less redacted version. And in my
9 version that I got when Mr. Martel was to testify
10 back in June, paragraph 2 was redacted. And that
11 is the paragraph, of course, that Mr. Cavalluzzo
12 has explored in some detail but leaves open to you
13 the inference that, on an earlier occasion,
14 Mr. Martel told some person who was interviewing
15 him that Mr. Arar had described beatings during
16 the first two weeks of his interrogation.

17 I just want to register this
18 observation. It is inconceivable,
19 Mr. Commissioner, that this was redacted. It is
20 my understanding the Government of Canada sought,
21 until yesterday, to keep that information from
22 Mr. Arar and counsel for Mr. Arar under the
23 auspices of a claim of National Security
24 Confidentiality.

25 It is so patently obvious to me as

1 counsel and to my client that, but for raising the
2 suggestions that the Syrians beat him, there can
3 be absolutely no basis for such a claim. And I
4 want to say that I find it shocking that counsel
5 for the Government and the Government of Canada
6 had sought, until yesterday, to hide that document
7 from us.

8 EXAMINATION

9 MS. EDWARDH: Now, let me begin,
10 if I could, I'm going to retrace, Mr. Martel.

11 I take it you are aware that
12 Mr. Arar is my client?

13 MR. MARTEL: I am aware.

14 Yes, I am aware of that.

15 MS EDWARDH: And to the extent you
16 are comfortable in answering any questions in
17 English to expedite this, please feel free to do
18 so, or in French, as you so choose.

19 MR. MARTEL: Thank you.

20 MS EDWARDH: I want to talk, first
21 of all, and go back to Exhibit P-197, which is the
22 review of Consular Affairs, and we are going to
23 have to struggle with a few documents.

24 Thank you, Mr. Registrar. I'm
25 going to give you your exercise today.

1 Of course, it is my understanding,
2 and I wonder if I can just confirm your
3 understanding, that one of the reasons the
4 Inspector General undertook an evaluation of the
5 provision of Consular Services on the part of the
6 Department of Foreign Affairs was because, in
7 fact, there were new demands facing the Department
8 and new demands of the kind represented by
9 Mr. Arar's case.

10 Is that fair?

11 MR. MARTEL: Well, I think that
12 this question should be put to senior management
13 and the management at Consular Affairs.

14 If they decided that we had to
15 move with the times, and based on the challenges
16 that we were presented with, there was certainly a
17 check.

18 And I believe that the Inspector
19 General carried out an evaluation and certainly
20 came up with recommendations.

21 What motivated this change, I
22 think that senior management and management at
23 Consular Affairs should be asked this question, in
24 my view.

25 MS EDWARDH: I'm asking you,

1 Mr. Martel. That is your understanding, is it
2 not?

3 MR. MARTEL: Yes, I think that this
4 was one of the reasons that pushed the Department
5 to conduct an evaluation and review our practices
6 and policies. Because we discovered -- in fact
7 we -- we realized that our world had changed and
8 that we had more and more cases abroad --
9 difficult cases.

10 MS EDWARDH: And Mr. Arar's case
11 was one such case that prompted this review?

12 MR. MARTEL: Well, I don't know.
13 The question must be asked -- I don't know what
14 motivated this review.

15 We are in the field. We are asked
16 sometimes to take part in -- developing documents.
17 Then they decided at management to go ahead with
18 an evaluation.

19 But in general, all decisions are
20 made here. We may be consulted about the content
21 afterwards, but we aren't the ones taking the
22 initiative.

23 MS EDWARDH: My question is quite
24 simple. It's clear that cases like Mr. Arar's
25 posed new and difficult challenges for the

1 provisions of consular service? Yes?

2 Do you agree with that
3 proposition?

4 MR. MARTEL: Yes, of course. All
5 dual nationality cases pose serious problems.

6 MS EDWARDH: Well, not every one.
7 But let us assume his created problems and others
8 have created problems?

9 MR. MARTEL: Yes, his and many
10 others now.

11 MS EDWARDH: And indeed the very
12 introduction to this document, in the third line,
13 the following observation is made:

14 The Evaluation Division --"

15 I'm looking at page 6, first
16 paragraph under "Introduction", section (a):

17 The Evaluation Division of
18 the office of the Inspector
19 General was asked to examine
20 the new demands faced by
21 Consular Services and how the
22 consular program could best
23 position itself to address
24 these demands in the future."

25 Do you see that?

1 MR. MARTEL: No, I'm sorry. What
2 page are you on?

3 MS EDWARDH: Mr. Martel, I'm on
4 page 6.

5 MR. MARTEL: Six.

6 Yes, I see.

7 MS EDWARDH: And I am in the first
8 paragraph.

9 MR. MARTEL: Okay.

10 MS EDWARDH: And I am at the third
11 line of the first paragraph.

12 MR. MARTEL: Fine. I see.

13 MS EDWARDH: It begins, and what
14 it says is,

15 ... the Inspector General was
16 asked to examine the new
17 demands faced by Consular
18 Services and how the consular
19 program could best position
20 itself to address these
21 demands in the future.

22 And all I'm really suggesting to
23 you is the review was undertaken because of
24 difficult and challenging consular cases like that
25 of Mr. Arar.

1 MR. MARTEL: Yes, of course.

2 In my view, the Department had to
3 do something because -- or change owing to the
4 fact that cases like Mr. Arar's were multiplying,
5 especially in the region, in the Middle East, and
6 possibly elsewhere.

7 MS EDWARDH: Yes. Fair enough.
8 And one of the challenges in delivering consular
9 services is set out at page 27 of the report
10 under 4.4.

11 MR. MARTEL: Yes.

12 MS EDWARDH: And the particular
13 challenge I'm going to ask you to agree with is:
14 To position Consular Services
15 in such a way that they are
16 better able to identify when
17 persons are submitted to
18 physical or mental torture.

19 So they can be better able to
20 identify it.

21 MR. MARTEL: I think that it's one
22 of the objectives that was in this report, which
23 was clearly described. It's one of the objectives.
24 Of course.

25 MS EDWARDH: And Mr. Cavalluzzo

1 put to you the proposition that your colleagues,
2 those who deliver consular services on behalf of
3 the Department of Foreign Affairs, readily
4 admitted that they had real problems or
5 difficulties in recognizing that persons who are
6 detained may or are subject to physical or mental
7 abuse. Your colleagues recognized that.

8 MR. MARTEL: Well Mr. Cavalluzzo
9 made that reference.

10 Right now, I don't have any exact
11 details. Is this all my colleagues, some of my
12 colleagues? They are my colleagues at what level?

13 I don't have any details.

14 MS EDWARDH: I'm talking about
15 colleagues like you who are visiting detainees who
16 are held in institutions or prisons, or in
17 confinement; that those colleagues readily
18 acknowledged that they had difficulty in
19 identifying whether someone had been tortured or
20 been the victim of abuse.

21 MR. MARTEL: Are you talking about
22 colleagues who have a lot of experience in the
23 field?

24 MR. DÉCARY: I object,
25 Mr. Commissioner.

1 Can my colleague address the
2 questions to the person, what his experience is,
3 does he agree with the statement, as opposed to
4 what his colleagues have stated? Just ask the
5 witness what he thinks about this, and that's it.

6 I mean, this is a fact-finding
7 inquiry, what this witness has to say, not his
8 opinion of what his colleagues have to say.

9 THE COMMISSIONER: Well, it is
10 cross-examination, Mr. Décary, but in any event...

11 Go ahead, please, Ms Edwardh.
12 Thank you.

13 MR. DÉCARY: But this -- and this
14 will be the last time on this one.

15 It's just that I understood that
16 on part of the examination, instead of it being
17 done by Mr. Cavalluzzo, it was done by a
18 colleague, and therefore I take it that this is in
19 the fact-finding mission. It's not truly
20 cross-examination, if I'm --

21 THE COMMISSIONER: No, let's be
22 clear about this.

23 Commission counsel is certainly
24 entitled to cross-examine, if you read the rules
25 and look at the process that has been followed in

1 other public inquiries. The object of the
2 exercise is for me to find out what happened.

3 While Commission counsel obviously
4 approaches the matter not from any particular
5 perspective or point of view, is not trying to
6 prove anything, Commission counsel nonetheless has
7 the task of assuring that I get the accurate
8 picture. If a witness conducts himself or herself
9 in such a way that Commission counsel are required
10 to ask pressing questions, then that is entirely
11 appropriate.

12 But in any event, that is perhaps
13 not directly your point.

14 The second point is that
15 Commission counsel, as I heard yesterday -- and I
16 haven't heard submissions on it -- had indicated
17 that Ms Edwardh would be covering questions in a
18 certain area. That is useful to me, if I have one
19 counsel rather than two doing it, simply so that
20 we don't waste time. As you know, I'm anxious to
21 get through this.

22 So I don't have any problem with
23 Ms Edwardh cross-examining, and the fact that a
24 subject was deferred to her should not in any way
25 limit her right to cross-examine this witness

1 thoroughly, as she sees fit, on behalf of her
2 client.

3 If you want to make further
4 submissions that she is not entitled to
5 cross-examine, I will hear you now. But why I'm
6 laying this out at length now is that it is my
7 view that she is entitled to cross-examine and it
8 would be helpful to me if her cross-examination
9 wasn't frequently interrupted so that we could get
10 through with the process in a timely way.

11 MR. DÉCARY: I appreciate that.
12 If the purpose is to contradict statements made in
13 his principal testimony, I understand it becomes a
14 form of cross-examination. But I don't believe
15 that the question was ever put to the witness as
16 to what his views are in respect to the specific
17 references that are made by my colleague.

18 So she should first ask this
19 person what his views are, and then if they are
20 not in accord with the colleague's views, then
21 there is a rise for cross-examination, but not
22 before the question is put.

23 It is a fact-finding basis what
24 the Commission is, and that is my position.

25 THE COMMISSIONER: With great

1 respect, I think you would be asking me to
2 micromanage a cross-examination, and if you were
3 cross-examining a witness I think you might be
4 concerned if the judge intervened to say, "Now, in
5 conducting your cross-examination, you should ask
6 this question first, and this next, and then do
7 that."

8 I think we can avoid a lot of this
9 delay -- we are taking time doing this, but so be
10 it -- if we just accept that Ms Edwardh is
11 entitled to cross-examine, as she would in any
12 other type of proceeding, and if you confine your
13 objections to what you might object to if she were
14 cross-examining in a commercial case that you
15 might be familiar with.

16 In any event, I'm satisfied the
17 line of questioning is appropriate.

18 MR. DÉCARY: Very well.

19 THE COMMISSIONER: Thank you,
20 Mr. Décary.

21 Please proceed, Ms Edwardh.

22 MS EDWARDH: I'm not likely to
23 know the questions to ask in a commercial case,
24 Mr. Commissioner.

25 Let me phrase it this way: It is

1 clear that the office of the Inspector General
2 makes a conclusion, or draws a conclusion, about
3 the willingness and candour of your consular
4 colleagues in acknowledging how difficult it is
5 when they meet someone in detention to determine
6 whether they have been tortured or abused
7 physically or mentally?

8 You agree that that is the
9 conclusion that the author of this report made?

10 MR. MARTEL: Yes, of course,
11 because they also say that the Consular Affairs
12 Office must review, plan, inform and give better
13 training to its officers, once this training is
14 ready, and if you would like to know a little more
15 -- my department approached me to see if I was
16 interested in taking part here in the training to
17 help them.

18 THE COMMISSIONER: Can you just
19 hold on, just for a moment, please? I'm having
20 technical difficulties.

21 --- Pause

22 THE COMMISSIONER: All right;
23 thank you.

24 MS EDWARDH: Mr. Martel, I'm going
25 to interrupt you just for a moment, sir, and ask

1 you to listen to my questions. Otherwise, you and
2 I, and probably the Commissioner, are going to get
3 very grumpy around 5 o'clock today because we will
4 not be concluded.

5 My question, I think, was quite
6 simple. Let me just phrase it: You will agree
7 that the author of this report found that your
8 colleagues were candid in acknowledging that they
9 had difficulty in identifying persons who were
10 subject to mental or physical torture when they --

11 MR. MARTEL: My answer is yes; I
12 agree because they take appropriate measures. It's
13 indicated here in the text.

14 MS EDWARDH: Thank you. And I
15 take it, sir, that this issue, of seeing detainees
16 in conditions of confinement, and trying to
17 determine whether they are the subject of physical
18 or mental abuse, is one you have had an
19 opportunity to talk about with some of your
20 colleagues over the years you have provided
21 consular services?

22 MR. MARTEL: Of course. I've had
23 the opportunity to discuss it with my desk officer
24 in Ottawa, and my colleague, because, first of
25 all, we must clearly understand that there are two

1 circumstances. In other words ---

2 MS EDWARDH: I've only asked you
3 if you have discussed it.

4 MR. MARTEL: Well, we're in
5 contact, almost on a daily basis, with our
6 colleagues in Ottawa who take care of the same
7 cases as we do. Liaison always has to be done,
8 and in terms of the content -- it's always
9 difficult. They know it.

10 MS EDWARDH: And I just want to
11 establish that yesterday you were very candid and
12 you agreed that you had no special skill, no
13 special training, and it was as difficult for you
14 as it was for your other senior colleagues?

15 MR. MARTEL: Yes. In the
16 circumstances that I experienced, in an
17 environment controlled by another State, it's even
18 more difficult. The ideal conditions, you are
19 familiar with them. I don't need to state them
20 for you. When the Vienna Convention is applied,
21 everything becomes much easier, but under
22 conditions that are controlled by a foreign
23 country, that's an enormous challenge to meet for
24 everyone.

25 MS EDWARDH: And you, I think,

1 sir, were candid enough -- all I'm asking you is
2 you are not suggesting you are any better than
3 your other senior colleagues who have professed to
4 have had this problem?

5 MR. MARTEL: I don't profess to be
6 any better than my senior colleagues.

7 MS EDWARDH: You are also, I take
8 it, keenly aware that the art of physical abuse
9 and torture includes means which are not highly
10 visible on a person's body? You know that?

11 MR. MARTEL: Yes I know that
12 already from reports from experts. Of course, with
13 modern techniques, as they refer to them now, they
14 don't leave any signs.

15 MS EDWARDH: And we also know that
16 if someone is the victim of psychological torture,
17 that there is really no way to identify that
18 without a full and open conversation with them
19 outside the scrutiny of their gaolers?

20 MR. MARTEL: Yes, we can conclude
21 this only if there are visible signs. We can't
22 really get to the bottom of it without a private
23 conversation with a client.

24 MS EDWARDH: We will come to some
25 of those visible signs later, but I just want to

1 make sure that we are talking in a framework where
2 it is understood that the signs of torture today
3 may be undetectable or difficult to detect. And
4 you agree with that?

5 MR. MARTEL: Yes, completely, and
6 experts say so.

7 MS EDWARDH: And you knew that and
8 have known that for many years, Mr. Martel?

9 MR. MARTEL: With modern
10 techniques, of course, we can now, and we could
11 then, and I knew before that there are all kinds
12 of ways to approach it, at different levels and to
13 different degrees, and we can very well torture
14 someone, and in a very short time, this person can
15 appear completely normal.

16 MS EDWARDH: I just want to review
17 some of your experience, if I could.

18 I know, sir, that you have had
19 extensive involvement in the management side of
20 consular affairs for many, many years, but I'm
21 trying, if I could, to get a better understanding
22 of how long you have actively been involved in
23 seeing persons in detention.

24 When did you start to deliver,
25 personally, services with detainees in the Middle

1 East?

2 MR. MARTEL: In the Middle East or
3 elsewhere?

4 MS EDWARDH: Sorry, anywhere?
5 Anywhere?

6 MR. MARTEL: In 1984.

7 MS EDWARDH: And in 1984, do we
8 take it, then, you began to visit detention
9 centres, prisons and jails in the areas you were
10 providing services?

11 MR. MARTEL: In 1984, I visited
12 police stations where my clients were detained.

13 MS EDWARDH: And where would you
14 have been -- I'm sorry, I've just forgotten -- in
15 1984?

16 MR. MARTEL: In the best country in
17 the Caribbean, Haiti. Haiti, Port au Prince.

18 MS EDWARDH: Did you have occasion
19 to visit prisons in Haiti outside the police
20 station?

21 MR. MARTEL: No, I didn't have the
22 opportunity. All my clients who were detained
23 were at police stations where we had to intervene
24 on the same day, and retain the services of
25 lawyers for them, etc, and then -- in general

1 tourists, and the Haitian government did not keep
2 our clients in prison as such, but rather at
3 police stations.

4 MS EDWARDH: And would it be from
5 your experience the conclusion that those
6 detainees, who were principally tourists, were
7 given somewhat privileged treatment by the Haitian
8 police forces?

9 MR. MARTEL: Of course, if we look
10 at this country's file and reputation, I must
11 admit that my clients received preferential
12 treatment. Of course.

13 MS EDWARDH: And your use of the
14 singular compels me to ask, sir: Is your
15 experience in Haiti confined to services provided
16 to one client, or one --

17 MR. MARTEL: No. I had a number of
18 clients, but ---

19 MS EDWARDH: Fine.

20 MR. MARTEL: A number, more than
21 one.

22 MS EDWARDH: And did you, when you
23 worked in West Africa, have occasion to visit
24 jails there?

25 MR. MARTEL: Not prisons, but again

1 police stations, and all my clients in this region
2 were Canadians who were working in the country but
3 had only one citizenship.

4 MS EDWARDH: So do I take it that
5 in your time in providing services in Côte
6 D'Ivoire, Senegal, Cameroon, that you have not
7 visited any prisons?

8 MR. MARTEL: No, I have never had
9 the opportunity to visit the prisons because they
10 never keep clients in prisons. They were detained
11 in police stations, and that was where I could see
12 them.

13 MS EDWARDH: And do I take it that
14 your reference to police headquarters is a
15 reference to the ordinary policing entities in
16 those nations? In other words, they were the
17 headquarters of the officers who you would see on
18 the street conducting investigations or directing
19 traffic, but it was that facility?

20 MR. MARTEL: Yes, or even a
21 neighbourhood police station. There are many in
22 the same city.

23 MS EDWARDH: Do I take it that
24 prior to Mr. Arar, that you had no occasion to
25 visit special military or security detention

1 centres or housing units?

2 MR. MARTEL: No. In general, these
3 places are not open to us, and they don't let us
4 enter.

5 MS EDWARDH: Not just generally,
6 sir, but in terms of your own personal experience.

7 MR. MARTEL: That's right.

8 MS EDWARDH: I take it you have
9 not had opportunity anywhere where you have served
10 to go to any detention centres run by the military
11 or intelligence or security?

12 MR. MARTEL: No. Prior to Mr.
13 Arar, no.

14 MS EDWARDH: Just one question
15 about your background and the awards you have
16 recently received, Mr. Martel.

17 There are two in 2005. One is the
18 Award for Consular Excellence. You commented on
19 that already.

20 MR. MARTEL: Yes.

21 MS EDWARDH: Do I take it, sir,
22 that that award was bestowed upon you in
23 recognition by the Department of your services, in
24 part, in respect of Mr. Arar?

25 MR. MARTEL: Well, we could assume

1 so, in part. I believe that there is a text
2 attached to this certificate. So, you might say in
3 part, but it was also for our consular activities
4 overall, and as I said yesterday, the Minister and
5 his assistants give this certificate to a
6 recipient, but in general, it's a collective
7 effort; it's the work of many people, both in
8 Ottawa and at the mission.

9 MS EDWARDH: I understand your
10 position that honours bestowed really belong to
11 many and not the individual, but I just want to
12 make it clear -- and we can look at the
13 certificate and what was said. But certainly that
14 award was in part bestowed upon you because of
15 your work with Mr. Arar?

16 MR. MARTEL: Yes, partially. At
17 the time, when I was awarded this certificate, I
18 don't remember anymore how many cases I had to
19 manage, but possibly in part, yes.

20 MS EDWARDH: Yes. And if people
21 want more detailed reference, the exhibit,
22 Mr. Commissioner, is P-85, volume 5, tab 37, pages
23 9 and 10.

24 I want to deal with the consular
25 mandate, if I could, Mr. Martel. We have heard a

1 great deal about it, but you of course are the
2 first person who comes to us out of the field in
3 respect of the very case the Commissioner is
4 looking into.

5 You will agree with me that with
6 respect to Canadian citizens you have a duty to
7 provide consular services?

8 MR. MARTEL: That's our primary
9 duty to all citizens.

10 MS EDWARDH: And the object of
11 those services is at least twofold: one, to
12 ensure that a Canadian citizen is not
13 discriminated against or treated worse than
14 nationals.

15 That is the first duty?

16 MR. MARTEL: Of course. In other
17 words, we must provide a Canadian who is
18 experiencing difficulties with any assistance, not
19 only to see whether he is being less well treated
20 as people from that country. We have to --
21 already, there is a complete list that we must
22 follow, first of all, to find our client, and
23 provide all the necessary assistance, which in the
24 end, would be to have the individual leave the
25 country or else, if he is staying in the country,

1 to help the individual stay in the country.

2 MS EDWARDH: Fair enough. But I
3 just want to establish the standards you look at.

4 The first and principal standard
5 is to determine that someone is not being treated
6 more severely than nationals of the state in which
7 they are held?

8 MR. MARTEL: Primarily, the first
9 thing we look at is the person's well-being. That
10 is what concerns us the most. You could interpret
11 it a little as you are referring to it now, that
12 he or she is not treated more severely than
13 others, but we are not always referring to arrests
14 and detentions. It's a small percentage of our
15 work. If I have a client who is in need of
16 assistance because he was arrested, I may have
17 four or five others who need a multitude of
18 services. We are there to obtain a large number of
19 services, not only for arrest and detention cases,
20 but for the person's well-being, the well-being of
21 our citizens is of the utmost importance.

22 MS EDWARDH: Of course. And in
23 terms of assessing their well-being and
24 determining whether you will protest their
25 treatment, one of the things you must have regard

1 to is how their own nationals are treated;
2 correct?

3 MR. MARTEL: Yes. Well, every
4 country has a reputation, which of course, changes
5 wherever we go. Every country treats its citizens
6 in its own way and in accordance with its laws.

7 MS EDWARDH: Yes. And you must
8 have regard to how they treat their own in forming
9 a decision about whether to protest.

10 MR. MARTEL: No. Already, we
11 must, regardless of how they treat their citizens,
12 if one of our citizens is in a situation in which
13 we discover that he is being mistreated, we can't
14 say, well everyone is mistreated in this country
15 and do nothing.

16 We must ensure the well-being of
17 our citizens, and should one of our citizens be
18 mistreated, and it is brought to our attention, of
19 course, we're going to protest, even if everyone
20 is mistreated in that country. This is not a
21 criterion.

22 MS EDWARDH: Of course. And,
23 Mr. Martel, what you are saying, if I can
24 translate it into the world of legal language, is
25 that if a country treats its citizens badly, that

1 doesn't get them off the hook; that you are
2 required to ensure that a Canadian citizen is
3 treated humanely and in accordance with basic
4 human rights, norms, and also minimum
5 international standards, and that's your job?

6 MR. MARTEL: Yes, that's our
7 mandate, to ensure that our citizens are well
8 treated, of course.

9 MS EDWARDH: Right. And so when
10 you are confronted with a person who is detained,
11 you have a duty, do you not, to make inquiry about
12 their detention, the circumstances of their
13 detention and the conditions of their detention?

14 MR. MARTEL: Yes, but there again,
15 everything varies and is circumstantial; in other
16 words ---

17 MS EDWARDH: I'm asking only about
18 the duty to inquire. Do you agree, sir, that you
19 have a duty to inquire --

20 MR. MARTEL: Yes. We must make an
21 effort to make enquiries.

22 MS EDWARDH: Okay. And when one
23 comes -- let's take this in a couple of steps --
24 about the duty to inquire, given your experience
25 and the experience you can draw upon, if a person

1 is in a prison, I'm going to ask you whether you
2 agree that these are the things about which you
3 would ordinarily inquire.

4 You would want to know, in order
5 to make a decision about the person's treatment,
6 what is the size of their cell? That is something
7 you would want to know, if you could?

8 MR. MARTEL: Of course, if we can
9 obtain the information.

10 MS EDWARDH: Yes. Of course. You
11 would want to know whether a person was in what we
12 criminal lawyers call general population or they
13 were held in solitary?

14 You would want to know that, would
15 you not?

16 MR. MARTEL: If that information
17 can be obtained.

18 MS EDWARDH: Because we all know
19 that if a person is in general population, they
20 are usually viewed as a less serious problem in
21 the institution?

22 MR. MARTEL: Not necessarily.

23 MS EDWARDH: Well, they could be a
24 problem themselves, causing difficulty, or it may
25 be that the institution wants to keep them away

1 from any other inmate?

2 MR. MARTEL: In some countries,
3 they -- they have a practice of putting in the
4 same room a large number of persons, whom the
5 authorities claim belong to a certain
6 organization.

7 A large number of people, from 50
8 to 100, or up to 160 people, can be put in very
9 uncomfortable conditions, in a large cell the size
10 of which varies, but may go up to 25 square metres
11 in size.

12 Therefore, we can't generalize by
13 saying that individuals are detained either alone
14 or in groups, and if they're detained in a group,
15 they're better off. Everything is circumstantial

16 MS EDWARDH: Mr. Pardy testified
17 that he generally was of the view that if a person
18 was in general population, that was a good sign.
19 I don't mean putting everyone in one cell. I just
20 mean in general population, where persons have
21 access to other inmates, to guards in the course
22 of a day for conversation -- that was a good sign.

23 Do you agree with him?

24 MR. MARTEL: Yes. I completely
25 agree that if, let's say, 10, 15 or 20 detainees

1 are in one large cell, and they can at least talk
2 among themselves, and they have daylight, etc.
3 that's already a great improvement, if you make
4 the comparison, of course.

5 MS EDWARDH: Yes. And the
6 something else is a huge improvement over solitary
7 confinement?

8 MR. MARTEL: Of course, that's the
9 worst.

10 MS EDWARDH: Thanks. Now, in
11 addition to where they are in the institution, you
12 would want to know, in order to form a view of the
13 conditions, whether they have access to members of
14 the outside community, particularly their family?

15 MR. MARTEL: Yes, that's the goal
16 because we always bear in mind, and I think that
17 we can refer to experts, that people who are
18 detained, as you say, and are both completely cut
19 off from their families and without any outside
20 contact suffer a lot, and this is absolutely
21 terrible because they believe that they have been
22 abandoned.

23 Therefore, the objective is always
24 to maintain ties between an individual and his
25 family.

1 MS EDWARDH: Yes. So when you are
2 forming your view about the conditions in which a
3 person is kept, you want to make inquiry about
4 that kind of access to persons in the outside
5 world? Can they have visits?

6 I think you have answered the
7 question.

8 One of the other questions you
9 would want to know, Mr. Martel, when you formed
10 your view about the conditions that a person was
11 held in, was did they have basic access to moving
12 around or exercise?

13 You would want to know that as
14 well?

15 MR. MARTEL: Yes, we would like to
16 know, if it's possible to find out.

17 MS EDWARDH: Yes. And then the
18 other thing you would want to know is whether the
19 person can have access to a nurse or doctor if
20 they asked for it; correct?

21 MR. MARTEL: Of course. But once
22 again, it all depends on the country that is
23 detaining a Canadian national.

24 MS EDWARDH: No, but if in coming
25 to a judgment about whether someone is being

1 treated in accordance with minimum international
2 standards, you want to know whether they have been
3 deprived of any health care. That is important?

4 MR. MARTEL: Yes, certainly. If
5 we can obtain the information, and if the
6 conditions are ideal. Obviously, we want to
7 ensure that they receive all medical care.

8 MS EDWARDH: But even if it's not
9 going to be an ideal situation, you will agree
10 with me that a basic condition is that they have
11 access if they need it to a doctor or a nurse?

12 It is not ideal. That is required
13 in accordance with basic standards of humanity?

14 MR. MARTEL: I agree with you that
15 that's the objective.

16 MS EDWARDH: The other domain you
17 are interested, of course, when you assess how a
18 person is being detained, Mr. Martel, is do they
19 have access to the essential things necessary for
20 human hygiene?

21 MR. MARTEL: Yes, that's also one
22 of the objectives that we try to obtain.

23 MS EDWARDH: Do they have access
24 to warmth when it is cold is another concern you
25 have?

1 MR. MARTEL: Yes. That's a -- of
2 course, that's cause for concern, and well, we act
3 accordingly. I recently did this for a detainee; I
4 mean, I brought a detainee some clothes.

5 MS EDWARDH: Yes. Because, of
6 course, if a person cannot keep even basically
7 warm, there is a substantial risk their health
8 will deteriorate, they will become ill, and it is
9 a big problem for being inside an institution,
10 especially --

11 MR. MARTEL: I agree with you
12 completely, and I gave you an example.

13 Recently, I had a detainee who was
14 going to be cold in the winter, and I knew that
15 authorities weren't going to provide him with
16 clothes, and we did what was needed to bring him
17 some clothes, and that was agreed to.

18 MS EDWARDH: And the clothing --
19 well, perhaps the coldest season in Damascus runs
20 from, what, December through the end of February?

21 MR. MARTEL: From December to
22 February, yes, that's cold. Cold as in -- not
23 cold like here, but can still be ---

24 MS EDWARDH: No place is as cold
25 as here except Siberia.

1 MR. MARTEL: --- It can still be,
2 the temperature can still drop outside. On the
3 inside, I don't know, but outside the temperature
4 can drop to zero at night and then go back up
5 during the day.

6 MS EDWARDH: And so if a person
7 were in a facility where there was no heat, when
8 it went down to almost zero during the night, they
9 would be very cold?

10 MR. MARTEL: Yes, we could think
11 that. Even if they were inside, if there wasn't
12 any heat, obviously it wouldn't be very warm.

13 MS EDWARDH: Correct. The other
14 major concern you would have is you would want to
15 know did the person have access to fresh, clean
16 water?

17 MR. MARTEL: Yes, whenever
18 possible, these are essential needs.

19 MS EDWARDH: They are essential to
20 sustain human life, and if a person does not have
21 it, the Government of Canada, through you, would
22 launch vigorous protests?

23 MR. MARTEL: Of course. If I were
24 to learn that someone did not have any water and
25 was suffering from dehydration, of course, we

1 would protest.

2 MS EDWARDH: Yes. Now I want to
3 then turn to another aspect of your duty, and I'm
4 going to also phrase it in the context that you
5 have a duty to inquire in respect of the nature of
6 a person's detention.

7 For example, is the person charged
8 or just detained? You want to know that; correct?

9 MR. MARTEL: Yes, of course.

10 MS EDWARDH: Because if a
11 detention is without any legal charge, you would
12 be very concerned?

13 MR. MARTEL: Yes, of course.

14 MS EDWARDH: We regard that as
15 nothing more or less than arbitrary detention;
16 correct?

17 MR. MARTEL: Yes, it's arbitrary.

18 MS EDWARDH: And if in fact a
19 person is going to be brought into the court
20 system, your mandate is to ensure, as best as you
21 can, that that person has access to legal counsel?

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

23 MS EDWARDH: And that that legal
24 counsel has the tools to ensure that they can
25 promote a fair trial of the accused person?

1 MR. MARTEL: Of course, again in
2 the context of the country.

3 MS EDWARDH: Of course. But you
4 would be very concerned and would protest if that
5 legal counsel could not see the detainee?

6 MR. MARTEL: Yes. There would be
7 a protest. An official request is made, and if it
8 was not granted, there would be a protest.

9 MS EDWARDH: You would also be
10 very concerned if that legal counsel was not given
11 any information about the allegations?

12 MR. MARTEL: Yes, that would be
13 very disturbing.

14 MS EDWARDH: And as I understand
15 the duties of consular services from Mr. Parady's
16 comment, if there was relevant and helpful
17 material in Canada, you would assist in making
18 sure that the consular officials passed on that
19 information, if it was in their possession, to
20 counsel for the defence?

21 MR. MARTEL: Well, if the counsel
22 for the defence did not have access to all the
23 files, obviously, if the Embassy could help, it
24 would have to inform us, and we would send the
25 counsel's request to the Consular Section, which

1 would probably consult the Legal Section.

2 And certainly if documents needed
3 to be sent with Ottawa's authorization, documents
4 would be sent to the counsel for the defence.

5 MS EDWARDH: And the objective, as
6 I understand it, Mr. Martel, is to ensure that
7 material or information in the hands of the
8 Department that could aid in the defence is put
9 into the hands of defence counsel --

10 MR. MARTEL: Yes.

11 MS EDWARDH: -- so that they can
12 resist the allegations of the state.

13 MR. MARTEL: In other words, the
14 counsel for the defence must be armed and equipped
15 with all the necessary documents to ensure a sound
16 defence.

17 MS EDWARDH: We will use that
18 general discussion, Mr. Martel, to frame what
19 happened with Mr. Arar, but I have a few questions
20 in an area that I am a little confused about.

21 You testified yesterday -- and I
22 think I'm correctly quoting you -- that your
23 Arabic wasn't very good; that you spoke a few
24 words, enough to count and make a transaction in
25 the marketplace.

1 Do you recall that evidence, sir?

2 MR. MARTEL: Yes, and I believe
3 that I can count to five, and I can say thank-you
4 and not much more, and Maher knows that. He is
5 aware of my proficiency in Arabic.

6 Therefore, we can't say that I can
7 follow a conversation, for instance, no. I can go
8 to the market and say I want two of these, three
9 of those, and four of those, and how much does
10 that cost, and then I don't always understand the
11 price either.

12 My vocabulary is limited to that.

13 MS EDWARDH: I see. So if we
14 accept your description, Mr. Martel, of your
15 Arabic, you will forgive me, but you don't speak
16 very much Arabic. Is that a fair --

17 MR. MARTEL: That's right.

18 MS EDWARDH: That's a fair
19 statement?

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

21 MS EDWARDH: It puzzles me because
22 Mr. Livermore testified that the Department
23 believed that you spoke very good Arabic, and
24 although they discussed trying to have someone who
25 was completely fluent enter into the Arar

1 situation in Syria, they thought that your Arabic
2 was more than sufficient for the purposes.

3 The reference to that,
4 Mr. Commissioner, is 2705 and 2706 in the
5 transcript.

6 But I take it, Mr. Martel,
7 Mr. Livermore is dead wrong?

8 MR. MARTEL: I read this part of
9 Mr. Livermore's testimony.

10 Now, you say that Mr. Livermore
11 and the Department were of the opinion that I knew
12 Arabic, well Mr. Livermore is obviously mistaken,
13 but the Department could not be mistaken because
14 it's all in our files.

15 They know that I studied Italian
16 and German, and all of that is described in my
17 record. Therefore, the Department cannot be
18 mistaken about my knowledge of the language.

19 MS EDWARDH: In any event, whether
20 Mr. Livermore and those he discussed this issue
21 with were mistaken, there is no doubt in your mind
22 that anyone who dealt with you or reviewed your
23 résumé would know that you did not speak Arabic?

24 MR. MARTEL: That's something that
25 is so simple to retrieve in the People Soft

1 computer system. In a second, they can see my
2 file, background and foreign languages. It's all
3 there.

4 And if you want me to add the
5 training in Arabic under foreign languages to
6 become really proficient, it's full-time and lasts
7 14 months.

8 MS EDWARDH: Right. And you have
9 not undertaken those studies, Mr. Martel?

10 MR. MARTEL: No, unfortunately.

11 MS EDWARDH: Nor have you had any
12 other formal training outside the Department in
13 Arabic?

14 MR. MARTEL: No.

15 MS EDWARDH: Just for the record,
16 because I do think there is some confusion, when
17 you met Mr. Arar -- and we know there were a
18 number of visits, and if you wish we can go
19 through them individually, and we will do that a
20 little later. But it is my understanding that you
21 were always accompanied by a Syrian who was an
22 interpreter?

23 MR. MARTEL: That's right. You
24 already know the name. Yes.

25 MS EDWARDH: Yes. And we also

1 know, sir, that one of the reasons -- or I believe
2 one of the reasons is that during those visits,
3 for the most part, Mr. Arar was required to speak
4 in Arabic?

5 MR. MARTEL: Although I don't have
6 the documents, and as you've said, we'll see them
7 again, but Maher and I had sessions in which we
8 were able to speak English.

9 I don't remember whether sometimes
10 he may have slipped in a few French words too, but
11 mainly English, and sometimes he was told to speak
12 Arabic because everyone in the room wanted to be
13 able to understand, except for me who couldn't
14 understand, but over time, if we look at the
15 visits, we were able to speak a little more freely
16 in English.

17 But at certain points, certainly,
18 he was told, very often, to speak Arabic.

19 MS EDWARDH: So would it be fair,
20 just so the Commissioner is alive to this, in some
21 visits more of it would be in Arabic than in other
22 visits, and in some visits you were able to
23 converse more likely in French than in English,
24 but there was always a blend?

25 MR. MARTEL: Always and a few

1 times, I was more relaxed, and then, we were given
2 permission.

3 If I started a conversation with
4 Maher in English, and he was able to answer me,
5 well, there were a few times when he was told to
6 speak Arabic, but if I was fairly insistent, I
7 would still quite often be able to have a
8 conversation with him in English.

9 MS EDWARDH: And certainly whether
10 the conversation was in English or Arabic, at all
11 times all parts of the questions and all parts of
12 the answers were recorded by Mr. Arar's gaolers?

13 MR. MARTEL: Yes. There was
14 someone who wrote down what we both said in
15 conversations. Everything was recorded in a file.
16 That's right.

17 MS EDWARDH: And it would be
18 obvious to not only you that those notes were
19 being taken, it would have been obvious to Mr.
20 Arar that everything he said was taken down and
21 reduced to writing by the Syrians?

22 MR. MARTEL: Of course. The note
23 taker was sitting close to us, and Maher and I
24 could both see him.

25 MS EDWARDH: I would like to turn

1 to your volume for a minute and ask a couple of
2 other questions in respect of a document that Mr.
3 Cavalluzzo has not covered with you.

4 I thought I had marked down the
5 exhibit. I'm sorry. Just give me a moment.

6 It is Exhibit 242, and it is the
7 portion of what I believe to be -- turn to Tab 20,
8 Mr. Martel.

9 Perhaps, sir, I could ask you, as
10 best you can, even though this document is highly
11 redacted, there is a single paragraph that is not
12 redacted which is found at page 3 of this 13-page
13 document.

14 What I want to, first of all,
15 understand, is this document, sir, the report on
16 human rights prepared by the Embassy about the
17 Government of Syria that is subsequently used by
18 the Government of Canada?

19 MR. MARTEL: Yes. This is the
20 annual report prepared by the Embassy. Yes.

21 MS EDWARDH: And, of course, you
22 being the Consul at the Embassy would have a
23 general input into this report. Is that correct,
24 Mr. Martel?

25 MR. MARTEL: No, not really. I'm

1 consulted, but often, even in the sector, this
2 report may have been prepared and finalized as is,
3 and I would be consulted to see if there were any
4 facts in it that I might be familiar with and
5 which are inaccurate, or if I had something to
6 add.

7 MS EDWARDH: So if facts are
8 included in the report that fall within your
9 direct knowledge, you would be asked to review
10 them and to verify their accuracy?

11 MR. MARTEL: Let's say that about
12 80%, these reports are prepared based on variety
13 of sources. From year to year, my colleagues
14 update the report. They have contacts that I
15 don't. They have information sources that I'm not
16 familiar with. They arrive with a final report,
17 and it's customary to ask, "Would you like to have
18 a quick look at this report? If you see something
19 in it that you are or are not familiar with or
20 that you think is inaccurate, could you let us
21 know before we send it?" That's all.

22 MS EDWARDH: Of course. And you
23 will agree with me that this report on human
24 rights and issues of concern is an important
25 report prepared by the Embassy and forwarded back

1 to the Government of Canada?

2 MR. MARTEL: Yes, it's an important
3 report. It's an annual report, and of course, it
4 summarizes the situation in the country.

5 MS EDWARDH: We understand that.

6 MR. MARTEL: Yes, I understand.

7 MS EDWARDH: And indeed, we have
8 been informed -- and I just want to understand
9 whether you agree -- that this kind of document
10 and the information contained therein is one that
11 is relevant and can affect the judgments of
12 Canadian policy-makers and Ministers because it
13 informs them about the human rights records of
14 nations, and that is a relevant factor in many
15 policy decisions; correct?

16 MR. MARTEL: Yes, this is an
17 essential document for the Department.

18 MS EDWARDH: I want to explore
19 with you, if I could, the one paragraph that
20 remains in this redacted document that relates to
21 Mr. Arar.

22 You will find that at page 3 and
23 it is paragraph 7, and it says as follows:

24 Allegations of torture and
25 intimidation of detainees by

1 police and security services
2 persist.

3 So might we take it, sir, that
4 when this report was authorized, the language used
5 here of "persist" indicates that there have been
6 other observations over the years of torture and
7 intimidation of detainees by the security service?
8 That didn't surprise you?

9 MR. MARTEL: No, it doesn't
10 surprise me. My colleague who prepared this
11 report certainly has information to the effect
12 that this is what goes on.

13 MS EDWARDH: Yes. And you
14 accepted that?

15 MR. MARTEL: Yes. I didn't make
16 any comments to her about that.

17 MS EDWARDH: Then it goes on:
18 Syria has been the target of
19 much international criticism
20 and pressure due to claims by
21 Canadian Maher Arar that he
22 was tortured during his
23 almost 11-month detention
24 here. Arar was detained by
25 U.S. authorities in late 2002

1 and deported to Syria, via
2 Jordan. According to
3 statements made since his
4 release -- -

5 We underline that.

6 ... since his release in
7 October of this year, Arar
8 was kept in an unlit
9 'coffin-sized' cell, 3 feet
10 wide, 6 feet long, and 7 feet
11 high. While the Embassy saw
12 no evidence of physical
13 torture during meetings with
14 him, Arar did tell an Embassy
15 official following his
16 release that he had a
17 difficult first two weeks in
18 Syrian custody while he was
19 being interrogated. He told
20 the Embassy that he had been
21 mistreated during that period
22 and that after that he had
23 been left alone. Since his
24 release, Arar has told the
25 press that prison guards

1 repeatedly beat him with a
2 2-inch thick electric cable
3 and finally forced him to
4 sign a confession prior to
5 his release. He has
6 announced plans to sue both
7 the U.S. and Syrian
8 governments.

9 I just want to make the
10 observation, sir, that that is very, very similar
11 to the remarks attributed to you on February 8th,
12 2004, but I want to just dissect some of it, if I
13 could.

14 Certainly the author of this
15 document is wrong when they say:

16 According to statements made
17 since his release in October
18 of this year, Arar was kept
19 in an unlit 'coffin-sized'
20 cell 3 feet wide, 6 feet
21 long, and 7 feet high.

22 That is incorrect, isn't it?

23 Mr. Arar told you, before he was
24 released, that he was kept in a cell 3 by 6 by 7.
25 We've already canvassed that at length yesterday.

1 MR. MARTEL: Yes. He said that on
2 August 14, I believe, "My cell is very small; it
3 measures three feet by six feet by seven feet."
4 That's right, but he didn't tell me ---

5 MS EDWARDH: Correct, correct.

6 MR. MARTEL: --- "Unlit."

7 MS EDWARDH: Fair enough. But it
8 is wrong to say, I'm going to suggest to you, it
9 is clearly wrong to say that the statement about
10 his cell size was made only after his release.
11 It's incorrect, because he made it to you August
12 the 14th.

13 MR. MARTEL: Yes, that's right. So
14 my colleague must change this text.

15 MS EDWARDH: Yes. So when you
16 read -- yes. I take it no steps have been made,
17 to your knowledge, to change this document up
18 until today's date?

19 MR. MARTEL: No. To my knowledge -
20 - Afterwards, I discussed some points in this
21 report with my colleagues -- they may have been
22 redacted -- and they said, "Fine, in the next
23 report, we'll take this into account." But not on
24 this point; no, a correction wasn't made, as far
25 as I know.

1 MS EDWARDH: I see. But you have
2 confirmation they were going to correct it in the
3 2004 report.

4 MR. MARTEL: Not necessarily this
5 part, but there are some texts that have been
6 redacted where it says -- I think that we are
7 authorized to say it ---.

8 MS EDWARDH: All right.

9 MR. MARTEL: --- That, according to
10 some information sources, all the detainees
11 claimed one thing or another, and "all the
12 detainees" could lead us to believe that the
13 detainees are my clients, and this wasn't the
14 case.

15 MS EDWARDH: So if I understand
16 you correctly, Mr. Martel, this paragraph was not
17 corrected in respect of the statement that Mr.
18 Arar only described his cell after his release.
19 It has not been corrected, to the best of your
20 knowledge.

21 MR. MARTEL: As far as I know, this
22 was not corrected.

23 MS EDWARDH: You also have read
24 with me that Mr. Arar is supposed to have said;
25 that he was beaten repeatedly with this 2-inch

1 cable. And the suggestion here is that his
2 statements to the press are different than the one
3 he made that is reflected here.

4 Do you see that? You say -- or
5 the document says,

6 ... Arar did tell an Embassy
7 official following his
8 release that he had a
9 difficult first two weeks in
10 Syrian custody while he was
11 being interrogated.

12 And I take it, sir, that refers to
13 his conversation, Mr. Arar's conversation, with
14 you, which we now know you reported to your
15 colleagues on October 7th, where he indicated that
16 he had been beaten during interrogation.

17 MR. MARTEL: No. He told me that
18 he had had problems in the first two weeks, and
19 when I had my meeting in Ottawa, I noted that he'd
20 told me that in the plane that, in the first two
21 weeks, he had been hit on a few occasions. I said
22 it in Ottawa. There were four or five people who
23 made a note of it. It was said, and then I didn't
24 put it in a later report. Yes, you're right that's
25 what he told me in the plane.

1 MS EDWARDH: Right. And here
2 again there is at least a statement that he had
3 difficulty in the first two weeks in Syrian
4 custody during interrogation that is set out here?

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

6 MS EDWARDH: And that is of course
7 true, and the difficulty we now know from the
8 October 7th note is he had been beaten.

9 MR. MARTEL: Yes, that is what he
10 meant, I imagine, yes. --

11 MS EDWARDH: Thank you.

12 MR. MARTEL: --- that he was hit
13 from time to time.

14 MS EDWARDH: The last sentence is
15 one I want to ask you about:

16 Since his release, Arar told
17 the press that prison guards
18 repeatedly beat him with a
19 2-inch thick electric cable
20 and finally forced him to
21 sign a confession prior to
22 his release.

23 Do you see that?

24 MR. MARTEL: Yes, I see it.

25 MS EDWARDH: I draw from that the

1 suggestion that the press -- that you accept or
2 the Government accepts or the author of this
3 report accepts that Mr. Arar has made statements
4 that he was beaten elsewhere and longer than the
5 two weeks.

6 MR. MARTEL: Those are -- my
7 colleague has her information source, I think,
8 based on public documents. Therefore, she is the
9 one who said, "according to the press" or "what
10 Mr. Arar told the press". That's what she told us
11 in the message.

12 MS EDWARDH: And if I were to
13 suggest to you, sir, that nowhere is there a clear
14 statement that can be directly connected to Mr.
15 Arar, either through watching him on television or
16 listening to a tape, where he has ever suggested
17 he was beaten throughout the 10 months of his
18 detention, nowhere has he ever said that, would
19 you agree with me?

20 Nothing that you have ever seen
21 that is a reliable report from his mouth, a
22 television interview, a radio interview, a
23 transcript of what he said?

24 MR. MARTEL: No. No, I have never
25 seen what he said in its entirety. Nor have I

1 seen all the articles in the press, and there have
2 been quite a number of them. So if you are asking
3 me today what was said in the press ---

4 MS EDWARDH: But you've also --

5 MR. MARTEL: --- In complete
6 honesty, I can't answer you.

7 MS EDWARDH: Okay. I appreciate
8 you haven't read anything, but I'm going to put to
9 you this question: that you have not seen any
10 transcript or any recording associated with Mr.
11 Arar describing beatings that went on throughout
12 his detention for 10 months and 10 days? He never
13 said that?

14 MR. MARTEL: No, I didn't see that.

15 MS EDWARDH: Thank you.

16 MR. MARTEL: I didn't see that, no.

17 THE COMMISSIONER: Is this a good
18 time to have the morning break?

19 MS EDWARDH: Perfect. Thank you
20 very much, Mr. Commissioner.

21 THE COMMISSIONER: We will rise
22 for 15 minutes.

23 THE REGISTRAR: Please stand.

24 --- Upon recessing at 10:54 a.m. /

25 Suspension à 10 h 54

1 --- Upon resuming at 11:19 a.m. /

2 Reprise à 11 h 19

3 THE REGISTRAR: Please be seated.

4 THE COMMISSIONER: I apologize for
5 the delay. I got tied up on the phone.

6 MS EDWARDH: Mr. Commissioner, we
7 have now obtained the relevant documents and
8 information that really invite Mr. Cavalluzzo to
9 ask questions that he wishes to ask, and I am
10 completely content to defer to him at this moment,
11 because I'm going there next so ...

12 THE COMMISSIONER: Okay. That's
13 great.

14 Does that make sense?

15 MR. CAVALLUZZO: That's fine.

16 EXAMINATION

17 MR. CAVALLUZZO: I wonder if the
18 witness might have Exhibit P-243 in front of him?

19 THE COMMISSIONER: 243?

20 MR. CAVALLUZZO: Right. Exhibit
21 243, once again, is the minutes or the notes of a
22 Canadian official relating what he reports
23 Mr. Martel told him about Mr. Arar. And
24 yesterday, towards the end of the hearing for the
25 day, I asked Mr. Martel some questions about

1 paragraph 1. In particular, I asked Mr. Martel
2 about the fourth line down:

3 Martel believed that his
4 information received from
5 Arar was likely more accurate
6 as it was fresher and it was
7 not tainted by the spectre of
8 big money and lawsuits.
9 Martel went as far as calling
10 Arar a liar, and that if he
11 was asked to attend an
12 inquiry, he would gladly tell
13 about the inconsistencies and
14 irregularities relating to
15 Arar.

16 In respect of questions dealing
17 with the statement that Mr. Martel called Mr. Arar
18 a liar, I gave Mr. Martel the opportunity to
19 respond to that, and his statement was that he had
20 the lawsuit claim sitting on his desk, and that
21 what he was referring to is that the statements in
22 the claim, particularly that he didn't visit
23 Mr. Arar enough -- I believe that was the fact --
24 was a big lie. And once again he stated that he
25 had the claim for the lawsuit on his desk.

1 After the hearing last night, I
2 went back to my office to get the claim, and the
3 claim, both in the Superior Court against the
4 Government of Canada, including Mr. Martel, and in
5 the Federal Court of Canada, against the
6 Government and Mr. Martel, is dated April 2nd of
7 2004, which of course is two months after February
8 the 8th of 2004 when this conversation took place.

9 So I'm putting it to you,
10 Mr. Martel, that it is very clear that you did not
11 have any claim by Mr. Arar against the Government
12 of Canada, including yourself, when you had this
13 conversation with this Canadian official on
14 February the 8th, 2004.

15 Isn't that correct?

16 MR. MARTEL: When I had my
17 conversation with my colleague, the date may not
18 have been correct, but on my desk there was this
19 Federal Court lawsuit. Yes, it was on my desk.

20 And it was clearly indicated in
21 the lawsuit that I had -- I hadn't had -- I had
22 been too busy to see my client more often. And
23 that was on my desk.

24 Now -- now if there are
25 conflicting dates, I mean, there may be a

1 difference in the date on which I saw my -- this
2 official, but definitely, and I'm certain of it,
3 the document -- the document was on my desk.

4 There's no doubt.

5 MR. CAVALLUZZO: If the
6 conversation took place on February the 8th
7 of 2004, which is the date that this Canadian
8 official testified to under oath, and his report
9 indicates that, then the Federal Court claim could
10 not have been on your desk when you spoke to him.

11 MR. MARTEL: So the question that
12 you're asking me is, "Was the lawsuit on the
13 desk?" The answer is yes.

14 Now, is the date that my colleague
15 indicated that he had this meeting with me, is it
16 correct? That's another thing.

17 I'm telling you that when I saw my
18 colleague, he had a conversation with me, the
19 lawsuit was on my desk, and specifically said that
20 -- and it was my disappointment that I expressed
21 yesterday ---

22 The lawsuit said that I was too --
23 I'd been too busy to see my client more often,
24 while in fact there was a slight nuance.

25 The Syrians had told me that they

1 were too busy to accommodate me more often. And
2 that's all. That's the truth.

3 MR. CAVALLUZZO: Do you recall
4 that this meeting -- that there was one meeting at
5 which you discussed both Mr. Arar and
6 Mr. Nureddin?

7 MR. MARTEL: No, I don't recall. I
8 believe that I had two meetings in fact with my
9 colleague, but -- but now that's a long time ago,
10 and I honestly don't recall.

11 I remember ---

12 MR. CAVALLUZZO: It is not ancient
13 history to your colleague because he has notes of
14 the meeting, and he has testified that this
15 meeting took place on February the 8th of 2004,
16 and -- listen to the question -- and he also
17 referred to discussing Mr. Nureddin's situation,
18 right?

19 MR. MARTEL: Possibly. I'm telling
20 you that when I saw my colleague and discussed the
21 issue that I was too busy, I had the lawsuit on my
22 desk.

23 Was it a lawsuit or a document --
24 I don't know -- a draft?

25 But I had it on my desk. There's

1 no doubt about that.

2 MR. CAVALLUZZO: Do you recall
3 when Mr. Nureddin was released, because this
4 meeting with the Canadian official was shortly
5 before Mr. Nureddin's release? Do you recall when
6 he was released?

7 MR. MARTEL: He was released in
8 2004, perhaps in January-February, around then.

9 MR. CAVALLUZZO: In January of
10 2004 or February of 2004. The meeting that this
11 official talked about was around the time of
12 Mr. Nureddin's release, which was in late January
13 or early February of 2004.

14 I'm putting it to you, Mr. Martel,
15 that what you testified to yesterday was a
16 rationalization of the statements you made about
17 Mr. Arar using information that you obtained after
18 this meeting and after those statements. I'm
19 putting it to you that that is what in fact
20 happened.

21 MR. MARTEL: What I can tell you,
22 and in all honesty, when I discussed the issue
23 that I was too busy, I discussed it based on a
24 document that was on my desk.

25 There is no doubt about that.

1 There were -- there were
2 accusations made against me in this document, not
3 only against me, against other people as well, and
4 the dates may vary, but that's when it happened.

5 MR. CAVALLUZZO: And I assume that
6 this document that you are referring to, that was
7 on your desk, that you would have kept that
8 document and kept it as part of your file?

9 MR. MARTEL: I don't know where
10 this document is because afterwards, I believe,
11 there was a change in procedure, and it was
12 withdrawn, and the case was transferred to the
13 provincial level, I think.

14 MR. CAVALLUZZO: Right. But what
15 I'm suggesting is that if you had a document on
16 your desk which was a claim that was suing you,
17 that you would have kept that document and it
18 would be part of your file?

19 MR. MARTEL: Possibly. It stayed on
20 my desk ---

21 MR. CAVALLUZZO: Possibly?

22 MR. MARTEL: Yes.

23 MR. CAVALLUZZO: If someone was
24 suing me, I would not throw the document away.

25 MR. MARTEL: No, I did not destroy

1 it. Certainly not.

2 MR. CAVALLUZZO: Well, is it part
3 of your file?

4 MR. MARTEL: Frankly, I really
5 don't know where it is because later there was a
6 change.

7 MR. CAVALLUZZO: You don't know
8 where it is?

9 MR. MARTEL: The counsel for the
10 Department told me that there had been a change.
11 There was another lawsuit now.

12 MR. CAVALLUZZO: Okay. But what
13 I'm going to give you the opportunity to do --
14 this is a fact-finding process, Mr. Martel. I'm
15 going to give you the opportunity to have you, the
16 Government, or whomever you want at your disposal
17 to find that document, and when you find that
18 document, I would ask you to produce it to this
19 Commission. Okay?

20 MR. MARTEL: Fine.

21 MR. CAVALLUZZO: Thank you.

22 I have no further questions.

23 THE COMMISSIONER: Thank you.

24 Ms Edwardh?

25 EXAMINATION

1 MS EDWARDH: Mr. Martel, we all
2 have a copy of the Federal Court claim. And that
3 claim is dated when filed in the Registry and then
4 served upon people, April the 2nd, 2004. That in
5 effect means, Mr. Martel, that you could not -- I
6 would like you to note that -- you could not have
7 had this document drawn by Julian Falconer, a
8 lawyer in Toronto, on your desk in early February
9 of 2004, because it didn't exist.

10 So if you accept that for a moment
11 as a fact, then the only conclusion that the
12 Commissioner can come to is that in seeking some
13 explanation for the language you used with your
14 colleague that seemed less damning of Mr. Arar,
15 you opted to kind of blame it on the lawsuit which
16 offended you when it was filed.

17 But I'm going to ask you to assume
18 that you didn't have the lawsuit.

19 MR. MARTEL: I repeat when I had
20 the meeting, this conversation, with my colleague,
21 this lawsuit was on my desk.

22 And that's a fact that I will
23 never forget. The lawsuit was on my desk.

24 There may be a discrepancy in the
25 meeting date, perhaps, but when I discussed the

1 case with my colleague, the lawsuit was in front
2 of me.

3 MS EDWARDH: I want to just draw
4 to your attention that neither the Ontario
5 Superior Court claim or the Federal Court claim,
6 would have possibly come on to your desk before
7 April 2004.

8 So I take it your position is --
9 and I will have to address the issue with the
10 Commissioner about hearing from your colleague.
11 But your position is your colleague is just dead
12 wrong?

13 MR. MARTEL: Well, perhaps -- he
14 had the wrong dates. I don't know.

15 But I'm telling you that the
16 lawsuit was on my desk, and I will continue to
17 repeat; at that time, it was on my desk.

18 There's no doubt. No doubt at all.
19 The lawsuit was on my desk, and I remember very,
20 very clearly. It's unequivocal.

21 MS EDWARDH: And if it wasn't on
22 your desk, I'm going to suggest to you,
23 Mr. Martel, that this is another significant
24 mistake made by you, like the kind of mistake made
25 when you didn't tell the Ottawa headquarters on

1 February 14th that Mr. Arar was in a cell 3 by 6
2 by 7.

3 If in fact it didn't exist, then
4 it is a significant error on your part. Correct?

5 MR. MARTEL: But I have admitted my
6 errors, Madam, previously, and if that was an
7 error, then I would also say so too.

8 The lawsuit was on my desk. There
9 is no doubt -- There is no doubt. The lawsuit was
10 on my desk.

11 I can't tell you that this is a
12 mistake. It was there.

13 MS EDWARDH: And I take it that
14 your colleague, who was in your office having this
15 discussion with you, would have seen the claim as
16 well?

17 MR. MARTEL: He saw it on my desk.
18 That doesn't mean that he saw the content.

19 MS EDWARDH: He saw it?

20 MR. MARTEL: He saw it on my desk.
21 Yes, of course.

22 MS EDWARDH: He saw it?

23 MR. MARTEL: Yes, I -- I directed
24 his attention to this lawsuit.

25 MS EDWARDH: And he would, of

1 course, be in a position to confirm your evidence
2 that you drew his attention to the claim, and that
3 you did not just say that Mr. Arar was a liar but
4 that you were really referring to the lawsuit?

5 MR. MARTEL: That's right.

6 MS EDWARDH: And he would confirm
7 that?

8 MR. MARTEL: He should in any case.

9 MS EDWARDH: I'm going to suggest
10 to you, Mr. Martel, that the only thing you had
11 seen was Mr. Arar's chronology. That had been
12 given to you and brought to your attention?

13 MR. MARTEL: No.

14 The lawsuit was in front of me,
15 and besides, it was this document that fuelled our
16 conversation because in this document -- I repeat
17 again, there were two or three points, but the
18 point that I remember, the main point, was that
19 the lawsuit indicated that I didn't have enough
20 time to see my client more often.

21 And I have always remembered it.
22 And it was at that period that my colleague was in
23 my office.

24 There's no doubt.

25 MS EDWARDH: And indeed, though,

1 I'm going to suggest to you that once you read the
2 chronology, you were already angry?

3 MR. MARTEL: I said that I was
4 disappointed by the lawsuit. I have never said the
5 chronology.

6 Mr. Arar knows better than I do
7 everything that has happened in his life. He says
8 it, and I have no reason to doubt ---

9 MS EDWARDH: Of course.

10 MR. MARTEL: --- what he said.

11 MS EDWARDH: But he also talks in
12 the chronology about his meeting with you on
13 August the 14th.

14 MR. MARTEL: Yes, he spoke of it.
15 Yes.

16 MS EDWARDH: Yes. And he also
17 spoke publicly, as did other people who were
18 concerned about his situation, and you got those
19 press reports. Correct?

20 MR. MARTEL: Yes, there -- yes,
21 there -- we were cc'd on the press report.

22 MS EDWARDH: And isn't it true,
23 Mr. Martel, that really you felt that Mr. Arar had
24 gotten the best consular services that any
25 Canadian could have ever been offered and that his

1 criticism of the Department was unfair and an
2 outrage?

3 MR. MARTEL: I said that this case,
4 which was an exceptional case -- he was granted,
5 to my knowledge, more time, more effort, and not
6 only by us, but there were a lot of people who
7 were involved in his case, including his wife,
8 human rights groups, the media, including the
9 Prime Minister and the Minister.

10 There were a lot of people who got
11 involved in this case. That's why I'm saying that
12 in this case, he was given attention, and we put a
13 lot of time into this exceptional case.

14 I'll tell you why it was
15 exceptional. Because it was a deportation case.
16 The other cases were different.

17 MS EDWARDH: And he should be
18 grateful.

19 MR. MARTEL: No, that's not ---

20 MS EDWARDH: Isn't that how you
21 felt? He should be grateful, Mr. Martel, to
22 you --

23 MR. MARTEL: That's not what I
24 said. I didn't say -- He didn't have to thank us.

25 He has -- he was a client, a

1 consular client, and he was entitled to all the
2 services he was entitled to under our consular
3 regulations.

4 And in addition there's more. I
5 got to know him better and later, and perhaps
6 there was actually an injustice committed against
7 him.

8 And in the plane, I discussed
9 legal issues with him, and this was not at his
10 request.

11 MS EDWARDH: We will come to your
12 conversation with him a little later.

13 But you were angry, or you were
14 annoyed at the suggestion that you and the
15 Government of Canada had not provided full
16 services to him in the best traditions of consular
17 affairs?

18 MR. MARTEL: No.

19 I wasn't angry. I was
20 disappointed. And I found it -- I found that we
21 were now and that the Department was criticized
22 for not having done enough for my client.

23 And then I said, "under the
24 circumstances that we found ourselves in, imposed
25 by the country, Syria, I think that we did the

1 maximum and beyond. Never had we devoted so much
2 time collectively to a single case, to my
3 knowledge."

4 That's what I said, and that's
5 all.

6 MS EDWARDH: Well, I'm going to
7 suggest to you, sir, that you also said to your
8 colleague on this occasion -- and if you want to
9 turn to paragraph 6 of this memorandum, page 3:

10 Martel said he was
11 annoyed --"

12 Do you see that, paragraph 6?

13 Martel said he was annoyed by
14 suggestions that Canada did
15 not do enough to release
16 Arar. Martel stated that in
17 his many years of consular
18 service, Arar received more
19 attention, including input
20 from the Prime Minister,
21 visits by Senators and other
22 senior DFAIT officials, than
23 any other consular case.

24 So you were annoyed. That is what
25 you told your colleague in February.

1 MR. MARTEL: That's what my
2 colleague says, but that doesn't mean that -- that
3 I was annoyed. I think we have to use the right
4 word. But I was still disappointed. I have to
5 admit it.

6 MS EDWARDH: I see. So you were
7 disappointed, and your colleague took from that
8 that you were also annoyed by the suggestion there
9 was any deficiency in service?

10 MR. MARTEL: Those are his words.
11 They aren't mine.

12 But I was disappointed.

13 MS EDWARDH: I see. And you told
14 your colleague that on the occasion of your --

15 MR. MARTEL: I said, "I'm
16 disappointed."

17 MS EDWARDH: Excuse me. You told
18 your colleague that on the occasion of your
19 conversation with him?

20 MR. MARTEL: That's right.

21 MS EDWARDH: Let me turn now,
22 Mr. Martel, to the provision of services and what
23 was done.

24 We have agreed -- we may come back
25 to this document a little later. We have agreed

1 that you knew, and the whole Department knew, that
2 ensuring access to a lawyer was critical, of
3 critical importance?

4 MR. MARTEL: Yes, certainly. For
5 every detainee.

6 MS EDWARDH: Yes. Now, could I
7 ask you, sir, to look at volume 2 of the DFAIT
8 materials at tab 163.

9 Who is Anwar Arar?

10 MR. MARTEL: Tab 263?

11 MS EDWARDH: Volume 2, tab 163.

12 This is a case note entered, sir,
13 by the name of a person called Sutton? Do you see
14 that?

15 MR. MARTEL: Yes, I see.

16 MS EDWARDH: And it is dated the
17 2nd of November, 2002. Correct?

18 MR. MARTEL: Correct.

19 MS EDWARDH: It is to you, among
20 others?

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

22 MS EDWARDH: And charged within
23 your mandate is the fulfilling of access to legal
24 counsel, and so you get this message:

25 "Mr. Arar (redacted) calling

1 to provide name and number of
2 a lawyer in Damascus.
3 Mr. Anwar Arar (redaction)
4 Apparently consular officials
5 are visiting subject tomorrow
6 and if they could please call
7 the lawyer as he would like
8 to go with them."

9 Do you see that?

10 MR. MARTEL: Yes, I see.

11 MS EDWARDH: And this was sent to
12 Damascus, to you for action; correct?

13 MR. MARTEL: Yes, among other
14 things. Yes.

15 MS EDWARDH: This specifically,
16 sir, was sent to you for action; correct?

17 MR. MARTEL: Mm-hmm.

18 MS EDWARDH: By "mm-hmm," you mean
19 "Yes"?

20 MR. MARTEL: I mean "Yes."

21 Yes. That's right.

22 MS EDWARDH:

23 "The lawyer has tried to see
24 subject but unable to find
25 him and not allowed to obtain

1 any information."

2 Now, sir when you got this message
3 I take it it was just before one of the consular
4 visits?

5 MR. MARTEL: Well, we'd have to
6 look at the document on the next consular visit.
7 We're at November 2, 2002.

8 MS EDWARDH: Yes? And do you
9 remember when the next consular visit was?

10 MR. MARTEL: No.

11 MS EDWARDH: It's November 12th.

12 MR. MARTEL: November 12th?

13 MS EDWARDH: I'm not interested --
14 we can turn to this consular visit, but I'm
15 interested in what you did between November 2nd
16 and November 12th.

17 It might help you, sir, to turn to
18 tab 166.

19 "The Consul will ask the
20 Syrian authorities, in his
21 next visit to subject, if
22 they are willing to authorize
23 the lawyer to come with him."

24 Do you see that?

25 MR. MARTEL: Yes, I see.

1 MS EDWARDH: Are you aware, sir,
2 that Anwar Arar had some familial connection to
3 Maher Arar?

4 MR. MARTEL: I believe Maher had
5 talked to me about that. I knew that there was a
6 connection on the side of -- of his father. I'm
7 not really sure.

8 MS EDWARDH: And Mr. Arar spoke to
9 you about that of course sometime when? Before,
10 in the earlier consular contact?

11 MR. MARTEL: No, no.

12 I think he told me about -- about
13 his defence when it became clear that there was to
14 be a trial. I believe that it only happened in
15 August 2003, when the authorities said, "He will
16 be judged."

17 But before then, he was detained
18 and, even if I had wanted to obtain a list of
19 lawyers for him, it would do no good. The
20 authorities didn't let me.

21 MS EDWARDH: All right. I have
22 looked, sir, and searched the documents for any
23 reference to you transmitting information to
24 Mr. Arar that a lawyer, a family lawyer, was
25 seeking to obtain access to him in November 2002,

1 and I can find nothing. I assure you there is
2 nothing in the consular notes. Nor can I find any
3 document that indicates that you or Franco
4 Pillarella, or anyone else at the Damascus
5 Embassy, made a direct request that Mr. Anwar Arar
6 would be given access to Mr. Arar.

7 Did you, sir, make a request prior
8 to November 12th to the Syrian authorities to
9 facilitate Mr. Arar's access to his family and
10 also to his counsel?

11 MR. MARTEL: If it's not included
12 in the consular notes, then I may have spoken
13 about it to my contact, but the position of the
14 Syrian authorities was that no one had access,
15 that he could not receive any phone calls, and I
16 was the only person who could visit him. This was
17 the position taken by the Syrian authorities.

18 So the question of bringing in a
19 lawyer from the outside was dismissed from the
20 outset. The Syrians did not want to discuss
21 anything else.

22 They were keeping him in
23 detention. I was the only person authorized to see
24 him until the parliamentarians could come. And no
25 one else could contact him.

1 The issue of having a lawyer was
2 out of the question as long as their -- what they
3 called their investigation was not complete.

4 MS EDWARDH: So if I understand
5 you, sir, the Syrians underlined for you that they
6 wished to hold him against or away from the entire
7 world except you?

8 MR. MARTEL: That's what they
9 said.

10 MS EDWARDH: And I also
11 understand, sir, that you took no step, by filing
12 a formal protest with the Syrian government, that
13 Mr. Arar was denied access to counsel? There was
14 no protest filed by the Government of Canada,
15 through you, through the Ambassador, or through
16 anyone else?

17 MR. MARTEL: No. We always made
18 our reports to the consular section in Canada, and
19 the instructions I received from Canada were:
20 one, we must maintain access, that was the first
21 major objective; and the second objective was to
22 obtain his release, his return to Canada.

23 The rest did not seem to be as
24 important in view of the Syrian position, which
25 was, "We're keeping him. He is with us. He is a

1 Syrian citizen. Syrian law applies. And nothing
2 else. We're doing you a big favour in letting him
3 see you." That's the message we were getting.

4 MS EDWARDH: I'm not interested,
5 sir, in the exception created for the Government
6 of Canada. I am interested in whether the
7 Government of Canada, through the Embassy, through
8 you or the Ambassador, took any formal steps to
9 protest the denial of access to counsel?

10 MR. MARTEL: No, I didn't -- I --
11 to my knowledge, we didn't -- we did not protest
12 the fact that they didn't authorize our client to
13 have a lawyer.

14 MS EDWARDH: And do I take it,
15 sir, that if you look to tab 191, the consular
16 visit on November 12th -- and all I want to do is
17 make this observation. There is no suggestion in
18 the record of this consular visit, and I'm going
19 to suggest to you as well that you never told
20 Maher Arar in front of his Syrian captors that he
21 had a family member, who was a lawyer, who had
22 been trying to seek access to him?

23 That information was never given
24 to him?

25 MR. MARTEL: Yes, I believe you're

1 right. I did not give that information to him.

2 MS EDWARDH: Don't you think that
3 information is an important thing for a detainee
4 to know so that they don't feel increasingly
5 hopeless and lost and to know that there is
6 someone else other than yourself who is seeking
7 access to him?

8 MR. MARTEL: Well, he already knew
9 that no one else could see him. The authorities
10 weren't willing.

11 What I tried to communicate to my
12 client, to give him hope, was that, yes, people
13 were interested in his case, very much so --
14 throughout Canada -- that his family was very
15 active in his case, and all that.

16 But if there's a relative who
17 lives -- even if he lives in the area, and who
18 wants to obtain access, the authorities will not
19 permit it.

20 So it's not something which -- in
21 my opinion, which merits a protest. If we protest,
22 the decision should be made at headquarters
23 because, if we protest, we will -- we risk
24 something else.

25 Now, what seems to interest the -

1 --

2 MS EDWARDH: Yes, but we have all
3 agreed, sir, that access to legal counsel falls
4 directly within your concern, and it is certainly
5 part of the mandate that consular services has to
6 do everything possible to facilitate a detainee's
7 access to counsel; right?

8 MR. MARTEL: Yes, certainly. We
9 have to try to facilitate inasmuch as the state
10 lets us do so.

11 MS EDWARDH: And while you told
12 Ottawa, and they were aware that Anwar Arar had
13 sought access, would you agree with me that there
14 was no formal discussion reflected in these notes,
15 or that you had on the telephone, that Ottawa
16 considered the benefits or risks associated with
17 making a protest over the deprivation of the right
18 to counsel?

19 MR. MARTEL: I believe that already
20 in -- well, it's my opinion. At the Consular
21 Affairs Bureau, they already knew that such a
22 request was impossible to grant.

23 So no one called for a protest. No
24 one asked us to follow up on the results of the
25 request, etc.

1 I believe that they did not treat
2 this as very important, in view of the
3 circumstances and the position adopted by the
4 Syrians.

5 That was why.

6 MS EDWARDH: I see. But you will
7 agree there is no record of any formal
8 evaluation --

9 MR. MARTEL: I don't think so. I
10 don't think that there was -- I don't remember
11 whether there was other correspondence about the
12 matter.

13 MS EDWARDH: I certainly couldn't
14 find it either.

15 Let's turn to the next area I
16 would like. We have talked about the importance
17 of familial visits, that one of the things a
18 consular official is alive to is whether or not a
19 person is getting access to family visits, because
20 everyone knows they form a crucial link between a
21 detainee and the world.

22 You agree with that?

23 MR. MARTEL: Certainly.

24 MS EDWARDH: Let's take a look at
25 tab 432, if we could? That would be in volume 5.

1 You will be pleased that these are
2 documents also entered onto the CAMANT note.

3 MR. MARTEL: That's right.

4 I believe that it's an e-mail. It
5 was pasted -- as we say -- pasted in the COSMOS
6 system, yes. CAMANT.

7 MS EDWARDH: And perhaps for the
8 benefit of everyone, you could indicate who drew
9 up this e-mail and to whom it was addressed?

10 MR. MARTEL: I don't know Odette,
11 Gaudet-Fee and JPS. It's certainly the consular
12 section.

13 Maybe it's a service -- oh, yes, I
14 see above here that it was Myra Pastyr-Lupul who
15 -- who pasted it.

16 But initially the e-mail came
17 from -- maybe from the service which -- which
18 operates 24 hours a day.

19 MS EDWARDH: You certainly got a
20 copy of this document?

21 MR. MARTEL: I got a copy. The e-
22 mail was addressed to Myra, and I was copied on
23 it.

24 So yes, I got it.

25 MS EDWARDH: Can you, for the

1 benefit of those of us who are not as fluent as we
2 ought to be in the French language, read or
3 describe in general terms what is being asked
4 here?

5 MR. MARTEL: In this message, a
6 family member wants to visit. So it says -- it
7 says ---

8 MS EDWARDH: Wants to visit who?

9 MR. MARTEL: Mr. Arar.

10 MS EDWARDH: In Syria?

11 MR. MARTEL: Yes.

12 It says, "To be able to" --

13 Do you want me to translate?

14 MS EDWARDH: Yes, that would be
15 helpful.

16 MR. MARTEL: Okay. "For the
17 purpose of visiting Mr. Arar, the Canadian embassy
18 in Damascus must send a diplomatic note to the
19 Syrian Foreign Ministry. At the moment only
20 Embassy employees -- and parliamentarians --"

21 So only employees and MPs --

22 "have been given access to

23 Mr. Arar."

24 I believe this is referring to
25 Ambassador Pillarella and Ian Shaw.

1 MS EDWARDH: So what has to
2 happen -- it is my understanding, sir, that Maher
3 Arar has a sister and a husband who are going to
4 be in Damascus, and this is in June of 2003, and
5 they are asking the assistance of the Embassy or
6 consular services to help them get access;
7 correct?

8 MR. MARTEL: That's right.

9 MS EDWARDH: And the conclusion
10 that you are faced with is in order to facilitate
11 possible access of family members, that a
12 diplomatic note ought to be sent?

13 MR. MARTEL: Yes, certainly.

14 MS EDWARDH: And to follow this
15 forward, we have another reference to this same
16 issue at tab 444 on June 13th in this volume.

17 Am I correct, sir, that -- do you
18 want to summarize this?

19 It is my understanding that the
20 nephew of Mr. Arar is writing to ask for help for
21 Maher's sister and her husband to get access?

22 MR. MARTEL: Yes. I believe that
23 what happened at the time, there were family
24 members who came and who were Syrian nationals,
25 and who of course wanted ---

1 MS EDWARDH: But they are also
2 Canadian citizens?

3 MR. MARTEL: Yes, but also -- also
4 Syrian and Canadian nationals. And who wanted to
5 visit Maher.

6 Now, the Syrian authorities took
7 the position that Syrian citizens and even dual
8 citizens and Canadians who wanted to visit would
9 have to go through immigration.

10 So we could not intervene, and at
11 that time I think, I had already lost my access --
12 a long time before. So I had not seen Maher in a
13 long time.

14 So I didn't have access, and what
15 we were being asked was, the family asked us to
16 intervene to obtain access.

17 MS EDWARDH: Yes. And can you
18 just summarize for the benefit of the
19 Commissioner?

20 Having been told that a diplomatic
21 note would have to be sent to assist in affecting
22 access, am I correct, sir, that no such note was
23 sent?

24 MR. MARTEL: No, a note was not
25 sent. First, because it was not the right way to

1 proceed.

2 After having -- my assistant
3 contacted the Department of Immigration, and they
4 said, "All citizens who have Syrian citizenship
5 must, in order to see a detainee, must deal with
6 other authorities and not Foreign Affairs."

7 And even if we had sent a note to
8 Foreign Affairs, they had not answered any of our
9 notes to date. So we would have had a family
10 waiting for permission which would never have come
11 because they weren't answering.

12 Throughout Maher's history, we did
13 not receive an answer to any of our notes.

14 MS EDWARDH: Did you assist the
15 family in approaching the Ministry of Immigration,
16 given the fact that they had this dual status, to
17 try and effect access to Mr. Arar?

18 MR. MARTEL: Yes, I must tell you
19 that, frankly, at that time I had unfortunately
20 gone on annual leave, and my assistant, the third
21 secretary, took over the file and conducted the
22 follow-up. And it was the correspondence which --
23 which then followed from Mylène Kahale and ---

24 MS EDWARDH: Can you identify for
25 us, sir, the correspondence that your assistant

1 forwarded on behalf of the family to the
2 Department of Immigration in order to assist them
3 in seeking access to Mr. Arar? I don't see it
4 here.

5 MR. MARTEL: No, I believe that
6 there was no written correspondence. No. I can't
7 find it either.

8 MS EDWARDH: Would it surprise
9 you, sir, if the family, after you left, simply
10 felt they got the message there was nothing the
11 Canadian Embassy would do?

12 MR. MARTEL: Possibly. They may
13 have gotten that impression, and then maybe they
14 weren't wrong because, considering the Syrian
15 position toward us, trying to obtain access for
16 them, practically, I tell you frankly, it was
17 unthinkable. Unthinkable in the circumstances.

18 MS EDWARDH: I see. But no
19 serious effort on their behalf was made with the
20 Ministry of Immigration to have the door slammed
21 shut. So be it? No effort was made?

22 MR. MARTEL: Well, I believe that
23 there were telephone conversations, but nothing
24 written.

25 And it was -- that was the

1 information given to my staff, according to what I
2 was told on my return.

3 MS EDWARDH: Right. There is no
4 documentary record of any telephone conversation
5 with the Syrian Ministry seeking to effect their
6 contact with Mr. Arar, and I'm going to suggest to
7 you, sir, that really what the family was told by
8 the Embassy personnel was they simply were not
9 able to assist them.

10 I think you get that if you take a
11 look at tab 457 -- I'm sorry; yes, 457. This
12 would be on page 2.

13 In effect what was told to them,
14 as recorded at the top of page 2, is you haven't
15 had access and there was nothing that you could do
16 to effect access for the family?

17 MR. MARTEL: Well, I believe that
18 it's the truth, and if the Syrians had already
19 deprived me of access some time before, how could
20 we intervene now to request access for the family?

21 It was something that was really
22 unthinkable and illogical.

23 MS EDWARDH: And do I take it that
24 the decision to not pursue this matter any further
25 was made by you in Damascus in conjunction with

1 whatever assistance Mr. Pillarella gave you, or
2 did you understand this to be a direction as well
3 that was agreed to and confirmed by Ottawa?

4 MR. MARTEL: Yes, I believe that
5 Myra was copied on that, and so my assistant gave
6 her an answer, and Myra came back encouraging me
7 to send another diplomatic note anyway and request
8 consular access, because Myra understood very well
9 that if we didn't have access, how could we obtain
10 access for the family? So it was unthinkable.

11 Foreign Affairs never answered our
12 notes. Even if we had asked, we would have
13 obtained nothing, and they were already making our
14 lives difficult. So we continued to send notes, at
15 least to obtain access, and if the authorities had
16 permitted anyone else to visit, then good, but
17 they never did. They didn't want him to have
18 telephone calls either, nothing.

19 MS EDWARDH: I'm really just
20 focusing, Mr. Martel, not on the efforts to obtain
21 consular access but the efforts to assist a
22 family.

23 If you look at the bottom of page
24 2 of this tab, tab 457, it is clear that Myra is
25 writing to Mylene, who I take it is an Embassy --

1 MR. MARTEL: She's a third
2 secretary. Third secretary to the Consul.

3 MS EDWARDH: And she quite
4 candidly is saying: "Listen, we're getting
5 fallout from the failure to take steps to help the
6 family. Please explain what is going on." Right?

7 That in effect is what she is
8 saying at the bottom of this page.

9 MR. MARTEL: Yes, I see.

10 MS EDWARDH: And you can agree
11 with me, sir, as a simple fact, given what you
12 have said, that there was never any step taken by
13 the Government of Canada to protest denial of
14 access to members of the family?

15 MR. MARTEL: No, we did not
16 receive instructions from anyone to the effect
17 that we had to protest.

18 MS EDWARDH: Right. And yet we
19 agree that trying to provide a detainee with
20 access to members of the family is a matter of
21 importance in the provision of consular services?

22 MR. MARTEL: It's important,
23 certainly, and we should try to do so inasmuch as
24 the country will authorize us.

25 MS EDWARDH: But you never asked?

1 MR. MARTEL: They had already
2 consulted the Department of Immigration, which
3 answered that since the citizens who were making
4 the request also had Syrian citizenship, they had
5 to go through another department. So it was simply
6 a formality, like for everyone.

7 Like now, I have a detainee whose
8 family has access, and the family does not go
9 through us to get access. The family must go
10 through another department. The Embassy is not
11 authorized to intervene.

12 MS EDWARDH: No. But, sir, there
13 are, I am sure, occasions when the Embassy assists
14 Canadian citizens if they are being given
15 information by other nations, which is, you know,
16 you have to go somewhere else. Certainly the
17 concern of the Embassy as expressed is a matter
18 that a foreign state may make note of.

19 But it wasn't registered in this
20 case?

21 MR. MARTEL: No, it was not done.
22 Quite frankly, to try to obtain access for the
23 family, we would have had to go to far, far higher
24 levels, and there again, as our access had been
25 taken away from us a long time before, we believed

1 that it was unthinkable to try to get access for
2 the family when I could not see him.

3 MS EDWARDH: The next thing I want
4 to discuss with you, Mr. Martel, is the issue of
5 legal assistance. We have covered the early
6 efforts of the family to provide Mr. Arar with a
7 lawyer, and then there is a period of time where
8 no one is looking in any way, shape, or form to
9 connect Mr. Arar to legal counsel.

10 It is just not an issue on the
11 table; fair enough?

12 MR. MARTEL: Yes, that's fair.

13 MS EDWARDH: And it doesn't become
14 an issue until the Department receives some
15 information that Mr. Arar may face charges?

16 MR. MARTEL: That's right.

17 MS EDWARDH: The first clear
18 statement that he is going to be faced with
19 charges seems to be made August 14th in a
20 statement to the Ambassador.

21 Can I ask you to look at tab 507.

22 And you see here that this is sent
23 from the Head of Mission. Is that correct?

24 MR. MARTEL: We'd have to see who
25 signed it, but I think that was redacted.

1 MS EDWARDH: Yes, it's redacted.
2 It is a matter of national security.

3 MR. MARTEL: But it wasn't me.

4 MS EDWARDH: So what would be
5 clear, though, is that on the morning, there is a
6 meeting between General Khalil and the Ambassador.
7 Is that correct?

8 MR. MARTEL: Yes, that's what it
9 says here.

10 MS EDWARDH: And this is of course
11 the morning where you get information that they
12 are going to let you back in?

13 MR. MARTEL: That's right, yes.

14 MR. CAVALLUZZO: Excuse me. If I
15 can just interrupt my friend, in respect of who
16 signed this, this tab has been replaced by Exhibit
17 134, tab 13, which is the Pillarella book, and it
18 is highly -- the signature is Mr. Pillarella.

19 MS EDWARDH: Perhaps it would be
20 of assistance to the witness, or only fair to the
21 witness, if you would give him the Exhibit 134,
22 tab 13.

23 Mr. Cavalluzzo, this is dated
24 January the 9th. Helpful it may not be --

25 MR. MARTEL: In any case, it was

1 Pillarella who signed it.

2 MR. CAVALLUZZO: It is 132, I'm
3 sorry; 132, tab 13.

4 MS EDWARDH: Just be patient,
5 Mr. Martel.

6 THE COMMISSIONER: It's Book 132?

7 MR. CAVALLUZZO: Yes. Well,
8 P-132, tab 13.

9 THE COMMISSIONER: Yes.

10 MS EDWARDH: This looks more
11 familiar.

12 Thank you, Mr. Cavalluzzo.

13 And, unfortunately, it is not
14 signed --

15 MR. MARTEL: It was Pillarella who
16 signed it.

17 MS EDWARDH: You think it is
18 Pillarella.

19 MR. MARTEL: I'm sure of it.

20 MS EDWARDS: Maybe you shouldn't
21 say anything. Maybe the Government of Canada has
22 an objection.

23 There is no objection. So we will
24 proceed on the basis that it is Mr. Pillarella,
25 the Ambassador, who is forwarding an account of

1 his meeting with General Khalil.

2 And we hear that Mr. Arar will be
3 put on trial within a week, one week, and you are
4 to be given access.

5 Paragraph 2 says you are going to
6 be given access this very day, and paragraph 3
7 says he is going to be going on trial.

8 Do you see that?

9 MR. MARTEL: Yes, I see it. Yes.

10 MS EDWARDH: And I take it,
11 Mr. Martel, that on August 14th this information
12 would have been provided to you by the Ambassador
13 so you would know that you were going to have that
14 consular visit and that Mr. Arar was likely facing
15 charges?

16 MR. MARTEL: Yes, that's right.
17 Yes.

18 MS EDWARDH: So would you agree
19 with me, sir, that up until this meeting, which is
20 dated August 14th, there were no steps taken by
21 the Embassy to try and secure legal counsel for
22 Mr. Arar pending his trial, if there was going to
23 be a trial. This is the first time you know and
24 it is the first time that lawyers really come into
25 play?

1 MR. MARTEL: Yes, that's right,
2 because, normally, the usual procedure with
3 clients is that we bring them a list of lawyers,
4 and then they have to choose, not we, they have to
5 choose their defence. We give them lists which
6 were published at the Embassy. These are lists of
7 reputable lawyers, and then the client must choose
8 his defence.

9 Of course, when it became known,
10 or when the General told Ambassador Pillarella
11 that Maher Arar was to go to trial, it was clear
12 that, at that time, we had to look into the matter
13 of his defence. That's for sure.

14 MS EDWARDH: Yes. All I'm
15 establishing, Mr. Martel, is that up until this
16 date, no steps were taken to provide Mr. Arar with
17 a list or to take steps to forward his defence in
18 respect of any possible charge that could arise in
19 Syria?

20 MR. MARTEL: No. Quite frankly,
21 we did not give him a list, first because we did
22 not know where the file -- how the file was
23 advancing. Then, I don't know if I would even have
24 been given an opportunity to provide him with a
25 list, and then, if we had given him a list, what

1 would he have done with it? He couldn't contact
2 anyone outside.

3 MS EDWARDH: Is it your view,
4 based on legal advice received by the Embassy,
5 that should Mr. Arar have been able to retain a
6 highly regarded lawyer in Damascus, Syria, to
7 challenge where he was, should he be able to do
8 that, that that was of no use?

9 Did you get legal advice on that
10 question, whether there was anything a lawyer
11 could do while Mr. Arar languished?

12 MR. MARTEL: During his detention,
13 you mean? I didn't quite understand, I'm sorry.

14 MS EDWARDH: Between October 22nd
15 and August the 14th, you will agree with me that
16 Mr. Arar languished in detention without charge.

17 Is that correct?

18 MR. MARTEL: That's right.

19 MS EDWARDH: My question, very
20 simply, when you say "Why bother giving him a
21 list", is: Had the Embassy taken steps to obtain
22 legal advice on the issue of whether there was
23 anything a lawyer could do in Damascus between
24 October 22nd and December 14th? Was there legal
25 advice that there was nothing to be done?

1 MR. MARTEL: Yes, in effect. We
2 retain the services of a lawyer at the Embassy and
3 I am -- others are in regular contact with him,
4 and we obtain an opinion, even if it is verbal.
5 But in the circumstances where Mr. Arar was
6 detained, in these conditions, there was nothing
7 to be done. There were no lawyers who could get
8 close to him, no lawyers who could get their hands
9 on his file. Nothing, nothing at all.

10 MS EDWARDH: My question, though,
11 is that while there is counsel or a lawyer
12 connected to the Embassy in general, my question
13 is this: Did you in fact get a legal opinion from
14 that counsel or any other counsel to ask whether
15 there was something that could be done to Mr. Arar
16 before August the 14th? Was there a real legal
17 opinion obtained?

18 MR. MARTEL: Maybe not written,
19 but verbal. I talked about it several times with
20 the lawyer, and he always answered me, in these
21 circumstances, you know, in this country, there is
22 nothing to be done. As long as they haven't
23 decided, there is nothing to be done.

24 MS EDWARDH: And so I take it that
25 it is your evidence, sir, that you spoke

1 specifically with counsel in Damascus -- counsel
2 to the Embassy -- I'm sorry, Mr. Commissioner, I'm
3 having electrical problems --

4 THE COMMISSIONER: Do you want
5 another one? I've got another one here, if you
6 want.

7 MS EDWARDH: I will try this. It
8 just was having difficulty.

9 Is it your evidence, sir, that you
10 actually spoke to the lawyer about Mr. Arar and he
11 told you nothing could be done?

12 MR. MARTEL: That's right.

13 MS EDWARDH: Who is the lawyer,
14 sir?

15 MR. MARTEL: I don't know if I can
16 -- It's a Canadian with dual Syrian citizenship. I
17 believe that if I reveal his name, there will be
18 consequences ---

19 MR. BAXTER: I think in light of
20 that, Mr. Commissioner, I would prefer if he
21 wasn't made to name the lawyer.

22 MS EDWARDH: I have looked for a
23 record of the lawyer's advice in the materials,
24 and there is no record of that advice.

25 Is that correct?

1 MR. MARTEL: No, there's no
2 written correspondence on the file.

3 THE COMMISSIONER: Just a second.
4 Sorry, what? I'm just not sure
5 what is happening.

6 MR. DÉCARY: May I speak to the
7 witness? I want to converse with the witness on
8 this very specific -- why the statement, just to
9 clarify for myself.

10 THE COMMISSIONER: It would be
11 most unusual to have a witness' counsel speak in
12 the middle of a cross-examination.

13 MR. DÉCARY: This incident --

14 THE COMMISSIONER: Just speak in
15 the microphone so that -- Ms. McIsaac, could you
16 just help him there?

17 MR. DÉCARY: It was only to see if
18 I could be of any assistance, to help resolve this
19 matter, to better inform myself as to --

20 THE COMMISSIONER: Okay. Well --
21 no. That wouldn't be a process we would normally
22 adopt. But thank you. Thank you, Mr. Décary.

23 The position, Mr. Baxter, is that
24 the name of the lawyer is --

25 MR. BAXTER: The Government of

1 Canada has no problem with it, but the witness has
2 just advised, and perhaps it got lost in
3 translation, so to speak, that there could be
4 consequences to this individual if they were
5 identified.

6 So the Government of Canada makes
7 no NSC claim at all in respect to this, sir.

8 THE COMMISSIONER: Well, then, in
9 that circumstance, I think I would leave it to
10 Ms. Edwardh's discretion to go ahead and ask the
11 question, if she chooses.

12 Does anything turn on the name of
13 the lawyer? Let me just ask that.

14 MS EDWARDH: I suppose,
15 Mr. Commissioner, since we are at a stage where
16 you are going to contemplate an interim report --

17 THE COMMISSIONER: Well, I
18 wouldn't sort of put too many eggs in that basket.

19 What I would say is --

20 --- Laughter / Rires

21 THE COMMISSIONER: Why don't you,
22 at the lunch break, speak to Mr. Martel.

23 Mr. Martel, you tell Ms. Edwardh
24 the name of the lawyer, and then if you think that
25 that is something that needs to be on the record,

1 we can address it then.

2 Is that fair enough?

3 MS EDWARDH: I'm satisfied with
4 that. I believe the lawyer's name may be in the
5 documents, but in any event --

6 THE COMMISSIONER: I don't know.

7 MS EDWARDH: So the lawyer who you
8 spoke about is a person who was retained from time
9 to time by the Embassy?

10 MR. MARTEL: Not from time to
11 time. He was retained on a permanent basis.

12 MS EDWARDH: I see. And he or she
13 would give the --

14 I'm sorry, Mr. Commissioner, I'm
15 having problems.

16 THE COMMISSIONER: Do you want to
17 take this one?

18 MS EDWARDH: I'm having a lot of
19 static. You are, too?

20 THE COMMISSIONER: There is
21 another one here.

22 MS EDWARDH: I will try this one.

23 THE COMMISSIONER: Mr. Baxter,
24 your colleague behind you may want this one.

25 THE COMMISSIONER: You are fine?

1 --- Pause

2 MS EDWARDH: We have established,
3 sir, that there is no memorandum or correspondence
4 in respect of this advice, nor is there any
5 discussion with headquarters about that advice.

6 Is that fair?

7 MR. MARTEL: Yes, that's fair.

8 MS EDWARDH: And I take it the
9 lawyer in question, who is on permanent retainer
10 to the Canadian Embassy, is in fact a lawyer who
11 provides general services to the Embassy?

12 MR. MARTEL: Yes. He provides us
13 with various services based on an agreement we
14 have, and I contact him regularly regarding
15 specific points of Syrian law, because you have to
16 know the laws and under which circumstances, what
17 applies and what doesn't apply, what you can or
18 can't do. He's someone I see probably . . . or to
19 whom I speak every week.

20 MS EDWARDH: Am I correct, sir,
21 that that lawyer also provides commercial
22 services, in the sense that if the Embassy needs
23 to look at a contract, or conduct its own affairs
24 and businesses, this lawyer would advise the
25 Embassy?

1 MR. MARTEL: With respect to
2 contracts, this lawyer will, for example, review
3 our own contracts, i.e., the Embassy's contracts.
4 Before signing a contract, I . . . the Ambassador
5 and I, naturally, want to make sure that we are in
6 compliance with local law and that there will be
7 no surprises later on. So, before entering into
8 an agreement or signing a new contract, I always
9 show it to my lawyer first so that he can read it
10 and assure me that everything is okay.

11 MS EDWARDH: That is my point;
12 that the lawyer who you consulted is a lawyer who
13 did not practise in the field of criminal security
14 or human rights law?

15 MR. MARTEL: Yes, you're quite
16 right, but all the same he's an expert in Syrian
17 law.

18 MS EDWARDH: I suppose he is an
19 expert in the same way any Canadian lawyer is
20 supposed to know all Canadian law. You will agree
21 with me, sir, that if he was going to give you
22 advice about a criminal trial, you would rather go
23 to someone who is a criminal lawyer?

24 MR. MARTEL: Well, first of all I
25 would consult my lawyer who is on retainer, and I

1 would get his opinion, but he might say, "Listen,
2 I'm not an expert in these matters, but I can
3 recommend someone else".

4 MS EDWARDH: And when you asked
5 for advice about whether there was any step that
6 Maher Arar could take prior to August, before
7 August 14th, did the lawyer who gives general
8 advice to the Embassy refer you to anyone else to
9 determine whether such steps existed?

10 MR. MARTEL: When I asked my
11 lawyer for advice, he told me the situation was
12 very straightforward. I had a citizen who was of
13 Syrian nationality and there was nothing I could
14 do.

15 If he was a prisoner, they could
16 keep him as long as they wanted, and there was
17 nothing more I could do. Period. That's the way
18 it was.

19 MS EDWARDH: In addition to the
20 information you received from your discussion with
21 the Ambassador about August 14th, that Mr. Arar
22 could have a trial within one week, you were also
23 aware from earlier discussions that you had with
24 Syrian authorities before your visits with
25 Mr. Arar that at least at one time they said that

1 they felt he was a member of the Muslim
2 Brotherhood.

3 That had been told to you before?

4 MR. MARTEL: I had been told that?

5 MS EDWARDH: Yes.

6 MR. MARTEL: It's possible, but
7 who would have told me? Souheil, perhaps, but he
8 wasn't someone who . . . it was my interpreter, I
9 think. I don't know who told me; I don't
10 remember.

11 MS EDWARDH: All right. But you
12 did get that information; that that was one of the
13 issues that was of concern to the Syrians?

14 MR. MARTEL: Yes, and I believe
15 they said so at some point. Whether they told the
16 Ambassador or me, I don't remember, but it was
17 brought to my attention that they . . . they
18 claimed, at least, that he was a member of the
19 Muslim Brotherhood.

20 MS EDWARDH: That in some cases it
21 is a capital offence in Syria?

22 MR. MARTEL: I don't believe so.
23 To the best of my knowledge, with clients I've had
24 since then, it's a 12-year prison sentence.

25 MS EDWARDH: It is my

1 understanding that in some circumstances it can be
2 treated as a capital offence, but I take it you
3 don't know that.

4 MR. MARTEL: No, I wasn't aware of
5 that.

6 MS EDWARDH: In any event, my
7 question to you is when you learned that there was
8 an issue in the minds of Mr. Arar's gaolers that
9 he may be a member or active in the Muslim
10 Brotherhood, do you recall having any discussions
11 with Canada as to the gathering of evidence that
12 might show that that claim was wrong?

13 Did you ask for help?

14 MR. MARTEL: No. Obviously, I
15 think it was reported, obviously, but if we did
16 not yet have access, and the lawyers did not have
17 access, to the prosecution file, it's what the
18 authorities were saying, but there was nothing yet
19 in writing anywhere.

20 There was no substantive evidence
21 indicating that Maher Arar was a member of the
22 Muslim Brotherhood. Actually, we, for our part,
23 and myself personally, really the Ambassador, did
24 not share this opinion.

25 We didn't know what the Syrians

1 were trying to get at with this accusation, but
2 the accusation had not yet been made in writing.

3 MS EDWARDH: No. I understand
4 that. It was not at this time. There were no
5 written accusations of any kind.

6 I am just simply asking the
7 question: When you learned that the Syrians said
8 this, was any request sent back between October
9 and August to Mr. Arar's family to say, "Can you
10 help us gather evidence about Mr. Arar's
11 connection, if any, to the Syrian Muslim
12 Brotherhood"?

13 MR. MARTEL: No, no, that wasn't
14 done.

15 MS EDWARDH: Did you ever go and
16 ask the Syrian authorities if Mr. Arar could sign
17 a power of attorney allowing his wife to get
18 access to information, private banking records,
19 et cetera? Did you ever ask?

20 MR. MARTEL: No, I don't think so,
21 neither beforehand nor after access was denied,
22 when I could no longer ask him anything . . . no,
23 we never asked.

24 MS EDWARDH: And after August
25 14th, when you knew he was going to stand his

1 trial, there was no effort to have him sign a
2 power of attorney?

3 MR. MARTEL: I never saw him again
4 after that.

5 MS EDWARDH: Fair enough. You
6 didn't make a telephone request to the Syrian
7 authorities so that some effort could be made at
8 least to ask them if they would allow him to sign
9 a power of attorney?

10 MR. MARTEL: No, no such requests
11 were made by phone . . . phone calls were always:
12 can I see my client? And the answer was always
13 the same, and at the end I was told no, he was no
14 longer under their jurisdiction.

15 MS EDWARDH: I would like you to
16 go to tab 512, if I could, in this same volume.

17 You had a visit -- obviously we
18 will deal with August 14th in other respects. But
19 you had a visit August 14th, and there is a
20 discussion of the pending accusations against
21 Mr. Arar and you are told a number of things, or I
22 assume you are told this as well -- you know this
23 from the conversation, I'm sorry -- that he is to
24 be given a choice of lawyer?

25 MR. MARTEL: Actually, this should

1 be taken with a grain of salt. That's what General
2 Hassan Khalil said at the time. So, there was no
3 formal communication between . . . on the part of
4 the Syrian government with the Embassy.

5 MS EDWARDH: No. But it is the
6 first indication the General has given you of the
7 nature of the proceedings?

8 MR. MARTEL: It's the General's
9 opinion.

10 MS EDWARDH: It was your
11 understanding that Mr. Arar could have counsel,
12 that he would be allowed to meet with counsel --
13 I'm just trying to summarize this. If you want to
14 go through the tabs, we can. But that his trial
15 would be a quick trial?

16 MR. MARTEL: That's what the
17 General led us to believe. The comments reported
18 were those of the General.

19 MS EDWARDH: I want to just know
20 whether at any time, up to and including the end
21 of your August 14th visit, you told Mr. Arar that
22 one of the concerns of the Syrians was that he was
23 a member of the Muslim Brotherhood?

24 MR. MARTEL: Well, I wasn't at
25 liberty to say whatever I wanted to Maher. Our

1 conversations were always monitored and limited,
2 and the Syrians had forbidden me to discuss the
3 case. They had warned me ahead of time that they
4 didn't want me to discuss the case.

5 So I wasn't at liberty to talk
6 about whatever I wanted with him.

7 MS EDWARDH: So at no time in all
8 of the consular visits that you had did you ever
9 inform him at least of your understanding of the
10 substance of the allegations against him?

11 MR. MARTEL: No, I never talked
12 about that, for a number of reasons.

13 First of all, because they
14 prevented me from discussing the case, and
15 secondly, because I didn't believe this
16 information either.

17 MS EDWARDH: I'm sorry, you didn't
18 believe that information?

19 MR. MARTEL: No, I didn't believe
20 what they were telling me . . . that he was a
21 member of the Muslim Brotherhood. He left Syria
22 when he was young . . . how could he be a Muslim
23 Brother?

24 MS EDWARDH: So is it your
25 evidence here that the reason that you did not

1 inform him of that allegation was that you assumed
2 that the Syrians were -- I don't know, for want of
3 a better word -- not being candid with you?

4 MR. MARTEL: No, they weren't. As
5 you say, one, they weren't telling me the truth,
6 and two, I was forbidden from discussing the case,
7 so I could only discuss certain topics with Maher,
8 but I couldn't get into the case itself.

9 I couldn't say to him, "Look, the
10 Syrians are accusing you of being a member of the
11 Muslim Brotherhood". It made no sense: he had
12 left the country when he was about 16 or 17, so,
13 as far as I was concerned, they were simply making
14 all this up.

15 It was at this point, I believe,
16 that I started to realize that they were
17 floundering. They didn't really know where they
18 were going.

19 MS EDWARDH: I take it that if you
20 look -- I'm just going to put a general
21 proposition to you.

22 If you look at the consular notes
23 overall, Mr. Martel, you confined your
24 conversations with Mr. Arar to matters trivial,
25 family, and just whatever observations you could

1 make; right?

2 MR. MARTEL: That's right, in
3 accordance with the instructions I had been given.

4 MS EDWARDH: And material issues
5 that are at the root of your mandate to provide
6 consular services were not the subject of
7 questions by you, nor were there any discussions
8 about what you understood to be allegations he
9 faced?

10 MR. MARTEL: Exactly, because I
11 wasn't at liberty, and the meetings were monitored
12 and I could only say what I was allowed to say,
13 and the same held true for Maher. He could speak
14 to me, but he had to stick to what he was allowed
15 to tell me.

16 MS EDWARDH: Yes. But you are
17 following instructions, I take it, from Ottawa,
18 and you are told, as I understand your evidence,
19 Mr. Martel, "Don't say anything to Mr. Arar about
20 the allegations made in the U.S., don't say
21 anything about what we have learned about what the
22 Syrians think. Just don't talk about what it is
23 alleged that Maher Arar did"?

24 MR. MARTEL: No, I never received
25 such instructions from Ottawa. The Syrians had

1 forbidden me to talk about the case.

2 Ottawa had never forbidden me to
3 talk about anything, except that, from the very
4 beginning, the Consular Affairs Bureau told me
5 that I must understand the situation and that I
6 should stick to the most transparent questions,
7 but that if I wanted to find out more, I should
8 perhaps ask such-and-such a question. That was
9 it.

10 But Canada never told me that I
11 should not try to get information, or that I
12 shouldn't do this or that. The instructions came
13 from the Syrian authorities. I could only ask
14 certain questions.

15 The same thing applied to the MPs
16 when they went. They were told that they could
17 ask certain questions, but they couldn't go any
18 further than that.

19 MS EDWARDH: So if one looks at
20 what you were told by the Syrians you couldn't
21 talk about, generally we could draw the following
22 conclusions.

23 The Syrians didn't want you to
24 learn or talk about the case. That was off the
25 table; correct?

1 MR. MARTEL: Yes, and from their
2 point of view . . .

3 MS EDWARDH: Let me do the list.

4 MR. MARTEL: Go ahead.

5 MS EDWARDH: They didn't want you
6 to talk about the case, and they didn't want you
7 to talk about how they were treating Mr. Arar. Is
8 that correct?

9 MR. MARTEL: Well, let's say, it
10 wasn't that they didn't want me to talk about how
11 he was being treated. They presented the
12 situation in a positive light, and my reports were
13 written accordingly, based on the positive manner
14 in which they presented the situation.

15 That doesn't mean they didn't want
16 . . . naturally, they didn't want any bad press or
17 anything like that.

18 If I understand the question
19 correctly, they didn't want me to talk about the
20 manner in which he was treated, and I talked about
21 the manner in which he was treated. They said to
22 me, "Yes, you can ask him questions about the
23 prison conditions and about his family".

24 MS EDWARDH: Right. But they
25 didn't permit you to ask certain questions about

1 his detention, or you would have asked that whole
2 list of questions I put to you at the beginning of
3 this?

4 MR. MARTEL: Definitely. Right
5 from the very first visit, I started asking
6 questions along those lines, such as: "Where did
7 you come from? How long ago? Where did you stay?
8 What did you do?" etc., and then they stopped me,
9 and they stopped him as well.

10 MS EDWARDH: Mr. Martel, let me
11 stop you because we are going to come back to
12 that, and I don't want to go too far offside. I
13 just want to finish this area with the lawyers,
14 and we will come back to what they would and would
15 not allow you.

16 Let me just turn you to tab 514
17 for a moment.

18 Am I correct, sir, that, after the
19 14th of August, there was some effort on the part
20 of yourself and others, first of all, to deal with
21 an issue of a visa for a Canadian legal observer?

22 MR. MARTEL: Yes. I believe . . .
23 it seems to me it was James Lockyear.

24 MS EDWARDH: Yes. And also to
25 finally put a lawyer in place for a trial?

1 MR. MARTEL: Yes, that's right,
2 and I had discussed the subject of lawyers with
3 Maher.

4 MS EDWARDH: And might I just make
5 it really simple with respect to Mr. Lockyear.
6 You asked the Syrian Foreign Ministry for
7 permission for him to come?

8 MR. MARTEL: Yes. I believe a
9 diplomatic note was sent. Yes.

10 MS EDWARDH: No one ever answered
11 and no one ever issued a visa?

12 MR. MARTEL: Would you have
13 expected otherwise? The answer is always the
14 same.

15 Mr. Lockyear asked me personally
16 if I thought the Syrians would grant him a visa,
17 and I told him that, to be perfectly honest, I
18 would be very surprised if they did, but that we
19 had to try anyway.

20 MS EDWARDH: Right. So efforts
21 were made to at least ask, and the Syrians did not
22 grace the request with an answer?

23 MR. MARTEL: And I don't know if
24 the visa request was submitted either, because it
25 is not submitted in Syria, it is submitted from

1 here.

2 MS EDWARDH: Well, I think we have
3 reason to believe a request was submitted but no
4 answer came, and that would go to the Foreign
5 Ministry, would it not, the visa request?

6 MR. MARTEL: To the Syrian
7 Embassy.

8 MS EDWARDH: That would be
9 Ambassador Arnous who would receive that request?

10 MR. MARTEL: Ambassador Arnous.

11 MS EDWARDH: We also have
12 information that there is an effort by Mr. Arar's
13 wife to settle on a lawyer, and she has some names
14 of lawyers. Do you see that in this memo?

15 MR. MARTEL: Which tab are you in?
16 Are you still in 514?

17 MS EDWARDH: The same tab, tab
18 514.

19 MR. MARTEL: Yes, yes. Already at
20 that time, and, as you just said, we had to act
21 quickly to find defence counsel, and I don't know
22 if you want to look at this section, but Maher had
23 already spoken to me about his defence.

24 MS EDWARDH: Well, I wanted -- and
25 he had told you that he wanted his wife to be in a

1 position to identify defence counsel who would act
2 on his behalf?

3 MR. MARTEL: Yes. Not initially,
4 but later on, yes.

5 MS EDWARDH: But by this date,
6 August the 15th -- indeed he says it to you in the
7 meeting on August 14th. He told you his wife
8 would take charge of retaining a lawyer?

9 MR. MARTEL: That's right. He
10 wanted his wife to take care of it.

11 MS EDWARDH: And what "take care
12 of it" meant was that she was to select the lawyer
13 who would act for Mr. Arar?

14 MR. MARTEL: Yes. This was normal
15 consular procedure.

16 MS EDWARDH: So on
17 August 15th, 2003, you are told the names of the
18 lawyers that she has selected, and they are listed
19 at the bottom of this note: Mr. Haithem Emaleh
20 and Mr. Anwar El Bouni.

21 Do you see those names?

22 MR. MARTEL: Yes, I see them, but
23 she had not yet made her choice.

24 MS EDWARDH: Well, you know you
25 have some role because you re going to contact

1 them on behalf of the family.

2 MR. MARTEL: Right.

3 MS EDWARDH: She has identified
4 those two lawyers as persons they want you to
5 contact on her behalf.

6 MR. MARTEL: That's right.

7 MS EDWARDH: Right. I am curious,
8 if you turn to tab 519 -- we are now four days
9 later -- why you are canvassing other lawyers. We
10 start by saying:

11 "The two persons whose names
12 you have provided are saying
13 they are aware of the case
14 and are willing to take on
15 the work."

16 So those are the two names that
17 Mr. Arar's wife gave you four or five days
18 earlier; correct?

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

20 MS EDWARDH: And then there is --
21 and I think it's even at Mr. Pardy's suggestion.
22 You go to other lawyers?

23 MR. MARTEL: Yes, of course.

24 MS EDWARDH: And -- well, I don't
25 know, of course. If you can help us with

1 paragraph (b), there is the name of a lawyer
2 associated, I gather, with a group of lawyers,
3 Cabinet d'avocats?

4 MR. MARTEL: Yes.

5 MS EDWARDH: Is that a group of
6 lawyers?

7 MR. MARTEL: Yes, it's a firm.

8 MS EDWARDH: And a particular
9 person is one there that is a prominent lawyer,
10 and you have discussed the case with him; correct?

11 MR. MARTEL: That's correct.

12 MS EDWARDH: He doesn't usually
13 work on criminal cases but may look at it; right?

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

15 MS EDWARDH: And after he gets
16 some information, he will let you know whether he
17 is interested?

18 MR. MARTEL: Yes. Exactly.

19 MS EDWARDH: I'm troubled,
20 Mr. Martel, I'm troubled. You have instructions
21 to retain the lawyers, or to contact the lawyers
22 that Mr. Arar's wife has identified. What on
23 earth are you doing contacting other lawyers?

24 MR. MARTEL: Well, at the time, we
25 were in the process of looking around. In the

1 end, if we could find some other lawyers who we
2 believed, for the mission -- who were on our list
3 and who were very influential lawyers, there would
4 be nothing wrong with getting in touch with them
5 simply to find out whether or not they would be
6 prepared to take on this case. Because both of
7 them had said yes, initially. In the end, it was
8 up to his wife, Monia, to decide who she wanted to
9 go with. But if we opened up our scope of action
10 to include the possibility of other lawyers, if it
11 didn't work out with A or B, then we could always
12 try C or D or E or F, just to see. But the final
13 decision was up to her, not us.

14 MS EDWARDH: Okay. Because
15 certainly (a) and (b) are people she has already
16 chosen, and they have already said they are
17 interested in taking the case.

18 MR. MARTEL: I believe she was
19 considering them, but she hadn't yet made her
20 choice.

21 MS EDWARDH: Well, she said in the
22 memo that was sent to you, and this is what I find
23 odd, if you go back to tab 514, it says she:

24 "... has canvassed various
25 contacts and suggests

1 following two names as
2 possible lawyers for Maher.
3 Her preference is the first,
4 Mr. Emaleh."

5 MR. MARTEL: Right.

6 MS EDWARDH: So she has clearly
7 put into your bailiwick --

8 MR. MARTEL: Her preference. It's
9 her preference.

10 MS EDWARDH: Yes. So I take it
11 you disapproved of her choice.

12 MR. MARTEL: No, not at all.
13 We . . .

14 MR. BAXTER: Mr. Commissioner, I
15 would intervene at this point and ask in fairness
16 that the witness be taken to page 2 of the
17 document, tab 519. The witness was asked four
18 specific tasks by Mr. Pardy, and I think that is
19 very material.

20 MS EDWARDH: Okay. Let me try a
21 different question.

22 Take a look at those four specific
23 tasks. I said to you it was at Mr. Pardy's
24 suggestion, but I'm going to suggest to you that
25 you and Mr. Pardy disagreed with her choice.

1 MR. MARTEL: No.

2 MS EDWARDH: Mr. Emaleh was a
3 human rights lawyer in Syria, and it was your
4 view, it was Mr. Pardy's view, it was the
5 Embassy's view, that it would be better to go to
6 someone else?

7 MR. MARTEL: That's not exactly
8 how it was. Mr. -- what's his name again?

9 MS EDWARDH: How is it wrong?

10 MR. MARTEL: Mr. Emaleh was a good
11 lawyer who, obviously, stood up for human rights.
12 The only problem was that he had just been
13 released from prison, and I was clearly afraid
14 that by choosing this lawyer . . . in the end, the
15 decision was up to her, but if she ended up
16 choosing this lawyer, my thoughts, knowing how the
17 authorities work, were: If he has just gotten out
18 of prison, what's to stop them arresting him
19 tomorrow and putting him back in prison? And the
20 day Maher ends up in court, there will be no one
21 there to defend him. That's what I was worried
22 about.

23 But, in the end, the choice was up
24 to Monia, not us. However, this didn't prevent us
25 from looking into who was available, who would be

1 ready, because in this country, as you know, not
2 everyone would be willing to take on this case.
3 People are afraid and will not agree to defend a
4 case like this. We might find three, four or five
5 people, no more. Even the law firm, whose name we
6 see here, even the head of this law firm is not a
7 specialist, and he would have passed on the case
8 to one of his clients.

9 He did a bit of research for us in
10 order to try and find the file, to find out where
11 it was. So it wasn't all a waste of time.

12 In any event, when all is said and
13 done, it's the client who decides, not us.

14 MS EDWARDH: Of course. And I'm
15 just noting that while Mr. Emaleh may have been
16 released from prison, he was released as part of a
17 Presidential pardon. Did you know that?

18 MR. MARTEL: No, I don't know all
19 the details.

20 MS EDWARDH: Nonetheless, that was
21 Mrs. Arar's choice.

22 MR. MARTEL: Of course.

23 MS EDWARDH: And I take it though
24 you will agree with me that the Department
25 generally tries to recommend against people who

1 have active records as human rights advocates?

2 MR. MARTEL: I was not aware of
3 that.

4 MS EDWARDH: In this case, they
5 did?

6 MR. MARTEL: Perhaps, but I was
7 unaware of it.

8 My only concern was that he had
9 just been released . . . this was my only concern.
10 There were no other reasons.

11 In the end, Monia contacted him
12 directly and we, naturally, were active --

13 MS EDWARDH: But, sir --

14 MR. MARTEL: -- but she was the
15 one who made the final decision.

16 MS EDWARDH: Right. Certainly if
17 you take a look at tab 536, by September the 2nd,
18 you are still recommending to Monia she consider
19 other members of the bar?

20 MR. MARTEL: Well, I believed it
21 was in everyone's interest, as well as in the
22 client's interest, to provide as much information
23 as possible about what was available, and, in the
24 end, the client must decide. We do not have the
25 right, nor is it part of our mandate, to tell a

1 client that they should hire a certain lawyer,
2 because after that we are responsible.

3 MS EDWARDH: Of course you don't.
4 I understand that. I understand that, Mr. Martel.

5 And can you tell me whether Mr.
6 El-Hakim has anyone in his firm anyone who has
7 expertise as a criminal lawyer?

8 MR. MARTEL: He told us that he,
9 personally, could not take on this case, but that
10 there was someone --

11 MS EDWARDH: But my question --

12 MR. MARTEL: -- in his office who
13 was competent.

14 MS EDWARDH: Did you ever inquire
15 whether that person was himself or herself a
16 criminal lawyer to defend charges of the kind you
17 expected against Mr. Arar?

18 MR. MARTEL: No, but it's the most
19 prestigious law firm in the country.

20 MS EDWARDH: It seems to me you
21 got some legal advice that you paid for about the
22 charges from his firm?

23 MR. MARTEL: No, we never had to
24 pay.

25 MS EDWARDH: Okay. But you got

1 legal advice and you expected that you might have
2 to pay?

3 MR. MARTEL: Maybe, but I was
4 prepared to pay myself.

5 MS EDWARDH: Right. Of course.
6 I'm just establishing that that firm gave the
7 Embassy or you legal advice. You thought you
8 might have to pay, but I take it they wrote off
9 the bill?

10 MR. MARTEL: Out of kindness
11 towards us . . . they knew us, and perhaps there
12 would be something to pay, then again, maybe not,
13 I don't know, but they never asked us for money.

14 MS EDWARDH: But with respect to
15 Haithem Emaleh, it was made very clear to
16 Mrs. Arar that the Embassy could not pay any part
17 of the fees he would charge?

18 MR. MARTEL: I believe that
19 decision was made by the Consular Affairs Bureau.

20 MS EDWARDH: Yes. Do you know why
21 the firm that is so highly regarded in Damascus,
22 that you asked Mrs. Arar to consider, and who
23 would have paid if they had been retained, why
24 would they be paid, and why would Mr. Emaleh not
25 be paid and why would Mrs. Arar be told that she

1 was on her own with respect to legal fees?

2 MR. MARTEL: Well, yes, if I
3 understand your question correctly, in any event,
4 neither the Embassy nor the Department would have
5 paid the El-Hakim law office's legal fees. I had
6 asked him to do some research in order to try and
7 locate the file, and these were little things.
8 But as for the defence itself, I was not
9 authorized to retain his services, and I would not
10 have been authorized to pay him either. I said
11 that there was perhaps \$200 or \$300 to be spent on
12 research to find the files, and this was what
13 worried me. Since this was a very prestigious law
14 firm --

15 MS EDWARDH: And then you would
16 have been authorized?

17 MR. MARTEL: Pardon me? No, I
18 would not have been authorized to pay for the
19 defence, but for the research, yes.

20 MS EDWARDH: I see. I take it no
21 aspect of Mr. Emaleh's account and the research he
22 did and the efforts he made to find Mr. Arar were
23 paid for by the Embassy?

24 MR. MARTEL: The Consular Affairs
25 Bureau said that the legal fees could not be paid

1 by the Embassy. The same applies to everyone in
2 all cases.

3 MS EDWARDH: To the best of your
4 knowledge?

5 MR. MARTEL: To the best of my
6 knowledge.

7 MS EDWARDH: And you were aware
8 that that position was taken in circumstances
9 where Mrs. Arar, facing a deadline of a trial
10 within a very short period of time, didn't have
11 the money to fund that defence?

12 MR. MARTEL: Well, based on the
13 correspondence I read, I think Monia was
14 disappointed, but the decision came from the
15 Consular Affairs Bureau, and not from us.
16 Embassies are not given this power to delegate
17 financial authority. The decision must be taken,
18 and, in certain exceptional cases, we have indeed
19 paid for consular expenses that we normally
20 wouldn't pay for, but the authorization came from
21 the Bureau.

22 MS EDWARDH: From the time that
23 these discussions go on to the time that Mr. Arar
24 walks out, it is clear, is it not, that to the
25 best of everyone's knowledge no one ever saw

1 Mr. Arar's file before the court?

2 MR. MARTEL: That's my
3 understanding. I was in contact, and my employees
4 were in contact --

5 MS EDWARDH: No lawyer ever --
6 sorry?

7 MR. MARTEL: No one.

8 MS EDWARDH: No lawyer ever got
9 access to it; no lawyer ever saw Mr. Arar?

10 MR. MARTEL: As far as I know.

11 MS EDWARDH: And you eventually
12 are of the view, are you not -- and I can go
13 through the tabs, but I want to get through this
14 as quickly as I can.

15 You are eventually of the view
16 that if he is tried in the security courts, it is
17 extremely unlikely that Canada will ever be
18 allowed to even participate, or go to, or attend
19 the trial to see what is alleged to have gone on?

20 MR. MARTEL: That's the lawyer's
21 opinion, but, later on, we had another case in the
22 same court, and the ambassador was allowed to be
23 present.

24 MS EDWARDH: All right. But there
25 was nothing you had by way of legal advice that

1 said you had any right to participate? It was,
2 you know, if the Syrians wake up one morning, they
3 may let you in, or they may not?

4 MR. MARTEL: That was the opinion
5 of the lawyer hired by Monia.

6 MS EDWARDH: Right. Now, I want
7 to just go to one other issue.

8 We have a lawyer now; right? We
9 have a lawyer with no access to information. We
10 have a lawyer who has no access to the client;
11 right?

12 MR. MARTEL: That's right.

13 MS EDWARDH: And now I want to
14 know what you did to try and change that
15 situation.

16 First of all, what did you do with
17 the information that the Government of Canada or
18 the Department of Foreign Affairs was sitting on
19 about Mr. Arar?

20 MR. MARTEL: I was unaware, first
21 of all, that there was information in Ottawa. If
22 the Consular Affairs Bureau had information for us
23 about the client that could be useful for his
24 defence, I think that the decision would already
25 have been made in Ottawa to send it to us. If the

1 people there have files that will help a client
2 who is outside the country, and if they already
3 know that the client will be standing trial, they
4 must send us any documents that they believe will
5 be helpful.

6 Since we are outside the country,
7 we don't know what they have.

8 MS EDWARDH: So if they had a copy
9 of his interrogation that you were told he could
10 refute -- do you remember that? You were told he
11 could refute it?

12 MR. MARTEL: Right.

13 MS EDWARDH: If they had a copy of
14 the interrogation, it should have been in your
15 hands to put in the hands of his defence lawyer;
16 correct?

17 MR. MARTEL: Yes. If it was not
18 already in the file to which the lawyer should
19 have access.

20 MS EDWARDH: We don't know what is
21 in the file because no one ever saw the file.

22 MR. MARTEL: We don't even know if
23 a file exists.

24 MS EDWARDH: That's true. But
25 nonetheless, in order to prepare to defend, given

1 what you were told by the Syrian authorities,
2 assuming it is not all completely a tissue of
3 lies, if Mr. Arar had made a statement and there
4 were transcripts of his interviews, and General
5 Khalil had said he could refute them and that
6 lawyer didn't have them, they should have been
7 given to that lawyer through you; correct?

8 MR. MARTEL: Obviously, I think
9 the lawyer should have all the incriminating
10 documents. He should have all the documents he
11 needs to defend his client. If this document
12 exists somewhere, and he is not given it, he
13 should be, of course.

14 MS EDWARDH: Yes. Indeed, that is
15 what Mr. Pardy said. He said that this kind of
16 information, if it lay within the Department of
17 Foreign Affairs, should be provided to defence
18 counsel in order that they can help deal with the
19 allegations made by the Syrian government. Right.

20 And I take it, Mr. Martel, that
21 despite the Canadian government having this
22 information, you were never aware of any effort
23 made by anyone through the Embassy or through any
24 other source to put that kind of information in
25 the hands of a defence lawyer in Syria?

1 MR. MARTEL: Well, as you know,
2 there was a scheduling issue. At the time these
3 events took place, it was already very important
4 to do everything possible, within the space of
5 only a few days, in order to enable Monia to
6 defend Maher.

7 As you said, there were perhaps
8 documents in Canada that the defence lawyer would
9 need. We didn't know what was in the file, and
10 whether there were copies of these documents in
11 the file. I had been told that he could refute
12 the accusations and all that, but no one had told
13 us --

14 MS EDWARDH: You were told he
15 could refute his statements.

16 MR. MARTEL: His statement.

17 MS EDWARDH: Yes.

18 MR. MARTEL: Statement.

19 No one in Ottawa said to us, "Here
20 you go, I have something". Anyway, I didn't know
21 anything about the exhibit.

22 MS EDWARDH: Does it surprise you
23 that ISI had it sitting in the file?

24 MR. MARTEL: I didn't know what
25 was in this document, nor where it was.

1 MS EDWARDH: If I ask you to
2 assume -- if I ask you to assume that the
3 Ambassador had a document, that ISI and ISD had a
4 document --

5 THE COMMISSIONER: I think there
6 is an objection behind you, Ms. Edwardh.

7 MR. DÉCARY: Aren't we going a bit
8 far here? Why ask this witness about something
9 that he doesn't have -- he has it or he doesn't
10 have. He is not here to give opinions, I believe,
11 and therefore the objection would be on the basis
12 that this witness is not here to give opinions.
13 He had it or he had not.

14 THE COMMISSIONER: But I think he
15 can say that. I think the question is fairly
16 giving him the opportunity to say that.

17 Go ahead, Ms. Edwardh, please.
18 Thank you.

19 MS EDWARDH: Sir, I want to just
20 establish. We know you did not have physical
21 possession of a document that purported to be a
22 summary of Mr. Arar's interrogation. You have
23 already answered that question. Your Ambassador
24 did; the Department did.

25 I take it you were unaware the

1 Department had that information. Is that your
2 evidence?

3 MR. MARTEL: Yes, that's my
4 evidence.

5 MS EDWARDH: And I take it you
6 were unaware that your consular notes were given
7 to other members outside of consular affairs? You
8 didn't know they were going to CSIS and the
9 Mounties and things like that?

10 MR. MARTEL: Did they really go to
11 them?

12 MS EDWARDH: Yes.

13 MR. MARTEL: Well, that's news to
14 me.

15 MS EDWARDH: Given your
16 understanding of your duties, and the duties of
17 the Department to the client, as you have insisted
18 on calling Mr. Arar -- he is your client -- do you
19 have any views, sir, of whether or not those
20 documents should have been put into your hands to
21 pass on to defence counsel?

22 MR. MARTEL: Well, once these
23 events started happening very quickly, we didn't
24 have much room to manoeuvre. The main concern was
25 that the Syrians would beat us quickly, that they

1 would bring my client to court and we would find
2 ourselves faced with a fait accompli within two,
3 three or four days, which happens frequently.

4 So we had to be realistic and look
5 at the situation at hand. What if the lawyer
6 tells us that he still hasn't found the file, that
7 he still does not have access to the file, and
8 that he can't do anything for us?

9 So the day the lawyer finds the
10 file, the day we are able to get some concrete
11 information . . . when exactly this trial will
12 take place . . . only then will the lawyer be able
13 to review the case. You're the expert in this
14 matter, not me. If evidence is missing in this
15 case, then the lawyer should definitely contact
16 us, and we can go to Ottawa and say, "Look, the
17 lawyer is missing a document; he needs it. You
18 must send it immediately via a secure means so we
19 can have it right away." But we never got that
20 far. One, we never got a file, the lawyer never
21 had access to it. If there was indeed a file, we
22 didn't know what was in it. So things had become
23 a bit . . . we had reached a standstill. We could
24 see that something was moving, but there were no
25 specifics.

1 MS EDWARDH: My question is really
2 simple: Leaving aside that you didn't have
3 anything precise at that time, you had a window
4 from August 14th to the end of September; correct?

5 You were always being told the
6 trial was coming up. Six weeks. Six weeks.

7 MR. MARTEL: That's right.

8 MS EDWARDH: From those of us who
9 practise at the bar, six weeks ain't bad to
10 prepare a case.

11 My only question to you is simply
12 this: If the Government of Canada held a summary
13 of the interrogation that you were told Mr. Arar
14 could refute in court, and you are moving really
15 fast to face a trial that you can't pin down
16 anywhere, isn't it your view that you were
17 duty-bound to provide that to the defence lawyer
18 in order that he could start to prepare?

19 MR. MARTEL: If the document
20 wasn't in the file -- because the lawyer has to
21 review the entire case -- if there was already a
22 copy in Canada, we could assume that the Syrians
23 had a copy as well.

24 So, if his statement was in the
25 file, yes; if his statement wasn't in the file,

1 Canadian authorities could definitely have sent
2 all the documents in their possession to the
3 defence lawyer for the client's defence, so that
4 everything was working in his favour. I think
5 that would be quite normal.

6 MS EDWARDH: That's normal. That
7 is how it is supposed to be done.

8 MR. MARTEL: Yes, I think so.

9 MS EDWARDH: It is not supposed to
10 be a matter that is not ever disclosed.

11 You see, the problem I have,
12 Mr. Martel, is you couldn't tell Mr. Arar a lot of
13 things you learned from General Khalil and others.
14 You weren't allowed to tell him.

15 MR. MARTEL: That's right.

16 MS EDWARDH: So one can only
17 imagine, only imagine the conversation he would
18 have had with a lawyer, if he ever got to see one.
19 In the ordinary course, the lawyer would say, "Can
20 you tell me what the allegations are against you?"
21 And Mr. Arar would say, "No one has told me. The
22 Canadian Embassy hasn't told me. My consular
23 service representative hasn't told me. Do you
24 have any information from your file?" "No."

25 So the only lifeline Mr. Arar had

1 was you, Mr. Martel.

2 All I'm simply suggesting to you
3 is that in not having that information given to
4 you to arm Mr. Emaleh, no later than August 20th
5 or 22nd, that you ran the risk that Mr. Emaleh
6 would find himself in a court unable to refute the
7 very statement that the General told you he would
8 have an opportunity to. That's all. It was a big
9 risk.

10 MR. MARTEL: Of course there was a
11 risk. That's why, of course, we formally insisted
12 that the chargé d'affaires or myself be present.
13 When there is a Canadian presence in this type of
14 trial, the authorities can't just make up all
15 kinds of stories. So, up to now, that's what took
16 place. In situations like this where we were
17 present, everything went well.

18 MS EDWARDH: In fact, in any of
19 the proceedings relating to Mr. Arar and his
20 appearance before the judge and whatever
21 determinations were made in this case, you weren't
22 there?

23 MR. MARTEL: We didn't have time
24 to be there; it was over before then.

25 MS EDWARDH: Well, I'm not sure

1 that is an answer you want to leave on the record.

2 You never knew that he would be
3 appearing before a judge the morning he appeared?

4 MR. MARTEL: No, no. Definitely
5 not. I found out afterwards --

6 MS EDWARDH: Yes.

7 MR. MARTEL: -- when he was
8 released.

9 MS EDWARDH: You weren't given
10 notice --

11 MR. MARTEL: No.

12 MS EDWARDH: -- that he was going
13 to have a trial and be acquitted?

14 MR. MARTEL: I hadn't had any
15 contact since the last visit, up to the moment
16 when the General summoned the Embassy to attend a
17 meeting.

18 MS EDWARDH: And Mr. Arar's lawyer
19 was given no notice.

20 MR. MARTEL: Neither.

21 MS EDWARDH: So in reflecting back
22 on this, is it fair to say that this whole issue
23 of charges, lawyers, from your perspective, really
24 was just a sham?

25 MR. MARTEL: That's my opinion.

1 MS EDWARDH: That Mr. Arar was
2 arbitrarily detained from Day 1, and when the
3 Syrians had no further use for him, for whatever
4 reasons, they let him go?

5 MR. MARTEL: In my opinion, the
6 Syrians released Mr. Arar when they deemed it in
7 their interest to do so. Period.

8 MS EDWARDH: That's the way they
9 usually act, is it not?

10 MR. MARTEL: Period. That's how
11 they do things.

12 We can elaborate on this if you
13 like, because there were nevertheless
14 circumstances in the region that forced them to do
15 so. There were many factors. They didn't just
16 get up one morning and say, "Okay, you're free to
17 go". There were a great number of factors --

18 MS EDWARDH: I'm going to stop you
19 because, Mr. Martel, I agree 100 per cent. The
20 Syrians acted in their self-interest.

21 MR. MARTEL: Exactly. That's all.

22 MS EDWARDH: And what I just want
23 to establish is we have heard a lot of people
24 speculate on how Syrians define their
25 self-interest. But you will agree with me that

1 nobody from the Government of Canada or the
2 Department was sitting in the offices of the
3 Syrians when they decided on their self-interests,
4 for whatever reasons they had?

5 MR. MARTEL: We don't know either
6 when they made their decision.

7 MS EDWARDH: Absolutely.

8 THE COMMISSIONER: Is that a
9 convenient time, Ms. Edwardh?

10 MS EDWARDH: Certainly.

11 THE COMMISSIONER: As far as the
12 length of the lunch hour, how are we doing?

13 We can have a shorter lunch hour,
14 if that is going to assist in accomplishing our
15 schedule this afternoon.

16 MS EDWARDH: I think it should be
17 shorter rather than longer.

18 THE COMMISSIONER: That's okay.
19 We will resume at a quarter to two.

20 We will rise until then.

21 THE REGISTRAR: Please stand.

22 --- Upon recessing at 1:04 p.m. /

23 Suspension à 13 h 04

24 --- Upon resuming at 1:47 p.m. /

25 Reprise à 13 h 47

1 THE REGISTRAR: Please be seated.

2 THE COMMISSIONER: I'm afraid I
3 will have to ask for some time estimates simply
4 because of the staff, and I have to deal with the
5 sound people, the court reporter and translators,
6 and so on.

7 I guess I could start with you,
8 Ms. Edwardh. Do you have any idea as to how long
9 your cross-examination will be from here?

10 MS EDWARDH: I find it difficult
11 to estimate, particularly because the witness
12 is -- we are speaking in different languages to
13 one another --

14 THE COMMISSIONER: Right.

15 MS EDWARDH: -- and there has been
16 a translation. I have been very bad, I have been
17 told over the luncheon recess, and interpreted
18 what he said in French and asked a question in
19 English and left the poor person translating
20 trying to deal with both of us.

21 I think I will be another two to
22 two and a half hours.

23 THE COMMISSIONER: Okay. So that
24 would take us until he break, probably until
25 5 o'clock.

1 Ms. Jackman said she would be 15
2 minutes, I think. She is not here.

3 Mr. Baxter?

4 MR. BAXTER: At this point,
5 depending upon what Ms. Edwardh touches upon, 10
6 to 15 minutes at the top.

7 THE COMMISSIONER: That would be
8 5:30.

9 Mr. Décary, at this point, do you
10 know how long you would be?

11 MR. DÉCARY: Ten to fifteen
12 minutes also.

13 THE COMMISSIONER: I take it,
14 Mr. Cavalluzzo, there would be --

15 MR. CAVALLUZZO: Nothing to this
16 point.

17 THE COMMISSIONER: So that would
18 probably be, I don't want to encourage this,
19 between 5:30 and 6:00.

20 Then we have Ms. Jackman's motion.
21 Do other people know -- Mr. Atkey, yes?

22 MR. ATKEY: Five minutes.

23 THE COMMISSIONER: I am told the
24 interveners will be five minutes. Is that right,
25 Mr. Cavalluzzo?

1 Do we know how long Ms. Jackman
2 might be?

3 Are you speaking on that motion,
4 Ms. Edwardh?

5 MS EDWARDH: I would not expect to
6 be more than a minute or two.

7 THE COMMISSIONER: And Government?

8 MR. BAXTER: I believe Ms. McIsaac
9 has a few remarks.

10 THE COMMISSIONER: I don't think
11 we need to be long, but we are looking at
12 something less than half an hour.

13 So I say to the people who are
14 working here, the camera crew, sound, translators,
15 I think we are probably at worst-case scenario
16 looking at 6:15.

17 Is there anybody for whom that
18 doesn't work?

19 I can't see in the sound booth or
20 the translation booth, but I think that's okay.

21 I've got thumbs up. Thank you,
22 all.

23 Ms. Edwardh?

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

1 I would like to deal with a
2 totally different topic, Mr. Martel, and that
3 relates to the public statements made by Minister
4 Graham on the 25th day of September, 2003.

5 It is in some form found at
6 tab 581 of the DFAIT volumes, which is volume 7,
7 Mr. Commissioner.

8 I don't know that I can -- I can
9 read this to you, Mr. Martel; it is just a couple
10 of lines where Minister Graham makes the following
11 statements as they are quoted.

12 "A Canadian who has been held
13 for a year in a Syrian prison
14 can get a fair and open
15 trial, Canadian Foreign
16 Affairs Minister says.

17 'They have taken the
18 position that he is guilty of
19 offences under Syrian law, in
20 which case the proper thing
21 to do is to prosecute him and
22 enable him to defend
23 himself,' Bill Graham said
24 about the case of Maher Arar.

25 'I have been given

1 assurances by them that it
2 will be in a civil process,
3 not a military process, and
4 that this will be open.'/

5 Do you see that?

6 MR. MARTEL: Yes. I see it. It's
7 a message from Lili Thomsen? Lilian Thomsen?
8 Yes?

9 "Arar can get a fair trial in
10 Syria: Graham"

11 MS EDWARDH: And you were of
12 course aware that the Minister had made such
13 comments because you, I think, are involved -- if
14 you turn then to volume 6 at tab 574 -- in having
15 to -- you are copied on this.

16 It is written by Myra
17 Pastyr-Lupul. And there is an observation about
18 what has been asked, to provide Mr. Arar's lawyer
19 with access to the file, to grant consular access,
20 and to have access to the upcoming trial.

21 And then she makes the
22 observation -- I'm sorry. This is from you,
23 Mr. Martel. I have mischaracterized it. It is
24 from you to Myra.

25 You say:

1 "We have not been requested
2 to convey our concerns to the
3 State Security Supreme Court
4 that the judicial process in
5 Mr. Arar's case be fair and
6 transparent. Perhaps this
7 was done through the
8 Minister's office. As the
9 defendant is a Syrian
10 national it is not
11 appropriate for mission to
12 act on the basis of a
13 suggested press line. Should
14 you wish to formally convey
15 your concerns to the Ministry
16 of Foreign Affairs, we will
17 require specific instructions
18 from headquarters. It is
19 however expected this action
20 may be taken as interference
21 in Syrian internal affairs."

22 Do you see that?

23 And I take it, sir, that was
24 certainly your view, that the press lines would
25 not suffice, and if there was a formal statement

1 on the part of the Government of Canada through
2 the Embassy, it may well be taken as internal
3 interference in the domestic affairs of Syria?

4 MR. MARTEL: Some speculation.

5 It's speculation, and that's why I
6 said we have to have instructions.

7 MS EDWARDH: Well, it's not
8 speculation to the extent that you are not
9 prepared to do anything without formal
10 instructions?

11 MR. MARTEL: Right. Yes.

12 MS EDWARDH: And if we turn then
13 to tab 575, the very next tab, I see that there is
14 a formal diplomatic note that is sent.

15 Do you see that?

16 MR. MARTEL: Yes. Note 1029.

17 MS EDWARDH: And that diplomatic
18 note does not include a specific call for an open
19 public trial or fair trial. It is limited to
20 consular access, disclosure to the defence
21 counsel, et cetera, but it doesn't make the call
22 that the Minister made; correct?

23 MR. MARTEL: No. This note is --
24 requests permission for the lawyer who had been
25 retained to have access to the file.

1 And I also believe that it
2 includes a request for Department intervention to
3 enable the Consul to once again have access to
4 Maher on a regular basis.

5 MS EDWARDH: Right. But what is
6 missing is any restatement in the diplomatic note
7 of a formal request for an open, public, or fair
8 trial process?

9 MR. MARTEL: Yes, but at my level,
10 I could not have sent such a note, and I did not
11 receive any instructions from Mr. Pardy to the
12 effect that that I should send that type of note.

13 So, at that time, at my level, our
14 concern was definitely ensuring that the lawyer
15 could access the file.

16 MS EDWARDH: All right. What I
17 wanted to ask you about, though, is the next tab,
18 tab 576.

19 We know no diplomatic note is
20 sent. This document appears to, obviously, be
21 part of the CAMANT files, and it is copied to you,
22 sir?

23 MR. MARTEL: Yes. It's -- yes, I
24 received a copy.

25 MS EDWARDH: And as a result of a

1 concern expressed by Mrs. Arar that the Minister
2 made some reference to being pleased the trial was
3 going forth and there would be an opportunity for
4 Maher to defend himself, she was obviously upset
5 by that comment.

6 Is that fair? Do you see that?

7 MR. MARTEL: I'm looking at the
8 bottom:

9 "Monia was very concerned
10 about the Minister's comments
11 this week..."

12 MS EDWARDH: Yes, at the end of
13 the first paragraph.

14 "Monia was very concerned -"
15 And this is Myra writing to
16 Michelle in the Minister's office.

17 "Monia was very concerned
18 about the Minister's comments
19 this week that 'We are
20 pleased that the trial is
21 going forth, as this will
22 give an opportunity for Maher
23 Arar to defend himself in
24 court."

25 Myra makes the observation:

1 "In reality, his lawyer
2 cannot get a hold of the case
3 files to defend his client,
4 we have not been informed of
5 a court date, nor the
6 charges, and all signs
7 indicate the trial will be a
8 closed one. This could very
9 well mean our Embassy
10 officials will not be allowed
11 in the courtroom when the
12 charges are announced, or to
13 hear Mr. Arar's lawyer when
14 given the opportunity to
15 defend his client."

16 And then I'm interested in the
17 next comment:

18 "Monia spoke with Robert Fry
19 last night and was told that
20 this is the 'strategy' of
21 MINA in preparation for his
22 meeting with the Syrian
23 Foreign Minister. Could you
24 please advise if this is
25 true? We must be aware that

1 the Minister's comments have
2 far-reaching implications,
3 and we can hope all we want
4 for a 'fair and transparent
5 judicial process', but the
6 Supreme State Security Court
7 is known for its secretive
8 procedures and lack of appeal
9 once a decision is rendered
10 by the court."

11 You certainly agree, do you not,
12 Mr. Martel, that that is a fair characterization
13 of the court in Syria, the Supreme State Security
14 Court?

15 MR. MARTEL: Yes. It's common
16 knowledge. There is always a major concern that
17 they could come to a decision without us being
18 notified.

19 MS EDWARDH: Or a lot of other
20 things, based on due process --

21 MR. MARTEL: It's a special court,
22 and so no one has access.

23 MS EDWARDH: Were you privy to
24 this strategy, on behalf of the Minister's office,
25 of how they hoped it would work to make it public,

1 call for a fair and transparent and public trial?

2 MR. MARTEL: No. It was -- the
3 correspondence with the Minister's office was at a
4 very high level, in consultation with Mr. Pardy,
5 with the Ambassador.

6 But we were on the ground, at the
7 operational level. I was not at the political
8 level.

9 How we would proceed, how the
10 Minister's office would proceed, was not my
11 business.

12 MS EDWARDH: And I take it there
13 is nothing about what the Minister said that makes
14 it obvious to you what the strategy was?

15 MR. MARTEL: No, I don't know what
16 their strategy was.

17 MS EDWARDH: All right. I would
18 like to just turn for a moment, if I could, to tab
19 590.

20 It may not be the right tab,
21 Mr. Commissioner, I'm sorry.

22 I just want to clarify: Was there
23 ever any discussion, that you became aware of,
24 that if a call was to be placed calling for a
25 fair, open, and public trial process, that that

1 call should be made by the Prime Minister?

2 MR. MARTEL: There was some
3 correspondence, of which I got wind, but I don't
4 know when. I think it was much later, afterwards.
5 At the time the discussions about strategy were
6 taking place, I was not in the loop, and these
7 actions were taking place at a much higher level
8 than mine.

9 But I know there were discussions
10 later on. Somebody -- either from the Minister's
11 office or the Prime Minister's office -- was
12 supposed to call someone, and that sort of thing,
13 but I was not involved in this.

14 MS EDWARDH: I'm sorry, it is the
15 tab just before that, 587, paragraph number 3.

16 If we go to paragraph number 3 --
17 and this is written around the same time,
18 September 25th, just a few days before Mr. Arar is
19 released -- am I correct that you would not have
20 gotten a copy of this directly?

21 MR. MARTEL: Yes. This message was
22 initially addressed to John McNee, Michael Chesson
23 and Konrad Sigurdson, and I was not copied, but it
24 was taken up again by Myra Pastyr-Lupul, who
25 eventually put it in the system, on September 30,

1 and so at that point, after September 30, I
2 definitely got a copy because my name appears
3 here, at the bottom.

4 MS EDWARDH: So in the few days
5 around September 25th to September 30th, it does
6 appear that it is the view of now Chrystiane Roy,
7 and she makes the following observations:

8 "That they ensure Prime
9 Minister Chrétien urgently
10 tell the Syrian President
11 that this trial is not
12 acceptable, that Maher Arar
13 does not belong in Syria and
14 must be returned to Canada
15 immediately. She asked that
16 Prime Minister Chrétien
17 clearly state that if Syrian
18 authorities do not comply
19 with this demand that there
20 will be consequences for
21 Syria. Returning Mr. Arar
22 immediately would be a
23 win-win situation for both
24 Canada and Syria as it would
25 be grounds to allow

1 cooperation and trade
2 relations to grow on."

3 And that was really attributed --
4 that statement is made by Mr. Arar's wife; right?

5 In order to deal with this issue
6 of the wisdom of the Minister calling for an open,
7 fair, public trial when it is the position of most
8 that none can be had, do you know whether any
9 formal note, or directive, or communication at any
10 level of the Canadian government took place with
11 Syrian counterparts from the President on down?

12 MR. MARTEL: All I know is that,
13 after the fact, there was supposed to be a call,
14 perhaps from the Prime Minister, but I don't know
15 whether this call was actually made. So I don't
16 know whether or not a conversation actually took
17 place. I read this. There was supposed to be a
18 phone call and a discussion with the Prime
19 Minister, but even today I'm not sure. It's
20 possible, and perhaps even probable, that it
21 didn't take place. I'm not sure.

22 MS EDWARDH: We have heard that
23 there was earlier that summer an expectation,
24 perhaps, by the Syrians that such a call would
25 take place in July or August of this year.

1 Was it your understanding as well
2 that that call was to deal with questions around
3 the process available to determine whether
4 Mr. Arar was guilty or not?

5 MR. MARTEL: No. I was not aware
6 of the details. I believe that a call was
7 supposed to be made to discuss Mr. Arar's case,
8 among other things, because usually a call is not
9 limited to a discussion of just one case -- they
10 would also, perhaps, discuss problems in the
11 region and all that, but as far as I know . . .
12 To my knowledge, the call did not take place, and
13 I also don't know what was supposed to be
14 discussed.

15 MS EDWARDH: And do you recall
16 being of the view that that the call was to follow
17 on after the delivery of the personal letter from
18 the Prime Minister through his special envoy? It
19 was after that that the Syrians were expecting a
20 call?

21 MR. MARTEL: I know that Senator
22 De Bané came, but I don't have any details about
23 his visit, and I don't know either whether he
24 brought a letter or a message from the Prime
25 Minister. I didn't see him. He came and went

1 without even visiting the Embassy.

2 MS EDWARDH: But was it your
3 understanding that the Prime Minister's call, if
4 it took place, was to occur after that?

5 MR. MARTEL: I couldn't say.
6 These discussions did not take place at my level,
7 and today, after so many months . . .

8 MS EDWARDH: That's fair.

9 MR. MARTEL: . . . I couldn't tell
10 you. I don't know.

11 MS EDWARDH: All right. I want to
12 deal with one other quick topic, which is the
13 pursuit of the Syrian information about Mr. Arar.

14 You have testified, sir, that you
15 had no idea that General Khalil arrived to give a
16 document to the Ambassador in November of 2003?
17 You didn't know that that --

18 MR. MARTEL: No, that's correct.

19 MS EDWARDH: And let me just
20 understand what happened.

21 At the time Mr. Arar was released,
22 were you aware that the Syrians also provided a
23 document that was to be sent back to Canada?

24 MR. MARTEL: Yes. Actually, I was
25 present with the chargé d'affaires when General

1 Khalil gave a document of some sort, the content
2 of which I did not see, to the chargé d'affaires,
3 who was, of course, the most senior representative
4 of the Embassy, Tracy Reynolds. He took the
5 document, and I took my client, and then we
6 parted. I didn't see the document.

7 MS EDWARDH: Right. Now, it is
8 true, is it not, that the Embassy, either through
9 you or the Ambassador -- of course the Ambassador
10 is a new Ambassador now -- and the Government of
11 Canada were hoping and expecting further
12 information to be provided?

13 MR. MARTEL: Well, that's what the
14 General told us at the meeting -- told Tracy
15 Reynolds, who was replacing the Ambassador at the
16 time. A document had been given to Tracy
17 Reynolds, and the General said at that time that
18 other documents would be provided, I believe, at a
19 later date, I don't know when, in November or
20 something like that. I can't remember when, but
21 it was supposed to be much later.

22 MS EDWARDH: So if you turn to tab
23 593, you have a document that is signed by
24 Mr. Gould, who is Deputy Director of the Foreign
25 Intelligence Division of Foreign Affairs, and it

1 goes to MJW via ISD, which we know to be
2 Mr. Livermore.

3 Who is MJW?

4 MR. MARTEL: MJW would be John
5 McNee, I believe.

6 MS EDWARDH: And the file
7 reference is 969004 bin Laden --

8 MR. CAVALLUZZO: Let me intervene
9 at this point in time. MJW is not John McNee;
10 it's Jim Wright.

11 MR. MARTEL: Oh! Excuse me. Jim
12 Wright.

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

15 MR. MARTEL: Thank you.

16 MS EDWARDH: And the final
17 reference, as I pointed out, has got a certain
18 number with the name Bin Laden [Arar].

19 Do you see that?

20 MR. MARTEL: Yes, I see it in the
21 file.

22 MS EDWARDH: Do you see the file
23 reference?

24 MR. MARTEL: Yes. Reference
25 9690004 Bin Laden.

1 MS EDWARDH: And there is a
2 discussion here about waiting for and looking for
3 a further file, and what is asked:

4 "As of this date, no such
5 file has been received.
6 Enquiries have been made of
7 the Embassy, CSIS, the RCMP,
8 as well as the geographic and
9 consular divisions of the
10 Department, and none have
11 received anything beyond the
12 single sheet."

13 And my simple question: There
14 were a number of other efforts to obtain the file,
15 or any other files that the Syrians were going to
16 give you?

17 MR. MARTEL: Not formally, first
18 of all because, one, we had been told that they
19 would come later on. In the end, they never came,
20 and we never formally followed up on this matter.
21 In my view, there were no other documents to come.
22 So, for my part anyway, I didn't take the matter
23 very seriously, and we were never given the
24 documents.

25 MS EDWARDH: That is an

1 interesting observation, Mr. Martel. Why do you
2 say "according to me, there was no such file or
3 documentation that would be provided"?

4 MR. MARTEL: Well, if you look
5 back at the way the General had spoken to me in
6 the past, you have to doubt his credibility a bit.
7 First of all, in the past, we saw that someone
8 said that Maher was a member of the Muslim
9 Brotherhood, a statement that was later dropped,
10 and which was not followed up on. So, after that,
11 when he told me that another document would be
12 provided later on, as usual I was sceptical. I
13 didn't know. He told me there would be another
14 document -- the document didn't come and that was
15 the end of it. I believed that we would never get
16 it.

17 MS EDWARDH: So I take it you at
18 no time had any expectation that further
19 information would be forthcoming from the Syrians?

20 MR. MARTEL: No, I didn't believe
21 there would be anything else.

22 MS EDWARDH: Let me turn to the
23 issue of torture, or abuse, or whatever label we
24 want to give it.

25 As I understood your evidence

1 sir.

2 When you flew back with Mr. Arar
3 and you watched him and watched his responses and
4 you watched his fear when he landed in -- I think
5 you landed in Jordan first. You are smiling, but
6 I can see that you recall this. You had no doubt
7 that the man who was with you was a fragile and
8 broken human being?

9 MR. MARTEL: Exactly, and it was
10 precisely for this reason that my mandate was to
11 bring him back.

12 MS EDWARDH: You have also very
13 candidly told us that, while you forgot -- because
14 I'm sure you have, as you have explained, many,
15 many duties and responsibilities -- Mr. Arar also
16 told you at the time of the August 14th meeting
17 something about the nature of his cell, 3 by 6 by
18 7. You have agreed and that that was left out in
19 any reporting?

20 MR. MARTEL: That's correct.

21 MS EDWARDH: You have also told us
22 in his discussions with you -- I don't intend to
23 go back to them in any detail -- on the plane that
24 he made it clear, although it didn't stick in your
25 mind, but he made it clear that in the first two

1 weeks of his interrogation he had been beaten?

2 MR. MARTEL: Yes, that's right. I
3 said so at the first meeting after two days of
4 travel, but Maher hadn't placed as much importance
5 on this, let's say, event. He told me something
6 to the effect that, yes, they had hit him from
7 time to time, but it was nothing very serious.
8 What was obviously much more serious were the
9 conditions of his detention. That's what struck
10 me more, and that's why . . .

11 But Maher himself, clearly, after
12 so many months, perhaps on that day he told me
13 that he didn't think . . . that things weren't all
14 that serious during the first two weeks. So this
15 is one element that stuck in my head after two
16 days of travel, and you noted later on that I had
17 omitted to include it in a report one month later.

18 MS EDWARDH: I'm going to suggest
19 to you that it is not that Mr. Arar said it wasn't
20 serious, but that what he was burning about, when
21 he talked to you, was the horror of living in the
22 grave?

23 MR. MARTEL: Yes. The worst part
24 was his long detention under horrifying
25 conditions. It was terrible. Yes.

1 MS EDWARDH: And in reality, in
2 reality, what he conveyed to you was that he had
3 been in detention so long that the beatings in the
4 first two weeks became much less significant as
5 the days and weeks and months went by when he was
6 alone in a grave. That's what he really said.

7 MR. MARTEL: Possibly. Actually, I
8 don't know what he really meant, but he placed a
9 lot less importance on this period.

10 MS EDWARDH: And I take it that,
11 given the description, it is obvious that the
12 horrors of the detention, the conditions of
13 detention, were much more recent for him. He had
14 only been out of that hole for some 45 days before
15 he was released.

16 MR. MARTEL: Yes. I think he got
17 out some time in August, around about the 20th,
18 something like that, and he was released in
19 October. Yes.

20 MS EDWARDH: So we have a general
21 agreement, really, that Mr. Arar told you
22 something about the detention on August 14th and
23 the size of the cell. We have a general
24 understanding and agreement now that Mr. Arar also
25 told you in the airplane as you passed the time

1 with him, even though he told you reluctantly,
2 that he had been beaten during the first two days
3 and was then thereafter preoccupied with what his
4 life was like in the grave.

5 So the real dispute, the only
6 dispute I can see between your version of
7 recollection and Mr. Arar's is that he believes he
8 told you he was beaten as well on October -- I'm
9 sorry, on August 14th when he answered, or
10 suggested to you, or has taken the position he
11 suggested to you that he said he was beaten at the
12 beginning, in the first two weeks; right?

13 So that is really the only point
14 of dispute, isn't it?

15 MR. MARTEL: I understand, but
16 that's not what he told me on August 14, because
17 he himself told me on August 14 . . .

18 MS EDWARDH: We are going to come
19 to that, Mr. Martel --

20 MR. MARTEL: No, that's not it.

21 MS EDWARDH: But I want to make it
22 clear that you are not saying that anything else
23 Mr. Arar has said about his treatment, or what he
24 said to you, is really wrong. You are not saying
25 that.

1 MR. MARTEL: No, I'm not saying
2 that what he told me during the trip . . . I'm not
3 disputing what he told me during the trip. I
4 fully believe what he told me during the trip. He
5 told it to me freely, without any constraints,
6 without anyone else around. He told me everything
7 he wanted to tell me, freely, and I believed
8 everything he said.

9 MS EDWARDH: And he told you some
10 things when you had the meeting on August 14th.

11 All I'm trying to establish,
12 Mr. Martel -- because I don't want everyone to
13 think there is such a huge conflict between what
14 your recollection is and what his is.

15 The only real dispute I can see is
16 he recalls saying something in the August 14th
17 meeting, and you don't recall it. Is that fair?

18 The other stuff is really very
19 similar.

20 MR. MARTEL: Well, what he told me
21 on August 14, he told me . . . several times, I
22 think he was forced to tell me things, and then
23 when I asked him some questions -- and the
24 questions are not in my notes -- and when I asked
25 him if they had made things a lot harder for him .

1 . . if the Syrians had made things very hard for
2 him, at that time he said, "At the beginning, but
3 not that much". That's what he told me on August
4 14. Once on the plane, however, he was able to
5 elaborate because he was free to speak at that
6 time.

7 MS EDWARDH: My only point,
8 though, Mr. Martel -- I'm trying to put this in
9 some way that those listening to you can
10 appreciate.

11 Mr. Arar has publicly, in his
12 chronology, and spoken -- there is a transcript.
13 He has made certain observations.

14 All I'm pointing out to you -- and
15 I'm looking for your agreement -- is you don't
16 have much different to say except about this one
17 tiny point about whether, on August the 14th, he
18 said anything about being beaten during the
19 beginning period. That's the only difference.

20 MR. MARTEL: Yes, there's -- no,
21 there's more than that, because there's the matter
22 of the cell, and where he was detained, and under
23 what conditions.

24 On August 14, I didn't know all
25 this. On the plane, yes, I knew about it.

1 There's a huge difference between -- between the
2 two meetings.

3 In my view, there's a huge
4 difference.

5 MS EDWARDH: Right, right. But
6 Mr. Arar certainly told you about the cell on
7 August 14th.

8 MR. MARTEL: Well, not entirely.
9 He told me about the size, and he told me he slept
10 on the ground. That's all he told me about the
11 cell on August 14.

12 Then, during the trip, he gave me
13 a complete description.

14 MS EDWARDH: And that, of course,
15 was before he ever saw anybody except you? You
16 were the only person he had met? He had not seen
17 any lawyers or anyone else?

18 MR. MARTEL: No. I went to get
19 him, and we stayed together, and there was no one
20 else.

21 MS EDWARDH: I want to go back
22 then. If I can't get you there the short way, I'm
23 going to try another route.

24 I want to just establish that your
25 evidence is that when Mr. Arar disappeared, you

1 became aware of a comment --

2 MR. DÉCARY: May I object before.
3 The record speaks for itself. If there are any
4 differences between what Mr. Martel stated and
5 what Mr. Arar stated, it is now on the record.
6 Why insist on going through this exercise? To me
7 it is very clear on the record.

8 It is just that I don't see where
9 this will lead us if the record up to date is
10 clear. All my colleague wants to show is that
11 what the record says is correct. Well, the record
12 says what it says.

13 THE COMMISSIONER: Well, clearly
14 we have had a number of questions about it, and I
15 agree with you that the record says what it says.
16 On the other hand, I think that it is
17 cross-examination.

18 MR. DÉCARY: But on this matter,
19 it seems to me -- I arrived only recently, but the
20 answer flows. But anyway, if it's useful at this
21 stage . . .

22 THE COMMISSIONER: Well, I will
23 leave that to Ms. Edwardh's judgment.

24 Go ahead.

25 MS EDWARDH: With your permission,

1 Mr. Commissioner . . .

2 I want to review three points that
3 you made to Mr. Cavalluzzo as the context of a
4 series of other questions.

5 You made it clear that you had
6 read the article where Mr. Riad Saloojee is quoted
7 saying on October 12th, when Mr. Arar has
8 disappeared, that he had a concern that Mr. Arar
9 might be tortured and that he had not finished his
10 military service in Syria -- or had not actually
11 started it. You knew that on October 12th, or
12 around about that time?

13 MR. MARTEL: I believe so, yes.

14 MS EDWARDH: Okay. But you did
15 not get -- no one showed you a memorandum written
16 by Mr. Livermore to Mr. Pillarella that it was
17 urgent that the Embassy find Mr. Arar because
18 there were concerns about aggressive
19 interrogation?

20 That memo was not shown to you.
21 That is your evidence?

22 MR. MARTEL: No, I never saw that
23 memo.

24 MS EDWARDH: Mr. Pillarella did
25 not share the concerns of ISD that aggressive

1 interrogation could be going on?

2 MR. MARTEL: No, I saw that memo
3 during this investigation. But the content of the
4 memo was not shared with me.

5 MS EDWARDH: Nor was the concern
6 shared with you by Mr. Pillarella. Forget the
7 memo for a minute.

8 MR. MARTEL: It wasn't discussed.

9 MS EDWARDH: When Mr. El Maati was
10 interviewed -- and I just want to take a quick
11 look at the consular note, because it has a
12 Damascus number on it. You will find it in
13 Exhibit P-192.

14 In August of 2002, Mr. El Maati
15 was interviewed. Interestingly enough -- you will
16 see under Subject "CAMANT File". Do you see that?

17 MR. MARTEL: M'hm.

18 MS EDWARDH: And the subject
19 CAMANT file says: 01-Damascus-728675-(El Maati).

20 Do you see that?

21 MR. MARTEL: Yes, I see it. Yes.

22 MS EDWARDH: I would have thought
23 that with that file number it was posted to the
24 Damascus file. Was it not, Mr. Martel?

25 MR. MARTEL: Well, that's just how

1 the system works. In other words, I never saw
2 that memo.

3 The way the system works is that
4 the files are in an immense databank. However, if
5 the Damascus mission is not in the addresses, the
6 mission is not alerted and, as a result, the file
7 remains in this huge databank in Ottawa, and the
8 file is not opened. That's how the system works.

9 If you forget to address a
10 communication to someone in this system, the
11 person or the mission will not see it.

12 MS EDWARDH: I see. And it is
13 clear from at least this initial list that no one
14 who had any responsibility for Damascus, except
15 Myra, received this note? She had not
16 responsibilities for Damascus.

17 MR. MARTEL: She was the person
18 named to follow up in the To: line.

19 It's addressed -- it's an e-mail
20 that was initially addressed to her, and I believe
21 it was copied into the system afterwards, and
22 Damascus was not sent a copy.

23 MS EDWARDH: I take it from what
24 you said to Mr. Cavalluzzo that you personally
25 were never made aware, not only of this note, but

1 that Mr. El Maati made allegations about his
2 confinement in Syria --

3 MR. MARTEL: No.

4 MS EDWARDH: -- until much later,
5 after Mr. --

6 MR. MARTEL: Up to now in the
7 papers, basically. Or a month, two months, three
8 months ago. Quite recently.

9 MS EDWARDH: And I take it,
10 though, you cannot say, cannot speak on behalf of
11 Mr. Pillarella, as to whether or not as Ambassador
12 he came to learn this information? He may well
13 have.

14 MR. MARTEL: I -- not -- not in
15 this memo anyway, and he doesn't have access to
16 this system either.

17 I have access to the system, but
18 he doesn't have access.

19 MS EDWARDH: No. But this kind of
20 information could readily come his way through
21 other means, whether by way of telephone calls or
22 other forms of communication that he might have
23 with headquarters --

24 MR. MARTEL: Possibly. I can't
25 speak for him, but according to the document here,

1 he's not there.

2 MS EDWARDH: Just in respect of
3 that one note?

4 MR. MARTEL: In this memo, yes.

5 MS EDWARDH: And if El Maati's
6 case had become a matter of intense public
7 scrutiny, or people expected it to become a case
8 of intense public scrutiny, then you would expect
9 the Ambassador to be notified and you to be
10 notified; would you not?

11 MR. MARTEL: Well, I think that
12 the Consular Affairs Bureau and Mr. Pardy, who, in
13 this case, obviously had a copy of this message --
14 if Mr. Pardy thought that this case was of
15 particular interest to Damascus at the time, he
16 would have noticed it, and would have said, "This
17 is of interest to Damascus. We should send them a
18 copy too." That would have been the appropriate
19 follow-up at the time.

20 But this decision has to be made
21 by someone in Ottawa, because we see here that
22 Damascus was left out of this matter.

23 MS EDWARDH: Do you know whether
24 this situation involving Mr. El Maati was reported
25 at length in the 2003 report?

1 MR. MARTEL: No, I -- when I
2 arrived in Damascus, the file -- what was called
3 the file -- was already closed. In other words,
4 the client had already left the country.

5 Consequently, when this happens,
6 this is usually the end of the matter for the
7 mission.

8 The file is closed and you're told
9 that the client is no longer in the country and
10 therefore the file has been closed.

11 So I knew that --

12 MS EDWARDH: I'm sorry. But was
13 his situation and the allegations, were they the
14 subject matter of discussion and report in the
15 human rights report that the Embassy releases?

16 MR. MARTEL: In general, the
17 cases -- consular cases are not included, and --
18 except if they appear in the media.

19 But, in general, my colleagues who
20 prepare these Embassy reports use their own
21 contacts. The sources are not the same as those
22 of consular clients.

23 MS EDWARDH: But my question is:
24 Did the person I suppose gathering together the
25 relevant information for the Government of

1 Canada -- they are not posting this on any
2 websites. Did the person who was doing that
3 include a discussion of Mr. El Maati's claims as
4 they existed in respect of his interrogation in
5 Syria?

6 MR. MARTEL: Well, I didn't see
7 anything. It came out -- these complaints
8 surfaced much later, right? In August, right? In
9 August 2002? I don't know if my colleague took
10 them into account in the next report.

11 MS EDWARDH: In 2003, when it is
12 published.

13 Mr. Commissioner, I find it again
14 difficult to struggle with the fact that the human
15 rights report that we have is entirely and
16 absolutely redacted. I know the Government of
17 Canada has asserted National Security
18 Confidentiality over everything and then we got
19 the one paragraph pertaining to Mr. Arar, but
20 certainly it would be relevant to at least know
21 the answer about whether Mr. El Maati's case was
22 included in that.

23 I wonder whether they would
24 consider answering that question and, if it is,
25 further redacting the document?

1 MR. BAXTER: We will look at the
2 document and so advise.

3 THE COMMISSIONER: There will be
4 an afternoon break before you complete your
5 cross-examination, Ms. Edwardh.

6 MS EDWARDH: Thank you.

7 MR. BAXTER: It is in a secure
8 location. We can make a phone call.

9 THE COMMISSIONER: If you can sort
10 it out, that would be great.

11 MS EDWARDH: You have also said
12 you had no idea at all about what the Department
13 of State report said about Syria, but you were
14 very, very clear, sir, in answer to a series of
15 questions by Mr. Cavalluzzo, that while you may
16 not have read the Department of State, or the
17 Amnesty International report, you made it very
18 clear that you were aware of the reputation of
19 Syrian Military Intelligence.

20 You made a very interesting
21 comment, and I think it is correct to describe it,
22 that Syrian Military Intelligence spread terror in
23 the community in Syria.

24 MR. MARTEL: That's right. It's
25 the truth.

1 MS EDWARDH: And in addition, I
2 guess, or because of their conduct and in
3 spreading that terror, one of the factors you just
4 described a little bit later on was the arbitrary
5 detention aspect where people would just be
6 gathered into detention and released some day if
7 they saw fit. That was a part of it, was it not?

8 MR. MARTEL: Yes, absolutely.

9 MS EDWARDH: And the other part of
10 that reputation that was well known to you related
11 to the treatment specifically of persons who
12 disagreed with the government?

13 MR. MARTEL: Yes, people known as
14 -- as political dissidents. Above all, yes.

15 MS EDWARDH: Those political
16 dissidents who were in detention, particularly if
17 they were in the hands of Syrian Military
18 Intelligence, were persons -- and you knew that
19 the reputation was that those gaolers also
20 tortured people? You knew that?

21 MR. MARTEL: Well, it -- we knew
22 about this from reports published by other
23 sources, not necessarily the Ministry of State.

24 MS EDWARDH: Right. But there is
25 nothing about what I have said that remotely

1 surprises you, sir, given the experience and
2 knowledge you had.

3 MR. MARTEL: It comes as no
4 surprise. It's based on various reports in public
5 circulation.

6 MS EDWARDH: In October of 2002,
7 that reputation was clearly something that you
8 knew then as well as you did later when you left
9 Damascus?

10 MR. MARTEL: Yes, and as I already
11 explained, it's the same thing -- these services
12 work more or less the same way throughout the
13 region.

14 So it was -- it was nothing new,
15 even at this time.

16 MS EDWARDH: When you were
17 informed by the Ambassador -- and I take it you
18 would be informed -- that Syria, on October 21st,
19 confirmed that Mr. Arar was in detention? You
20 realized that?

21 MR. MARTEL: Yes.

22 MS EDWARDH: I want to just go
23 through what you knew.

24 You knew then, or very soon after,
25 that he was being detained by military

1 intelligence?

2 MR. MARTEL: Yes, after the
3 initial visit, I did some research. Yes.

4 MS EDWARDH: And you knew then, or
5 very soon after, that he was being detained in
6 what I'm going to call a prison or detention
7 facility belonging to military intelligence?

8 MR. MARTEL: Yes, he was detained
9 by the military intelligence authorities. That's
10 right.

11 MS EDWARDH: Right. And those
12 aren't the ordinary police officers?

13 MR. MARTEL: No. They're --
14 they're military personnel.

15 MS EDWARDH: You were aware very
16 soon after that Mr. Arar had been removed by
17 United States because they alleged him to be a
18 threat to the U.S., or having some connection to
19 terrorist activities?

20 MR. MARTEL: I didn't have any
21 details. I knew he had been deported.

22 MS EDWARDH: And you knew it was
23 alleged that he had, with no details, I understand
24 that, that there was some question about whether
25 he had a connection to terrorist activities?

1 MR. MARTEL: I don't remember. I
2 don't think I had any specific details about that.
3 I knew that he had entered the U.S. and that the
4 Americans had had him deported.

5 MS EDWARDH: Mr. Martel, I'm
6 sorry, I'm not suggesting you had specific
7 details. I'm suggesting that you knew the U.S.
8 had deported him, which would be pretty unusual,
9 since he was a Canadian citizen, right, and
10 deported to Syria. You knew that. And you knew
11 there was a question that he was involved in
12 activities that had a terrorist connection.

13 MR. MARTEL: Possibly.

14 MS EDWARDH: And while you may
15 have been more familiar with the detainees who
16 were dissidents, political dissidents, you were
17 also aware of the reputation of the Syrian
18 authorities in respect of persons they thought
19 might be security threats, such as the Muslim
20 Brotherhood?

21 We know that story; right?

22 MR. MARTEL: Yes, we know. Yes.

23 MS EDWARDH: And we know that the
24 conduct of those authorities, vis-à-vis detainees,
25 is marked by the same abusive and perhaps --

1 torture, actions, as it was with dissidents.
2 There is no suggestion that those two categories
3 of detainees are really persons that the Syrians
4 made distinctions about.

5 MR. MARTEL: There's a
6 distinction.

7 MS EDWARDH: What is the
8 distinction?

9 MR. MARTEL: There's a distinction
10 in that -- if we think of-- for example, when we
11 think of members of the Muslim Brotherhood, they
12 are all treated the same way.

13 If we think of people who oppose
14 the government and who are Kurds from the north,
15 for example, they are treated the same way by the
16 authorities.

17 Now, if clients -- if -- we're
18 talking about dual nationality, because we don't
19 know what's going on with the Syrians. But dual
20 nationality, Syrian nationality and that of
21 another country. So, Canadian in our case.
22 There's a range. I mean, we never really know.

23 We never really know. And it's
24 clearly evident from the past, we never know.

25 MS EDWARDH: I may have not asked

1 my question clearly, Mr. Martel.

2 All I am saying to you, given the
3 reputation that you were aware of, you had no
4 sense that a political dissident would be treated
5 differently than a person viewed as a security
6 threat by the Syrians?

7 MR. MARTEL: I think that, if the
8 person is a threat to national security, they will
9 treat them the same way.

10 Yes, I agree with you.

11 MS EDWARDH: That was my point.

12 MR. MARTEL: Mm-hmm!

13 MS EDWARDH: And certainly at this
14 time, when Mr. Arar was detained, the Syrian
15 authorities were keen to establish that they would
16 stand in opposition to al-Qaeda and stand beside
17 the United States; correct?

18 MR. MARTEL: That was the public
19 position, in any case.

20 MS EDWARDH: I suppose we have to
21 take that one with a grain of salt, too. But that
22 was the public position.

23 MR. MARTEL: Exactly.

24 MS EDWARDH: So when you go see
25 Mr. Arar for this first visit, you would have been

1 alive to the fact that the man you were about to
2 see had been disappeared for a period of time. Is
3 that correct?

4 MR. MARTEL: Yes, he had been
5 reported missing, yes.

6 MS EDWARDH: And that the fact of
7 he being a disappeared person raised substantial
8 questions about what may have happened to him?

9 MR. MARTEL: Yes, of course.

10 MS EDWARDH: The fact that he was
11 in the hands of Syrian Military Intelligence,
12 which you soon realized raised substantial
13 concerns about what was going to happen to him and
14 what had happened to him. Is that fair?

15 MR. MARTEL: It's always a
16 concern, of course.

17 MS EDWARDH: Right. Now, one of
18 the things that puzzles me is there was some press
19 lines prepared, and they were drafted by Myra and
20 you will see those at tab 129.

21 Perhaps I had better take you
22 to them.

23 I think I want to start with
24 Exhibit 123, volume 1.

25 THE COMMISSIONER: Tab 1?

1 MS EDWARDH: I'm sorry. Volume 1,
2 tab 123.

3 This is a message from the
4 Ambassador. It is being sent to a number of
5 people in Ottawa, and he is announcing his first
6 visit with General Khalil, and this is sent before
7 there is any consular visit; right?

8 MR. MARTEL: Yes, if you read the
9 text, he says he just had a meeting.

10 MS EDWARDH: Yes.

11 MR. MARTEL: Yes, that's right.
12 You are correct.

13 MS EDWARDH: And at the very end
14 of this document, the Ambassador is suggesting to
15 Ottawa that no public announcement be made of the
16 visit before it takes place, and he says this:

17 "Obviously, in any public
18 announcement no reference
19 should be made to (blank)..."

20 No, I'm sorry, I have to go up a
21 little farther. You have to go to the top of the
22 page.

23 "While I believe that (blank)
24 will not renege on his
25 promise, it would be more

1 prudent if we could announce
2 that a consular officer had
3 in fact met with Arar and
4 that he is well."

5 Do you see that? So that is
6 certainly the Ambassador's wish before you ever
7 see him, or anyone has ever seen him, that the
8 announcement be postponed to be able to announce
9 that he is well.

10 You will agree with me that that
11 is pretty optimistic on the part of the Ambassador
12 at this time? He had no idea what condition
13 Mr. Arar would be in.

14 MR. MARTEL: Yes, I think he's
15 assuming he's -- the authorities have decided to
16 hold a consular visit, and the Ambassador is
17 already assuming that the client is well. That's
18 how I read it, in any case.

19 I didn't see this document at the
20 time.

21 MS EDWARDH: That is a very
22 important presumption because, given the
23 sophisticated nature of abuse and torture, to
24 presume someone will be well just because you get
25 access to them is naive in the extreme, is it not?

1 MR. MARTEL: I can't comment on
2 what the Ambassador was thinking at the time, and
3 he didn't copy me, he didn't consult me and he
4 sent his report.

5 I think you'd have to ask him
6 that.

7 MS EDWARDH: Let me just go to
8 your first consular visit from a different
9 perspective than Mr. Cavalluzzo did.

10 Mr. Pardy in his instructions to
11 you, which are found, I believe, at tab -- I think
12 we should probably have the Pillarella documents,
13 tab 3, which is the visit.

14 That is Exhibit 134,
15 Mr. Commissioner, tab 3; and the instructions, tab
16 131 in volume 2 of the DFAIT materials.

17 --- Pause

18 MS EDWARDH: It is fair to say
19 that before each consular visit, you would get
20 directions?

21 MR. MARTEL: Almost always,
22 otherwise -- I'd follow the previous instructions,
23 the guidelines I had to follow for each visit.

24 But as in this case, Mr. Pardy
25 sent me specific instructions, it was the first

1 visit, and he didn't always do so after that.
2 Myra sometimes gave me instructions, or if there
3 were none, I'd follow the same procedure.

4 MS EDWARDH: And the instructions
5 acknowledge very clearly that the circumstances
6 may intrude to the point where all you can do is
7 simply make an observation?

8 MR. MARTEL: That's correct.

9 MS EDWARDH: Before you arrive at
10 the visit, or thereafter before you meet Mr. Arar,
11 do you sit down with the Syrian authorities and do
12 they lay out the ground rules for you about what
13 you can or cannot talk about?

14 MR. MARTEL: Yes, and even before
15 then with my interpreter in the car, because I
16 didn't know where he'd take me, exactly, and he
17 told me in English that I had to limit myself to
18 questions about his family and his wellbeing and
19 that I wasn't to discuss the case.

20 The Syrians gave me specific
21 instructions.

22 MS EDWARDH: So you were to limit
23 yourself entirely to his family, to his wellbeing.
24 And what was the third one?

25 MR. MARTEL: And the conditions of

1 his detention, his wellbeing.

2 MS EDWARDH: I want to be very
3 careful about this, because if the Syrians had
4 welcomed your inquiry about the conditions of
5 detention, then we might draw some inferences.

6 But were you told by the Syrians
7 you couldn't talk about his case but you could
8 talk about the family, his wellbeing and the
9 conditions of his detention?

10 MR. MARTEL: Well, his wellbeing,
11 it means the same thing. They told me that I
12 could see he was well, but I couldn't ask any
13 questions, for example, about where he was being
14 detained, and so on. That was out of the
15 question. They had told me, I couldn't ask that.

16 MS EDWARDH: So no one ever told
17 you that other than saying "How are you? Are you
18 well? Do you need medical care?" or something
19 like that, beyond those very, very general
20 questions, you understood from the first moment
21 that you had been told by the interpreter that all
22 the other questions were off the table?

23 MR. MARTEL: Yes, exactly, and as
24 early as the first visit I was prevented from
25 asking and Arar was prevented from answering when

1 I wanted more details or tried to ask more
2 specific questions.

3 They immediately -- they
4 interrupted us immediately.

5 MS EDWARDH: Let me then ask you a
6 couple of questions.

7 Do you recall, sir, whether you or
8 the Ambassador ever, ever asked whether you could
9 meet with Mr. Arar by himself?

10 MR. MARTEL: I never asked because
11 they set the conditions, and I don't know if the
12 Ambassador asked.

13 I think you have to ask him that,
14 but as for me, the Syrians imposed conditions on
15 me, with an interpreter, with someone who took
16 notes, with two people present. It was always the
17 same and that was how they had agreed to work.

18 MS EDWARDH: And you will agree
19 with me that in the ordinary case, the Consul is
20 expected to try to seek, indeed demand it and
21 protest if they don't get access, which is
22 confidential access?

23 MR. MARTEL: Yes. We can protest,
24 of course, but the Syrian position was that we had
25 a Canadian citizen, of course, while they claimed

1 they had a Syrian citizen.

2 They'd tell me that the citizen
3 was now in Syria, it was Syrian law that applied
4 and they didn't have any obligations to the
5 international community or under the Vienna
6 Convention.

7 To ask for an interview under the
8 Vienna Convention, they are obliged to do it, but
9 they claimed that the Vienna Convention didn't
10 apply because of my client's nationality. So, I
11 couldn't get a private interview, they wouldn't
12 let me.

13 MS EDWARDH: I appreciate that
14 there are differing and evolving views, but I do
15 want to just make this observation: that it
16 appears from this record that no one ever asked
17 for confidential access to Mr. Arar as a
18 representative. And even though you can say the
19 Vienna Convention didn't require it, you were
20 there; you were delivering consular access to a
21 man that you are telling us the Syrians said is
22 just Syrian. They had made the exception.

23 MR. MARTEL: Yes, they had made
24 the exception, and according to Gar Pardy's
25 instructions, who at the outset himself said, "I

1 realize that the conditions will be very
2 difficult. You won't be able to ask for anything
3 else." Gar Pardy already knew the Consular
4 Affairs Bureau at the beginning was aware of the
5 Syrian position, he knew under what conditions I
6 would be seeing my client. He knew I wouldn't be
7 able to get more than that.

8 He gave me instructions, and when
9 I asked if I could take a photo or if my client
10 could take a phone call, the answer was no.

11 MS EDWARDH: All right. I wonder
12 if you could give to the witness the document
13 "Conclusions and Recommendations of The Committee
14 Against Torture, Canada"?

15 I have provided a copy to --

16 THE COMMISSIONER: Is this a new
17 exhibit?

18 MS EDWARDH: Well, it is actually
19 one that was filed, but it's so long ago,
20 Mr. Commissioner.

21 THE COMMISSIONER: Let's mark it
22 again. 246.

23 EXHIBIT P-246: Document
24 entitled "Conclusions and
25 Recommendations of the

1 attention. While Canada is praised in some
2 respects in this document, there are also, on page
3 2, a list of things that the committee is
4 concerned about.

5 Do you see that?

6 MR. MARTEL: In Part C,
7 paragraph 4.

8 MS EDWARDH: Yes, they are a list
9 of the committee's expressed concerns. And this
10 document is of course not only public, but it is
11 communicated to the Government of Canada; correct?

12 MR. MARTEL: Yes, I see that.

13 MS EDWARDH: If you turn to
14 paragraph 4(b), one of the subjects of concern
15 raised by this memorandum is:

16 "The alleged roles of the
17 State party's authorities in
18 the expulsion of Canadian
19 national Mr. Maher Arar,
20 expelled from the United
21 States to the Syrian Arab
22 Republic where torture was
23 reported to be practised."

24 Do you see that concern?

25 MR. MARTEL: Yes, I see that in

1 paragraph (b), yes.

2 MS EDWARDH: What I wanted to talk
3 to you about, or ask you about, is whether or not
4 the recommendation was ever something that was
5 brought to your attention and you agree with --

6 MR. MARTEL: No, there's no --

7 MS EDWARDH: I'm sorry, could I
8 just read the recommendation so we can ask the
9 question?

10 5(d):

11 "The State party should
12 insist on unrestricted
13 consular access to their
14 nationals who are in
15 detention abroad, with
16 facility for unmonitored
17 meetings and, if required, of
18 appropriate medical
19 expertise."

20 Do you see that?

21 MR. MARTEL: Yes, I see it.

22 MS EDWARDH: While I'm confident,
23 sir, you are going to say to us that it is the
24 best -- no. One wants unrestricted access, but
25 that in this case it was just never a question

1 that you would get a confidential meeting. It
2 would never have happened?

3 MR. MARTEL: No, never.

4 MS EDWARDH: At the same time you
5 will see the difficulty we have, Mr. Martel, is
6 that none was ever asked for.

7 So how do we know they would say
8 no?

9 MR. MARTEL: Because they would
10 say no to everything we asked for, and also
11 because they had set the ground rules themselves
12 at the beginning.

13 They said, "We're doing you a huge
14 favour, and it's the first time we do something
15 like this for another country. We'll let you see
16 a detainee, and we're the ones laying down the
17 rules, not you."

18 Not in so many words, but if you
19 didn't like it you can take it or leave it. That
20 was their approach.

21 MS EDWARDH: Is that the way you
22 interpret it?

23 MR. MARTEL: Well, you can
24 interpret it any way you want, but I think it was
25 later confirmed.

1 MS EDWARDH: I don't think -- I
2 think we have agreed none was asked and it will be
3 for the Commissioner to consider the failure to in
4 the decision --

5 MR. MARTEL: We didn't -- for
6 starters, we didn't receive instructions to ask.
7 We did what we were asked to do. It was important
8 for Gar Pardy in Ottawa, first of all, to have
9 access, continuous access. Second was his
10 release.

11 Those were the two main
12 objectives. Those were the two main objectives we
13 had been told about.

14 MS EDWARDH: I want to go to the
15 first consular visit because it does seem to me,
16 sir, that we can draw some conclusions here. I
17 just want to get quickly to the point where I ask
18 you a few general questions.

19 But it is very obvious to me that
20 you have to agree that you had very limited
21 observations of Mr. Arar?

22 MR. MARTEL: Nobody will dispute
23 that. The framework was set up to let me see what
24 they wanted me to see and what they wanted Maher
25 Arar to let me see.

1 It was a controlled environment.

2 MS EDWARDH: Right. And so when
3 you say you got to see what the Syrians wanted you
4 to see --

5 MR. MARTEL: Exactly.

6 MS EDWARDH: Exactly?

7 MR. MARTEL: Of course.

8 MS EDWARDH: And anything they
9 didn't want you to see, you wouldn't have seen?

10 MR. MARTEL: They tried to hide
11 it.

12 MS EDWARDH: And they succeeded in
13 some respects?

14 MR. MARTEL: Yes, but not all the
15 time.

16 MS EDWARDH: What did they try to
17 hide that you were able to ferret out?

18 MR. MARTEL: Well, for example,
19 they tried to contradict me or contradict Maher on
20 the time he'd spent in Jordan and the time he'd
21 been with them, and that's why they interrupted
22 him.

23 There were some things they didn't
24 want me to hear.

25 MS EDWARDH: But you found out,

1 and I think that is something I want to --

2 MR. MARTEL: Well, I think you
3 have to be sharp and try to determine where
4 they're headed, and you have to come to your own
5 conclusions. You can't be naive.

6 MS EDWARDH: Right. I want to
7 talk about some things that aren't recorded there,
8 because it's my understanding that this may jog
9 your memory.

10 Specifically, you brought the Bon
11 Voyage book to that first meeting. Do you recall
12 that, Mr. Martel?

13 MR. MARTEL: No, I don't remember.

14 MS EDWARDH: Would it surprise you
15 if I told you that you had the Bon Voyage book,
16 because it describes your consular functions?

17 MR. MARTEL: Yes, but maybe I
18 brought it with me, thinking that my client had to
19 have a copy if he didn't have one.

20 Many people travel and don't
21 always have Bon Voyage with them. Not everyone
22 has it.

23 MS EDWARDH: And so it is the kind
24 of thing you might well have brought?

25 MR. MARTEL: Yes.

1 MS EDWARDH: One of the objectives
2 you had was to ensure that Mr. Arar -- I think
3 from your perspective -- had a realistic
4 understanding of what Canadian government consular
5 services could do. You wanted to make sure he had
6 no misunderstanding.

7 MR. MARTEL: Especially in his
8 case.

9 MS EDWARDH: Yes. I would like
10 you to have a chance to talk about what
11 "especially in his case meant".

12 If I told you that you conveyed to
13 him that it may well have been the case that the
14 Government of Canada couldn't do very much because
15 they took the position -- not they, the Syrians
16 took the position he was a Syrian, that wouldn't
17 surprise you?

18 That is the kind of thing
19 generally you would say?

20 MR. MARTEL: I could reformulate
21 the sentence a bit differently, that is, he must
22 have known already --

23 MS EDWARDH: I don't want to
24 choose the words. I'm sure you might use
25 different words.

1 The question is: Do you agree
2 that is the kind of thing, the effect of the words
3 you would have used --

4 MR. MARTEL: I told him that our
5 intervention was limited in his case because the
6 Syrian government had told us that he was a Syrian
7 citizen in Syria.

8 So he must have known. I had to
9 tell him that, not arrive with a list of lawyers
10 and say, "Here's a list of lawyers, and you can
11 choose the one you want. In the meantime, you'll
12 be released pending your trial, which will come
13 later."

14 He must have known what was
15 coming. I couldn't tell him, "You are Canadian
16 and you're protected by the Vienna Convention and
17 we'll get you out of here today or tomorrow."

18 MS EDWARDH: No. You told him
19 realistically that that wasn't the case; that he
20 was a Syrian national and that he had to live with
21 the fact that there were limits on what you could
22 do?

23 MR. MARTEL: That's correct, as
24 per our instructions.

25 MS EDWARDH: And you also had to

1 make it clear from your perspective -- and we will
2 talk about the effect of this on him. From your
3 perspective, you thought it was important to tell
4 him that it was uncertain. You could not
5 guarantee that you could visit him and provide
6 consular services regularly as you might want?

7 MR. MARTEL: Exactly. I told him
8 that during the first visit, because I said to
9 him: "It's the first time the authorities grant us
10 a visit in this case. And it's your case. And
11 they promised we could have regular visits, but I
12 can't guarantee anything."

13 MS EDWARDH: That's right. You
14 can't guarantee a thing, and you might not be able
15 to even visit again.

16 MR. MARTEL: Possibly.

17 MS EDWARDH: And that is the kind
18 of thing you told him because you felt he needed
19 to understand it.

20 MR. MARTEL: In my opinion, he
21 needed to know. Of course.

22 MS EDWARDH: Also you were trying
23 to create a scene where the Syrians would perhaps
24 soften a little towards him. So you asked him,
25 did you not, you said to him, "Mr. Arar, thank the

1 Syrians"?

2 MR. MARTEL: No. No. I didn't
3 ask him to thank -- to thank the Syrians. I
4 thanked the Syrians in front of him, saying, "I
5 thank -- I thank the Syrian authorities for at
6 least giving me the permission to come and see
7 you."

8 MS EDWARDH: And indeed I'm going
9 to suggest to you, and it was made perfectly clear
10 why to him that he should also thank the Syrians?

11 MR. MARTEL: Maybe he got that
12 from the Syrians, that he had to thank them.

13 He has roots in this -- he knows
14 the culture.

15 MS EDWARDH: Well, he left as a
16 17-year-old.

17 MR. MARTEL: Yes, I know. But he
18 knows the culture nonetheless.

19 MS EDWARDH: Now, he cried
20 throughout this visit --

21 MR. MARTEL: No, no.

22 MS EDWARDH: -- or through good
23 portions of this visit?

24 MR. MARTEL: No.

25 You could say he was emotional,

1 but no, I didn't see Maher cry during that visit.

2 He was surprised, at any rate, to
3 see me. I don't think he'd been told I was
4 coming.

5 I don't know what he'd been told
6 beforehand, but he was very surprised to see me.

7 MS EDWARDH: Did you notice
8 anything about his facial hair? Did he have any
9 facial hair?

10 MR. MARTEL: Facial hair?

11 MS EDWARDH: Yes, a beard. Was he
12 shaved?

13 MR. MARTEL: I don't remember. I
14 think -- I think so. I think so.

15 Yes, I think so -- I don't think
16 he had a beard at the time.

17 MS EDWARDH: And so for an
18 observant Muslim man, what would that mean?

19 MR. MARTEL: Well, I didn't know
20 at the time whether he was an observant Muslim
21 man.

22 MS EDWARDH: If he were, to have
23 one's beard shaved would be dehumanizing, would it
24 not?

25 MR. MARTEL: No, I don't know what

1 -- I'm not familiar enough with the religion to
2 say that if someone has a beard or not makes a
3 difference.

4 I don't know which people,
5 Muslims, practice their religion, who is religious
6 or very religious. I don't make the distinction.

7 MS EDWARDH: You, I take it, sir,
8 didn't know enough, even given your work in the
9 Middle East, to know what the beard meant to an
10 observant Muslim and what its forcible removal
11 might mean?

12 MR. MARTEL: Well, if -- obviously
13 if I had known he was a practising Muslim and the
14 authorities had removed his beard, it's an
15 indication that they wanted to humiliate him. Of
16 course.

17 I think it's reasonable to think
18 that.

19 MS EDWARDH: And indeed it would
20 have been the easiest thing for you to enquire
21 from his wife, Mrs. Arar, who dresses in a very
22 conservative fashion, to ascertain whether her
23 husband was a practising Muslim and whether he
24 would be humiliated by the removal of his beard?
25 That was easy to find out?

1 MR. MARTEL: Yes. I didn't know
2 he was a practising Muslim, and I wasn't given any
3 details on the family in Canada. I didn't have
4 much information on that.

5 At that point in time, I didn't --
6 I didn't notice -- I didn't notice whether his
7 beard had been removed.

8 MS EDWARDH: Right. My point is,
9 I want to talk now about the duty to inquire.

10 Mr. Martel, you had ample
11 opportunity and sources to find out whether
12 Mr. Arar was a practising Muslim because it was a
13 quick e-mail to Myra or Gar Pardy, a discussion
14 with Mrs. Arar, and you could have readily
15 determined whether Mr. Arar was an observant
16 Muslim man? That was easy to find out?

17 MR. MARTEL: Yes, but that's not a
18 question we in the field usually ask. We don't
19 talk about religion, race, colour, and so on.

20 We don't immediately think about
21 it, about asking a client whether he belongs to
22 this or that religion or whether he practices or
23 doesn't practice his religion.

24 MS EDWARDH: Mr. Martel, we are
25 not interested in what religion he really

1 practices. We are interested in whether he has
2 been subjected to humiliation by his captors or
3 gaolers. That's the object. That's a whole
4 different purpose behind those questions. You
5 will agree?

6 MR. MARTEL: Yes, I understand
7 your question, and I'm telling you that I didn't
8 have that information at the time.

9 MS EDWARDH: In any event --
10 right. You didn't have it and you didn't ask for
11 it; correct? Simple.

12 MR. MARTEL: I didn't have the
13 information. It wasn't given to me.

14 MS EDWARDH: Right. And then I
15 want to just ask a little bit about what you did
16 once you learned that Mr. Arar was in this
17 building that you associated with Syrian Military
18 Intelligence.

19 There is no doubt on the public
20 record, the Palestine Branch isn't a secret
21 entity, is it, Mr. Martel?

22 MR. MARTEL: The Branch's
23 reputation is well established.

24 MS EDWARDH: And indeed you knew
25 something about the conditions of confinement in

1 the Palestine Branch because there was someone at
2 the Embassy who had a relative who had been there.

3 Isn't that right?

4 MR. MARTEL: I don't remember.
5 You'd have to tell me more about it.

6 MS EDWARDH: There was an employee
7 at the Embassy who had a family member who had
8 been held in the Palestine Branch, and that was
9 one of the employees who had a conversation with
10 Mr. Arar on his release?

11 Does that jog your memory?

12 MR. MARTEL: I think that, in
13 fact, you can't -- we have to be careful about
14 what we say in public.

15 MS EDWARDH: Don't I?

16 MR. BAXTER: The concern is the
17 same kind of concern as before, Mr. Commissioner,
18 the safety of the individuals concerned. It is
19 not a national security issue at all.

20 THE COMMISSIONER: Is there any
21 way we can deal with this line of questioning
22 without --

23 MS EDWARDH: I will try.

24 THE COMMISSIONER: Thank you.

25 MS EDWARDH: Let's see where I can

1 get.

2 There are a broad range of public
3 and private sources available to you, Mr. Martel,
4 had you wished to learn anything about the
5 conditions of confinement at the Palestine Branch
6 of Syrian Military Intelligence.

7 Do you agree with that as a
8 general proposition?

9 MR. MARTEL: Generally, the
10 conditions of confinement of detainees at this
11 branch, especially political detainees, are well
12 known. We don't need to argue about its
13 reputation.

14 I agree with you.

15 MS EDWARDH: So this is a matter
16 of some importance because, while Mr. Arar was
17 unable to speak directly to you about the
18 conditions of his detention and you felt you could
19 not ask about them, other than "Are you well?",
20 you knew that the conditions of detention involved
21 many people being held in solitary confinement;
22 correct?

23 MR. MARTEL: Yes, of course.
24 Political detainees.

25 MS EDWARDH: You knew that there

1 was a substantial possibility or likelihood that
2 men like Maher Arar could be held in tiny little
3 cells because this is what happened to political
4 dissidents as well?

5 MR. MARTEL: At the time, I didn't
6 know -- enough, for example, the type of cell
7 used, whether people were grouped together in
8 large cells -- I didn't have -- details or witness
9 accounts about this.

10 And various magazines or articles
11 also talk about poor conditions of detention. It
12 has a reputation.

13 But it isn't always stated that
14 people are kept in small cells.

15 MS EDWARDH: All right. You had
16 access to people who knew, or you could sit down
17 with, or you could have brainstormed and said
18 okay, if I can't ask my client what is it really
19 like and he can't tell me what it is really like,
20 there are ample sources to make inquiry of;
21 correct?

22 MR. MARTEL: Yes, someone could
23 have found out and obtained sufficient details and
24 speculated on the possibilities where my client
25 was being detained.

1 But, one way or another, we'd
2 never get an answer until the client was able to
3 speak freely. It was impossible to get an answer.

4 MS EDWARDH: Yes. For example, if
5 you walked into a client who had been rendered
6 comatose with a crushed skull and you knew would
7 never talk, you would have to make inquiries
8 through independent channels to try and understand
9 what happened; correct?

10 MR. MARTEL: Well, if I meet a
11 client who is in -- who has been visibly abused,
12 I'd immediately draw some conclusions and draft a
13 report.

14 MS EDWARDH: All right. Well, I
15 don't want to go around in circles with you. I
16 just want to establish that you knew the general
17 reputation of military intelligence, you knew the
18 reputation for torture, and you knew the
19 reputation of lousy, rotten condition of
20 confinement.

21 And the fourth point I want you to
22 agree with is you knew you couldn't ask a question
23 about it, and you knew Mr. Arar couldn't say
24 anything about it.

25 So the only thing you could do was

1 go to inquire of other sources to determine, as
2 best you could -- never perfectly -- as best you
3 could what it was like for him; right?

4 MR. MARTEL: No, it was already
5 known. That is, that there are detainees --

6 MS EDWARDH: What was --

7 MR. MARTEL: -- who are in small
8 cells, like you said, and there are others who are
9 in large cells.

10 So, nobody could come and tell me,
11 "Your client will be detained in a small cell."

12 I had other clients who were
13 detained in cells with 25 people, who were in the
14 same - in the same place.

15 So, it's -- you can't come to a
16 conclusion and say, "Maher Arar is being detained
17 in a small cell. Because he can't tell me, I
18 conclude that he is in a small cell."

19 It's possible. But I couldn't
20 come to that conclusion because I couldn't talk to
21 him alone.

22 And as long as I wasn't given an
23 opportunity to speak to him alone so that he could
24 tell me, I couldn't find out. It was impossible
25 -- if he couldn't tell me, then I couldn't know.

1 MS EDWARDH: You could have known
2 a great deal about the conditions of his
3 confinement and you could have known that by
4 asking others who had that information. You could
5 have even written a letter to Myra or she could
6 have written you -- and there is some corporate
7 element to this -- "This is what Mr. El Maati says
8 about where he was and what it looked like. This
9 is what other people who have experienced it have
10 described. And if you can't ask Mr. Arar
11 specifically about it, you should assume they are
12 as follows."

13 Isn't that a reasonable approach
14 to take?

15 MR. MARTEL: Yes, I think that,
16 the Bureau, Gar Pardy's office, already had
17 information from another detainee who had been
18 there, but we weren't told, "Be careful! El Maati
19 went there and this is what the Syrians did to
20 him. Keep a sharp eye out and try to find out
21 more. You have to protest. This is what you have
22 to do."

23 I did what he told me to do: "Go
24 there. The important thing is to see him. Even
25 if it's controlled, it's already -- it's better

1 than no visit at all."

2 Now, in what kind of conditions
3 was he being detained? With the information I
4 had, it was impossible for me to find out.

5 Maybe he was in a small cell, as
6 you said. But I didn't know that yet.

7 MS EDWARDH: The difficulty that I
8 have, Mr. Martel, is that you do not adequately
9 qualify your report, sir. You don't make it clear
10 to the reader in each and every report that the
11 person who you are describing has no voluntary
12 choice in their decisions around what to say to
13 you; that they are captives, that they are
14 supervised, and they live in a fearful environment
15 even though its particulars may not be known, and
16 therefore nothing can be drawn from the failure to
17 observe. Nothing. That's the problem,
18 Mr. Martel.

19 MR. MARTEL: I believe I completed
20 --

21 MS EDWARDH: You draw from nothing
22 a positive conclusion.

23 MR. MARTEL: No. I believe I
24 completed my reports.

25 There were people there who are

1 very intelligent, who know the field and who read
2 it. And I said, "We can't speak freely. He isn't
3 at liberty to talk. I can't find out where he is,
4 exactly." I gave them all that information.

5 Now, if other steps were to be
6 taken, if there was to be some form of protest, a
7 request for a private interview, the instructions
8 had to come from headquarters, we had to be told
9 by headquarters what to do, because we, at the
10 mission, couldn't take the initiative and ignore
11 what we were given at the beginning, the mandate.

12 In other words, we had access,
13 they wanted me to see him regularly, and that was
14 our objective, and the second objective was to get
15 him out of there.

16 Now, I wasn't told: "Go protest.
17 Go do this, go do that." I wasn't given any
18 instructions like that.

19 MS EDWARDH: No. But I'm saying
20 when you read your reports, you draw the
21 conclusion you thought he was well.

22 MR. MARTEL: Well, the others too
23 could have drawn a conclusion. And I always said
24 he looked well. I didn't know whether he was
25 well.

1 MS EDWARDH: You are the only one
2 who is with Mr. Arar, and all I'm saying is you
3 send these reports back, sir, and you don't show
4 to the readers the limits upon your actual
5 interaction. And you don't tell them you should
6 need their assistance to make inquiries so that a
7 proper framework of analysis can be struck for
8 Maher Arar.

9 MR. MARTEL: Well, if that's your
10 take on the reports, the many people in Ottawa who
11 read the report never came back to ask me specific
12 questions, saying: "This isn't specific enough.
13 Give us more information. Tell us more. And
14 during your next visit, you have to do this, that
15 and the other thing. And I have further
16 instructions for the following visit."

17 So, I had to limit myself to
18 Ottawa's instructions. If I -- if I strayed from
19 the instructions, I didn't know what the
20 consequences would be.

21 It was up to them to decide. Not
22 me. I was in the field and I followed -- I did
23 what I was asked.

24 And if they didn't like the type
25 of reports I sent, if they thought they were

1 incomplete, they could have got back to me and
2 asked me some questions the same day or the next.
3 If they wanted to.

4 THE COMMISSIONER: If I can,
5 Ms Edwardh, I have the point.

6 MS EDWARDH: Okay.

7 THE COMMISSIONER: I understand
8 both sides of the point.

9 We have now been going over an
10 hour and a half, and I think we will take the
11 afternoon break.

12 Before we do, the schedule, for
13 some that weren't here, at least the tentative
14 schedule is that Ms Edwardh will be probably
15 another hour and then there are some examinations.

16 Ms Jackman, you were going to be
17 brief, if at all in this?

18 MS JACKMAN: I have about three
19 questions.

20 THE COMMISSIONER: All right.

21 And then, Ms Jackman, your motion
22 will follow the completion of this witness. I
23 think it's going to be fairly late, but I would
24 expect that we could probably deal with it all. I
25 know there are a few people to speak on it, but we

1 could deal with it all in probably half an hour or
2 thereabouts.

3 In any event, let's rise now for
4 ten minutes.

5 THE REGISTRAR: Please stand.

6 --- Upon recessing at 3:20 p.m. /

7 Suspension à 15 h 20

8 --- Upon resuming at 3:35 p.m. /

9 Reprise à 15 h 35

10 THE REGISTRAR: Please be seated.

11 THE COMMISSIONER: Ms Edwardh.

12 MS EDWARDH: Thank you, Mr.

13 Commissioner.

14 Mr. Martel, perhaps you can cast
15 some light, additional light, on an area of
16 concern to everyone.

17 It is clear that Mr. Arar was able
18 to convey to you that he had only been in Jordan a
19 very brief time, a few hours, before he arrived in
20 Syria; correct?

21 MR. MARTEL: This is what he
22 stated at our first meeting, yes.

23 MS EDWARDH: Yes. When this
24 matter is reported to the Minister -- and if you
25 want to look at tab 129, page 7, in the background

1 evaluation in the first paragraph under the
2 heading "For Minister's Eyes Only" misrepresents
3 what you knew by stating:

4 "It was not clear from the
5 conversation --"

6 Referring to the one you had.

7 "... how long Mr. Arar had
8 been in Syria --"

9 Because you had at least been able
10 to ascertain from Mr. Arar that he was in Syria
11 within hours of landing in Jordan; correct?

12 That is not an accurate statement?

13 MR. MARTEL: Yes. Mr. Arar had
14 already told me at our first meeting, even though
15 our conversation was interrupted, that he had
16 spent only a few hours in Jordan.

17 MS EDWARDH: Right. So this is
18 wrong. This "For the Minister's Eyes Only" advice
19 is incorrect; correct?

20 MR. MARTEL: Well, it says here
21 that we learned he had been detained by the
22 Americans for two weeks before being transferred
23 to Jordan. It wasn't clear.

24 MS EDWARDH: Keep reading.

25 MR. MARTEL: In the conversation

1 itself, how long had Mr. Arar been detained in
2 Syria, in light of the fact that the Syrian
3 authorities intercepted the questions.

4 MS EDWARDH: Yes. But they didn't
5 adequately intercept it because in fact you got
6 the answer to the question.

7 MR. MARTEL: Yes. I had already
8 communicated that, according to Mr. Arar, what he
9 told me was that he'd spent only a few hours in
10 Jordan.

11 MS EDWARDH: And the suggestion
12 that Mr. Arar languished in Jordan was one that
13 the Canadian Ambassador to Jordan tried to
14 correct, did he not?

15 MR. MARTEL: I think there was
16 correspondence to that effect. At the time, I
17 think people were looking for him everywhere, and
18 the Canadian Ambassador to Jordan took steps to
19 determine whether he'd been detained in Jordan.

20 MS EDWARDH: But the Canadian
21 Ambassador, if you look at tab 135, communicated
22 his concern about Canadian press comments relating
23 to Jordan's handling of Mr. Arar's case because
24 they directly quoted DFAIT spokesman, Mr. Doiron,
25 and the quote is:

1 "We do not know why the
2 Jordanians did not provide
3 information on his presence
4 in their country."

5 And the Ambassador notes,
6 "contradicting my report." Do you see that,
7 "contradicting my report"?

8 MR. MARTEL: Yes. I see that, yes.

9 MS EDWARDH: So it is quite clear
10 that the Ambassador in Jordan felt that the
11 suggestion that was left, that the Jordanians did
12 not provide information, was, as he says,
13 "absolutely incorrect".

14 Do you see that?

15 MR. MARTEL: Yes, he seems to say
16 that, yes.

17 MS EDWARDH: Yes. So what puzzles
18 me is what interest everyone had in not putting
19 forward on the public record the fact that the
20 Syrians had held Mr. Arar for most of the period
21 following October 8th, if not the vast majority of
22 it, less about eight hours.

23 I'm going to ask you some
24 questions.

25 Were you or the Embassy concerned

1 that should they confront the Syrians with the
2 issue that they had held him for the entire
3 period, that would end consular contact?

4 MR. MARTEL: Possibly. What we
5 did at the time, after I found out that Mr. Arar
6 had been in Jordan for only a few hours, was that
7 we drafted the report, saying that we were very
8 puzzled. Why were the Syrians telling us that he
9 had just arrived a few days earlier, whereas he
10 was telling us that he had been in Jordan for only
11 a few hours?

12 We reported all this information
13 to Gar Pardy. To my knowledge, we didn't ask the
14 Syrians, we didn't press them on the issue, since
15 senior Syrian officials had already communicated
16 information to the Ambassador.

17 Now, if headquarters wanted the
18 Ambassador to go back and ask more questions, he
19 had to receive instructions to that effect.

20 MS EDWARDH: So that the failure,
21 or the decision to not confront or further
22 question, I'm going to suggest to you, was an
23 express decision on the part of headquarters,
24 given the information you provided them.

25 MR. MARTEL: Yes. We gave them

1 the information, and they assimilated the
2 information. We pointed out the discrepancy in
3 times, dates and all that to them. We pointed it
4 out clearly. And senior Syrian officials gave us
5 or gave the Ambassador some information that was
6 inconsistent with what I had come up with in the
7 field. All that was communicated to headquarters.
8 To my knowledge, the Ambassador did not receive
9 instructions telling him to go back to the Deputy
10 Minister or someone else who was high up and say,
11 "Look, you haven't told us the truth."

12 MS EDWARDH: Right. Indeed, it is
13 quite clear from the Pillarella documents, Exhibit
14 134, tab 5, that the Foreign Minister was very
15 anxious to press upon the Ambassador the fact that
16 Arar wasn't in Syria. Isn't that true?

17 He had not languished in Syria
18 since October the 9th?

19 MR. MARTEL: I think that's the
20 message the Syrian authorities communicated to the
21 Ambassador, that he had arrived only a few days
22 earlier.

23 MS EDWARDH: And this was
24 something that the Syrian Foreign Minister gave
25 assurances to the Ambassador about; correct?

1 That is what this document says.

2 MR. MARTEL: I think it was the
3 Deputy Minister.

4 MS EDWARDH: Okay, the Deputy
5 Foreign Minister.

6 MR. MARTEL: Yes.

7 MS EDWARDH: That he gave those
8 assurances.

9 MR. MARTEL: Yes. First of all,
10 if memory serves, I didn't always have access to
11 the documents, but at first, the Deputy Minister
12 said, "No, we don't have him." Later, he
13 retracted his statement and said, "Oh, by the way,
14 yes, we found him." That's it.

15 MS EDWARDH: Yes. But he hasn't
16 been here -- he made it clear that Arar had not
17 been here, or had not been in Syria from October
18 the 9th on, and pressed that upon the Ambassador;
19 correct?

20 MR. MARTEL: Yes. It was him or
21 the general. I don't remember which of the two
22 gave him the information, but someone provided the
23 information and said, "He's been here only for a
24 few days."

25 MS EDWARDH: If one sees that Mr.

1 Arar has no interest in making up where he is,
2 either in Jordan or Syria, or how he has gone from
3 one place to the other, you can agree with me that
4 the entity that had the interest in lying were
5 Syrian officials?

6 They had the interest in not
7 having Canada assume that Mr. Arar had been a
8 disappeared person under their control for that
9 period of time?

10 MR. MARTEL: If indeed he was in
11 the hands of the authorities, there may be many
12 reasons to lie to us. Maybe they didn't want us
13 to see him right away. They didn't want to admit
14 they had him because we would have said, "Why is
15 it that you've had him for two weeks and you tell
16 us only now that you have him?" There are many
17 reasons.

18 You can think of any number of
19 reasons, but, certainly, if they'd had him all
20 that time and didn't want to say so, they had
21 their reasons and their interests in mind.

22 MS EDWARDH: Yes. And the most
23 obvious reason, given what we know now, is they
24 didn't want you to be in a room with a man who was
25 being beaten during interrogation sessions. They

1 didn't want you there then.

2 That is the most obvious reason,
3 isn't it, Mr. Martel?

4 MR. MARTEL: I'd be speculating.
5 I can't say that the Syrians prevented me from
6 seeing him for two weeks because, during that
7 period, they were beating him, they were torturing
8 him, and so on. I never had any evidence of this,
9 and I still can't say to this day that that's the
10 reason why they didn't provide access to him.
11 We're in the same boat in that regard.

12 MS EDWARDH: If you were
13 hypothesizing explanations for their conduct, can
14 you think of any more likely reason?

15 MR. MARTEL: They keep people for
16 three months, six months, a year, two years
17 without letting us see them, and they never give
18 any reasons. So how can I know? There's a
19 detainee I haven't seen for two years. How is my
20 detainee? I don't know. Why are they preventing
21 me from seeing him? I don't know that either.
22 There are no answers to these questions. We don't
23 know. They have their own theories. They do what
24 they want. We can maybe draw our own conclusions.
25 We can think, we can say, "Oh, we can't see him

1 because he isn't fit to be seen, and when he is
2 fit enough, they'll let us see him." Or: "They're
3 not providing any access to him", as they've done
4 with my other clients, whom I never did see in
5 detention, never, and who were despicably treated,
6 but whom I never got to see.

7 MS EDWARDH: I want to go back to
8 the first visit for a moment. That is tab 130.

9 I'm sorry, it is 131, but the best
10 place to find it is tab 3 in the Pillarella
11 documents, which is the first visit.

12 I was going to put to you, Mr.
13 Martel, that because some of the visits were
14 always translated or portions of the visit were
15 translated from Arabic into English, given your
16 language facility with Arabic, you may well have
17 been misled by the translator.

18 Would you agree with that as a
19 general proposition; that if a person doesn't
20 speak the language, they are in fact dependent
21 upon the integrity of the translator; correct?

22 MR. MARTEL: I cannot totally
23 agree. Maher always looked at me when he spoke.
24 Even though he was speaking in Arabic, he looked
25 at me and listened to what the interpreter said.

1 If it had been inconsistent with what he was
2 telling me, he would have given me an indication
3 with his eyes.

4 When I wrote down specific facts,
5 he was the one who told them to me. Although he
6 didn't speak in English, we could still talk to
7 each other. There wasn't always interpretation.
8 There were many conversations in Arabic between
9 Maher and the Syrians. But generally, even though
10 he was told to speak in Arabic, we often had
11 conversations in English.

12 MS EDWARDH: I'm just saying to
13 you, sir -- it is a really simple proposition, Mr.
14 Martel -- that if Mr. Arar was forced to speak
15 Arabic and you are not fluent, you are captive to
16 the integrity of the translator, at least to some
17 extent?

18 MR. MARTEL: Yes, possibly, to a
19 certain extent, but in my --

20 MS EDWARDH: But the difficulty I
21 have with this general proposition I was going to
22 carry forward is that the first document that we
23 are looking at of the first consular visit leaves
24 the impression that you in fact are much more
25 competent in Arabic than you have portrayed.

1 I would like you to look at
2 paragraph 7 --

3 MR. BAXTER: Perhaps I could also
4 ask that the witness be directed to paragraph 3,
5 to the second-last sentence.

6 THE COMMISSIONER: Okay.

7 MS EDWARDH: I think that
8 paragraph 3 refers to a conversation in English
9 this time. And many of the conversations were in
10 Arabic, or part of them were. So I'm concerned
11 about this:

12 "When asked if he wished the
13 Embassy to provide him with
14 anything he might need, he
15 answered that his needs were
16 all taken care of by his
17 Syrian hosts --"

18 Do you see that?

19 MR. MARTEL: Yes.

20 MS EDWARDH: And then in brackets,
21 sir, you wrote the following words. This is your
22 report.

23 "... (his answer was dictated
24 to him in Arabic by the
25 Syrians) "

1 MR. MARTEL: Yes.

2 MS EDWARDH: How would you know
3 that what he said in English was the same as what
4 was dictated to him unless you understood the
5 Arabic? Or was that translated? Is that the
6 suggestion?

7 MR. MARTEL: No, it wasn't
8 translated. The Syrians told him something in
9 Arabic and he repeated it in English. So he was
10 the one doing the translating. He told me what he
11 wanted, in fact. When he was forced to tell me
12 something, it was obvious to me that he was being
13 told, "Say this, say that", and he'd say it in
14 English.

15 When he was told to tell me
16 things, of course I took them as such, but it was
17 incomprehensible, most of the time I couldn't
18 believe what he was telling me, or I doubted what
19 he was telling me, because he was forced to say
20 some things in English.

21 MS EDWARDH: So did you draw the
22 conclusion that he was parroting what was said to
23 him because of the interjection in Arabic and then
24 the prompt answer by Mr. Arar? You couldn't
25 understand it yourself.

1 MR. MARTEL: I didn't understand
2 what the Syrians told him, but he told me in
3 English. But I knew that what he was telling me
4 was on the Syrians' instructions.

5 MS EDWARDH: And while you could
6 determine that he was being prompted, I take it
7 you could not necessarily determine the exact
8 words of the prompt?

9 MR. MARTEL: No, but he was the
10 one who was talking. So I imagine that with the
11 interpreter present, if he had been told in Arabic
12 to tell me something, the interpreter would have
13 known that he wasn't saying the same thing. So he
14 was repeating what the Syrians wanted him to tell
15 me.

16 MS. EDWARDH: And the interpreter,
17 in effect, is the guardian or the assurer that he
18 delivers the right message, in accordance with his
19 instructions in Arabic?

20 MR. MARTEL: No. He was the
21 interpreter who accompanied me and translated from
22 Arabic to English. He didn't belong to the same
23 group; he came from somewhere else. I don't know
24 where he was from, but he always accompanied me.

25 MS. EDWARDH: But if he determined

1 that Mr. Arar was not following instructions, you
2 would have expected him to say something?

3 MR. MARTEL: Well, he could have
4 said -- either to start over or "that's not what
5 they said" -- "that's not what they said" or
6 "that's not what they want you to say", and maybe
7 Maher would have said his sentence over again.

8 MS. EDWARDH: All right. I just
9 wanted to clarify the perception I had that this
10 indicated you spoke better Arabic than in fact you
11 do?

12 MR. MARTEL: No. Sorry.

13 MS. EDWARDH: I just wanted to
14 simply clarify the impression.

15 I want to go to the August 14th
16 visit. I recall that Mr. Cavalluzzo took you to
17 the Syrian Human Rights Committee report, and I
18 don't want to go there.

19 I want to go to a letter, Tab
20 573.11.

21 --- Pause

22 MS. EDWARDH: Can you find that
23 reference, Mr. Martel?

24 MR. MARTEL: Yes, I have the
25 chronology.

1 MS. EDWARDH: No, I'm not asking
2 about the chronology. I'm asking about the letter
3 written to Mr. Arar's wife, found under the
4 coloured Tab 11, after 573.

5 MR. MARTEL: Yes, I have it.

6 MS. EDWARDH: This letter is
7 written on July 29th, 2003?

8 MR. MARTEL: That's right.

9 MS. EDWARDH: And in the third
10 paragraph, it includes an express reference to
11 torture in two different time periods. Is that
12 correct?

13 Torture at the beginning stages,
14 and there is a reference to the present abuse he
15 is receiving. Do you see that?

16 MR. MARTEL: Yes.

17 MS. EDWARDH: And in particular it
18 says:

19 At present he receives
20 torture and abuse from time
21 to time as a daily routine of
22 the Syrian prison practices
23 against political detainees.

24 Do you see that?

25 MR. MARTEL: Yes, I see it.

1 MS. EDWARDH: Did you get a copy
2 of that letter?

3 MR. MARTEL: Yes. Yes, I remember
4 having seen that letter, yes.

5 MS. EDWARDH: Can you agree with
6 me, sir, that it, as a letter, is more specific in
7 its allegations than the general SIRC report that
8 you looked at yesterday, which is at Tab 478?

9 MR. MARTEL: Yes, it's more
10 specific, of course.

11 MS. EDWARDH: The emphasis, and
12 what I want to pursue with you right now, is that
13 when this letter became public, and it did on or
14 about this date -- actually, it was August 6th
15 that it became public -- it was this very, very
16 real concern that caused you and the Ambassador to
17 press for access. And the concern in question was
18 that there was present torture being carried out
19 on Maher Arar -- not in the past, not five months
20 ago, but that he was presently the victim of
21 torture.

22 And that was a real concern to
23 you; right?

24 MR. MARTEL: Yes, of course.

25 MS. EDWARDH: That was a real

1 concern to the Ambassador?

2 MR. MARTEL: Also, yes.

3 MS. EDWARDH: What I'm just trying
4 to establish is when you pressed for access to Mr.
5 Arar, in your mind was the very clear question:
6 Is he presently being mistreated?

7 MR. MARTEL: Well, the Ambassador
8 requested access, of course, as for all visits. I
9 believe that at the time, we hadn't seen him for
10 quite a while, so that was always a concern. The
11 Ambassador took steps so that I could gain access
12 again, and, of course, I kept those elements in
13 mind. They were very disconcerting.

14 MS. EDWARDH: And just so we can
15 be very clear, the element that was at the
16 forefront of your concern when you walked into
17 Syrian Military Intelligence was the question: Is
18 Mr. Arar presently being tortured?

19 MR. MARTEL: That's what I was
20 thinking, and I think that at the time, I asked
21 Maher a question.

22 MS. EDWARDH: That is all my
23 question is.

24 MR. MARTEL: Yes, of course.

25 MS. EDWARDH: I then want to take

1 that state of mind, sir, and go to your notes,
2 which are found in Tab 508.

3 Would you please provide
4 Mr. Martel with his notes?

5 Do you have them, sir?

6 THE COMMISSIONER: He has the
7 right book, yes.

8 MS. EDWARDH: And I want to ask
9 this question before we turn to the contents of
10 the notes.

11 You are sitting in a room with a
12 number of Syrian officials and Mr. Arar; correct?

13 MR. MARTEL: Correct.

14 MS. EDWARDH: Mr. Arar speaks to
15 you and you speak to him. Are you making these
16 notes as you speak and as he speaks, or are you
17 making these notes after the conclusion of the
18 session?

19 MR. MARTEL: These notes were
20 taken while I was sitting there, except for "New
21 York Times article" at the top. I remember having
22 written that before the meeting because I wanted
23 to remember it. But the rest of the notes were
24 taken on the spot.

25 MS. EDWARDH: You will agree with

1 me that one of the things you don't do is write
2 down your questions, but that you write down the
3 gist of what Mr. Arar says as best you can?

4 MR. MARTEL: Yes. Given the
5 context, if I can take notes to refresh my memory
6 for the report I'm to prepare, I write elements
7 down, of course.

8 MS. EDWARDH: But because you are
9 taking them as Mr. Arar speaks, you will agree
10 with me that you basically cannot take it down
11 verbatim but you take down the gist of what he
12 says as best you can?

13 MR. MARTEL: Yes. Yes. I write
14 part of a sentence, a word here, two words there,
15 but of course, it wasn't always complete.

16 MS. EDWARDH: And when Mr. Arar
17 came into that room -- and perhaps I can do it by
18 working backwards.

19 In his chronology, in a part that
20 I do not believe you dispute, he says that when he
21 came into the room he had made the decision that
22 he was going to speak about prison conditions and
23 that he burst forth into that discussion in a way
24 that he had never done in all the other consular
25 visits.

1 Do you agree with that
2 characterization of him bursting forth with this
3 information?

4 MR. MARTEL: Yes. When he arrived
5 at the meeting, he seemed irritated, and I
6 couldn't immediately understand why -- maybe it
7 was because there hadn't been a visit for a very
8 long time -- and he immediately spoke in Arabic.
9 He spoke to the General, since he was there that
10 time. Yes, that's right.

11 MS. EDWARDH: And when you say he
12 seemed irritated, I'm going to suggest that a
13 better word would be that he seemed agitated.

14 MR. MARTEL: Maybe agitated, but
15 certainly irritated.

16 MS. EDWARDH: Is it your evidence,
17 sir, that when Mr. Arar came in he spent the first
18 five minutes speaking quickly in Arabic to General
19 Khalil?

20 MR. MARTEL: Yes. At first he
21 spoke in Arabic to the General, maybe not quite
22 five minutes, but for a good span of time, yes.

23 MS. EDWARDH: I'm sorry. You said
24 I think yesterday four or five minutes.

25 MR. MARTEL: Yes, possibly.

1 MS. EDWARDH: I take it you
2 couldn't understand that conversation?

3 MR. MARTEL: No, and no one was
4 translating.

5 MS. EDWARDH: Was it obvious to
6 you that he was extremely excited in his
7 conversation with the General?

8 MR. MARTEL: He was -- he was
9 irritated. He was talking to the General, and I
10 couldn't understand the meaning of the
11 conversation, but I knew that Maher Arar was
12 irritated about something, and he was telling the
13 General about it.

14 MS. EDWARDH: Did you understand
15 any part of that conversation, or did it entirely
16 escape you?

17 MR. MARTEL: It entirely escaped
18 me, except when he spoke to me in English, in the
19 middle of the conversation, to tell me the size of
20 his cell and that he was sleeping on the ground.
21 He said everything else in Arabic only.

22 MS. EDWARDH: So the only portion
23 of the discussion that was in English, I take it
24 you are saying he turned to you and then blurted
25 out the size of his cell?

1 MR. MARTEL: That's right. He
2 continued talking to the General after that.

3 MS. EDWARDH: In Arabic?

4 MR. MARTEL: In Arabic.

5 MS. EDWARDH: So their
6 conversation, I take it, after he had blurted out
7 "three by six by seven", you understood he was
8 talking about his cell?

9 MR. MARTEL: Yes, of course; and I
10 understood that it was, "My cell ---"

11 MS. EDWARDH: How did ---

12 MR. MARTEL: No, he said, "My cell
13 is very small, it's only three by six by seven,
14 and I'm sleeping on the ground". He said it in
15 English, then he continued talking to the General
16 in Arabic, so I let him finish his conversation
17 with the General.

18 MS. EDWARDH: Can you describe
19 whether his voice, the tone of his voice, was
20 louder than it usually was?

21 MR. MARTEL: He was irritated and
22 he let it show.

23 MS. EDWARDH: Now, that comment,
24 "three by six by seven, sleeping on the ground",
25 is in the middle of your note on the first page.

1 It is not at the beginning, or it doesn't stand
2 alone, Mr. Martel. So I'm going to suggest to you
3 that Mr. Arar didn't just break away from his
4 conversation with the General but that you had
5 asked him some questions that led to those
6 answers? Yes?

7 MR. MARTEL: Go ahead.

8 MS. EDWARDH: No. You have
9 implied that he was talking in Arabic, turned to
10 you, made the statement, and went back to the
11 General.

12 And clearly these notes do not
13 give rise to that implication. They give rise to
14 the implication that the reference to the cell
15 size is part of a general discussion that begins
16 to be recorded at the top under "Prison
17 Conditions" and ends with "mentally destroyed".
18 That all seems a coherent description.

19 MR. MARTEL: Well, what I remember
20 from that conversation with the General, which was
21 in Arabic, is that in the middle of the
22 conversation, he turned to me and gave me that
23 information in English, and I think that the
24 authorities were listening to him, and I didn't
25 understand what had happened. I know that

1 afterwards, Maher sat down, and we continued to
2 talk, I don't remember now, in English, I imagine,
3 because that's what I marked here, and that's when
4 he told me that he had been destroyed mentally,
5 etc. That's how I remember that incident.

6 MS. EDWARDH: All right. I'm
7 going to suggest to you, like anyone else,
8 Mr. Martel, that this event happened quite
9 quickly. This whole conversation from Arabic to
10 English would not have taken more than maybe 10,
11 12 minutes, and that your recollection is not
12 consistent with your note, because if you start to
13 make notes at the top of the page, you clearly got
14 information and asked something about prison
15 conditions.

16 MR. MARTEL: Yes, that's possible.
17 My notes are a blank page like this, and there are
18 three or four of them. I might very well have
19 started writing in the middle and looked for space
20 and gone to the top afterwards. They're
21 handwritten notes taken in very difficult
22 circumstances. I had it on my knees, a sheet of
23 paper, and I had to write. So it doesn't mean
24 that the chronology on this page is correct
25 either, since I wrote "New York Times article"

1 outside and "the General" at the bottom
2 afterwards. So it isn't necessarily -- it doesn't
3 necessarily mean that.

4 MS. EDWARDH: I see. I understand
5 it doesn't mean it, necessarily. Equally, it does
6 not mean that this was not the chronological order
7 of the conversation. It could have been; correct?

8 MR. MARTEL: I remember that in -
9 especially in the three, six, seven, he
10 interrupted himself while he was talking to the
11 General. He turned to me suddenly. He said, "But
12 my cell is very small, it's only three by six by
13 seven, and I'm sleeping on the floor". And he
14 continued to talk to the General after, in Arabic.
15 That's how that episode happened.

16 MS. EDWARDH: And he said "I'm
17 mentally destroyed".

18 MR. MARTEL: He said that.

19 MS. EDWARDH: Your note says:
20 Prison conditions. I will
21 tell you the truth. I'm
22 asking Syria to release me or
23 to see a judge. What Syrian
24 law or which Syrian law have
25 I broken?

1 And then, in accordance with the
2 question that you were there to ask, it says,
3 "Present condition". Not past condition, present
4 condition:

5 I have not been paralysed,
6 not beaten, not tortured.

7 That was the question you asked
8 because that is what you wanted to know,
9 Mr. Martel. You wanted to know if the Syrian
10 Human Rights letter to Monia was correct and that
11 Mr. Arar was currently the subject of torture.
12 That is why you were there.

13 MR. MARTEL: Yes. That was
14 already known to the public; obviously. It had
15 been published, and the Syrians certainly already
16 had a copy. And Maher told me that he hadn't been
17 paralysed, beaten or tortured, but I think that he
18 was already being prompted ---

19 MS. EDWARDH: And you ask him --
20 I'm sorry, Mr. Martel. I didn't mean to
21 interrupt.

22 MR. MARTEL: No. I think he was
23 prompted to say that. It doesn't mean that he was
24 saying it freely. Because I told him that there
25 was some very negative information about him being

1 circulated in the press. I didn't say in
2 humanitarian organizations; I said, "There is a
3 lot of very negative press", and I wanted the
4 Syrians to understand that, and they were ready
5 for it. It was obvious that they were ready to
6 respond to it.

7 MS. EDWARDH: In fact, isn't what
8 you said to him that there has been a statement in
9 the media that you are presently being tortured,
10 and that is what you asked him in front of the
11 Syrians, because you could get away with that one
12 way of saying it, "The media has reported ---"

13 MR. MARTEL: The media ---

14 MS. EDWARDH: "--- has reported
15 that you are presently being tortured". And you
16 said, "Is that true, Mr. Arar?"

17 MR. MARTEL: I may not have said
18 "tortured", I may have used another word, but I
19 said, "There is some very negative press about
20 your condition", and then he's the one who came up
21 with those words; I think he was prompted by the
22 Syrians to say that to me. It didn't come from
23 him.

24 MS. EDWARDH: No, I don't think
25 so. Let's just take away the word "torture".

1 The one thing you would have said
2 that day was, "Mr. Arar, there are reports in the
3 media that you have been beaten recently, that you
4 are presently being beaten. Is that true?"

5 You would have said that?

6 MR. MARTEL: Something like that,
7 that there were negative reports in the press
8 about him. Yes.

9 MS. EDWARDH: About your current
10 position. That's my point, Mr. Martel.

11 MR. MARTEL: Yes.

12 MS. EDWARDH: You had just heard
13 that on July 29th he was presently being beaten on
14 a routine basis.

15 MR. MARTEL: Yes.

16 MS. EDWARDH: And you went in and
17 asked him that question, "The media is reporting
18 that you are being beaten now".

19 MR. MARTEL: Mm-hmm.

20 MS. EDWARDH: And he said "Not
21 now". He said, "Not now".

22 What did he say to you? Let's
23 read it.

24 MR. MARTEL: He said:

25 Present condition.

1 I'm the one who wrote "Present
2 condition".

3 He said:

4 I have not been paralysed,
5 not beaten, not tortured.

6 And I asked him to explain to me
7 what he meant.

8 MS. EDWARDH: No. Keep reading.
9 Keep reading, Mr. Martel.

10 MR. MARTEL: After that, I asked
11 him a question. I said, "Did they make your life
12 difficult? Did they give you a great deal of
13 trouble? Did they cause problems for you?" and so
14 on. So it's the question that isn't there,
15 obviously. Then he said to me, "At the
16 beginning. At the beginning, but very little".
17 That was his answer to my question.

18 So, you can't connect the two,
19 because there's a missing sentence -- the question
20 is missing. That's the question I asked him. I
21 couldn't say to him directly, for instance, "Did
22 they torture you?", but I said, for example, "How
23 did they treat you? Did they hurt you? Are they
24 treating you well? Are they making things
25 difficult for you?" and he answered, "At the

1 beginning, but very little". That's what he
2 replied.

3 MS. EDWARDH: I'm going to suggest
4 to you, Mr. Martel, that it is very clear that you
5 too made a distinction between the present and the
6 beginning, just as the Syrian Human Rights
7 Committee report did, and that he told you, "Not
8 now, but, yes, in the beginning"?

9 MR. MARTEL: Yes, but he didn't
10 tell me to what degree. I said, "Did they make
11 your life difficult?" And he answered, "Yes, at
12 the beginning, but very little".

13 MS. EDWARDH: I'm not interested
14 at what level. You knew from what he said, sir,
15 that he was conveying to you the information that
16 he had been abused at the beginning but not now.
17 That's what you understood.

18 MR. MARTEL: I understood that at
19 the beginning, yes, the Syrians had made his life
20 difficult.

21 MS. EDWARDH: And those
22 difficulties included that he was being beaten?

23 MR. MARTEL: That, I don't know.

24 MS. EDWARDH: And I take it that
25 if Mr. Arar said that to you, sir, he might well

1 have but you didn't write it down and you just
2 don't remember it today?

3 MR. MARTEL: No. If he had said
4 that he had been beaten, I would have written it
5 down and I would have reported it. I have nothing
6 to gain by failing to report a fact like that. If
7 my client had said, "Look, I'm being beaten", what
8 am I going to do? Am I going to hide that fact?
9 I have to report that fact to the Canadian
10 authorities, who will then -- It isn't my problem
11 after that. If I report a fact like that, if my
12 client is being tortured ---

13 MS. EDWARDH: You see, the problem
14 with your position -- I'm sorry.

15 MR. MARTEL: No, not at all.
16 Look, if I report a fact like that, I'm
17 transferring the decision to headquarters, to Gar
18 Pardy, to the Minister and the others, not to
19 myself. So, I have nothing to gain in hiding
20 those facts. If those are the facts, those are
21 the facts, and I have to convey them, and someone
22 at headquarters has to act accordingly and make a
23 decision.

24 MS. EDWARDH: The difficulty,
25 Mr. Martel, is very simple. He did tell you the

1 cell size, and you never reported that.

2 MR. MARTEL: Yes, I also asked him
3 about his cell.

4 MS. EDWARDH: Because you forgot.

5 MR. MARTEL: No. I asked him
6 about his cell and I asked him -- He said, "Yes,
7 my cell is very small and I'm sleeping on the
8 ground". And I asked him how the others were, and
9 he said, "As far as I know, we are all the same".

10 At that point, I didn't have all
11 the elements he told me afterwards. I didn't know
12 that his cell was underground. The cell was
13 small, yes. We all agree on that. I understood
14 that his cell was very small, but nothing
15 indicated at that point that his cell was so small
16 and was underground, and in the dark, with rats,
17 cockroaches and cats and all that. If you add all
18 that up, that's inhumane conditions, and I have to
19 report that.

20 MS. EDWARDH: Isn't that
21 Mr. Pardy's problem, Mr. Martel? Isn't it
22 Mr. Pardy's problem to put together -- if you
23 can't put it together what three by six by seven
24 means, you can't stand here, sir, in my respectful
25 submission, and say you knew it was small but not

1 that small.

2 MR. MARTEL: That's not what I'm
3 saying. I'm saying that the cell was very small
4 and he confirmed to me that all the inmates were
5 in the same situation, and according to my
6 guidelines, I'm being told that we must not ask
7 for special treatment, and after he confirmed that
8 everyone was in the same situation, at that point,
9 I didn't make the connection with inhumane
10 treatment. I didn't have all the details and
11 that's why it escaped me. Yesterday, I said --
12 yesterday I said that if I had to do it over
13 again, I would put those numbers in.

14 MS. EDWARDH: You knew Mr. Arar
15 wasn't in general population because the Syrian
16 gaolers told you that he was separate from all
17 other inmates; right? They had told you that.

18 MR. MARTEL: Yes. Yes, they told
19 me he was separated from the others.

20 MS. EDWARDH: How would Mr. Arar
21 know about the conditions of confinement of other
22 inmates?

23 MR. MARTEL: I don't know. He
24 said, "As far as I know, we are all the same".
25 That's what he said to me.

1 MS. EDWARDH: Isn't that what you
2 thought? Isn't what you thought is, "Listen, they
3 are all sleeping on the floor"?

4 MR. MARTEL: That's what he said.
5 He said, "As far as I know, we are all the
6 same". He said it to me in English.

7 MS. EDWARDH: And, of course, you
8 will agree with me that Mr. Arar could not, in any
9 detail, have conveyed to you that his conditions
10 of confinement were like everyone else in that
11 institution because you knew that he didn't have
12 access to anyone.

13 MR. MARTEL: I didn't know that he
14 didn't have access to anyone. It was never
15 mentioned anywhere before that he didn't have
16 access to anyone.

17 MS. EDWARDH: Nonsense. You were
18 told by the Syrian authorities that Mr. Arar was
19 lucky he was in a separate cell and not mixing
20 with other detainees. You were told that, were
21 you not?

22 MR. MARTEL: Yes, but that didn't
23 mean that he was -- that he didn't have a
24 neighbour beside him or two cells away.

25 Nor did it mean that he was

1 isolated and that there was no one where he was
2 being detained, in a cell, and that he saw no one.

3 Nothing indicated that.

4 The Syrians -- in their minds,
5 they tried to make me understand that he was --
6 and I'm sure, when I place myself in their shoes,
7 that that's what they were thinking.

8 MS. EDWARDH: All right. Now, in
9 terms of your memory, sir, I take it you have
10 agreed with Mr. Cavalluzzo that on October 7th,
11 when you told the group of officials you were
12 briefing, that you told them -- and we don't have
13 to go back over this -- that Mr. Arar had told you
14 in the first two weeks he had been beaten and then
15 subsequently you wrote a number of memoranda;
16 right?

17 In those memoranda you said
18 Mr. Arar did not say he had been beaten.

19 MR. MARTEL: Yes. I explained
20 that yesterday, too.

21 MS. EDWARDH: Because you forgot.

22 MR. MARTEL: I explained yesterday
23 that Maher and I had taken the plane together and
24 on board, for two days --

25 You have to remember, this was

1 Sunday morning. We spent the entire day. We went
2 to the detention centre. He left with me. We
3 took the plane that night. We left for Europe.
4 We didn't sleep. We arrived in Ottawa on Monday
5 night. Let's say at four or five o'clock in the
6 morning for me. And at 10 o'clock, I had a
7 meeting in the Department.

8 I had been travelling for two
9 whole days, without sleeping. And it was the same
10 for him.

11 And then I -- I was asked, without
12 notes, because I didn't take any notes, none, on
13 the entire trip. And then they said to me, and I
14 didn't expect it, but they said, "Tell us what
15 happened on the trip".

16 So I told them as best I could
17 from memory after those two days of travel.

18 Now, as you're saying, I forgot
19 afterwards. A month later, someone from the
20 Political Section said to me, "Yes, but we want a
21 report".

22 And I sent the report they asked
23 for. And it had holes in it. I have to admit, it
24 had holes in it.

25 But everyone who received that

1 report ---

2 MS. EDWARDH: Because you forgot.
3 You forgot that Mr. Arar told you that he was
4 beaten in the first two weeks. That is your
5 evidence, isn't it, Mr. Martel?

6 MR. MARTEL: I forgot to include
7 that fact in my final report, but I said it. I
8 didn't hide it. I said it at the meeting. I said
9 what he had said to me.

10 Except that a month later ---

11 MS. EDWARDH: I understand that.
12 At the meeting you ---

13 THE COMMISSIONER: Let him finish
14 the answer.

15 MS. EDWARDH: I'm sorry.

16 THE COMMISSIONER: And I do have
17 the point, really. It is quite clear that he said
18 several times that he did forget, that he left it
19 out.

20 MS. EDWARDH: If you are content
21 with what the Commissioner has said, your
22 description of it, I'm going to suggest to you,
23 sir, as well, that while you forgot this important
24 point, as well when Mr. Arar told you that he was
25 presently not being beaten or tortured, that he

1 was not paralysed, but that he had been earlier,
2 that that is what that phrase means, that brief
3 phrase that isn't completed. And, sir,
4 unfortunately you have just forgot it again, the
5 same kind of thing.

6 MR. MARTEL: No.

7 MS. EDWARDH: No.

8 MR. MARTEL: I'm sorry. I'm
9 sorry, but that's not it.

10 He told me what he told me. "I
11 was not paralysed and I wasn't beaten. I wasn't
12 tortured".

13 And when I asked him afterwards,
14 "Did they make your life difficult?" because he
15 was -- he was irritated. He behaved in an
16 irritated manner.

17 So I said, "Have they made your
18 life difficult?" because I couldn't ask questions
19 that were too direct. And he said, "Yes. At the
20 beginning, but not very much. Not as much as
21 that".

22 MS. EDWARDH: And what did you
23 understand? If this is your recollection, what
24 did you understand about the problems? What
25 message was he giving you, Mr. Martel?

1 MR. MARTEL: Well, I think he was
2 telling me that initially, at the beginning, when
3 he told me that the interrogation was more
4 intense, it had been more difficult for him.

5 Maybe they were depriving him of
6 sleep. I don't know what they did to him. He
7 couldn't give me those details. I didn't know.
8 But ---

9 MS. EDWARDH: You don't remember
10 what he said specifically, do you?

11 MR. MARTEL: No. He said, "At the
12 beginning. At the beginning. At the beginning,
13 but very little". That's what he said to me. I
14 remember that that's what he said to me. He said
15 it clearly. "At the beginning, but very little".
16 That's what he said to me.

17 --- Pause

18 MS. EDWARDH: I want to ask you
19 just a couple more questions and then I will sit
20 down.

21 On the plane on your way back,
22 when you stopped over from -- you flew from Syria
23 to Jordan, and Jordan to Paris. Is that correct?

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

25 MS. EDWARDH: I would like you to

1 tell the Commissioner what Mr. Arar's response was
2 when he was told to leave the plane in Jordan,
3 because you had to disembark.

4 Is that correct?

5 MR. MARTEL: Yes. When we left
6 Damascus, there was already an embargo on -- on
7 the fact that he had been released.

8 So, we agreed with Ottawa that as
9 of 2:00 a.m., our time, we could announce the
10 news, even publicly.

11 But what we didn't realize was
12 that at that time, Air France had changed its
13 flights because of a lack of passengers and --

14 We were doing a reverse route,
15 actually. We were leaving Damascus and going to
16 Aman for a technical stopover and to take on
17 passengers.

18 As soon as we had lifted off, the
19 pilot welcomed us aboard and announced that we had
20 a technical stopover in Aman. Naturally, Maher
21 panicked at that point because he had already come
22 from Jordan.

23 So I told him, "Don't worry. You
24 mustn't worry, because it's a technical stopover.
25 We don't even have to get off the plane. We both

1 have our luggage on board. And you're with me.
2 You have nothing to worry about".

3 So he calmed down and -- but when
4 we got to Aman, after we landed, there was another
5 problem. A passenger hadn't shown up, so there
6 was one suitcase too many. So the crew asked us
7 to disembark.

8 Then I said, "We don't have to
9 disembark. We don't have any luggage". Because
10 they wanted us to identify all the luggage in the
11 baggage hold.

12 I said, "We don't have to because
13 we don't have any luggage". They said that we had
14 to go anyway.

15 So I said to Maher -- we were
16 sitting in the front of the plane. I said, "Okay,
17 let's go. We'll make this very quick and exit at
18 the front. We don't need to stop and look at the
19 luggage. We'll get back on in the back and come
20 back to our seats".

21 So that's what we did. We
22 disembarked quickly. We walked around the plane.
23 We re-embarked and sat down in our seats. So when
24 the officers of -- the Jordanian officers came on
25 board and -- I told Maher, "Don't look. Don't

1 look. Look outside. Don't pay any attention to
2 them. In any case, you're with me, you have
3 nothing to worry about".

4 Does that answer your question?

5 MS. EDWARDH: Yes. The answer I
6 think conveys that Mr. Arar was quite panicked and
7 fearful when he landed in Jordan and was asked to
8 leave the aircraft.

9 MR. MARTEL: Yes, of course. I
10 had to reassure him.

11 MS. EDWARDH: And it was clear to
12 you that one of the things he was terribly afraid
13 of was that he would be taken into custody again
14 because he had come through Jordan.

15 MR. MARTEL: Exactly.

16 But I told him, "It's not going to
17 happen. You're with me, so don't worry".

18 MS. EDWARDH: I understand your
19 attempt at -- I'm trying to capture for the
20 Commissioner how frightened he was that the
21 Jordanians had handed him over once, and that he
22 might well be detained and taken from your
23 presence and put wherever he might be put.

24 I mean, that was obvious that he
25 was frightened of that?

1 MR. MARTEL: He was very
2 uncomfortable.

3 MS. EDWARDH: And did he convey to
4 you at all, Mr. Martel, why he was afraid, why he
5 didn't want to talk about his detention?

6 I know you did speak over the
7 course of the two days. He gave you some
8 information. But when you got off the plane, it
9 had been clear to you that he really didn't want
10 to fully discuss it at that time.

11 Isn't that fair?

12 MR. MARTEL: No, he -- yes, that's
13 right.

14 He didn't want -- he didn't want
15 to talk about that episode.

16 MS. EDWARDH: The details?

17 MR. MARTEL: Yes. He gave me a
18 few details here and there. He wanted -- when he
19 wanted to talk to me, he did.

20 But most of the time, he would say
21 to me -- or if I asked him a question, for
22 instance, he would say, "I'm not ready. I'm not
23 ready to talk".

24 So I had to respect my client's
25 wishes. I couldn't push him.

1 I wasn't conducting an
2 examination, so if he didn't want to give me
3 details about his detention, I couldn't insist.

4 Other clients have given me three
5 full pages in telling me their stories. But Maher
6 didn't want to. He had suffered a great deal
7 emotionally, and it showed.

8 I had to respect that.

9 MS. EDWARDH: It was clear to you
10 he wasn't ready to have a detailed conversation?

11 MR. MARTEL: No, he didn't want
12 to. He didn't want to, and he was sometimes very
13 up emotionally, and sometimes down.

14 So it was hard for him.

15 MS. EDWARDH: And one of the
16 things you queried or asked about was what
17 happened to him in the USA. Do you remember?

18 Do you remember trying to obtain
19 some information about what had gone on in the
20 United States?

21 MR. MARTEL: Maybe I was still
22 trying to gather the dates and -- of his departure
23 and all that. And I hadn't gotten all the details
24 on -- on his transfer, his deportation. We might
25 have talked about it.

1 But over the two days, we talked
2 about all kinds of things. There were some things
3 he wanted to tell me, and others, not.

4 So, I don't remember. His
5 detention in the United States, I don't remember.

6 MS. EDWARDH: Well ---

7 MR. MARTEL: Wait. I think that
8 -- I think he told me that the American
9 authorities had been quite harsh with him and that
10 he hadn't -- I don't know -- that he hadn't been
11 given enough to eat. Something of the sort.

12 MS. EDWARDH: And do you recall
13 asking him, or do you recall him saying that he
14 didn't want to talk about the evidence that they
15 had put to him?

16 He didn't mention to you about his
17 lease, did he? He didn't tell you that the
18 American authorities had a copy of some part of a
19 lease agreement that could only have come from
20 Canada? He didn't say that to you?

21 MR. MARTEL: I don't remember.
22 No. He said no.

23 MS. EDWARDH: Okay. And would it
24 surprise you if I were to suggest to you that he
25 was deleting that kind of reference in his

1 conversation because he was afraid that once you
2 learned that, you might turn him in too, send him
3 back?

4 MR. MARTEL: I don't know.
5 Possibly.

6 Possibly. He was quite open with
7 me. He gave me some information ---

8 MS. EDWARDH: About some things.

9 MR. MARTEL: Yes, about -- mostly
10 about the major difficulties, the big ordeal he
11 had been put through and all that. He talked
12 about that at length.

13 I believe there was, all in all -
14 a climate of trust between us. And my role wasn't
15 to bring him back to Canada and deliver him to the
16 authorities, it was to bring him back to his
17 family.

18 MS. EDWARDH: I understand. I
19 know that was your role. I'm talking about
20 whether you appreciated how fearful he was, even
21 fearful of you?

22 MR. MARTEL: Maybe, but he seemed
23 very, very comfortable with me. When he left the
24 prison, we went outside together. We went to eat.
25 I brought him to my home. And ---

1 I don't think he was really afraid
2 of me. I explained my role to him. He knew -- he
3 already knew.

4 I was the one who had always
5 transmitted messages to and from his family, as
6 well as Monia's [...] and photos of his children.

7 So he -- we had established a
8 fairly close relationship with -- each other.

9 And when we travelled together, I
10 was worried too, even in Paris, so I asked for
11 assistance from our Embassy while we were in
12 transit.

13 MS. EDWARDH: Mr. Martel, so as
14 not to leave anyone with the wrong impression,
15 since you deposited Mr. Arar on Canadian soil, it
16 is my understanding you have had a single
17 conversation with him, and that conversation
18 occurred when you were here to testify?

19 MR. MARTEL: Yes. Exactly. I
20 spoke to him in June. The last time I was here.

21 MS. EDWARDH: Yes. You have not
22 had any other conversations?

23 MR. MARTEL: No. We've said hello
24 and that's all.

25 MS. EDWARDH: And that

1 conversation that you had took place in the
2 cafeteria here when you wanted to talk to him
3 about the lawsuit?

4 MR. MARTEL: No, I was -- I was
5 with my counsel at the time, and someone said,
6 "Maher's over there".

7 I asked if I could go and speak to
8 him and they said I could.

9 So I -- I went to see Maher. We
10 chitchatted at first. He said, "Oh! I didn't
11 recognize you right away. You've changed", and
12 all that.

13 And after that conversation, the
14 issue of the photo came up. I said, "The
15 Commission attached a lot of importance to that
16 photo I took of you".

17 And I said, "You know, I'm very
18 worried about that photo". He said, "It's
19 nothing".

20 So he didn't -- and afterwards, I
21 also said, "I don't know -- I don't know why ---"

22 MS. EDWARDH: You were concerned
23 with the picture because it had never been a
24 document that you intended to publicly put out,
25 but yet it was publicly widely displayed; correct?

1 MR. MARTEL: Actually, I gave it
2 to the Commission when the Commission asked me for
3 it, but before that it hadn't -- that photo had
4 never been published anywhere.

5 MR. CAVALLUZZO: I would like to
6 object to that in terms of I think the witness is
7 confused as to the Commission asked for it and he
8 gave it to the Commission.

9 MS. EDWARDH: Well, we will let
10 that factual question remain with you,
11 Mr. Commissioner.

12 But I just want to put it to you
13 that you did ask him about the lawsuit and you
14 made it clear to Mr. Arar in that conversation,
15 which was also present in front of one of our
16 colleagues, you made it clear to him that you
17 didn't call him a liar personally.

18 Do you recall saying that to him?

19 MR. MARTEL: I remember ---

20 MS. EDWARDH: There is a
21 distinction that you made. "Something may be a lie
22 and a person may not be a liar".

23 Do you recall saying that to him?

24 MR. MARTEL: I remember a
25 conversation we had in June. I -- I told him how

1 surprised I was at having been named in the
2 lawsuit.

3 And I don't think there were any
4 other details.

5 After that, he explained why I was
6 named. And I understood. And I closed that
7 chapter.

8 For me, that was all. I had
9 understood the judicial or legal process. That's
10 all. Nothing more.

11 MS. EDWARDH: One of the things
12 you said, sir, you said to your lawyer that, "It's
13 a lie". But you wanted Mr. Arar to know that you
14 weren't saying that he was a liar.

15 I want to put it to you that that
16 is what you said in front of him and that is what
17 you said in front of a woman who was standing
18 directly beside him when you had this conversation
19 in the cafeteria?

20 MR. MARTEL: Maybe I said that
21 according to some reports, I was being accused of
22 saying he was lying, but I was just referring to
23 the lawsuit.

24 In the lawsuit, I said that it was
25 a big lie, that I never -- and he knows this -- I

1 never, never would have missed an opportunity to
2 visit him.

3 MS. EDWARDH: You also know that
4 you have in your own mind never, ever, said that
5 Mr. Arar lied to you about what happened to him in
6 Syria?

7 MR. MARTEL: No. When he lied, he
8 lied under pressure. It wasn't deliberate.

9 Apart from that, he always told me
10 the truth.

11 MS. EDWARDH: Thank you.

12 THE COMMISSIONER: Thank you,
13 Ms. Edwardh.

14 MS. EDWARDH: I'm sorry,
15 Mr. Commissioner, I have two very brief questions.

16 THE COMMISSIONER: Oh, I'm sorry.

17 MS. EDWARDH: There is probably
18 going to be an objection to these questions so
19 everybody wake up.

20 --- Laughter / Rires

21 THE COMMISSIONER: Don't answer
22 the question.

23 MS. EDWARDH: When Mr. Arar was
24 leaving, finally, one of the persons in attendance
25 was a man that we will call George. Do you

1 remember that man?

2 MR. MARTEL: Yes, of course.

3 MS. EDWARDH: Can you describe to
4 the Commissioner, please, George's demeanour on
5 the very last occasion when Mr. Arar left his
6 control?

7 MR. MARTEL: Well, when -- when we
8 parted company in what was called the yard,
9 because there was a yard, sort of, a big yard.
10 The Embassy car was there.

11 After we had all had coffee
12 together -- Maher was free, we were leaving and
13 everyone was very happy -- officials escorted us
14 outside and before we left, everyone shook hands.

15 As we were leaving, Maher said
16 something to me that to this day, I still don't
17 understand. Maybe he'll be able to explain it to
18 me afterwards. Later. Much later. He said that
19 as he was leaving, George cried.

20 That's all I remember about George
21 at that moment.

22 MS. EDWARDH: Do you remember
23 seeing George cry?

24 MR. MARTEL: No, I didn't -- I
25 didn't see him cry, but I saw George. George was

1 there.

2 But if Maher told me that George
3 was crying as we left, he was crying.

4 MS. EDWARDH: Did you, Mr. Martel,
5 have, beyond a formal relationship with the
6 persons you have described today, a personal
7 relationship with any of the persons inside
8 Military Intelligence or with the interpreter that
9 was not just a purely professional relationship?

10 MR. MARTEL: No, I'm -- I'm not
11 allowed to have a relationship with them. They're
12 not allowed to either.

13 I can't even have lunch with them,
14 with one of the members. I'm given a different
15 contact for each case. It isn't always the same
16 person.

17 Up until the time I left, I had
18 someone else ---

19 MS. EDWARDH: You have answered
20 the question.

21 MR. MARTEL: Thank you.

22 MS. EDWARDH: The next question is
23 we have heard that Ambassador Franco Pillarella
24 had a remarkable connection, better than anyone
25 else's, to Syrian Military Intelligence, a very

1 good connection, the best that Canada could have.

2 Did Franco Pillarella have a
3 personal relationship with anyone in Syrian
4 Military Intelligence?

5 MR. MARTEL: Not as far as I know.
6 Except with the person you just mentioned. I
7 think he met that person two or four times ---

8 MS. EDWARDH: George?

9 MR. MARTEL: No; the General.

10 MS. EDWARDH: General Khalil?

11 MR. MARTEL: No. The Ambassador
12 doesn't know George.

13 MS. EDWARDH: And can you just
14 assist us as to ---

15 MR. DECARY: So do I.

16 MS. EDWARDH: Can you just assist
17 us, sir, as to whether the Ambassador's
18 relationship with General Khalil had both a
19 professional and a personal component to it?

20 MR. MARTEL: I don't think there
21 was a personal relationship. I don't think so.

22 You should address this question
23 to the Ambassador. He doesn't speak to me much
24 about his relations; I don't know whom he invites
25 to his home. I see them when I'm there, but those

1 people don't usually accept invitations, so they
2 don't go anywhere.

3 So it would surprise me if he had,
4 say, a truly personal relationship, but you should
5 ask him.

6 MS. EDWARDH: Fine. I appreciate
7 that. He just happens not to be here. You are,
8 Mr. Martel.

9 Last question in the same area:
10 Do you know whether any of the General's children
11 or grandchildren or their spouses have travelled
12 to Canada while Franco Pillarella was the
13 Ambassador, for medical care or for delivery of
14 children?

15 MR. MARTEL: That's an Immigration
16 matter; it's not my area at all.

17 MS. EDWARDH: Well, if in fact
18 General Khalil or his grandchildren had applied
19 for a visa to Canada, it is a question that would
20 be addressed by the Embassy in Damascus.

21 MR. MARTEL: Yes, but not by the
22 Ambassador.

23 MS. EDWARDH: But not by you?

24 MR. MARTEL: No, not at all. It's
25 completely forbidden. We can't even intervene, we

1 can't even make suggestions; quite the contrary.
2 It's my work, so maybe I can't talk about it in
3 public, but it's the opposite.

4 MS. EDWARDH: Well, no, it's fine
5 to say that there are rules that prohibit you from
6 intervening. Are you suggesting that the
7 Ambassador cannot facilitate the request of a
8 foreign national to obtain a visa ---

9 MR. MARTEL: He's forbidden from
10 doing that. He can't.

11 MS. EDWARDH: And to your -- well,
12 then I will leave that.

13 I gave to your counsel yesterday
14 an article, asking that you take a moment to look
15 at it.

16 It is an article,
17 Mr. Commissioner, dated October 10th, 2003. It is
18 an English article written by Mr. Jeff Sallot.

19 I gave this to you because I
20 wanted to ask a question. This of course is
21 written -- and I would like it to be marked as the
22 next exhibit, Mr. Commissioner.

23 THE COMMISSIONER: What number are
24 we at?

25 MR. CAVALLUZZO: Two hundred and

1 forty-seven.

2 EXHIBIT NO. P-247: Article
3 written by Jeff Sallot

4 MS. EDWARDH: Thank you,
5 Mr. Cavalluzzo.

6 It is written just a few days
7 after your meeting with the colleagues that you
8 briefed at the Department of Foreign Affairs.

9 Is that correct?

10 MR. MARTEL: Yes; in early
11 October, yes.

12 MS. EDWARDH: Yes. The meeting
13 was October 7th, as I understand it, and this is
14 written October 10th. In the top left there is a
15 date where this was published.

16 MR. MARTEL: Yes, I see it.

17 MS. EDWARDH: What is quoted in
18 this document is that an official -- or it says:

19 The officials say they have
20 not yet learned any details
21 from Mr. Arar about his
22 arrest by U.S. authorities 13
23 months ago and treatment
24 after his deportation to the
25 Middle East.

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It goes on:

All they know from preliminary conversations with him is that he was slapped around by Jordanians during the 8 to 10 hours he was in that country and held in very bad conditions in Syria.

Were you the source for that story, Mr. Martel?

MR. MARTEL: No. I had no contact with -- was that a reporter, whom I met today?

MS. EDWARDH: No. My question is simply whether you gave an interview that led to this description ---

MR. MARTEL: No, I'm not authorized to give interviews to the press. So my answer is no, I'm not the source.

MS. EDWARDH: Do you recall seeing this story?

MR. MARTEL: No, I don't remember.

MS. EDWARDH: And we can agree, sir, that if what is released to the public by an official on October the 10th, 2003, is that simply

1 that "Mr. Arar was slapped around by Jordanians
2 and/or held in just bad conditions in Syria", that
3 is an extremely inaccurate portrayal of all the
4 information you had at hand.

5 MR. MARTEL: I don't know who the
6 source was for that, but it wasn't me. It was
7 certainly ---

8 MS. EDWARDH: Fair enough. I
9 appreciate it wasn't you, sir. But whoever said
10 these things certainly was not putting out the
11 full picture. That's all I'm saying.

12 Do you agree?

13 MR. MARTEL: Yes, of course. I
14 don't know who was the source and it doesn't
15 reflect the whole story.

16 MS. EDWARDH: Fair enough.

17 Could I have just two minutes?

18 THE COMMISSIONER: Sure. Go
19 ahead.

20 --- Pause

21 MS. EDWARDH: Mr. Commissioner,
22 there are a couple of documents that I should file
23 that I don't believe Mr. Cavalluzzo filed.

24 We referred to some litigation or
25 lawsuits, and I believe there are copies of the

1 Federal Court lawsuit that are sitting on a pile
2 on Mr. Cavalluzzo's desk, and I think we should
3 file them as an exhibit.

4 I have copies of the Provincial
5 Court lawsuit. You have them there?

6 I would like them to be filed as
7 an exhibit. And then I have a couple of other
8 documents that I would like to do as well.

9 THE COMMISSIONER: Is this the
10 Provincial one?

11 MS. EDWARDH: This is the Superior
12 Court.

13 THE COMMISSIONER: Two hundred and
14 forty-eight.

15 EXHIBIT NO. P-248: Superior
16 Court lawsuit

17 MS. EDWARDH: And could I ask that
18 the Federal Court lawsuit be filed as Exhibit 249.

19 THE COMMISSIONER: Two hundred and
20 forty-nine will be the Federal lawsuit.

21 EXHIBIT NO. P-249: Federal
22 Court lawsuit

23 MS. EDWARDH: There was some
24 suggestion that there may be some other public
25 documents. One of them, of course, is the lawsuit

1 filed in respect of Syria, and I think we can do
2 this by way of agreement, but I think it is an
3 important fact, Mr. Commissioner.

4 Is that the Syrian lawsuit?

5 THE COMMISSIONER: No. This is
6 the Federal Court.

7 MS. EDWARDH: Oh, the Federal
8 Court. This is the Federal Court.

9 With respect to the Syrian
10 lawsuit, it was indeed filed prior to February,
11 but I think Ms. McIsaac is in agreement with me
12 that there is no mention of Mr. Martel in it.

13 It is a lawsuit against the
14 Government of Syria.

15 THE COMMISSIONER: Do we need to
16 file it then?

17 MS. EDWARDH: I don't think so.
18 If Ms. McIsaac is content with the assertion of
19 that fact, then I don't think we do.

20 THE COMMISSIONER: Then we don't
21 need to, yes.

22 MS. EDWARDH: But if there is any
23 dispute about that ---

24 THE COMMISSIONER: He is not a
25 defendant.

1 MS. EDWARDH: He is not a
2 defendant and none of the facts that are described
3 in that lawsuit bear upon what the witness has
4 said today.

5 MS. McISAAC: Why don't we file it
6 because I have not read it.

7 THE COMMISSIONER: Two hundred and
8 fifty will be the lawsuit against Syria.

9 EXHIBIT NO. P-250: Syrian
10 lawsuit

11 --- Pause

12 MS. EDWARDH: Ms. McIsaac, we do
13 not have the one handy. I thought we did.

14 Perhaps what we could do, could we
15 tentatively mark it and we will produce it -- oh,
16 you have got a copy? Thank you, Ms. McIsaac.

17 THE COMMISSIONER: Thank you,
18 Ms. McIsaac. It will be 250.

19 MS. EDWARDH: And the other public
20 document that I would like to file as a source of
21 reference by way of exclusion, if nothing else.

22 Mr. Arar, on basis of an affidavit
23 filed, applied for leave to intervene in the
24 Basari litigation and an affidavit was filed in
25 support of that litigation. There was some

1 suggestion earlier that this might be a source for
2 the witness' recollection, and I'm going to ask
3 that it be filed.

4 There is in it no reference at all
5 to Mr. Martel.

6 THE COMMISSIONER: The only
7 purpose you are filing the affidavit is not to
8 prove the facts but just as a matter of exclusion,
9 as you say.

10 MS. EDWARDH: Exclusion.

11 THE COMMISSIONER: If we can agree
12 upon that, we don't need to file it.

13 Ms. McIsaac, are you familiar with
14 that affidavit?

15 No. Then it ---

16 --- Pause

17 MS. EDWARDH: My friend is content
18 that the references the witnesses have referred to
19 are not in fact in the affidavit of Maher Arar
20 filed in the Basari lawsuit.

21 THE COMMISSIONER: Okay. Then we
22 don't need to file that. That is on the record.

23 MS. EDWARDH: I don't believe I
24 need to file the last document.

25 Thank you, very much,

1 Mr. Commissioner. Thank you, Mr. Martel.

2 THE COMMISSIONER: Thank you, Ms.
3 Edwardh.

4 Ms. Jackman?

5 MR. ATKEY: Commissioner, before
6 Ms. Jackman starts, there was a housekeeping
7 matter.

8 With respect to Tab 20 of
9 Mr. Martel's newly redacted documents, Mr. Baxter
10 was going to get instructions about removal of
11 further redactions from this document, which is
12 the 2003 Report on Human Rights, Democratic
13 Development and Good Governance, which is almost
14 entirely redacted except for one paragraph and yet
15 received wide distribution throughout many, many
16 departments of government and agencies.

17 I wonder if there are any
18 instructions about removal of redactions. It
19 would be helpful have this information.

20 THE COMMISSIONER: Thank you,
21 Mr. Atkey.

22 MR. BAXTER: My understanding,
23 sir, was that we undertook to look and determine
24 if Mr. El Maati was mentioned in -- is this the
25 2003?

1 THE COMMISSIONER: Yes.

2 MR. BAXTER: I'm advised that
3 there is no mention of the El Maati case in there.
4 That is what we have been able to determine.

5 THE COMMISSIONER: So we can make
6 that clear.

7 Mr. Atkey raises a slightly
8 different point. It is just the extent of the
9 redactions. I appreciate that throughout the
10 public hearings the government has further
11 redacted documents. I think the point Mr. Atkey
12 makes is this might be one that would be a good
13 target for reconsideration. So if the government
14 could do that, and if there is to be removal of
15 redacted portions, then let the Commission know
16 and we will make the re-redacted document
17 available publicly.

18 MS. EDWARDH: Mr. Commissioner,
19 you had also made a request of government counsel
20 to consider providing this document to Mr. Stephen
21 Toope. You may recall that in your ruling.

22 I have no knowledge of whether or
23 not that invitation of the Government of Canada
24 has been accepted and it has been provided, but I
25 would ask through you if they would be prepared to

1 disclose whether it has and then, of course, I
2 might want to add a piece of transcript from
3 today's proceedings.

4 THE COMMISSIONER: Right.
5 Do you know the answer to that,
6 Mr. Cavalluzzo?

7 MR. CAVALLUZZO: No, I don't.

8 THE COMMISSIONER: I don't know
9 the answer to that. That is something that we can
10 pursue. I think Mr. Toope's report won't be
11 prepared for a few weeks yet, so we can look into
12 that.

13 MS. McISAAC: Well, my
14 understanding is any documents that Mr. Toope
15 wanted would be provided through you, sir, through
16 the Commission.

17 THE COMMISSIONER: Yes. That's
18 what I'm saying.

19 MS. McISAAC: Sorry.

20 THE COMMISSIONER: What I'm saying
21 is I don't know if the government's provided it to
22 the Commission and we passed it on to Mr. Toope.

23 MS. McISAAC: The Commission
24 certainly has it, sir.

25 THE COMMISSIONER: There was a

1 question of whether or not we could give it to
2 Mr. Toope ---

3 MS. McISAAC: I thought we dealt
4 with that the other day, sir.

5 THE COMMISSIONER: Oh, did we?

6 MS. McISAAC: Yes.

7 THE COMMISSIONER: I must confess,
8 I'm ---

9 MR. BAXTER: This document, you
10 have it unredacted and it was the subject matter
11 of certain in-camera testimony through witnesses.
12 So I think what Ms. McIsaac is saying is if
13 Mr. Toope wants it, the Commission has it.

14 MS. EDWARDH: In fairness to
15 Mr. Toope, I don't know if he has security
16 clearance. I think what you were asking the
17 government to do is to consider releasing it to
18 him for his purposes on a confidential basis.

19 THE COMMISSIONER: But what I'm
20 hearing from the Government now -- and I must
21 confess, if they have done this already then I
22 should recall it. But the government has no
23 objection to us releasing this document in
24 unredacted form to Mr. Toope.

25 Is that what I hear?

1 MS. McISAAC: No. Sir, I thought
2 we had a discussion about Mr. Toope's access to
3 documents. Maybe I'm making things up.

4 MR. BAXTER: It is getting late.

5 MS. McISAAC: Perhaps we can deal
6 with this, not wasting the public's time.

7 THE COMMISSIONER: All right.
8 Let's leave it at that.

9 Ms. Jackman, do you have any
10 questions of this witness?

11 MS. JACKMAN: I just have a couple
12 of questions.

13 EXAMINATION

14 MS. JACKMAN: Mr. Martel, it would
15 appear from Exhibits 134 and 242 that there were a
16 progression of measures taken with respect to
17 Mr. Arar in relation to his detention in Syria,
18 and what I can see of the many documents that have
19 been attached of the meetings between the
20 Ambassador and General Khalil, or the Syrian
21 Deputy Foreign Minister, the phone calls between
22 our Minister of Foreign Affairs and their Minister
23 and their Ambassador, that there were maybe four
24 points:

25 First, all of that contact related

1 only to Maher Arar. Second, it was made clear to
2 the Syrians that he was not wanted for any offence
3 in Canada. Third, Canada wanted him to come home,
4 back to Canada. And, fourth, that he is a
5 Canadian citizen.

6 And so I'm wondering, given that
7 Mr. Almalki is detained this whole time, what was
8 he, chopped liver?

9 Like, what happened with
10 Mr. Almalki? There is nothing here. There is no
11 redaction showing that they were talking about two
12 people in Syria, just Mr. Arar.

13 MR. MARTEL: Well, as far as I
14 know, Mr. Almalki was detained in August 2002,
15 maybe, around that time.

16 MS. JACKMAN: May.

17 MR. MARTEL: In May, and at that
18 time, when we were notified, meaning the Embassy,
19 maybe by Foreign Affairs, I'm not quite sure who
20 notified us initially, we sent a diplomatic note
21 to the Syrian authorities requesting -- informing
22 them that we believed we had a Canadian citizen
23 who had been arrested and was being detained, and
24 we requested information about that inmate, the
25 usual diplomatic note, and to see him.

1 And I read in the file later on
2 that the family ---

3 MS. JACKMAN: I don't want to take
4 all day. I just want to know, in terms of when
5 you went to the jail, for example, when Mr. Graham
6 was talking to the officials, could they not have
7 just said, you know, there's Mr. Almalki as well?

8 Why didn't you ask, "Is he in the
9 same jail?"

10 MR. MARTEL: Well, this is what I
11 have already talked about with other counsel here.
12 What I mean is of course. Mr. Arar was an
13 exceptional case because of his deportation, while
14 the other Canadian Syrians had gone to Syria of
15 their own accord, and when the Syrian authorities
16 take a very firm position by telling us ---

17 They answered that in Mr.
18 Almalki's case: "He's a Syrian citizen, yes, we
19 are detaining him and we are detaining him
20 according to our own laws, and, no, you cannot see
21 him". That's what we were told.

22 So, when they take such a hard-
23 line position, the Minister has to intervene, or
24 someone from the very top, to change that.

25 MS. JACKMAN: And there was no

1 intervention from the Minister?

2 MR. MARTEL: As far as I know, the
3 Minister didn't intervene, and I also think that
4 the family didn't want to make waves. He has
5 family over there and they didn't want his name to
6 be made public; the family didn't want his name to
7 be made public.

8 MS. JACKMAN: We are not talking
9 about being made public. I'm talking about
10 pressuring the Syrians, not making anything
11 public.

12 MR. MARTEL: There wasn't any
13 pressure, and maybe -- I may be wrong, but I still
14 feel today that the family didn't want us to apply
15 any strong pressure that in the end would make it
16 public.

17 MS. JACKMAN: Okay. I think there
18 is probably a disagreement in terms of what the
19 family wanted. That is already a matter of
20 record.

21 But I just want to know, would you
22 not agree that Mr. Almalki and others in Canada
23 could come to the conclusion that he was less
24 worthy than Mr. Arar, or was it just that Canada
25 only acts when there is publicity?

1 MR. MARTEL: No. You have to make
2 the distinction; that is, we always take the same
3 approach for every Canadian who is being detained,
4 and we had tons in Syria in the years when I was
5 serving.

6 Each detainee, obviously, is
7 entitled to all the services, but the Syrian
8 State's position in those cases is very hard-line,
9 and when we try to find out if they are being
10 detained, we don't even get an answer or we get
11 one six months later or we get one after they've
12 left the country.

13 So, there's no -- there's no
14 serious co-operation with the Syrian authorities.
15 They say, "Ah! He's Syrian, it's none of your
16 business. Why are you asking? It isn't your
17 problem; he's one of our citizens".

18 The position is very hard-line in
19 that part of the world. They don't want to know
20 about dual citizenship; they agree that the person
21 acquired another nationality later on, but they
22 say they're keeping him because he didn't do his
23 military service.

24 They have all kinds of reasons.

25 MS. JACKMAN: I don't want to get

1 into an argument with you. But there are two
2 things: One is that Mr. El Maati and Mr. Nureddin
3 were not Syrian citizens. Mr. El Maati and Mr.
4 Nureddin, neither of them were citizens of Syria,
5 were they ---

6 MR. MARTEL: Exactly.

7 MS. JACKMAN: You don't need to
8 answer. I'm just pointing that out.

9 And second, the fact that Mr. Arar
10 was a dual citizen didn't stop you from pressuring
11 in his case. Again, you don't want to answer. I
12 don't want to drag this out. I just wanted to
13 make the point.

14 My second question is that it is
15 apparent again from this record and your testimony
16 today, even though you may have minimized it, that
17 there was a serious concern about mistreatment in
18 Syria for Mr. Arar.

19 From the very beginning when he is
20 detained, that first memo from October 23rd, at
21 Tab 3 in Exhibit 134, there was a concern about
22 him being "aggressively" questioned. Through that
23 time, there are indicators that there is torture
24 going on.

25 In August of 2002, Mr. El Maati

1 says he was tortured. In December of 2002, Mr.
2 Arar's brother talks about it. The Syrian Human
3 Rights Committee comes up with a report. On
4 August 14th, Mr. Arar tells you some details --
5 and again, I'm not going to argue with you about
6 what they were -- about his treatment.

7 Did that not cause you concern in
8 terms of Mr. Almalki? Was there any follow-up
9 with the Syrians to make sure Mr. Almalki was
10 treated properly?

11 MR. MARTEL: Of course, but the
12 authorities had already answered, saying, "It's
13 none of your business, he's a Syrian citizen, he
14 came here of his own accord. We are detaining him
15 according to Syrian law, and you can't see him".
16 As they say, "end of story".

17 One day, I went to the prison to
18 see another client of mine whom I was authorized
19 to see. I asked about Mr. Almalki because I had
20 learned that it was possible and probable that he
21 was being detained in the same place, but I was
22 never able to see him, not then either. They
23 flatly denied me permission, giving me some story
24 or other. So I wasn't able to see him either.

25 MS. JACKMAN: But nothing was

1 brought up with the Minister or sent up the line
2 to the Minister of Foreign Affairs to say, "Hey,
3 we have another person here. We're really
4 concerned about torture. Can you start putting
5 pressure on Syria for him too?"

6 MR. MARTEL: Well, we always
7 reported the facts on detainees to Gar Pardy, who
8 was the Director General in the Consular Section.
9 If Gar wanted the Ambassador or the Minister to
10 intervene at the appropriate level, that was the
11 only thing that would budge the Syrians, nothing
12 else. Even at the Ambassador's level, it wouldn't
13 have changed anything. We had received a formal
14 response from Foreign Affairs, saying, "He's one
15 of our citizens, not yours. He's in our country,
16 we're holding him according to Syrian law and you
17 may not see him".

18 MS. JACKMAN: With respect to Mr.
19 Nureddin, the memo that was put in, Exhibit 245,
20 there is an indication in that memo that Mr.
21 Nureddin tells you, and this is in January when he
22 is released. So Mr. Almalki is still detained, as
23 is, I think at that time -- no, I think Mr. El
24 Maati has been just released from Egypt. But in
25 any event, Mr. Almalki is still detained at that

1 time.

2 At the top of page 2 in that
3 exhibit, Mr. Nureddin believes that Canadian
4 authorities passed information on to the Syrians
5 because he was taken aside at Pearson Airport and
6 then he goes on about the questions he was asked
7 in Syria.

8 Did that cause you to do any
9 further investigation in relation to Mr. Almalki?
10 Did it cause you a concern?

11 MR. MARTEL: That's always
12 worrisome, naturally, but the Syrian authorities
13 continued to be inflexible. That report was still
14 sent to the Political Section and to the Director
15 General, Consular Section. When the report was
16 read in Ottawa, if they wanted to intervene in Mr.
17 Almalki's case, it really would have had to come
18 from the Minister's office.

19 Of course, they were managing that
20 file. They were also managing it in consultation
21 with Mr. Almalki's family. We had done our field
22 work, namely, to know where he was, to confirm it,
23 and to try to get access, which was refused.

24 Now, if they had wanted to put
25 pressure on the Syrians, it would have had to come

1 from headquarters and management in the Minister's
2 office; that's certain. No one else could have
3 changed that.

4 MS. JACKMAN: I only have two
5 little questions.

6 You are saying that it is all the
7 Syrian government's fault with respect to Mr.
8 Almalki. But when Mr. Arar and Mr. Nureddin are
9 released, you travelled to Canada with both men
10 because they are frightened and concerned. Nobody
11 travels with Mr. Almalki -- in fact, he is kicked
12 out of the Embassy at one point -- or Mr. El
13 Maati. Why the difference?

14 MR. MARTEL: I never met Mr. El
15 Maati, so that was before my time. Then Mr.
16 Almalki, when he was released, I was with him for
17 about six months. He had been released while
18 awaiting trial.

19 So, after his detention, during
20 the six months of his release, I saw him
21 constantly. He came to the Embassy maybe once a
22 week. We were together very often.

23 The trial was held, the Ambassador
24 was there on two occasions, and at the final
25 session ---

1 MS. JACKMAN: I just want to know
2 why you didn't travel with them back to Canada.

3 MR. MARTEL: Because I wasn't
4 instructed to. I asked Consular Affairs if we
5 should continue the same practice for Mr. Almalki
6 and the others, that is, accompany them back to
7 Canada, and Mr. Sigurdson, who had replaced Mr.
8 Pardy at the time, said, "There has been a change
9 in procedure in that we cannot accompany everyone,
10 etc".

11 In any case, Mr. Almalki was not
12 free to leave the country.

13 MS. JACKMAN: Well, eventually he
14 was. He eventually came back to Canada ---

15 MR. MARTEL: But he wasn't free to
16 leave the country. He wasn't free to leave the
17 country.

18 MS. JACKMAN: Well, he is in
19 Canada now.

20 MR. MARTEL: I'm telling you that
21 he wasn't free to leave Syria, so I couldn't
22 accompany him in any case.

23 MS. JACKMAN: Oh, you mean he
24 wasn't free to come back to Canada before you left
25 the position?

1 MR. MARTEL: No. When he was
2 released, meaning, when he was found not guilty by
3 the Syrian government, he was told that because he
4 hadn't done his military service, he had to report
5 for military service right then, so he could not
6 leave Syria for maybe two or three years.

7 MS. JACKMAN: But he came back to
8 Canada in July ---

9 THE COMMISSIONER: Ms. Jackman,
10 with respect, we are getting pretty far afield.

11 MS. JACKMAN: I'm not going to --
12 it's all right. I will leave it at that.

13 Those are all the questions that I
14 had to ask.

15 THE COMMISSIONER: Thank you very
16 much.

17 We might take a 10-minute break.
18 We have been at it for a while.

19 How long do counsel expect to be?

20 MR. BAXTER: Very short.

21 THE COMMISSIONER: Do you know at
22 this point, Mr. Décary?

23 MR. DÉCARY: Ten minutes.

24 THE COMMISSIONER: Why don't we
25 take a 10-minute break, but then we won't break

1 again. We will just start the motion without the
2 need for a further break.

3 THE REGISTRAR: Please stand.

4 --- Upon recessing at 5:07 /

5 Suspension à 17 h 07

6 --- Upon resuming at 5:20 p.m. /

7 Reprise à 17 h 20

8 THE REGISTRAR: Please be seated.

9 Veuillez vous asseoir.

10 THE COMMISSIONER: Mr. Baxter?

11 EXAMINATION

12 MR. BAXTER: Mr. Martel, I would
13 like to talk to you a little about Mr. Arar's
14 release date. You talked to Ms. Edwardh about the
15 fact that October 2003, in your opinion, suited
16 Syrian interests. Do you remember that?

17 MR. MARTEL: Yes, of course; and I
18 came to the conclusion that since this had never
19 happened before, that the Syrians had always
20 adopted a very firm position and could keep people
21 in detention for years without even granting
22 consular access, we can attribute the Syrians'
23 change in attitude to other factors related to the
24 Middle East. You have to remember that Syria's
25 neighbours had undergone some changes.

1 MR. BAXTER: But you were in the
2 field, as you say. So in your opinion, what
3 affected the timing of his release?

4 MR. MARTEL: The timing was good
5 because there was an enormous amount of
6 international pressure on the Syrians, and the
7 Syrians ---

8 MS. EDWARDH: I'm going to rise.
9 Excuse me, my friend.

10 I don't think, although we have
11 heard it from other witnesses -- if I understand
12 my friend's question, it is: Please speculate on
13 the reasons for release.

14 And I think we have established --
15 maybe I misunderstood the question?

16 MR. BAXTER: If I can answer, this
17 arose from a question you asked the witness. It
18 was about the proceedings and the trial and the
19 date of the release, and he said, yes, I believe
20 there were a lot of factors that were involved.
21 And you cut him off, if I may say, and I would
22 like to hear his full answer in that regard.

23 THE COMMISSIONER: I remember the
24 answer. I think the line of questioning is fair.

25 MR. BAXTER: So, please continue.

1 MR. MARTEL: There was --
2 evidently, there was a lot of pressure on the
3 country at that precise time, and of course, as I
4 already told your colleague, there were some
5 interventions; there was all that.

6 But in the end, what changed the
7 outcome, in my opinion, not only for this case,
8 but for others too, was the fact that Syria looked
9 for support elsewhere, support either from the
10 United Nations or -- because all of a sudden they
11 were very, very isolated.

12 So, obviously, they became more
13 flexible. They realized that they needed new
14 friends. They didn't have many friends around
15 them. They had one before in Saddam Hussein, but
16 this neighbour had changed. There was also
17 enormous pressure in Lebanon. To the south,
18 Jordan was an ally of the Americans. To the
19 north, Turkey was a member of NATO. So the
20 country was feeling more and more isolated.

21 In my opinion, we were looking for
22 support, and there was a change in attitude, I
23 think, beginning around April 2003. We felt, even
24 in dealing with Foreign Affairs, that they were
25 suddenly becoming much more receptive.

1 MR. BAXTER: What role, in your
2 opinion, was played by the war in Iraq or
3 relations with the United States, which invaded
4 Iraq?

5 MR. MARTEL: Well, at the outset,
6 according to the information I was able to gather,
7 that is, that the Syrians appear to have
8 cooperated with the Americans and were expecting
9 something in return and, in the end, that's not
10 what happened. The Syrian position was that, yes,
11 we gave the Americans a lot of help and look what
12 they gave us in return, and they were very
13 disappointed and cooperation between the two
14 countries deteriorated.

15 MR. BAXTER: What period in time
16 was this?

17 MR. MARTEL: I think that,
18 beginning in April 2003, there was already a
19 change in attitude.

20 MR. BAXTER: Were there other
21 factors, in your opinion, that you had in mind?

22 MR. MARTEL: Well, there were all
23 the factors that... Europe was also applying
24 pressure. Syria needed support in Europe. There
25 was what was called the Accountability Act, as

1 well as the Americans, and an enormous number of
2 factors bringing this pressure to bear on the
3 government, the State of Syria, and support had to
4 be found somewhere.

5 MR. BAXTER: Looking for friends
6 and they found...

7 MR. MARTEL: Friends.

8 MR. BAXTER: ...in Canada?

9 MR. MARTEL: Well, I mean, we
10 obviously did not participate in the war in Iraq,
11 and they saw us in a climate, from a more positive
12 angle, for sure. That's clear.

13 MR. BAXTER: Thank you. Those are
14 my questions.

15 THE COMMISSIONER: Mr. Décary?

16 EXAMINATION

17 MR. DÉCARY: We're just about done.
18 I have a few questions. There are five sets. The
19 first relates to the circumstances, some of the
20 circumstances of your first meeting with Mr. Arar.

21 First of all, did Mr. Pardy, or
22 anyone from the centre or headquarters tell you at
23 any time about allegations of torture in the case
24 of Mr. El Maati?

25 MR. MARTEL: No. I never knew the

1 El Maati case. I knew it in the sense that I was
2 aware that it existed. I found a diplomatic note
3 that had been sent by my assistant and I found a
4 reply saying that he had left the country and, as
5 far as we were concerned, the case was closed and
6 there was nothing further with regard to that
7 case.

8 MR. DÉCARY: And just to be
9 certain, the question is: Did anyone, Mr. Pardy or
10 anyone else, tell you of allegations of torture in
11 the case of Mr. El Maati?

12 MR. MARTEL: No. No. The
13 allegations of torture emerged very late, and at
14 that time, unfortunately, we had not been
15 informed.

16 MR. DÉCARY: The second question.
17 The framework...you referred to the framework of
18 the first meeting, which was established, and that
19 leads me to ask you questions on the
20 conversations, the discussions you had with the
21 Syrians.

22 Could you, first of all, tell the
23 Commissioner what was said at the outset, from the
24 initial contact with the first Syrian to the
25 meeting with Mr. Arar?

1 MR. MARTEL: Once I had been loaded
2 into the government vehicle, with my companion, of
3 course, I needed to know how the process would
4 unfold or what the framework would be, what I
5 could see, ask, etc., and they told me then, you
6 have to keep to family matters and questions of
7 well-being; you cannot ask questions about the
8 case itself. There you have the framework imposed
9 on me by the Syrians.

10 MR. DÉCARY: Subsequently, were
11 there... before the meeting with Mr. Arar, was
12 anything more said on this subject, or was that
13 all?

14 MR. MARTEL: That was the only
15 thing that the Syrians said to me.

16 MR. DÉCARY: And was your
17 understanding? What conclusions did you draw from
18 these remarks?

19 MR. MARTEL: I concluded that I
20 could have access to my client, but that there
21 were some matters relating to the case that I
22 could not ask about or discuss, that I had to
23 confine myself to general matters, family matters,
24 matters of well-being and no more.

25 MR. DÉCARY: My colleague asked you

1 about a number of subjects that you might have
2 been able to discuss with Mr. Arar. The first was
3 the size, the dimensions, of the cell.

4 So, did you ask a question about
5 the size of the cell?

6 MR. MARTEL: No, I didn't ask...

7 MR. DÉCARY: I think we all
8 understand. But I'm going to ask you now, why?

9 MR. MARTEL: Because the
10 authorities, one, would not have permitted it. In
11 fact, if I had asked the question, the question
12 would certainly have been thrown out. But I had
13 received my instructions beforehand from Mr.
14 Pardy, to ask only the most transparent questions
15 and which included the context in which I had to
16 see my client.

17 So, if I went out on a limb, of my
18 own accord, and I decided to start asking
19 questions that would cause displeasure, I would,
20 on the one hand, risk a reaction on the part of
21 the Syrians and a negative reaction that could,
22 potentially, have had repercussions for me and my
23 client.

24 MR. DÉCARY: Now, did Mr. Pardy or
25 anyone else from headquarters tell you to ask

1 questions about the size, the dimensions, of the
2 cell?

3 MR. MARTEL: No. No one ever told
4 me to ask such questions.

5 MR. DÉCARY: Now, the second
6 suggestion was related to detention conditions:
7 was he in solitary confinement or was he with the
8 group?

9 Did you ask questions about that?

10 MR. MARTEL: No. My instructions
11 were to ask the most transparent questions and
12 that is what I did, and the Syrians would not have
13 appreciated it if I had asked more specific
14 questions.

15 MR. DÉCARY: Did Mr. Pardy or
16 anyone from headquarters tell you to ask questions
17 about detention conditions, whether he was being
18 held in solitary confinement or with the inmate
19 population?

20 MR. MARTEL: No, that subject never
21 arose in any correspondence.

22 MR. DÉCARY: I was struck by one of
23 my colleague's questions, and it had to do with
24 exercise. Was the prisoner able to get any
25 exercise?

1 Did you ask a question about that?

2 MR. MARTEL: I could not ask that
3 question and I could not even ask where he was
4 being held, and I could not have any details on
5 the size, location or any other relevant details
6 which, normally, under normal conditions for a
7 citizen, can be obtained. The Syrian authorities
8 would not have allowed me to ask these questions.

9 MR. DÉCARY: Did anyone at
10 headquarters, Mr. Pardy or anyone else, at any
11 time, tell you to find out about... try to find
12 out whether Mr. Arar was able to exercise?

13 MR. MARTEL: No. I think that Mr.
14 Pardy sent instructions at the outset. I
15 completed my reports. He read them. I did not
16 receive any comments. I never received a
17 telephone call from him during the entire period
18 and I never received any additional questions from
19 him.

20 MR. DÉCARY: Just for the record,
21 you understand that this is not limited to Mr.
22 Pardy, but could be Myra Pastyr-Lupul or anyone
23 else from headquarters. Is that not correct?

24 MR. MARTEL: Yes. It could be the
25 consular section, it could be the geographic

1 office, it could be all kinds of people.

2 MR. DÉCARY: But there was no one
3 else, you said?

4 MR. MARTEL: No one.

5 MR. DÉCARY: Okay. The next point,
6 clean water, the cleanliness of the water, was
7 that discussed by you and Mr. Arar?

8 MR. MARTEL: No, it was never a
9 point of discussion. No.

10 MR. DÉCARY: Just for my
11 information -- I didn't ask you -- is that a
12 concern in Syria, is there a problem with the
13 cleanliness of the water?

14 MR. MARTEL: The cleanliness of the
15 water is a problem for foreigners.

16 MR. DÉCARY: I think I understand
17 what you're saying, but could you explain?

18 MR. MARTEL: Well, I mean that we,
19 as foreigners, feel that drinking tap water is not
20 very safe, and, as a result, Health Canada ordered
21 that employees have to be provided with filtered
22 water, bottled water. The water might be okay
23 today, and tomorrow it might not be good, but
24 people there, in general, drink tap water and they
25 are used to it, so they tell us. In any case, they

1 don't have any great problem.

2 MR. DÉCARY: Did Mr. Pardy or
3 anyone else from headquarters, at any time, ask
4 you to find out about the quality and cleanliness
5 of the water?

6 MR. MARTEL: No, I wasn't asked to
7 find out. No, I wasn't asked.

8 MR. DÉCARY: I am going back again
9 to the first meeting, the atmosphere.

10 That's because I have two
11 question, to move along quickly, Mr. Commissioner.

12 The first concerns the description
13 of the atmosphere at the first meeting, and then
14 the change in the atmosphere, did it change.

15 For the first, then, can you tell
16 the Commission what the atmosphere in the room was
17 like?

18 MR. MARTEL: I think it could be
19 accurately said that the atmosphere of the first
20 meeting was enormously frustrating for the
21 security services. I mean that, perhaps this
22 visit was imposed on them at the outset, they
23 received an order from someone else, I don't know.
24 That they did not seem, in any case... even if
25 they tried not to show it, I felt that I was

1 bothering them and they were nervous. Everyone
2 was nervous, myself included. And then they began
3 to get used to it, to know me better, perhaps, and
4 it was more relaxed.

5 MR. DÉCARY: And in the end, what
6 was the atmosphere like during the last two or
7 three meetings? I understand that time elapsed
8 between each meeting.

9 MR. MARTEL: Time elapsed. The
10 conversations were good. The visits went well
11 while they continued and up to the day when they
12 ended. In general, the atmosphere improved.

13 MR. DÉCARY: Now, to return
14 specifically to the case, between the first and
15 second meetings, you... in your memo concerning
16 the second meeting, you noted that Mr. Arar seemed
17 disoriented during the first meeting. I'm
18 speaking of the atmosphere. Was there a change
19 between the first and second meetings?

20 MR. MARTEL: Well, there was a
21 change in that I did not say, at the first
22 meeting, that he was... that he seemed
23 disoriented, but I said, at the second meeting,
24 that he seemed less disoriented than at the first
25 meeting. I think that there was an element of

1 surprise the first time, but when I said to him:
2 "I'll be back next week if the authorities
3 permit", I think he was expecting my visit and I
4 think that perhaps they prepared him for my visit.
5 He was told, perhaps, or he gave some sign that he
6 knew I was coming. So there was no element of
7 surprise the second time.

8 MR. DÉCARY: When you observed Mr.
9 Arar's behaviour, were there any changes between
10 the first and second meetings?

11 MR. MARTEL: No, except that he was
12 more relaxed and certainly more at ease.

13 MR. DÉCARY: I am changing subjects
14 now, Mr. Commissioner, Mr. Martel.

15 My colleague asked some questions
16 with regard to the quality level of your reports
17 on the meetings.

18 My question is: Was there a time
19 when anyone at all from headquarters, Mr. Pardy or
20 anyone else, either complained about the quality
21 of your reports or made comments of any sort, but
22 negative... of any sort, positive, obviously, but
23 mainly negative, regarding your reports? Did that
24 happen on any single occasion?

25 MR. MARTEL: No, never. To my

1 knowledge, if I remember right, the consular
2 section, for example, Mr. Pardy, never got back to
3 me to ask for further details on my reports.

4 MR. DÉCARY: Were there, following
5 the reports, did headquarters provide you with any
6 questions on details? Did they get back to you
7 and say, for example, with regard to the first
8 paragraph, with regard to the third paragraph, as
9 we did here, did a similar exercise take place
10 with some paragraphs, where you were asked for
11 details, for particulars, what did you mean by
12 that?

13 MR. MARTEL: No, they did not... no
14 one got back to me to ask questions about the
15 reports.

16 MR. DÉCARY: Now I will direct you
17 to the report of August 14, exhibit number...

18 It's the report of August 14, Mr.
19 Commissioner. I'm at Exhibit 507. It will be
20 very brief.

21 --- Pause / Pause

22 THE COMMISSIONER: Okay, I've got
23 it. Thank you.

24 MR. DÉCARY: The report, first,
25 once you have it in front of you, the report of

1 the 14, drafted Léo Martel, approved Ambassador
2 Pillarella.

3 In particular, I would draw your
4 attention to paragraph 3. In the last sentence,
5 we read, and I quote:

6 "He indicated that as far as
7 he knew he was not receiving
8 worse treatment than that
9 given to other prisoners."

10 My question is: following this
11 report, did anyone ask you any questions about the
12 treatment that had been received or could have
13 been received, by other prisoners?

14 MR. MARTEL: No, there was no
15 reaction.

16 MR. DÉCARY: You were on site and,
17 there, the date is August 14, 2003, so that's
18 about nine months after September 2002, to the
19 best of your knowledge, in the department, Mr.
20 Pardy, the others and yourself, obviously, did
21 people know about conditions, the treatment of the
22 prisoners, what it was like, in general?

23 MR. MARTEL: Well, I believe that
24 Mr. Pardy had a great deal of consular experience,
25 and certainly he knew countries around the world

1 and he had his own opinion.

2 Then there were the geographic
3 offices, which must also have known an enormous
4 amount and the people who took care of Human
5 Rights and all that.

6 So, all the people who were copied
7 on this report should have, or certainly did, know
8 about the conditions in each country.

9 MR. DÉCARY: And specifically, Mr.
10 Martel, in your opinion, did people know the size
11 of the cells?

12 MR. MARTEL: Not necessarily. In
13 my opinion, not necessarily.

14 MR. DÉCARY: Who in the group
15 could have known?

16 MR. MARTEL: I don't know. The
17 cells were never visited by anyone, not by
18 individuals or the Red Cross.

19 It is very hard to assess, but I
20 don't know whether anyone could have known the
21 size of a cell.

22 MR. DÉCARY: So, when you write:
23 "He indicated that as far as
24 he knew -- I'm reading -- he
25 was not receiving a worse

1 treatment than given to other
2 prisoners."

3 What I understand from you is that
4 no one at headquarters asked you any questions
5 about the treatment received by other prisoners or
6 Mr. Arar. Is that correct?

7 MR. MARTEL: No, there was no
8 reaction.

9 MR. DÉCARY: Changing the subject,
10 we see, it's Exhibit 61, it's a memo from Daniel
11 Livermore, from October 10, 2002, in which he
12 says, among other things, and I am reading because
13 everyone will recall it, where he says:

14 "There are concerns that Arar
15 may be aggressively
16 questioned by Syrian security
17 services."

18 If someone had indicated to you,
19 had told you that there were concerns that Mr.
20 Arar, may be, to keep to the text, aggressively
21 questioned by Syrian security services, would you
22 have done anything different in this case, other
23 than what you have done so far?

24 MR. MARTEL: Well, the reputation
25 of security services, as I have already said

1 yesterday and again today, has been established
2 and they have had a reputation for years, we know
3 how they operate and we know how they treat
4 detainees, and so forth, so the fact of having
5 this information would not have changed how I
6 acted.

7 We go to these places and we
8 always have a certain apprehension, because we
9 never know what we're going to find, that's for
10 sure.

11 Everyone knows that.

12 MR. DÉCARY: But the question is,
13 and I will repeat it: was there anything, if
14 someone had said to you, Mr. Parady, Mr. Pillarella
15 or anyone else, had said to you:

16 "There are concerns that Arar may
17 be aggressively questioned by
18 Syrian security services."

19 On October 10, that is, prior to
20 the first meeting, would that in any way have
21 changed your behaviour during the meetings?

22 MR. MARTEL: It would not have
23 changed anything. I am obligated to see my
24 detainee, to talk to him and try to determine, in
25 a situation that is very highly controlled, how

1 long he has been there and how he has been treated
2 and try to obtain as much information as possible.
3 That is what I did.

4 MR. DÉCARY: The last question,
5 Mr. Commissioner.

6 We reported on the allegations of
7 Mr. Arar's brother, to the effect that Mr. Arar
8 was tortured, or, at least, we spoke of his
9 conditions, being held underground and so forth,
10 in the dark.

11 My question is: did anyone from
12 headquarters ask you to conduct a follow-up of
13 these allegations, to pay special attention, to
14 investigate further, to do anything whatever in
15 particular to determine whether, in fact, the
16 evidence confirmed the comments of Mr. Arar's
17 brother?

18 MR. MARTEL: I received a copy of
19 the memo, but it does not contain any instructions
20 asking me specifically to do such-and-such a
21 thing.

22 Sometimes, most of the time before
23 the visits, I would alert Ottawa that I expected
24 to have a visit soon, and do you have anything to
25 tell me? And they sent me, perhaps, two or three

1 items and somethings they had nothing to tell me
2 and I made my visit.

3 MR. DÉCARY: So, my question, just
4 to close: Yes or no, did anyone from headquarters,
5 at any time, following these allegations, ask you
6 to make a follow-up of the facts with regard to
7 these specific allegations?

8 MR. MARTEL: No, I was not asked
9 to find out more or to investigate.

10 MR. DÉCARY: Those are my
11 questions, Mr. Commissioner.

12 THE COMMISSIONER: Thank you,
13 Mr. DÉCARY.

14 Mr. Cavalluzzo?

15 EXAMINATION

16 MR. CAVALLUZZO: Yes, just
17 briefly, Mr. Martel.

18 You were asked questions -- for
19 example, let us start with the first one -- as to
20 whether Mr. Pardy or anyone at headquarters ever
21 advised you about the El Maati allegations about
22 torture, and your answer was, "No, he did not" or
23 "they did not".

24 The question that I have is: Did
25 Mr. Pillarella ever advise you of these

1 allegations?

2 MR. MARTEL: No, no, Mr.
3 Pillarella did not advise me either, no.

4 MR. CAVALLUZZO: And the next
5 question was relating to whether Mr. Pardy, or
6 anybody at headquarters, asked you to ask about
7 conditions of detention, the conditions of the
8 water, the size of the cell, and so on.

9 Did Mr. Pillarella ever ask you to
10 ask those questions?

11 MR. MARTEL: No, no one asked me
12 to ask those questions.

13 MR. CAVALLUZZO: In response to a
14 question as to the latitude you had to ask
15 questions, you seem to indicate that you were
16 under strict orders from Mr. Pardy as to what you
17 were to say; that is, these were to be transparent
18 questions.

19 But do you not agree with me that
20 Mr. Pardy was relying upon your 20 years of
21 experience and your discretion and judgment, which
22 would be that if you had an opening, in your
23 judgment, you should ask the question?

24 Isn't that correct?

25 MR. MARTEL: Yes, and those are

1 the guidelines that Mr. Pardy gave me at the
2 outset, and before each visit, when I told Ottawa
3 that I might be having a visit that week, do you
4 have any specific questions for me to ask.

5 And the questions were mainly
6 centred on well-being and family matters, sending
7 photos and correspondence with the family. It
8 always focussed on that.

9 MR. CAVALLUZZO: But do you not
10 agree with me that Mr. Pardy also indicated to you
11 that if there was an opening and you could ask
12 questions beyond the mundane questions about
13 family, et cetera --

14 MR. MARTEL: Yes, of course,
15 it's...

16 MR. CAVALLUZZO: -- that you
17 should use your judgment and ask those questions?

18 MR. MARTEL: Yes, he said: I
19 realize that you have to ask the most transparent
20 questions, but if you have an opportunity, you can
21 ask more.

22 MR. CAVALLUZZO: And that's
23 exactly what Mr. Pardy said in tab 131, which is
24 the tab that we took you to yesterday.

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

1 MR. CAVALLUZZO: There is one
2 final document, Mr. Commissioner.

3 In Mr. Martel's testimony this
4 morning, you may recall that he referred -- or
5 maybe it was yesterday -- he referred to a
6 document, a consular framework document. I had
7 asked some questions about the document that was
8 prepared by the Inspector General, and Mr. Martel
9 responded by saying he did respond to another
10 study, some consular framework study.

11 Today my friends, counsel for the
12 Government, have given me a copy of that document,
13 and I'm going to file that as an exhibit.

14 I only have one copy and I've only
15 read it recently, but to give the witness an
16 opportunity to respond to certain comments he made
17 in respect of those documents, I think it is only
18 fair that we do that now.

19 THE COMMISSIONER: Then that will
20 be marked as the next exhibit, which is 251.

21 EXHIBIT NO. P-251: Consular
22 framework document

23 MR. CAVALLUZZO: Let me give you
24 the history of this.

25 For counsel's benefit, in July of

1 2004, DFAIT decided to do a study, a framework
2 analysis in terms of consular duties, somewhat
3 similar in respect of the one we looked at earlier
4 from the Inspector General, in the sense that a
5 lot of these consular functions have become far
6 more complicated in effect because of 9/11.

7 So what happened in the late
8 summer of 2004 is that a document entitled
9 "Framework of Operations for Consular Services
10 Programs" was sent out to all of the embassies
11 around the world and each of the consular
12 officials were asked for their comments in respect
13 of the document itself.

14 This document went to Damascus.
15 Mr. Martel did respond in September of 2004. He
16 made comments in respect of certain issues that
17 are relevant to the issues before us today. I
18 would like to make reference to the comments that
19 he did make.

20 I assume that these comments that
21 you referred to earlier were made by you. Is that
22 correct?

23 MR. MARTEL: The comments that are
24 lightly blacked out are mine and were sent to the
25 consular section.

1 MR. CAVALLUZZO: The paper itself
2 is set out in terms of different aspects of the
3 consular function. There is one topic entitled
4 "Arrest and Detention". This is number seven in
5 this document.

6 The document reads that:
7 "The Vienna Convention
8 guarantees a foreign detainee's
9 right to have a representative
10 of his or her government
11 notified of the detention and to
12 communicate with that
13 representative consular access.
14 As well, detaining authorities
15 have a duty to inform detainees
16 of the existence of this right.
17 Canada expects these provisions
18 to be upheld for all Canadian
19 detainees, including dual
20 nationals."

21 From the Syrian experience that
22 Mr. Martel had, he added this comment.

23 "Based on our experience, those
24 expectations are unrealistic
25 when dealing with dual nationals

1 who have returned to Syria,
2 their country of origin, freely
3 or against their will. The
4 Syrian authorities do not
5 recognize the other citizenship.
6 This leaves us with a major
7 struggle to gain consular
8 access."

9 Did you make those comments,
10 Mr. Martel?

11 MR. MARTEL: Yes, those are my
12 comments.

13 MR. CAVALLUZZO: Mr. Martel also
14 made comments in respect to Topic 19, which is
15 Security Related Arrest and Detention.

16 It is quite a lengthy comment.
17 There are three paragraphs of it.

18 I would just ask counsel to read
19 it and the Commissioner to read it, unless you
20 want to comment on the comments that you made.

21 The only other reference that I
22 would refer to is when Mr. Martel dealt with Topic
23 20 entitled "Incidents of Abuse and/or Torture".

24 What the document says prior to
25 his comment are in the first paragraph, it states:

1 "Part of the role of consular
2 officials is to seek to ensure
3 Canadian detainees are not
4 subjected to abuse or torture.
5 They are guided by the
6 definition of torture in the UN
7 Convention Against Torture."
8 And the definition is set out.
9 It goes on:
10 "The international community has
11 also prohibited torture or
12 abuse of detainees through
13 several other international
14 instruments."
15 And they are set out as well.
16 And then it goes on:
17 "Many forms of physical abuse,
18 including systematic torture,
19 are calculated to leave no
20 evidence. Torture by electric
21 shock and various forms of
22 water treatment are two of the
23 more common forms of torture,
24 which normally do not leave
25 marks. When such methods are

1 alleged to have been used, the
2 personal interview of the
3 prisoner is imperative. In all
4 cases of allegations of abuse,
5 it is essential that the
6 officer exercise judgment on
7 the basis of all of the
8 evidence at hand, including
9 assessment of the prisoner's
10 credibility in determining the
11 probable veracity of the
12 allegation. Care should be
13 taken to avoid any implication
14 that Canadian officials have
15 prematurely concluded that the
16 local authorities had
17 maltreated the prisoner."

18 And finally these are the comments
19 of Mr. Martel in respect of that.

20 "While consular officials do
21 exercise judgment on the basis
22 of all evidence at hand, it is
23 practically impossible to
24 detect whether or not a
25 detainee has been subjected to

1 torture. We have not dealt
2 with cases of imprisoned
3 Canadians who held only one
4 citizenship, that is, born in
5 Canada from Canadian parents.
6 Detainees have been dual
7 national citizens,
8 Syrian/Canadians or
9 Syrian/Australians. Consular
10 access has been denied in most
11 cases and the expectation of
12 being granted a personal
13 interview with the prisoner,
14 while it is imperative, is
15 unrealistic here."

16 And then finally he says:

17 "We have not dealt with arrest
18 and detention cases pertaining
19 to Canadian or Australian
20 citizens only holding one
21 citizenship. In those cases we
22 expect the Vienna Convention to
23 be respected and, at worst,
24 unless we are dealing with
25 security related issues, the

1 clients would be deported."

2 Mr. Martel, do you recall making
3 those statements, in particular the statement that
4 "while consular officers do exercise judgment on
5 the basis of all the evidence at hand, it is
6 practically impossible to detect whether or not a
7 detainee has been subjected to torture"?

8 MR. MARTEL: Yes, that's in my
9 text.

10 MR. CAVALLUZZO: In terms of the
11 final portion of the exhibit, all of this
12 information, and so on, was tabulated and then
13 another document was prepared. It is entitled --
14 and you will have this -- "Consular Services
15 Framework, Part 2, Consular Issues and Case
16 Category Guidelines". It is from the Consular
17 Affairs Bureau and it is dated January 2005.

18 I understand that it is an
19 evolving document. It is a dynamic document in
20 the sense that it is being changed as they get
21 more comments, and so on. But it seems to be the
22 last expression from the Consular Affairs
23 Department in respect of the issues that I have
24 referred to.

25 THE COMMISSIONER: Shall we mark

1 it as the next exhibit?

2 MR. CAVALLUZZO: Yes, I think so.

3 THE COMMISSIONER: That will 252,
4 the January 2005 report.

5 EXHIBIT NO. P-252: Report
6 entitled "Consular Services
7 Framework, Part 2, Consular
8 Issues and Case Category
9 Guidelines", dated January
10 2005

11 MR. CAVALLUZZO: There is only one
12 other exhibit.

13 This should have been filed before
14 because we asked witnesses about this. This is a
15 draft memorandum, dated October 30, 2002, about
16 Abdullah Almalki from Mr. Solomon. And what we
17 have here is a less redacted version of the
18 memorandum which we have in the document.

19 So we should file this less
20 redacted version as well.

21 THE COMMISSIONER: That will be
22 253.

23 EXHIBIT NO. P-253: Draft
24 memorandum from Mr. Solomon re Abdullah Almalki,
25 dated October 30, 2002

1 MR. CAVALLUZZO: The final
2 administrative matter is that Ms McIsaac was
3 mistaken. She did not have the claim of Arar v.
4 Syria. So we cannot file it today.

5 I have one at the office. And on
6 agreements of everybody, we will mark that through
7 the Registrar and have that filed as an exhibit
8 tomorrow.

9 THE COMMISSIONER: That's fine.
10 Is that that?

11 MR. CAVALLUZZO: That's that.

12 THE COMMISSIONER: Let me thank
13 you, Mr. Martel. That completes your evidence.
14 It has been two very long days. I know you have
15 put a lot of time and effort into preparing and
16 coming here and giving evidence.

17 I think there has been some
18 persistent questioning, and I think your demeanour
19 throughout has been appropriate and I appreciate
20 the way you dealt with the questions.

21 MR. MARTEL: Thank you,
22 Mr. Commissioner.

23 THE COMMISSIONER: Thank you for
24 your assistance.

25 We are going to hear a motion now.

1 So if you want to step down, you are free to go.

2 MR. MARTEL: Thank you.

3 THE COMMISSIONER: We are going to
4 here a motion now so if you want to step down, you
5 are free to go.

6 --- Witness steps down

7 THE COMMISSIONER: Ms Jackman, it
8 is time for your motion.

9 MS JACKMAN: This is not my idea
10 of a good time to start a motion.

11 --- Laughter / Rires

12 MS JACKMAN: I will be as brief as
13 I can.

14 THE COMMISSIONER: You can be sure
15 you will have my full attention. Don't worry
16 about that.

17 MOTION

18 MS JACKMAN: You have received, I
19 expect, the chronologies of Mr. Almalki and
20 Mr. El-Maati and Mr. Nureddin. And also with
21 respect to Mr. Almalki and Mr. El-Maati, there are
22 brief bios of Ahmad El-Maati, his brother and Mr.
23 Almalki. All three men are seeking to have them
24 introduced into the record before you. I have to
25 say there has been some discussion before, among

1 different people today, about how that gets done.

2 I don't care if it is an exhibit
3 to the Commission or if it is an exhibit to
4 Mr. Toope's report. I don't care what it is, as
5 long as it is public and it is on the record here,
6 whether it is through Mr. Toope or through the
7 Commission directly.

8 THE COMMISSIONER: Let me just
9 pursue that for a second. Mr. Toope has conducted
10 interviews.

11 MS JACKMAN: Yes.

12 THE COMMISSIONER: So that
13 presumably -- I'm sure he doesn't have the
14 chronologies you are referring to, but --

15 MS JACKMAN: He has them now.

16 THE COMMISSIONER: Does he?

17 MS JACKMAN: Yes.

18 THE COMMISSIONER: Okay. I don't
19 have my ruling with respect to Mr. Toope in front
20 of me. Correct me if I am wrong in what I say, I
21 mean it is certainly open to Mr. Toope to consider
22 the variety of information, including information
23 relevant to these three individuals for the
24 purposes that I indicated in my ruling.

25 MS JACKMAN: I think it was for

1 the purpose of corroborating the torture with
2 respect to Mr. Arar.

3 THE COMMISSIONER: That's right.
4 I specified as to what the purpose of the fact
5 finder's report would be.

6 MS JACKMAN: Right.

7 THE COMMISSIONER: Let me just
8 take the request, if I can, for a moment, that it
9 be on the basis that this be material that
10 Mr. Toope would be entitled to consider as part of
11 the fact finding exercise, and put that idea
12 forward and see if anybody has any -- let me go
13 this way -- any objections to it being used as
14 part of the --

15 MS JACKMAN: Can I clarify one
16 thing? As long as it is clear it is public,
17 Mr. Toope already has a fair bit of information
18 from us. And my understanding is that everything
19 he has received is secret, so --

20 THE COMMISSIONER: I think, I
21 could hear submissions on it, but I envision
22 Mr. Toope's report will be made public.

23 MS JACKMAN: Right.

24 THE COMMISSIONER: But there may
25 well be material that Mr. Toope receives -- we had

1 a discussion with Ms McIssac earlier -- that might
2 not be, so that -- you are asking, then...?

3 MS JACKMAN: I want it part of the
4 public record, the chronologies. And like I said,
5 whether it comes in through Mr. Toope or as an
6 addendum or an attachment to his report, I don't
7 care, or if it's an exhibit here, but I want this
8 matter on the public record.

9 THE COMMISSIONER: I guess the
10 question, if you said "an exhibit here", is for
11 what purpose?

12 MS JACKMAN: Well --

13 THE COMMISSIONER: I don't know if
14 you are suggesting that it can be made available
15 to Mr. Toope for his consideration. That is one
16 purpose. If you were suggesting that all of it
17 facts set out in the chronology for purposes of
18 this inquiry, the exhibit be entered for proof of
19 the truth of the facts set out in the
20 chronology -- I see you shaking your head -- then
21 that would be obviously another matter and there
22 would be difficulties with that.

23 But your request, then, is that it
24 be given to Mr. Toope and, in some form, either as
25 an addendum to his report or in some form, that it

1 form part of the record -- public record of the
2 inquiry.

3 MS JACKMAN: Yes. I know that I
4 wish to refer to it -- maybe I should just clarify
5 in terms of why we want it in. First of all, we
6 are not seeking to expands the scope of the
7 inquiry by any means.

8 THE COMMISSIONER: And you're
9 not seeking -- sorry to interrupt -- and you're
10 not seeking -- I'm being legalistic here -- it to
11 be entered as proof of the truth of what is said
12 in it.

13 MS JACKMAN: No.

14 I think, though, I can put it
15 under, we can put all three packages of documents
16 under affidavit, either hearsay affidavit saying I
17 directly heard this from Mr. Almalki, or
18 Mr. Almalki and Mr. El-Maati directly. I have an
19 affidavit for Mr. El-Maati, I don't know, with
20 respect to Mr. Almalki, if he would swear an
21 affidavit now, in the light of the fact that he
22 hasn't, I haven't discussed it with him. I think
23 Mr. Nureddin would. But certainly others who have
24 been involved in preparing it can swear an
25 affidavit.

1 I think what it becomes, really,
2 is a question of weight. You can receive any
3 credible or trustworthy evidence. You have in
4 front of you reams of documents from the
5 government. Some of them, the persons who
6 authored the reports have been examined on.
7 Others, the persons haven't been examined
8 directly, not all of it authors of the reports
9 have come before you.

10 I guess I look at it this way:
11 That exhibit 245 which was put in today,
12 respecting Mr. Nureddin, outlines in summary what
13 happened to Mr. Nureddin according to what
14 Mr. Martel recollects. It is very similar in
15 content to what Mr. Nureddin has himself set out
16 in his own chronology. Why would the go in as a
17 government document and then deny Mr. Nureddin the
18 right to put in essentially the same basic
19 structure through his own affidavit or through the
20 affidavit of someone who helped him prepare it. I
21 don't understand the difference.

22 If it's relevant for this
23 purpose -- in terms of the government documents --
24 it's relevant, the same kind of information when
25 it's coming from Mr. Nureddin. That's one thing.

1 I'm not asking, and I don't think
2 anyone else is asking that you make conclusive
3 findings or even any findings with respect to some
4 of the issues that these men are concerned about,
5 in terms of the practice or the pattern. But at
6 least if you can see on the public record that the
7 issue is not black and white, that you don't just
8 have the government's side of the case, that you
9 can come to the conclusion at the end of the day
10 there is something there that calls for further
11 investigation by somebody else, I don't care.

12 I just think you have to be aware
13 of it, that you may not have the full picture when
14 you only have the government's side of the story
15 in the secret hearing. So that's a primary
16 concern.

17 There are three reasons why I want
18 it in. One is so you understand the context in
19 terms of pattern and the complicity and, like I
20 said, not to make any conclusions on these men or
21 any Canadian officials that passed information on
22 to the Syrians, I am not asking you to do that.
23 Or the fact that it kept happening one after the
24 other as a result of Canadian information, even
25 after Mr. Arar is released.

1 I am not asking you make any
2 findings on that, but I think you should have the
3 entire context to be able to say, "I don't have
4 enough information in front of me to deal with the
5 issue of context."

6 The second reason we want it in,
7 clearly, is the reputational interest. You have
8 government's side of the case in secret, a little
9 bit in public, that Mr. All El-Maati and
10 Mr. Almalki were targets of the A-OCANADA and
11 OCANADA investigations. You have, in secret,
12 their side of the story and you have the public
13 left guessing as to how terrible these men are
14 with no opportunity to answer. They have to be
15 able, in my submission, to have on this record, at
16 least their answer, whether or not you give it any
17 weight. I don't think you even have to deal with
18 it, but I do think they should be given that
19 opportunity to have some of their explanations on
20 it is record, given that the government has just,
21 holus-bolus, put in their entire case against
22 them, apparently, to the extent that we know.

23 And the third reason, I think, is
24 also to be able to contextualize not just the
25 pattern in practices, but the strength of the case

1 gains Mr. Arar. These men, in their chronologies
2 have said, "Yes, CSIS came to talk to me." or
3 "They didn't come to talk to me." You need to
4 know when they tell you in secret how strong their
5 case against Mr. Arar was because of his link with
6 Mr. El-Maati, for example, what kind of case they
7 had gains Mr. El-Maati and what Mr. El-Maati says
8 in terms of how much they contacted him to talk
9 about things. How much is inference?

10 Same thing with Mr. Almalki. I
11 don't think at the end of the day you have to make
12 any findings on this, but I do think you should
13 have it before you. And I think that when you
14 consider the importance of it for these four men:
15 Mr. Arar, Mr. Almalki, Mr. El-Maati and
16 Mr. Nureddin, all four men are victims, victims of
17 very severe torture, I would say, very severe
18 mistreatment.

19 We're not playing a game of
20 technicalities in terms of whether the government
21 wants it in or doesn't want it in. They shouldn't
22 have their way all the time. These are real
23 victims who, I would submit to you, would be done
24 a disservice if, in fact, they are not allowed to
25 put there side of the story put forward for

1 whatever weight it may be given. It is a
2 disservice to these four victims, as Canadian
3 citizens, as Muslims, as human beings.

4 It's a disservice to Muslims in
5 Canada and elsewhere and it's a disservice to
6 Canadians if it's not on the record. It just
7 looks patently unfair to have the government put
8 in everything and not allow them to put in
9 anything.

10 Thank you.

11 THE COMMISSIONER: Thank you. The
12 intervenors, I take it, support the request?

13 THE COMMISSIONER: Mr. Neve.

14 MR. NEVE: Alex Neve, Amnesty
15 International.

16 You have heard from us previously
17 with respect to our concerns that it is very
18 critical that, as the inquiry proceeds, this issue
19 of pattern, as it has come to be known, be as
20 fully examined as possible. The critical question
21 of whether or not what happened to Maher Arar can
22 be interpreted as having been an isolated
23 aberration, an unfortunate mistake, or whether it
24 was part of something wider, some sort of pattern
25 or policy that went how high or how wide is

1 anyone's guess.

2 That is why it is critical that
3 these documents become part of the public record.
4 We would totally agree with Ms Jackman that we're
5 not suggesting that by having them become part of
6 the record they automatically be deemed as
7 conclusive proof of what is stated therein, but
8 that it's very critical there be available to you,
9 to all of us who are involved in the inquiry and
10 to the Canadian public, some sort of statement
11 which provides their version of what has happened
12 to them, both on its own merits but also the
13 connections that may or may not be inferred from
14 their case to Mr. Arar's.

15 If we don't have the opportunity
16 to have as much information available in the
17 course of this inquiry with respect to that issue
18 of pattern, we are concerned that your ability to
19 fulfil your mandate will be comprised. It is
20 critical that that question be answered as fully
21 as possible. It is not extraneous to your task of
22 deciding what happened to Maher Arar. It is
23 absolutely central to it.

24 We are also concerned that the
25 ability of all of us to participate adequately and

1 effectively in the final steps of the policy
2 review portion of this inquiry will also be
3 comprised because, again, we cannot be making the
4 fulsome concrete submissions that we want to, and
5 we would suggest you will have greater difficulty
6 in making the kinds of recommendations you need to
7 with respect to policy oversight if we don't fully
8 understand the nature and extent of the problem.

9 THE COMMISSIONER: Let me just --
10 sorry to interrupt you -- but on that, that was
11 one thought that had already gone through my mind
12 when I heard about this issue and, as you
13 know, the type of process for the policy review is
14 very different than the evidentiary, "legalistic",
15 if I can call it, process for the factual inquiry
16 for reasons I have spoken of.

17 And this isn't suggesting I won't
18 go along with what Ms Jackman is arguing, but
19 people in the policy review, when they come to
20 make submissions, should feel free to make much
21 more liberal use, if you will, of non-strictly
22 evidentiary material.

23 So the types of issues that would
24 be raised -- I haven't actually read these
25 chronologies, but I think I have a scenes sense of

1 what is in them -- the types of issues that would
2 be raised and how, if those types of issues and
3 complaints are there, what sort of concerns that
4 would trigger for a policy review mechanism.

5 I can say to you, here and now,
6 you should feel free, and I hope you are going to
7 make submissions, to refer to that type of
8 material. I mean, as an example of the type of
9 problems that may need to be addressed by a review
10 mechanism.

11 MR. NEVE: We appreciate that
12 reassurance and we will take you up on that
13 invitation. At the same time, we do very much
14 underscore the importance of this information
15 being available and available on the public
16 record. It is obviously already out there in the
17 broader public domain, but clearly on the public
18 record of this inquiry in the course of the
19 factual inquiry.

20 THE COMMISSIONER: Thank you very
21 much. Mr. Atkey?

22 Oh, I'm sorry, Mr. Saloojee, go
23 ahead.

24 MR. SALOOJEE: Mr. Commissioner,
25 Riad Saloojee speaking on behalf of CAIR-CAN and

1 CAF.

2 Just a couple of points regarding
3 what my colleagues have said. Both CAIR-CAN and
4 CAF are here both for the fact this is a public
5 inquiry into Maher Arar's case, an individual
6 Canadian, Arab and Muslim, but also in the
7 collective concern that his case also encapsulates
8 many of the concerns of the Arab and Muslim
9 community.

10 You have already heard, I think, a
11 great deal of contextual evidence regarding some
12 of our collective concerns post 9/11 about
13 Islamophobia and about racial profiling.

14 So while we fully appreciate that
15 this is an inquiry into Maher Arar's case
16 specifically, we also strongly feel that
17 Mr. Arar's case is part of a broader story that is
18 very inextricably bound together and that can't
19 truly be understood apart from one another.

20 We do appreciate some of your
21 concerns regarding adding the material to the
22 public record and we certainly would not advocate
23 that it be used for it's truth. I would submit
24 that the inclusion of the chronologies would
25 introduce important evidence or important

1 information that I believe is uncontested at this
2 point. The very six or seven pieces of evidence
3 are that all three of threes individuals are
4 Arabic, Muslim men, they all had a relationship,
5 casual or otherwise, all under the same
6 investigation, they are all alleged complicity,
7 they all alleged torture, they were all held in
8 Syria and all allege similarities in terms of
9 there confinement, and this information, I think,
10 would be very helpful in your analysis of what
11 exactly happened to Maher Arar.

12 With respect to the document that
13 Ms Jackman alluded to earlier, Mr. Martel's
14 description of Mr. Nureddin's confinement, I would
15 echo what Ms Jackman said, that there really, at
16 least in my opinion, is no practical difference
17 between the chronologies by Mr. Almalki and
18 Mr. El-Maati and the documents that has been
19 accepted as part of the record. I would further
20 submit that the document that has been submitted
21 and has been accepted already is Mr. Martel's
22 account, so it is actually a hearsay account of
23 Mr. Nureddin as well as the fact Mr. Martel is a
24 Canadian official whose actions are being
25 scrutinized.

1 The chronologies of the other
2 individuals are their first-hand information, and
3 so I think there is a great deal of similarity
4 between the two, and certainly accepting the one
5 document, I think, should prove as a precedent in
6 accepting the other two chronologies, with the
7 proviso, of course, that they would not be
8 accepted for their truth.

9 THE COMMISSIONER: Thank you,
10 Mr. Saloojee.

11 Mr. Atkey?

12 MR. ATKEY: Mr. Chairman, I find
13 myself differing slightly as a matter of process
14 rather than objective or substance. I think the
15 information may be useful to the Commission. I am
16 concerned about the context and the process under
17 which it is put before this factual inquiry in a
18 way that may be misinterpreted by the public as
19 proof of the information that is stated therein.

20 I was, frankly, impressed with the
21 unique way that you dealt with submissions in May
22 and came up with the proposal of the fact finder,
23 Stephen Toope, who has been given a mandate, a
24 very specific mandate to speak with these
25 gentlemen. I have discussed with my friend

1 Ms Jackman the notion that these are documents
2 that I'm sure Professor Toope would find very
3 useful.

4 If indeed he is satisfied, after
5 having investigated other sources and talked
6 to the individuals concerned, that the information
7 is reliable, it could be attached to his report or
8 it could be summarized as part of his report and
9 could come to this commission in that form in the
10 context of the factual inquiry.

11 And I don't touch upon the policy
12 review which, as you noted, is a broader issue.

13 But I think, in terms of
14 interpretation of the document and putting the
15 document in the context that the Commission would
16 find useful, I think if they were filtered through
17 the process of Professor Toope, that might be a
18 preferable way of proceeding, and I don't think
19 there is strong objection to Ms Jackman in
20 proceeding in that fashion if there is some
21 assurance that, through Professor Toope, the
22 information will come before this commission.

23 THE COMMISSIONER: Thank you,
24 Mr. Atkey.

25 Does anybody else...?

1 Ms Edwardh, do you have anything
2 to say on this issue?

3 MS EDWARDH: I think that the
4 answer of providing the document to both the
5 policy review for its purposes and Professor Toope
6 for his purposes is one that can readily be
7 adopted. But I don't know that that answers the
8 true dilemma that you face, Mr. Commissioner.

9 People are inviting you to file it
10 is part of the public record in order to
11 contextualize. In order to let individuals whose
12 reputations have been damaged provide an answer,
13 and when one looks at it from that perspective, it
14 raises a challenge that I don't think is met by
15 just shuffling it off to Professor Toope, who
16 isn't dealing with reputation, really, or to the
17 policy review.

18 Everyone here knows that you are
19 entitled in a commission of inquiry to receive
20 information through forms that maybe quite
21 unconventional; you are the master of your own
22 ship. And as long as counsel filing them are
23 saying this is the purpose, to contextualize, to
24 have the answer on the record, and to give a basis
25 to say to you this is kind of probable cause to

1 invite someone else to look at this matter, but
2 you don't have to make final findings. If that is
3 the basis, then I would urge you to accept it
4 knowing that whatever facts you draw from it are
5 going to be only in that kind of context, that it
6 won't be a basis for making findings that would
7 engage Section 13 of the Inquiries Act, but that
8 it would allow someone to say, "We believe there
9 is an adequate basis in the information before you
10 to make a further recommendation.", that kind of
11 thing.

12 So I'm just uncomfortable because
13 I can see us all arguing at the end of the day,
14 "Well, what does it mean that it's in the policy
15 review?" or "What does it mean that it's in
16 Professor Toope?". I think as long as we all
17 understand that counsel is seeking to put limited
18 weight on it and for specific purposes, then it
19 can go before you. I certainly have no difficulty
20 if it goes before you as is.

21 I suppose I might say to
22 Ms Jackman, "Maybe we should adjourn and get it
23 all sworn and just file it.", but I see the
24 government's issue; I think that's not fair to you
25 to expand your terms of reference. But Ms Jackman

1 is not asking you to expand it, it's about
2 context, it's about an answer, and it's about
3 being able to submit at a later date that there
4 may be someone else that should conduct some kind
5 of investigation or inquiry.

6 So, I am content it be received in
7 all three forums, but acknowledging that there is
8 a limited component to it coming before you.

9 THE COMMISSIONER: So it's
10 context, answering reputational concerns and the
11 basis for recommendation is what I hear everybody
12 saying. It's a question of how we do it.

13 MS EDWARDH: Yes.

14 THE COMMISSIONER: Monsieur
15 Décary, do you wish to add anything to this issue?

16 MR. DÉCARY: I don't wish to add
17 anything.

18 THE COMMISSIONER: Thank you.

19 Ms McIssac?

20 MS McISSAC: I have a couple of
21 points, sir.

22 First of all, I feel compelled to
23 respond to a couple of issues. The first one is
24 the document relating to Mr. Nureddin. That
25 document was introduced for one purpose and one

1 purpose only, and that purpose was to assist the
2 witness in his explanation as to the reports that
3 the other Canadian official made with respect to
4 his comments regarding Mr. Arar, and it was
5 necessary for that document to be introduced
6 so that the witness could explain what was
7 happening. It was not introduced for any other
8 reason, and it is only relevant, in my submission,
9 to this inquiry for that limited purpose.

10 The second point, and I feel
11 compelled to make some comments on, is the issue
12 of reputational interest of Mr. Almalki and
13 Mr. El-Maati. You will recall, sir, that one of
14 the reasons the government was concerned about
15 releasing documents that had been inadvertently
16 earlier released was the fact we did not want to
17 go any further than necessary on the public record
18 naming Mr. Almalki and Mr. El-Maati.

19 Maybe it was inevitable. Maybe
20 once the day this inquiry was called it was
21 inevitable that that would happen, but I do take
22 issue with any suggestion that the government has
23 deliberately tried to sully the names of either of
24 those individuals. It was something that was
25 inevitable and, quite frankly, something that we

1 tried to avoid to the extend it was possible to do
2 so.

3 Having made those preliminary
4 comments, I would like to comment on the three
5 reasons that I heard Ms Jackman suggest the
6 document should be provided in this context as an
7 exhibit to part one of the inquiry. The first one
8 relates to the fact that this provides a context
9 for a finding or -- not a finding, I suppose, she
10 said, but that there is some kind of pattern of
11 conduct here, but you are not to make any findings
12 of fact with respect to the documents.

13 I have trouble with that because I
14 don't know what it is, if not a finding of fact,
15 that there is some kind of pattern here. It is a
16 finding of fact and it presupposes that one has to
17 take at some degree of face value what is in those
18 documents. I am not suggesting it is inaccurate,
19 I am putting that point on the record.

20 The second one is the reputational
21 interests of the two individuals, and I have
22 already addressed that.

23 Thirdly, it was to be able to
24 assess the case about Mr. Arar, and again, I think
25 we are on the wrong track when we talk about

1 He may wish to summarize them, or he may wish not
2 to refer to them at all, and I think it would be
3 inappropriate for any of us to presuppose what he
4 should do.

5 So in my submission, these
6 documents, if they are to come before the
7 Commission in respect of Part 1 of the Inquiry,
8 the appropriate way is for them to be provided as
9 I gather they have to Mr. Toope, for him to use
10 them in whatever manner he feels appropriate in
11 fulfilling is mandate.

12 Thank you.

13 THE COMMISSIONER: Ms Jackman,
14 anything by way of reply?

15 MS JACKMAN: I guess I find
16 Ms McIssac's submissions to you, with respect to
17 suggesting it come through Mr. Toope, somewhat
18 disingenuous in the sense that, ultimately, the
19 government doesn't want them on the public record,
20 and if it's put over to Mr. Toope, they may or may
21 not be part of the public record. Mr. Toope may
22 append them as exhibits, he may summarize them, he
23 may leave out things that are very important.
24 It's just deferring the decision over to
25 Mr. Toope, or delegating it to him.

1 I think that you should deal with
2 it directly. He has it before him, he may very
3 well put it forward anyway. But the issue is
4 before you and I think you need to address it.

5 The question of receiving credible
6 or trustworthy evidence, when I say you can
7 receive it, and it is probably better if we put it
8 under affidavit, if nobody cross-examines on it,
9 that's a question of weight.

10 THE COMMISSIONER: I would be --
11 if I can suggest, I don't see offering it in that
12 form. No, I would be disinclined because if the
13 concern is there be cross-examination or there not
14 be cross-examination, you put me in a very
15 difficult position if you file an affidavit and
16 turn around and ask for no cross-examination.

17 But --

18 MS JACKMAN: You don't practice in
19 the federal area of law where the government puts
20 in affidavits all the time and we never get to
21 cross-examine.

22 THE COMMISSIONER: No, no --

23 MS JACKMAN: I'm used to it.

24 THE COMMISSIONER: In this
25 inquiry, I would feel -- I won't comment on

1 federal practice -- I would feel there might be
2 some merit to a request to cross-examine. In any
3 event, I think, even for the purposes that you are
4 proposing, taking it at its broadest, which is
5 your request -- I'm not saying I'm against it -- I
6 don't think if I were to adopt it, given the
7 limits you're putting on the use to be made of it,
8 I don't think putting it in an affidavit,
9 un-cross-examined is going to advance the case, so
10 I don't think we need to confront that.

11 MS JACKMAN: I want to answer a
12 couple of points that Ms McIssac made.

13 Ms McIssac properly points out
14 that Mr. Nureddin's memo, the memo concerning Mr.
15 Nureddin was put in for the purpose of assisting
16 Mr. Martel in perhaps clarifying what may have
17 been a confusion or not. I accept that but, I
18 guess my question then is, if the government
19 dictates the parameters of the evidence that comes
20 before you, if there is no memo written that
21 Mr. Martel confused about, about Mr. El-Maati or
22 Mr. Almalki, then nothing comes before you. It
23 shouldn't be dictated for that purpose.

24 THE COMMISSIONER: But that
25 evidence, having gone in for that purpose, you can

1 rest assured I wouldn't use it as proof of the
2 truth.

3 MS JACKMAN: No, and I'm not
4 asking you to. I'm saying that it shouldn't be --
5 the parameters of what comes before you should not
6 be dictated by what memos are and aren't written
7 because then if they don't write a memo, it never
8 becomes evidence even if someone else thinks it is
9 relevant.

10 THE COMMISSIONER: I understand
11 that.

12 MS JACKMAN: I guess the bottom
13 line is, in terms of the last point about Ms
14 McIssac's submissions to you, is Mr. Toope is
15 interviewing these men too corroborate, as I
16 understand it, the evidence of Mr. Arar around
17 whether or not he was tortured.

18 Mr. Arar has explained to you --
19 or he hasn't explained to you but you have his
20 chronology which, by the way, was put in by the
21 government as it was part of Mr. Martel's evidence
22 or file, I think.

23 MS McISSAC: Yes.

24 I really must interject. The
25 choice of what evidence is put in, by and large,

1 is the Commission's choice, not the government's.

2 MS JACKMAN: I didn't mean that
3 the government was putting it in, it's just that
4 it's in existence because the government chose
5 what to write, and it shouldn't be dictated by
6 that.

7 The only point is -- and again I
8 think it's a fine line, and I'm not asking you to
9 make findings in terms of pattern or in terms of
10 the process around the suspicions arising with
11 respect to Mr. Arar based on the other cases, but
12 on the other hand, I do think that you can say
13 there is at least a sufficient concern here, based
14 on what you see, and that you should have it
15 before you so that you know there is a sufficient
16 concern.

17 THE COMMISSIONER: Okay.

18 Thank you, Ms Jackman.

19 I'm going to think about it -- I
20 haven't had an opportunity, actually, to look at
21 the documents. I have been otherwise occupied.
22 As a minimum, I can indicate now I ascribe to the
23 thought that it should be provided to Mr. Toope so
24 that people can rest assured with respect to that
25 and I will ask counsel to make it available to

1 him.

2 Also I made my comments to
3 Mr. Neve with respect to the recommendation power,
4 and parties making submissions to the policy
5 review should feel free to refer to the types of
6 materials they think appropriate. I don't say
7 that -- I'm not sure what weight I would attach to
8 them but, in any event, there is much broader
9 latitude in a forum like that to refer to
10 information that you wish.

11 But dealing with the balance of
12 the request, let me think about it and I will
13 issue a brief ruling in due course. I will try to
14 do that in relatively near future. I have a few
15 other commitments I have to deal with first, but
16 that's it.

17 Let me thank everybody for, first
18 of all, for today for the long day and the
19 patience, and the people who waited a long time to
20 bring the motion and counsel again for their
21 dedication to the process. As I said to Mr. David
22 the other day, I will reserve my final comments
23 until we finish our last public hearing or
24 finish the oral arguments, at least, later on, but
25 thank you for your dedication to the process

1 today.

2 So we will stand adjourned until
3 Monday, September 12, is that right
4 Mr. Cavalluzzo?

5 MR. CAVALLUZZO: Tuesday.

6 THE COMMISSIONER: No, it's
7 Monday.

8 MS JACKMAN: Monday's the twelfth.

9 THE COMMISSIONER: Yes, Monday's
10 the twelfth, that is the first day of oral
11 argument. I am not sure what time we're starting,
12 do you know?

13 MR. CAVALLUZZO: Just so that
14 counsel are advised, we will be proceeding to
15 submissions on Monday, September 12, but there may
16 be a few final evidentiary points that we are
17 going to have to deal with. There are some
18 outstanding undertakings that I have to ensure are
19 fulfilled. As well, counsel should be advised
20 that Mr. Décary is talking, he has indicated to me
21 that he would like to introduce some expert
22 evidence and that will be some time later on,
23 after the submissions.

24 So that will still be outstanding.
25 But our next event is going to be Monday September

1 12.

2 THE COMMISSIONER: In terms of
3 Mr. Décary's issue, it is a relatively discreet
4 one in the overall context of the inquiry, and so
5 the fact that that evidence -- I have been spoken
6 to about this for good reason -- cannot be called
7 until some point later, later and probably in
8 October, should not delay the progress of the
9 inquiry, so that people should prepare their
10 submissions as I requested earlier, in accordance
11 with those time frames, and that question of the
12 expert evidence that Mr. Décary may call will be
13 something that will have to be carved out.

14 People will be given notice when
15 that evidence is to be called and the nature of
16 the evidence and those who have an interest in it
17 will be obviously be entitled to be involved and
18 participate in it.

19 So we will resume, it will be
20 here, public hearings, I think it is 10 o'clock,
21 is it, on Monday September 12?

22 MR. CAVALLUZZO: Yes.

23 MR. DÉCARY: Before you leave
24 Mr. O'Connor, as the youngest member, probably, in
25 this room -- you might have noticed -- I would

1 like to express the gratitude and consideration I
2 have. I have appeared before many commissions in
3 my young life, and I was very impressed, not only
4 by the way you disposed of matters, but also by
5 the tone. Tone comes from the top, and I told you
6 in private and told you the way you handled all
7 matters is most impressive.

8 I wish to thank you in my name and
9 I'm sure in the name of every lawyer in this room.

10 THE COMMISSIONER: Thank you very
11 much, Mr. Décary. I appreciate that.

12 THE REGISTRAR: Please stand.

13 --- Whereupon the hearing adjourned at 6:35 p.m.,
14 to resume on Monday, September 12, 2005
15 at 10:00 a.m. / L'audience est ajournée

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