

**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 25 mai 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Wednesday, May 25, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Wednesday, May 25, 2005

3 at 9:34 a.m. / L'audience débute le mercredi

4 25 mai 2005 à 09 h 34

5 THE REGISTRAR: Please be seated.

6 Veuillez vous asseoir.

7 THE COMMISSIONER: Good morning,

8 Mr. Pardy.

9 MR. PARDY: Good morning.

10 THE COMMISSIONER: Mr. Cavalluzzo.

11 MR. CAVALLUZZO: Thank you,

12 Commissioner.

13 At the outset, let me report back,

14 Mr. Commissioner, concerning the meeting that was

15 held last night with counsel concerning a possible

16 motion relating to four documents which are in

17 issue between the parties.

18 What I can report back is that the

19 parties are still in negotiations and discussion

20 and that there is a possibility that there may be

21 no need for that motion. However, I think it's

22 important that we put a time limit on that, in

23 that if nothing comes to fruition within a week or

24 so, we may report back to you and ask for you to

25 schedule a motion.

1 THE COMMISSIONER: All right.

2 That's fine.

3 MR. CAVALLUZZO: Second, in
4 respect of the issue as to which counsel should
5 question Mr. Pardy subsequent to my direct
6 examination, that matter will have to be argued
7 before you at the completion of my direct.

8 THE COMMISSIONER: All right.

9 PREVIOUSLY SWORN: HENRY GARFIELD PARDY
10 EXAMINATION (Continued)

11 MR. CAVALLUZZO: Mr. Pardy, we
12 were at tab 145 in Volume 2, which is October
13 28th.

14 Prior to you referring to that
15 particular e-mail, I understand that subsequent to
16 the proceedings yesterday you thought about the
17 question I asked you relating to the seven
18 considerations which I had put to you which
19 indicated that this case, Mr. Arar's case, is
20 different than that of Mr. Baloch and Mr. Jaffri,
21 and that you want to add one other consideration
22 which you think is relevant on the other side of
23 the scale.

24 Is that correct?

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: Would you like to
2 share that with us so that we have a full picture?

3 MR. PARDY: Yes. I would point
4 out that this information certainly was not
5 available to us at the time when we were doing
6 this consideration, but it certainly came to my
7 attention shortly after these events occurred in
8 New York.

9 This relates to information that I
10 had seen that Ms Oummih, when she visited Mr. Arar
11 on the morning of October the 5th, the issue of
12 deportation came up. She reported that Mr. Arar
13 had told her that the American officials were
14 asking him to sign a document agreeing to his
15 deportation to Syria, and she assured him that
16 under American law he had a right to choose the
17 country of destination for the deportation, and
18 that if there was a problem, that this could be
19 argued before an appropriate American tribunal.

20 MR. CAVALLUZZO: Of course, that
21 is a double-edged sword in the sense that on the
22 one hand she is saying that you have the legal
23 right to choose otherwise, but on the other hand,
24 once again, it indicates the Americans' interest
25 in Syria and Mr. Arar.

1 MR. PARDY: And I mention it only
2 in the sense that the conclusions that we had
3 reached on this information were not
4 idiosyncratic. They were, in effect, founded in
5 our general understanding of American law on this
6 point.

7 MR. CAVALLUZZO: Okay. Then if we
8 can move to October 28th of 2002, at tab 145,
9 where we left off yesterday.

10 THE COMMISSIONER: Sorry, 148,
11 Mr. Cavalluzzo?

12 MR. CAVALLUZZO: No, 145.

13 THE COMMISSIONER: Thank you.

14 MR. CAVALLUZZO: We had discussed
15 the last paragraph of the document, which is
16 redacted.

17 This morning government counsel
18 has indicated to me that I can read into the
19 record and we will get a copy of this in the
20 unredacted version. And there is only one point
21 that is redacted and that is the name.

22 So let me read in, if I can,
23 paragraph 4.

24 Paragraph 4 of Mr. Pardy's e-mail
25 is as follows:

1 "Would appreciate if you
2 could report if you obtain
3 any information on possible
4 visits by RCMP and CSIS
5 officials, either to meet
6 with Maher or ..."

7 Or "Syrian officials", I believe
8 it states. "Many thanks, Gar."

9 I don't know if I read that
10 correctly, Mr. Baxter. Is that correct?

11 MS McISAAC: Yes.

12 MR. CAVALLUZZO: Mr. Pardy, a week
13 into Mr. Arar's visit into Syria detention, we
14 have a question that you are asking concerning
15 possible visits by the RCMP and CSIS to meet
16 Mr. Arar in Syria.

17 Can you tell us what gave rise to
18 that particular instruction?

19 MR. PARDY: Generally, when you
20 have very high-profile cases of this nature,
21 certainly the involvement of Canadian police and
22 security officials is -- their interest is not
23 uncommon, as we have come to know in all of this.

24 My main concern in this, and I
25 think if you refer to the subsequent message that

1 went out on the same subject on October 30th, I
2 was much more specific in my question to the
3 ambassador.

4 And my concern was not so much
5 in -- the concern was whether or not liaison
6 officers, who are already posted overseas and
7 representing those organizations, who have
8 accreditation possibly to Syria, and as such are
9 responsible and must report to the ambassador,
10 that they could travel to Syria without our
11 knowledge back in Ottawa. I think that was the
12 general concern.

13 MR. CAVALLUZZO: Actually, it may
14 be useful at this point in time if I do file with
15 the Commission as the next exhibit that e-mail to
16 which you refer, and it will give more sense to
17 our discussion.

18 MR. PARDY: Yes.

19 THE COMMISSIONER: Ninety-seven.

20 MS McISAAC: Excuse me. Is this
21 the next one that doesn't have any redaction left
22 on it, Mr. Cavalluzzo?

23 MR. CAVALLUZZO: Yes.

24 No, it should be the unredacted --
25 and I am trying to find -- there is a tab number.

1 It's tab 158, which is the
2 redacted version.

3 --- Pause

4 MR. CAVALLUZZO: Mr. Commissioner,
5 the redacted version is this one here.

6 MS McISAAC: We are getting a
7 properly redacted one. Why don't we just reserve
8 an exhibit number for it and file it when it
9 arrives. We should have it by the break.

10 MR. CAVALLUZZO: This is an e-mail
11 dated October 28th, which coincides with tab 145,
12 if the unredacted version could be the next
13 exhibit number.

14 THE COMMISSIONER: It would be
15 P-98.

16 EXHIBIT NO. P-97: Unredacted
17 version of e-mail dated 30
18 October 2002 (Tab 158)

19 MR. CAVALLUZZO: And then we have
20 the next document, which is dated October 30th.

21 THE COMMISSIONER: I just marked
22 it P-97 so ...

23 MR. CAVALLUZZO: That's fine,
24 P-97.

25 And that coincides with tab 158.

1 EXHIBIT NO. P-98: Unredacted
2 version of e-mail dated 28
3 October 2002 (Tab 145)

4 THE COMMISSIONER: Okay.

5 MR. CAVALLUZZO: So we have the
6 October 30th e-mail, and just let me read it into
7 the record for those people that do not have
8 copies of it.

9 It says:

10 "With respect to paragraph 6
11 of reference message, would
12 appreciate if Ambassador
13 could report if there have
14 been any contact with RCMP
15 and CSIS liaison officials
16 indicating interest in
17 visiting Arar or contact ..."

18 MR. PARDY: No, in visiting Syria.

19 MR. CAVALLUZZO: "In visiting
20 Syria"; sorry.

21 "... or contact with Syrian
22 officials with respect to
23 this case. There have been
24 indications of this from
25 RCMP, and letter is being

1 prepared by ISI suggesting
2 that this not happen in the
3 current circumstances. Gar."

4 Once again, what you are
5 suggesting is that you are maybe concerned that
6 the liaison officers of RCMP and CSIS, who had
7 jurisdiction over Damascus, may wish to visit
8 Mr. Arar.

9 Is that correct?

10 MR. PARDY: Yes.

11 MS McISAAC: May I simply remind
12 the witness of not to give any indication of where
13 liaison officers with respect to CSIS might or
14 might not be situated.

15 MR. CAVALLUZZO: I was very
16 careful not to ask that question. I think I
17 should be applauded for that.

18 In any event, let's move on.

19 What was your concern? What was
20 your concern?

21 MR. PARDY: Well, the general
22 concern in this is when you are managing cases of
23 this complexity, you want to be in control of all
24 of the elements that could occur, that could
25 affect the outcome of the case.

1 MR. CAVALLUZZO: Right.

2 MR. PARDY: And discussions
3 between other parts of the Canadian government and
4 the Syrian authorities, I have always -- and on
5 many other cases I have always considered an
6 element that we should be fully aware of.

7 And the way the arrangements that
8 are in place with respect to liaison officers for
9 these organizations, they would not necessarily,
10 if I can, report to Ottawa or seek permission from
11 Ottawa before such visits would be made to their
12 countries of accreditation.

13 MR. CAVALLUZZO: I would think
14 that one of your concerns would be that if your
15 objective, as you have said throughout, was to get
16 Mr. Arar back as quickly as possible, then if at
17 the same time CSIS and/or the RCMP want to go and
18 visit Mr. Arar to question or whatever, that would
19 give a very mixed signal to the Syrians, wouldn't
20 it?

21 MR. PARDY: I am not sure whether
22 it would give them mixed signals or not, but it
23 was an element that I considered important and I
24 would be aware of before it occurred. If I felt
25 there was a potential for mixed signals, then I

1 would try to take action.

2 And as you will note from the
3 October 30th message, this was a concern that was
4 shared by our colleagues in ISI as well, and they
5 were prepared at that point, if necessary, to
6 prepare a letter.

7 It was not necessary, if my memory
8 serves me right, to prepare such a letter.

9 MR. CAVALLUZZO: You would agree
10 with me, though, that if I am a Syrian official
11 with a large moustache and I see CSIS coming down
12 the street to see Mr. Arar, I see the RCMP coming
13 to see Mr. Arar, I wouldn't think it was just for
14 a social visit.

15 You would agree with that?

16 MR. PARDY: Oh, absolutely.

17 MR. CAVALLUZZO: And you would
18 agree with me that if the RCMP or CSIS wanted to
19 visit Mr. Arar, it would be in respect of their
20 mandate. In respect of the RCMP, it's police
21 activities or enforcement; in respect of CSIS,
22 it's security intelligence?

23 MR. PARDY: Yes.

24 MR. CAVALLUZZO: I guess I come
25 back to a question I asked you yesterday, and that

1 is that if the RCMP -- and you say this in this
2 October 30th message after talking about the
3 liaison officers. You say:

4 "There have been indications
5 of this from the RCMP and
6 letter is being prepared by
7 ISI suggesting that this not
8 happen in the current
9 circumstances."

10 But if the RCMP wants to go and
11 question Mr. Arar in October of 2002 in order
12 presumably to carry out their mandate, which is a
13 police investigation, if I was Mr. Arar, I would
14 be very concerned that DFAIT was sharing any
15 information on me, particularly relating to
16 consular visits, with a police investigation body
17 which now, in October, has expressed a clear
18 interest in me.

19 Would you agree with that?

20 MR. PARDY: In part. What I think
21 the key thing here is that the information that
22 was critical with respect to this case as far
23 as -- and I am perhaps making a bit of an
24 assumption here and reacting to information
25 certainly that has come to me after the fact.

1 But the damaging, if I want to use
2 the term, information with respect to Mr. Arar was
3 already in place long before the Department of
4 Foreign Affairs was involved in this case.

5 And so what we are dealing here is
6 a consequence of that information and not -- as I
7 mentioned to you yesterday as well with respect to
8 the sharing of information, the sharing of that
9 information was highly selective and was done with
10 the express purpose of seeing whether or not we
11 could help Mr. Arar through the actions of some of
12 these agencies.

13 MR. CAVALLUZZO: And do you think
14 that when the RCMP expressed an interest to go
15 over to interview Mr. Arar, they were trying to
16 help Mr. Arar?

17 MR. PARDY: I am not sure. I
18 would not impute motive to any other part of the
19 Canadian government on something of that
20 magnitude. I think that would be erroneous for
21 any of us to do at this stage.

22 MR. CAVALLUZZO: But you would
23 agree with me that they do have a mandate of
24 investigating criminal activity?

25 MR. PARDY: Absolutely, and --

1 MR. CAVALLUZZO: And presumably
2 they would only expend money, which is
3 expensive -- as you know, it's very expensive to
4 send somebody over to Syria to interview people.

5 Presumably they would only do that
6 in respect of carrying out their mandate?

7 MR. PARDY: Carrying out their
8 mandate, which is to develop information that
9 could be either negative or positive with respect
10 to a suspect.

11 MR. CAVALLUZZO: And I guess that
12 brings me back to that question that I asked you:
13 that if you are going to share information in the
14 future, DFAIT is going to share information with a
15 police agency or a security intelligence agency in
16 respect of a consular visit, surely you would
17 agree with me that you should either tell the
18 individual that is giving the information, that is
19 the Canadian detained, or at least if you are
20 going to give the information without their
21 permission, you should be very circumspect in
22 ensuring that only information that would not be
23 prejudicial to that individual be given to the
24 RCMP or CSIS?

25 MR. PARDY: And the judgment that

1 I reached was that the information was not
2 prejudicial and it was only done after careful
3 consideration.

4 --- Pause

5 MR. CAVALLUZZO: I guess the final
6 question relating to this, and that is when you
7 have a Canadian -- and we will get to this in
8 terms of your deck presentation and the action
9 memo you sent to Mr. Graham.

10 But in terms of this mixed signal
11 that I am talking about, it would seem to me that
12 a reasonable result may be confusion or
13 uncertainty in the minds of the Syrians in respect
14 of: what does Canada want to do with Mr. Arar?

15 MR. PARDY: Yes, and as you -- I
16 think we went over several points yesterday: that
17 I, through my communications with the ambassador
18 and other people involved, tried to ensure that
19 the message that was delivered to the Syrian
20 authorities by the ambassador, speaking for the
21 Government of Canada, that there was absolutely no
22 ambiguity on that point whatsoever.

23 MR. CAVALLUZZO: Right. We will
24 come back to that, in particular on March 24th,
25 2003.

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: Let's move on
3 then to tab 147.

4 This is the second consular visit
5 that Mr. Martel makes to Mr. Arar in Damascus?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: Just from your
8 perspective -- I am not going to take you through
9 this nor any of the other consular visits in light
10 of the fact that we are going to have both
11 Mr. Martel and Mr. Pillarella testify. But is
12 there anything in this particular visit report
13 which gave you cause for alarm, or was it business
14 as usual?

15 MR. PARDY: Could you give me a
16 moment to read it, please?

17 MR. CAVALLUZZO: Certainly.

18 --- Pause

19 MR. PARDY: No, I don't think
20 there was anything unusual here, except in
21 paragraph 4 we are again asking about where they
22 were with respect to their own investigation, and
23 suggesting that the ambassador speak to the senior
24 military intelligence person; that we acted on
25 that and very shortly thereafter there was another

1 meeting with that person, with the ambassador.

2 MR. CAVALLUZZO: We will come to
3 that.

4 If you go then to tab 148, we see
5 this is a letter that you are sending to
6 Dr. Mazigh?

7 MR. PARDY: No.

8 MR. CAVALLUZZO: It isn't? Oh,
9 this is from -- the originator is Laatar.
10 And Laatar is located in...?

11 MR. PARDY: Tunis.

12 MR. CAVALLUZZO: In the embassy in
13 Tunis?

14 MR. PARDY: Yes. And she is
15 reporting on --

16 MR. CAVALLUZZO: The birth
17 certificate?

18 MR. PARDY: Birth certificate and
19 possible problems in terms of return to Canada by
20 Ms Mazigh and the two children.

21 MR. CAVALLUZZO: There are going
22 to be a number of tabs which relate to your
23 assistance to Dr. Mazigh in getting her back to
24 Canada, and I am going to take you quickly through
25 those. If there is anything that you want to add,

1 please do.

2 MR. PARDY: All right.

3 MR. CAVALLUZZO: At 152, we see
4 this that is an e-mail from you to Mr. Martel
5 attaching a letter from Monia?

6 MR. PARDY: Mm-hmm.

7 MR. CAVALLUZZO: And this,
8 presumably, is to be given to Mr. Arar in the next
9 consular visit?

10 MR. PARDY: That's correct.

11 MR. CAVALLUZZO: At tab 153, this
12 is a Q&A that is being developed as it evolves
13 over time?

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: I guess in
16 respect of the exchange of letters, and certainly
17 throughout the piece from this point on to the
18 last consular visit, the exchange of letters,
19 either from Monia to Maher or from Maher to Monia,
20 is the way that these partners or spouses
21 communicated during this difficult period?

22 MR. PARDY: Yes, and we tried to
23 supplement it with the possibility of a telephone
24 call, which we didn't succeed. And one of the
25 elements as well was the possibility that

1 Dr. Mazigh might go to Damascus as well, yes.

2 MR. CAVALLUZZO: Okay. Tab 154 is
3 once again a series of questions and answers that
4 presumably you were preparing for the Minister,
5 and we have seen these throughout as they evolve
6 over time.

7 For the Commissioner's notice and
8 counsel's notice, I just refer to a couple of
9 things.

10 This is at page 5 of the tab. A
11 possible question to the Minister or another
12 member, official of DFAIT is:

13 "Is it true that the Syrians
14 are investigating Mr. Arar
15 for terrorist connections?"

16 And the answers are:

17 "Syrian authorities are
18 currently conducting an
19 investigation. Until that
20 investigation is completed,
21 he will remain in their
22 custody.

23 We do not expect to be
24 informed of the Syrian
25 investigation."

1 That one there, that is not really
2 totally correct, is it, because Pillarella was
3 expecting to get something from a person in Syria?

4 MR. PARDY: Well, I think the date
5 on this is -- what date are we talking about here?
6 This is the 29th of October.

7 MR. CAVALLUZZO: Right.

8 MR. PARDY: Three to four days
9 later, Mr. Pillarella was provided with certain
10 information.

11 But again, as with other elements
12 of this case, we were totally surprised that the
13 Syrians provided us with that information. But at
14 the time this was written, in terms of past
15 experience, the Syrians basically wouldn't even
16 tell us whether the sun was up at 12 noon.

17 MR. CAVALLUZZO: Okay. If we just
18 go through it, at page 10 the question is, the
19 possible question is:

20 "Does the Department of
21 Foreign Affairs suspect Mr.
22 Arar of being a terrorist?"

23 And the answer is:

24 "The Department of Foreign
25 Affairs has no information to

1 support this allegation."

2 And the second possible answer is:

3 "This issue falls under the

4 mandate of other

5 organizations in the Canadian

6 government."

7 And then, finally, at pages 11 and

8 12, I would point out in terms of the

9 backgrounder, which is prepared by Myra

10 Pastyr-Lupul and approved by you, the last line

11 says:

12 "The Syrian authorities

13 initially responded on

14 October 20 that he was not in

15 Syria. They responded again

16 on October 21 saying that Mr.

17 Arar had just arrived in

18 their country from Jordan.

19 Previous to this, we had made

20 enquiries of the Jordanian

21 authorities as to whether

22 Arar was in their country.

23 At the time, they replied

24 that he was not but on

25 October 21 reported that he

1 had been in Jordan but 'in
2 transit' to Syria."

3 And that confirms what we talked
4 about late yesterday afternoon.

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: At tab 155, there
7 is another exchange of e-mails between you and
8 Dr. Mazigh. This is dated October 29th.

9 You are talking about the message,
10 as well as you are talking about speaking to
11 Mr. Edelson, who was the counsel for Mr. Arar at
12 the time?

13 MR. PARDY: That is correct. I
14 would add that the other point here is that we
15 discussed yesterday that I sent the two letters,
16 but throughout this whole period, there were
17 detailed conversations with Ms Mazigh in terms of
18 conveying to her the full flavour of the
19 information that was available to us.

20 MR. CAVALLUZZO: Okay. At tab
21 158, that's the e-mail that we looked at earlier,
22 which is one of the new exhibits.

23 MR. PARDY: Mm-hmm.

24 MR. CAVALLUZZO: And this, once
25 again, is from you and it's to Mr. Pillarella.

1 You are seeking that information and you say:

2 "Many thanks for the detailed
3 report, contents of which
4 have been shared with Maher's
5 wife. She was most
6 appreciative of the exchange
7 and will prepare another
8 letter and send it to us for
9 delivery during next visit.
10 She now plans to return to
11 Canada early next week."

12 And we have already dealt with
13 paragraph 2.

14 Now at tab 160, two days later, on
15 October the 31st, we see that GXD -- who is GXD?

16 MR. PARDY: The "X" signifies an
17 official that has been appointed at the Director
18 General level to deal with a specific subject, and
19 I believe that this particular official was
20 concerned with the -- I believe at this time
21 largely with refugee issues in the Middle East,
22 largely the Palestinian issue of refugees.

23 Subsequent he took on the
24 responsibility of coordinating the Canadian
25 government's response in terms of the war

1 preparations that were under way in early 2003.

2 MR. CAVALLUZZO: In any event,
3 this mystery person meets with Deputy Foreign
4 Minister Mouallem on October 30th, and the Deputy
5 Foreign Minister raised the issue of Mr. Arar and
6 he said:

7 "He indicated that when he
8 first investigated Canadian
9 press reports that the USA
10 had deported Arar to Syria,
11 Arar was not in the
12 country..."

13 Was GXD going to Syria just to
14 discuss Mr. Arar's situation, or was it brought up
15 independently by the Syrians?

16 MR. PARDY: No, he was there. As
17 I indicated, that his responsibility at the time.

18 And I would appreciate if I could
19 check this particular fact, but my recollection
20 was that he was responsible for -- Canada was
21 chairing an international committee that was
22 dealing with refugee issues in the Middle East,
23 and he was going out for consultations with the
24 regional governments on that particular issue.
25 And certainly any high level contact that we had

1 with the Syrians at that point, we wanted to
2 discuss Mr. Arar as well, of course.

3 MR. CAVALLUZZO: And it goes on in
4 the second paragraph to say:

5 "Ambassador Pillarella
6 thanked the Deputy Minister
7 for his cooperation in the
8 Arar case. He noted that
9 Canada understood that
10 according to Syrian law, Arar
11 was a Syrian national, and
12 appreciated that Syria had on
13 an exceptional basis accorded
14 consular access."

15 And then he goes on:

16 "This access had helped to
17 assuage some concerns raised
18 by the Canadian press.
19 Nonetheless, the case was
20 continuing to generate
21 considerable interest in
22 Canada."

23 I guess the point that I would ask
24 you -- certainly Ambassador Pillarella points to
25 the Canadian press' interest in Mr. Arar's case,

1 and indeed the Deputy Foreign Minister himself
2 talks about investigating Canadian press reports.
3 And it would seem to me that a reasonable
4 implication from this memorandum is that the
5 Syrians are sensitive to concerns expressed in the
6 Canadian press.

7 Would you agree with that?

8 MR. PARDY: Certainly they appear
9 to suggest that certainly the reporting by their
10 ambassador in Ottawa, Ambassador Arnous, was
11 keeping them informed, as he should have, and that
12 material of course would have gone to the Deputy
13 Foreign Minister. A chance to discuss this
14 particular issue with a senior Canadian official
15 arose, and he did so.

16 The level of sensitivity to these
17 issues would be a matter of conjecture on my part.

18 MR. CAVALLUZZO: Right. But I
19 guess the point that you can directly testify to
20 is the fact that you were aware that the Syrian
21 officials were looking at the Canadian press in
22 terms of this particular period of time when
23 Mr. Arar was in detention?

24 MR. PARDY: Yes. This is an
25 official from the Ministry of Foreign Affairs, and

1 part of their mandate would be sensitive to issues
2 that arose in terms of the bilateral relationship,
3 yes.

4 MR. CAVALLUZZO: Okay. And then
5 finally in this document, it would seem that there
6 was a discussion in the third-last line, where it
7 says:

8 "Ambassador Pillarella agreed
9 that the US action was very
10 difficult to comprehend."

11 So very early on, as they did
12 right throughout the piece, the Syrians kept
13 saying repeatedly, "We don't understand why the
14 Americans sent Mr. Arar to us."

15 MR. PARDY: Yes, they mentioned
16 that fact several times in exchanges, yes.

17 MR. CAVALLUZZO: If we could move
18 now to tab 181, once again I am not going to take
19 you through this, but these are a series of
20 e-mails between you and Dr. Mazigh about her
21 returning to Canada.

22 You say:

23 "Monia, thank you for the
24 good news of your plans to
25 return home. Look forward to

1 the final details and we will
2 make arrangements..."

3 And so on and so forth.

4 We will come back to how you
5 assisted Dr. Mazigh in her return to Canada.

6 MR. PARDY: Yes. I would only
7 note that the date, 5 November at the top of the
8 page, is not indicative of when this exchange took
9 place.

10 MR. CAVALLUZZO: That's correct.
11 It's November the 1st.

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: Okay. I would
14 like to come now to a letter that Mr. Edelson
15 sent.

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: You are smiling.
18 You are anticipating my question. I went to law
19 school to learn how to ask them, so let me ask and
20 you can answer.

21 MR. PARDY: Okay. I will take the
22 smile off my face.

23 MR. CAVALLUZZO: No, no. I like
24 the smile.

25 If you could go then to Exhibit

1 P-83, and if you go behind tab 1, at pages 228 and
2 229, we have a letter from Edelson & Associates
3 which is dated October 31st, 2002.

4 THE COMMISSIONER: Sorry. I
5 missed the reference to it.

6 MR. CAVALLUZZO: Pages 228 and 229
7 in P-84.

8 THE COMMISSIONER: Okay. Got it.

9 MR. CAVALLUZZO: It is P-83.

10 Don't worry, Mr. Registrar,
11 lawyers were never good with numbers. It is P-83.

12 THE COMMISSIONER: Right.

13 MR. PARDY: This is the October 31
14 letter, is it?

15 MR. CAVALLUZZO: You have it.

16 MR. PARDY: I have it.

17 MR. CAVALLUZZO: You have the
18 right book?

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: What I would like
21 to do is just to read portions to you, and once
22 again it's to the legal counsel for the RCMP IPOC
23 Unit, Ms Ann Alder.

24 It says in the body of the letter,
25 in the first paragraph:

1 "As you know, I have met with
2 H.G. Pardy, Director General,
3 Department of Foreign Affairs
4 and International Trade, and
5 he has advised me that in his
6 view a letter from the RCMP,
7 or yourself for that matter,
8 would be of significant
9 assistance in facilitating
10 the return of Maher Arar to
11 Canada. If such a letter
12 contained the following
13 specifics, Mr. Pardy is
14 confident that it would be a
15 critical factor in the
16 Department's efforts to
17 return of this Canadian
18 citizen to Canada."

19 And the four points are:

- 20 "1. That the RCMP made no
21 request to have Mr. Arar
22 deported to Jordan or Syria.
23 2. That Mr. Arar does not
24 have a criminal record.
25 3. That Mr. Arar is not

1 wanted in Canada for any
2 offence, nor is there a
3 warrant for his arrest.

4 4. That Mr. Arar is not a
5 suspect with respect to any
6 terrorist-related crime."

7 And then it goes on asking her to
8 contact him.

9 Obviously you have seen this
10 letter before, and we have also seen that you did
11 have contact or a meeting with Mr. Edelson prior
12 to this time. I would ask for your comments
13 respecting this letter that Mr. Edelson sends the
14 RCMP.

15 MR. PARDY: Yes. As you noted, a
16 week or ten days previous to this, Mr. Edelson
17 called a person that he knew in the Department,
18 Mr. John McNee, the Assistant Deputy Minister for
19 the Middle East and Africa, wanting to discuss the
20 Arar case and indicating that he had been retained
21 by the family.

22 Mr. McNee referred Mr. Edelson to
23 me and we made telephone contact and then arranged
24 to meet shortly after to discuss the case.

25 At that point, we were casting

1 about for any mechanism that could be of possible
2 assistance to us and to Mr. Arar, and the fact
3 that Mr. Edelson had indicated to me that he was
4 quite knowledgeable in activities of the RCMP in
5 this area, since he had other clients that had
6 worked in this area, and that he was familiar with
7 the officials at the RCMP who dealt with these
8 matters, we discussed it and I suggested to him
9 that the information that he was seeking from me
10 was not available from me and that he might
11 profitably approach the RCMP with respect to this.

12 We discussed the kinds of
13 questions that he might wish to put to the RCMP,
14 and he said, "Well, can I make reference to the
15 fact that we had discussions?" And I said
16 absolutely.

17 Quite open, quite transparent, no
18 subterfuge involved here whatsoever.

19 MR. CAVALLUZZO: Right. And
20 Mr. Edelson's letter is a fair representation of
21 the discussion that you had with him?

22 MR. PARDY: Yes. The only thing
23 that I can't remember is whether or not we had
24 agreed that he would do this via a letter or
25 whether in effect he would speak direct to the

1 people, because he did have direct contact with
2 some of these officials.

3 MR. CAVALLUZZO: And once again
4 your goal, as stated at the outset, was to try to
5 get Mr. Arar back as quickly as possible?

6 MR. PARDY: Absolutely.

7 MR. CAVALLUZZO: And this was done
8 in pursuance of that objective?

9 MR. PARDY: It was done in
10 pursuance of this.

11 MR. CAVALLUZZO: Let us stay in
12 Exhibit P-83 and go to page 230, to see what
13 response we get from the RCMP.

14 Page 230 is a memorandum from the
15 Project Manager of A-OCANADA to the officer in
16 charge of "A" Division, which as you know is
17 located in Ottawa.

18 The point that I would ask you
19 about is in the second and third paragraphs, where
20 it is stated:

21 "It would appear that..."

22 That should be "Mr. Pardy".

23 "... suggested that an
24 official letter from the RCMP
25 attesting to the points

1 listed in Edelson's
2 correspondence would greatly
3 assist DFAIT's efforts in
4 securing the return of Mr.
5 Arar to Canada. While at
6 this juncture our project is
7 aloof to Mr. Arar's status,
8 the suggestions and comments
9 of Mr. Pardy are highly
10 problematic in that they seek
11 to shift the responsibility
12 of Mr. Arar's future status
13 squarely on the RCMP. I
14 believe DFAIT has to be
15 sensitized on the possible
16 impact these types of
17 discussions can have on
18 ongoing investigations."

19 And then in the final paragraph he
20 states:

21 "We will be preparing a
22 response to Mr. Edelson's
23 request in the coming days.
24 While we had no role to play
25 in Mr. Arar's detention and

1 subsequent deportation from
2 the United States, we are not
3 in a position at this time to
4 categorically determine Mr.
5 Arar's role. To be asked to
6 do so at this stage is
7 unreasonable."

8 Now, you wouldn't have seen this
9 particular internal memorandum?

10 MR. PARDY: No. I saw it as a
11 result of this particular process, yes.

12 MR. CAVALLUZZO: Okay. Then let
13 us move on and I will come back to these comments.

14 At page 232, on November the 6th,
15 we have that officer in charge of "A" Division,
16 Mr. Couture, writing to Mr. Proulx, who is the
17 headquarters head of the CID, which is responsible
18 for national security investigations.

19 He refers to the Edelson letter
20 and your comments or recommendations to Edelson,
21 and then he goes on in the second paragraph, third
22 sentence:

23 "However, I agree with ...
24 that if the comments by Pardy
25 are accurate, DFAIT must be

1 sensitized to the possible
2 impact that such suggestions
3 may have concerning ongoing
4 investigations to which Arar
5 may be associated. Project
6 A-OCANADA investigators are
7 not in a position to provide
8 any comment with respect to
9 the status or role of Mr.
10 Arar in connection with the
11 investigation. As this
12 matter impacts the
13 relationship and
14 responsibilities of the RCMP
15 and DFAIT, I believe
16 discussions between our
17 agencies should be initiated
18 at your office ..."

19 MR. PARDY: They spelled my name
20 correct this time.

21 MR. CAVALLUZZO: Yes, that is
22 true.

23 You wouldn't have seen this
24 internal memorandum either?

25 MR. PARDY: No.

1 MR. CAVALLUZZO: Then if we move
2 on to Exhibit P-84 and start at pages 65 and 66.

3 This is another memorandum to
4 Assistant Commissioner Proulx or Chief
5 Superintendent Killam, and both are responsible
6 for national security investigations, and it is
7 from Wayne Pilgrim, who is the officer in charge
8 of the national security investigation branch.

9 Mr. Pilgrim's comments are, in the
10 middle paragraph -- he obviously attaches the
11 correspondence and says:

12 "You will note that I have
13 attached a draft response to
14 DFAIT outlining our concerns
15 relating to this matter. The
16 suggestion that DFAIT/Pardy
17 may have advised defence
18 counsel to seek our
19 assistance in the release and
20 return of the subject is, in
21 my opinion, outrageous and a
22 clear abuse of the respective
23 office. However, I am
24 prepared to give the benefit
25 of the doubt to DFAIT and

1 accept the fact the defence
2 misunderstood."

3 Well, he obviously shouldn't have
4 given the benefit of the doubt there because
5 defence did understand.

6 And it goes on:

7 "You will also note that the
8 tone of the draft letter is
9 to the point you may wish to
10 have it reworded to a more
11 softer approach."

12 And then at 233 --

13 MR. PARDY: In the other document?

14 MR. CAVALLUZZO: Yes. This is
15 still behind tab 1.

16 We see there the response, dated
17 November the 16th of 2002, which is sent to
18 Mr. Edelson. This is from the officer in charge
19 of IPOC, or Project A-OCANADA, and basically says
20 that:

21 "While I sympathize with the
22 present situation of Mr.
23 Arar's family and your plight
24 in securing his release and
25 return to Canada, I am not in

1 a position to acquiesce to
2 your request at this time.
3 As you can understand, the
4 RCMP as a matter of course
5 does not involve itself in
6 subjects of foreign policies.
7 Furthermore, it would be
8 improper for me to comment on
9 Arar's present situation
10 relative to our ongoing
11 investigation."

12 I am wondering if you did see this
13 response that was sent to Mr. Edelson from the
14 project manager of A-OCANADA?

15 MR. PARDY: Yes. My recollection
16 is such that Mr. Edelson called me shortly after
17 he had received this letter.

18 MR. CAVALLUZZO: Do you recall
19 what your view was as to the position taken by the
20 RCMP in attempting to assist DFAIT in their
21 mandate to try to seek Mr. Arar's release as soon
22 as possible?

23 MR. PARDY: I think we both took
24 encouragement from the phrase "I am not in a
25 position to acquiesce to your request at this

1 time".

2 MR. CAVALLUZZO: "At this time"?

3 MR. PARDY: "At this time".

4 MR. CAVALLUZZO: So you were still
5 hoping that the RCMP may be of assistance to you
6 in your role of getting Mr. Arar back?

7 MR. PARDY: And as you know
8 from -- I am sure we will discuss over the next
9 while that there are other initiatives that I took
10 to try to achieve that.

11 MR. CAVALLUZZO: Well, why don't
12 we just complete the piece in terms of your
13 expectations and go to the final letter.

14 This is dated December 10th of
15 2002, which can be found behind tab 248.

16 MR. PARDY: I think I need another
17 book.

18 MR. CAVALLUZZO: Yes, it's Volume
19 3.

20 --- Pause

21 MR. CAVALLUZZO: Tab 248, and it's
22 the second page in.

23 This is when Mr. Proulx -- as you
24 know, the memos were going to Mr. Proulx, who is
25 the Assistant Commissioner and head of CID --

1 writes to Mr. Livermore, Dan Livermore, and refers
2 to the Edelson letter and references your
3 recommendation that he seek this kind of letter
4 from the RCMP and points out the four conditions.

5 And then on page 2 of the letter,
6 which once again is dated December the 10th, he
7 says:

8 "The RCMP had previously
9 responded to DFAIT's concerns
10 with respect to Mr. ARAR and
11 the circumstances surrounding
12 his deportation to
13 Jordan/Syria from the United
14 States. In that
15 correspondence it was
16 confirmed that Mr. ARAR is a
17 subject of interest in the
18 Project 'A O Canada'
19 investigation. Also, in the
20 same communications, the RCMP
21 advised that it played no
22 role in the decision of the
23 US Government to deport Mr.
24 ARAR.
25 RCMP 'A' Division will

1 respond to Mr. Edelson..."
2 Of course, they already had done
3 by that time.

4 "...however there will be no
5 reference made to Mr. ARAR's
6 present status relating to
7 Syria or to Project
8 'A O Canada'.

9 In closing, assuming that the
10 statements of Mr. Edelson is
11 an accurate depiction of the
12 advice provided to him by Mr.
13 Pardy, the RCMP has serious
14 concerns with the obvious
15 misunderstanding of the role
16 of the RCMP in matters of
17 this nature, therefore, I
18 would like to meet with you
19 at your earliest convenience
20 to discuss the matter
21 further."

22 We asked Mr. Livermore about that.
23 No meeting was held, and asked Mr. Livermore if he
24 shared this letter with you, and he said that he
25 did.

1 Can you confirm that?

2 MR. PARDY: Yes, he did, yes.

3 MR. CAVALLUZZO: And what was your
4 response to Mr. Proulx's, shall we put it,
5 admonition as to your misunderstanding of the role
6 of the RCMP?

7 MR. PARDY: Well, I -- overall I
8 just saw this as another rock on the road that we
9 had to go over. I didn't see it as being anything
10 by way of a final judgment on this issue.

11 With respect to the phrase
12 "obvious misunderstanding", I think it would be a
13 fair comment to say that short of being a uniform
14 member of the RCMP, I knew more about RCMP
15 operations and their procedures than perhaps
16 anybody else in the Department of Foreign Affairs.
17 I have had long experience with the Force. I have
18 worked with the Force on any number of issues over
19 the years, and I have great admiration for their
20 work.

21 I was surprised that they would
22 suggest that I had some obvious misunderstanding,
23 or that I had some ulterior motive in terms of
24 shifting responsibility of this matter from the
25 Department of Foreign Affairs to the RCMP. That

1 was not the case whatsoever.

2 MR. CAVALLUZZO: You say that this
3 is just another "rock on the road". It seems to
4 me we are getting to the point of being a boulder,
5 in the sense that we are pretty high up in the
6 RCMP and they are certainly indicating to you that
7 as far as participating in the efforts to get
8 Mr. Arar back, certainly they have their own view
9 of their own mandate, and they will do what they
10 think is in the interests of the RCMP.

11 MR. PARDY: Quite understandable.
12 And I know all of the people that are involved in
13 this; I have worked with them closely. And I
14 could form my own judgment independent of the
15 words that were on the paper here.

16 MR. CAVALLUZZO: Surely by
17 December the 10th of 2002, when you see this
18 letter from Mr. Proulx, that Mr. Arar is a subject
19 of interest in the A-OCANADA investigation and
20 they are not prepared to share his status with you
21 or with the Syrians, surely at that point in time,
22 doesn't that give you cause for concern in sharing
23 any information whatever that you get from
24 Mr. Arar in these consular visits with this
25 organization that has now stated on the record

1 that he is a subject of interest?

2 MR. PARDY: No. I knew that quite
3 early on, I think arising from our meeting on
4 October 16th and the letter that Superintendent
5 Pilgrim sent to us. The phrase "person of
6 interest", the assessment I think as reflected in
7 the memorandum to Mr. Graham about that, I think
8 that this was at the lower end, if I could use
9 that term, of concern.

10 But as time developed, I did not
11 waiver in my belief that it was important that
12 once this issue moved out of the Department of
13 Foreign Affairs into the central agencies of the
14 Government of Canada, the role of the RCMP would
15 be an important consideration. And throughout I
16 felt it my responsibility to try to bring them
17 into that process in a way that was going to be
18 helpful to Mr. Arar.

19 MR. CAVALLUZZO: And certainly we
20 will come to that.

21 But certainly as of December of
22 2002, it would appear that the RCMP was not
23 prepared to jump on board with DFAIT in terms of
24 the efforts of their pursuing in getting Mr. Arar
25 back? They may have disagreed with your

1 methodology or whatever, but certainly they
2 weren't prepared to accommodate, shall we put it
3 that way, accommodate the request that you had
4 made?

5 MR. PARDY: Well, if I took these
6 disappointments, you know -- I mean, I wouldn't
7 get out of bed in the morning if I took them in
8 any way.

9 MR. CAVALLUZZO: Right.

10 MR. PARDY: I mean I got up after
11 they occurred and continued to try to walk forward
12 on this case. That was not the way that I worked
13 in terms of letting these kinds of disappointments
14 get in the way of the main objective here, and
15 that was Mr. Arar.

16 MR. CAVALLUZZO: Okay. Then let
17 us go back to the chronology, Mr. Pardy.

18 We are still in Volume 2, and I
19 would ask you to go to tab 161, and we are back at
20 November 1 of 2002.

21 Once again, I am going to go
22 quickly through these items, and this is a
23 chronology that you had prepared at this
24 particular point in time.

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: I leave that to
2 counsel to read.

3 There is a point that I would ask
4 in this particular chronology, though, and no
5 doubt other counsel may ask you, and I will just
6 give you the opportunity to comment on it.

7 I note in this chronology, which
8 is presumably prepared for the Department of
9 Foreign Affairs, and presumably for the Minister,
10 that in my view three key facts are not indicated.

11 One is the fact that Taufik Arar
12 told DFAIT on October the 1st that his brother had
13 told his mother-in-law that the Americans were
14 threatening him to be deported to Syria.

15 Second is the INS official's
16 recommendation that this be brought up to higher
17 levels because of the seriousness of the case.

18 And the third is the October 3rd
19 visit of Ms Girvan to Mr. Arar, wherein he told
20 her that two INS officials had threatened to send
21 him off to or deport him to Syria.

22 So those three facts are not set
23 out in this chronology, and some may question why
24 they are missing.

25 MR. PARDY: I don't think there is

1 any -- I am not quite sure the date on this
2 document. The redacted sections would indicate
3 that it takes us into, I would assume, late
4 October here.

5 Is that correct?

6 MR. CAVALLUZZO: It should be
7 probably November 1st.

8 MR. PARDY: Oh, November 1st,
9 exactly. And those kinds of things I used to do
10 on a regular basis, as much for my own
11 edification, if you like, sort of to help the
12 memory on specific points, and I would sit down
13 and add to them as specific events occurred.

14 It was never meant to be the
15 detailed chronology of everything that went on.
16 It was just hitting the highlights with regard to
17 specific dates and what happened on those dates.

18 MR. CAVALLUZZO: Okay. If we move
19 along in terms of time, if you go to the next tab,
20 162, you were in contact again with the -- or
21 Girvan is in contact with the CCR, the Centre for
22 Constitutional Rights, concerning representing
23 Mr. Arar in Syria, and you are copied on that.

24 The point here is that DFAIT seems
25 to be cooperating with the Centre for

1 Constitutional Rights in terms of whatever
2 assistance they may give Arar?

3 MR. PARDY: Absolutely, yes.

4 MR. CAVALLUZZO: Then I
5 understand, according to your notes, between
6 November the 1st and November the 7th that you are
7 in Beirut, Lebanon?

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

9 MR. CAVALLUZZO: And just for that
10 context.

11 Then if we go to tab 172, we just
12 have e-mails with Mr. Fry.

13 You are relating to him about your
14 contacts with Mr. Arar's family, but the point
15 here is that you seem to be persistently and
16 usually keeping the Minister's office informed of
17 the progress of the file?

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: Now we come to
20 tab -- go back to tab 164.

21 This is a fax both to the RCMP
22 headquarters and the RCMP "A" Division from Scott
23 Heatherington, who is, as you know, with ISI in
24 DFAIT. He has faxed to these two divisions of the
25 RCMP Mr. Pillarella's November 3rd memo wherein he

1 is meeting with a Syrian official: met for an hour
2 on November 3rd to review the Arar case.

3 He goes on in paragraph 3:

4 "When I asked the [Syrian
5 official] whether I could get
6 a resume of information
7 obtained so far from Arar
8 that I could take to Canada
9 with me, he agreed to do so.
10 He promised I would receive
11 it before my departure,
12 unfortunately only in
13 Arabic."

14 And then he finally -- this is
15 Pillarella -- finally comments:

16 "Comment: It is obvious that
17 the Syrians continue to be
18 well disposed towards us."

19 If we go to the next tab, we have
20 an indication, at 165 -- this is from
21 Mr. Saunders. As you know, Mr. Saunders is with
22 ISI.

23 This is dated Sunday, November
24 3rd, and it states:

25 "On November 3, 2002, the

1 Canadian Ambassador to Syria
2 received a document (written
3 in Arabic) from [a Syrian
4 official]. The Ambassador
5 brought the document to
6 Canada personally and gave it
7 to ISI on November 6. ISI
8 sent it to CSIS for
9 translation. The document,
10 an undated three-paragraph
11 bout de papier, was
12 translated on November 7.
13 The document alleges that
14 Arar spent time in
15 Afghanistan in Mujaheddin
16 camps and that he knew
17 [unnamed persons]. The
18 document was sent to CSIS for
19 translation by [whomever].
20 The translated document was
21 returned to ISI and the
22 information was shared with
23 Mr. Pardy, the RCMP and
24 CSIS."

25 If I am in Mr. Arar's shoes,

StenoTran

1 knowing what the RCMP is up to in carrying out
2 their mandate, that he is a person of interest in
3 an investigation, and I find out that my
4 ambassador, who is supposedly trying to help me,
5 gets this statement -- and we will come to the
6 reliability of that statement -- but gets this
7 statement, brings it back to Canada, and shares it
8 with the RCMP, with whom I am the subject of
9 investigation or a person of interest, however you
10 want to frame it, and CSIS, I think I would be
11 very concerned about that.

12 Do you think it was appropriate
13 for Mr. Pillarella to bring back this statement
14 or, if it wasn't him, ISI, or anyone in DFAIT, to
15 share this information, which was obtained in the
16 course of consular functions and duties, to share
17 this information with the RCMP and CSIS?

18 MR. PARDY: Well, we go back to
19 the issue of the role of the Canadian ambassador
20 in a foreign country. There are many aspects to
21 his role. One of them, as you have noted, is to
22 provide and assist in providing consular
23 assistance to Canadians in difficulty.

24 The other role is to obtain
25 information from a foreign government of relevance

1 to other parts of the Canadian government in terms
2 of their operations. And when a foreign official
3 of this rank provides such information to a
4 Canadian ambassador, then it is quite appropriate
5 and quite normal -- it happens in any number of
6 circumstances -- that that information is then
7 shared with the appropriate parts of the Canadian
8 government that has a responsibility to deal with
9 it.

10 MR. CAVALLUZZO: Certainly I am
11 not going to do debate that point. It seems to
12 certainly be a very good public policy question.

13 But in any event, it would seem to
14 me that if that's the position of the Canadian
15 government, then the Canadian government should
16 advise -- should advise -- a Canadian detained in
17 a foreign detention centre or a jail: By the way,
18 the ambassador is not just representing your
19 interests but is also representing the RCMP, is
20 also representing CSIS, and any other organization
21 that may be interested in you.

22 Don't you think that's a fair
23 warning?

24 MR. PARDY: Well, the problem that
25 we had, of course, was our ability to communicate

1 with Mr. Arar in any specific sense. And quite
2 clearly it would have been.

3 I did the next best thing in the
4 circumstances, and that was to share the
5 information with his wife.

6 MR. CAVALLUZZO: Okay. And we are
7 going to come back to the sharing of the
8 information with the wife.

9 But do you not think -- and you
10 have 35 years' experience in the foreign service,
11 a lot more experience than I have. But as a
12 typical Canadian, what I think is my ambassador is
13 wearing two hats there, and indeed my ambassador
14 is wearing conflicting hats. On the one hand, he
15 is going to try to help me get back to Canada; and
16 on the other hand, he is the agent for the RCMP
17 and CSIS, who may be trying to investigate me, get
18 as much information on me as possible so that they
19 could charge me.

20 Do you not see that there are
21 conflicting duties there that the ambassador has
22 to --

23 MR. PARDY: I am not sure whether
24 they are conflicting duties to the extent that you
25 suggest. I think all senior officials -- and I

1 shouldn't say "senior officials", but persons in
2 positions of responsibility at a senior level, and
3 I would suggest in the private sector, in the
4 legal profession. I mean, you have duties when
5 you represent a client that could be as an officer
6 of the court, that could be balanced off in terms
7 of your duties to the client or in terms of being
8 a member of a law firm.

9 These things are not unusual in
10 the way that the world works out there.

11 What I considered important in all
12 of this was to get the information that could, in
13 effect, form the core of any trial that the
14 Syrians might subject Mr. Arar to, and to have
15 that information available to us and to try to
16 have it investigated as to whether or not we
17 could, through our own sources, prove the accuracy
18 or the inaccuracy of such information or, in this
19 case, the issue of Afghanistan in the time that
20 this was made, the validity of that information.

21 MR. CAVALLUZZO: But couldn't you
22 have done that without getting the RCMP involved,
23 getting CSIS involved? You have your own law
24 department in DFAIT in terms of international law,
25 Syrian law. You have your own ISI department that

1 can perform functions.

2 Can't you do this without the
3 conflict that I see?

4 MR. PARDY: No. I think the
5 problem you run into is, I mean, we have no
6 investigative arm, if I can use that term,
7 available to us in the Department of Foreign
8 Affairs.

9 The key issue surrounding this
10 information was whether or not Mr. Arar was out of
11 the country for a period of time, and the period
12 under consideration was almost ten years previous
13 to what we were dealing with, which in effect
14 requires professional investigators to go and see
15 whether or not they could find records of that.

16 I mean, short of going to the -- I
17 mean, do I go to the CBC and ask them to
18 investigate? No, it's not going to work.

19 And there are no resources in the
20 Department of Foreign Affairs, despite your
21 suggestion, to do this.

22 MR. CAVALLUZZO: Last question,
23 and that is: If I am a Canadian detained in a
24 Syrian jail, or any other foreign nation's jail,
25 particularly with a human rights record that is

1 not stellar, and I know up front, I know that that
2 ambassador, my Canadian ambassador, may try to
3 help me through consular services in getting me
4 back or whatever else he or she can do, but at the
5 same time know that that ambassador may share
6 information on me with the RCMP and CSIS, I may
7 refuse consular assistance.

8 The point is that Canadians should
9 be aware that the ambassador, when he is wearing
10 his or her consular hat, at the same time may be
11 sharing information about me with a police agency
12 or a security intelligence agency. Canadians
13 should know that.

14 You would agree with that,
15 wouldn't you?

16 MR. PARDY: I think you are
17 collapsing the process in this particular
18 incident.

19 Mr. Pillarella was given the
20 information, and it is my understanding that
21 Mr. Pillarella did not make the decision with
22 respect to the sharing of that information. But
23 Mr. Pillarella had a responsibility to report that
24 information to Ottawa, and the decision to share
25 was not for Mr. Pillarella to make; it was a

1 decision to be made by officials back in Ottawa.

2 MR. CAVALLUZZO: But if I am
3 Mr. Arar, I really don't care who makes the
4 decision. I don't care if it's Mr. Pillarella, or
5 Mr. Martin, indeed. The fact is that this
6 information is being shared with a police service
7 that has told you that I am a person of interest?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: It seems to me
10 that you are assisting -- DFAIT is assisting the
11 police investigation, which I would think that
12 most Canadians would be surprised at.

13 MR. PARDY: Well, I go back to
14 something that I said earlier. The availability
15 of information of this nature could have gone the
16 other way and could have been proved that the
17 comments that were being made here were wrong, and
18 that would have been helpful to Mr. Arar.

19 MR. CAVALLUZZO: Okay. I want to
20 give you the opportunity -- you said that you did
21 the next best thing, since you didn't have access
22 to Mr. Arar, that you shared the information with
23 Dr. Mazigh.

24 Why don't you tell us how that
25 came about and what in fact you told her?

1 MR. PARDY: Well, the information
2 came to me -- as you mentioned earlier, I was in
3 Beruit during this period, and on November the 3rd
4 I spoke with Ambassador Pillarella. We had a
5 lengthy conversation where he reported to me, even
6 before he did the message that we had been
7 discussing earlier. We went over the information
8 and I tried to elicit from him additional details.
9 And the fact that he was able to get a written
10 record -- I had not seen the written record but I
11 think I saw it when I came back to Ottawa or
12 subsequent to all of that.

13 My memory is that the information,
14 I shared it with Dr. Mazigh early in the New Year,
15 I think it was, when there was a suggestion that
16 the Syrians were about to proceed to trial again.

17 I had not received any information
18 back from the Canadian agencies with respect to
19 the status of their investigation of this
20 information and the reliability of it, and the
21 suggestion was that the family might have some
22 information that would be valuable here, should it
23 proceed to trial.

24 There is a written record not of
25 that particular conversation with Dr. Mazigh, but

1 later on in the summer when the issue of the trial
2 came up again, I sat down with Dr. Mazigh and her
3 brother-in-law and we discussed all of this again.

4 MR. CAVALLUZZO: Okay. Now,
5 before we leave November the 3rd, what
6 Mr. Pillarella brings back to Canada is a
7 statement which the Syrians have told Canada that
8 they miraculously got within less than 24 hours.
9 Remember they said that he just showed up at the
10 border, and by the way, within that time he has
11 given us a statement in which he has admitted to
12 certain terrorist activities.

13 And the question that I have for
14 you is that, in light of all of the circumstances,
15 including the public record that I have taken you
16 through, Exhibits P-27 and P-28, did you have any
17 views as to the reliability of the statement which
18 Mr. Pillarella brought back to Canada?

19 MR. PARDY: No. The judgment I
20 made was can we investigate this information in
21 some sort of a systematic way and establish
22 whether there is any validity to this?

23 My assessment of the information,
24 though, given the time frame, and particularly I
25 am talking about the alleged trip to Afghanistan

1 in -- I don't know whether I am allowed to give
2 the date here, whether it's in the public record
3 or not.

4 But that particular time frame --
5 you mean in terms of my own knowledge of the
6 region at that time -- was that al-Qaeda was in
7 the Sudan. There was a civil war going on in
8 Afghanistan --

9 MR. CAVALLUZZO: Let's not be
10 oblique here so that the public is aware.

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: The allegation
13 was that he was involved in Mujahedin training in
14 Afghanistan in 1993, and you are saying now that
15 in 1993, al-Qaeda was in the Sudan, was not even
16 in Afghanistan?

17 MR. PARDY: Well, there could have
18 been some elements in Afghanistan going back, but
19 I think after the Soviets pulled out in 1989, then
20 there was -- I think most people would agree that
21 there was a civil war under way, and the Mujahedin
22 of course were the freedom fighters --

23 MR. CAVALLUZZO: That's right.

24 MR. PARDY: -- if you want to use
25 that term during the period that the Soviets were

1 there and were strongly supported in their efforts
2 by various western governments.

3 So the value that I attach to the
4 allegation that Mr. Arar might have been in
5 Afghanistan at that point of time, it didn't ring
6 any bells whatsoever. I just did not see that as
7 being an important element.

8 And my view was that it was
9 important that people understand the time context
10 of that particular piece of information.

11 MR. CAVALLUZZO: I guess the other
12 aspect to this -- and that is very important what
13 you have just stated concerning the political
14 conditions in Afghanistan. And of course you
15 bring to bear a great deal of experience. You
16 spent some time dealing with Afghanistan in the
17 late 1980s.

18 Isn't that correct?

19 MR. PARDY: Yes, and previously I
20 had visited the country earlier as well.

21 MR. CAVALLUZZO: I guess the only
22 other question I would have relating to that
23 statement that Mr. Pillarella brought back is
24 whether you considered the possibility that it
25 might be the product of torture in light of the

1 public record?

2 MR. PARDY: All information that
3 comes from governments, I look at it in a fairly
4 sceptical way, unless I can prove it by some
5 independent means that I have some reliability in,
6 yes.

7 MR. CAVALLUZZO: Okay. And
8 presumably, your scepticism, being a fairly
9 seasoned professional your scepticism arises with
10 a lack of human rights in a particular country?

11 MR. PARDY: Yes, I think
12 generally. Not so much the level of human rights
13 here, it's really the conduct of a government
14 generally.

15 MR. CAVALLUZZO: If we continue on
16 then in terms of the chronology, we are still in
17 Volume 2. And we can move to tab 186.

18 This is an e-mail dated November
19 7th from Jonathan Solomon, who we understand was
20 in ISI at the time, and you told us yesterday was
21 a lawyer.

22 He states:

23 "Gar, I understand from
24 Reynald..."

25 I understand that Reynald is the

1 head of the communications division at DFAIT?

2 MR. PARDY: He was the desk
3 officer responsible for this case in our media
4 relations division, yes.

5 MR. CAVALLUZZO: All right.

6 "... that a reporter has
7 called and cited diplomatic
8 sources as having told him
9 that the Canadian Ambassador
10 to Syria has visited Arar and
11 that the Syrians gave our
12 Embassy a report on the
13 progress/completion of their
14 investigation into Arar."

15 It goes on:

16 "While I am concerned about
17 how he received this
18 information, we need to craft
19 an amendment to our Arar
20 Q&A."

21 Is this the first, if I can put it
22 nicely, leak that we see concerning Mr. Arar's
23 file that you are aware of?

24 MR. PARDY: No. I think there was
25 an earlier report in The Globe and Mail in

1 October -- and I would need to go back -- where
2 there was a suggestion of use of information that
3 generally I didn't believe was in the public
4 domain.

5 But I would have to go back and
6 check the records on that, yes.

7 MR. CAVALLUZZO: But it would be
8 the first or second leak.

9 MR. PARDY: Oh, yes. At this
10 point it's very early on in the matter, yes.

11 MR. CAVALLUZZO: And obviously,
12 once again being a longstanding professional in
13 this regard, you would have concerns about anybody
14 inside the Canadian government leaking information
15 about Mr. Arar at this point in time?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: Tab 189
18 captures -- before we do that, why don't we go to
19 167. This really confirms your conversation that
20 you had with Dr. Mazigh concerning the November
21 3rd visit.

22 This is 167. It's dated November
23 3rd and it's an e-mail to you.

24 Dr. Mazigh says:

25 "Good afternoon.

1 I hope that you are fine.
2 You promised me that you will
3 receive a report from
4 Damascus regarding the
5 meeting of today between
6 Canadians and Syrians ..."

7 That presumably confirms the
8 conversation you had with her from Beirut and she
9 is talking about that meeting.

10 Or am I incorrect in that?

11 MR. PARDY: No, I did not have a
12 conversation with her from Beirut. This came
13 in -- I came back, I think, on the night of the
14 6th, and I think it was some point subsequent to
15 my return to Ottawa that we had a conversation,
16 yes.

17 MR. CAVALLUZZO: Did she ever get
18 a copy of that report?

19 I guess she didn't because that
20 would have been top secret.

21 MR. PARDY: Not from me,
22 certainly.

23 MR. CAVALLUZZO: Then if we go to
24 tab 189, which attests to your meeting with -- a
25 conversation at least you had with Bassam Arar?

1 MR. PARDY: I would assume so.
2 There is no indication in the message of that.

3 MR. CAVALLUZZO: It is dated --
4 well, I guess for privacy reasons the name is
5 blacked out. But in any event, it would indicate
6 you talked to somebody in Mr. Arar's family
7 concerning the file?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: I apologize for
10 raising his name.

11 MR. PARDY: Well, I think we had
12 said earlier that he was the principal contact
13 during this period in Canada, yes.

14 MR. CAVALLUZZO: Okay.

15 At the next tab, 190, there are a
16 series of e-mails of your communications with
17 Dr. Mazigh concerning, I guess, the plans to
18 return home. And she is going to be returning
19 home very shortly thereafter.

20 Tab 196 is also a series of
21 e-mails concerning Dr. Mazigh's trip back to
22 Canada with her two children.

23 Rather than taking you through
24 every e-mail related to the trip, because there
25 are numerous e-mails in here of your

1 communications with her, could you tell us, in
2 effect, what efforts you expended in terms of
3 making her trip back to Canada from Tunis as easy
4 as possible in light of all of the circumstances,
5 unfortunately, in which she found herself?

6 MR. PARDY: Well, the principal
7 one I think was to ensure that she was able to
8 leave Tunis. As you know, she was interviewed by
9 Tunisian officials prior to her departure --

10 MR. CAVALLUZZO: That's a very
11 important point. Unfortunately, prior to her
12 departure from Tunis, we have a young woman with
13 two very small children, whose husband has been,
14 to put it nicely, deported to Syria and is in
15 certain conditions in Syria. She is returning to
16 Canada and she is interviewed by Tunisian
17 officials.

18 Did you ask, or did you inquire,
19 as to what gave rise to the interview of
20 Dr. Mazigh by Tunisian officials?

21 MR. PARDY: No. But I would
22 assume by this time of course there was a lot of
23 material in the press. And the fact of her
24 Tunisian citizenship was in the media, and the
25 fact that she was resident in Tunisia, and the

1 fact that she needed an exit permit from the
2 Tunisian authorities in order to leave.

3 So all of this information was
4 available, I think, from public sources for them.
5 That's all I am aware of.

6 MR. CAVALLUZZO: Did any Canadian
7 officials attempt to assist Dr. Mazigh during this
8 interviewing or questioning by Tunisian officials?

9 MR. PARDY: No, I think -- my
10 recollection is that that particular interview --
11 well, there were two things: One, she went to the
12 appropriate office of the Tunisian government in
13 order to get the exit permit, and in that process,
14 for want of a better word, the people with the
15 large moustaches intercepted her and spoke to her
16 for a period of time and then was allowed to
17 leave.

18 But when that was told to us, we
19 instructed the embassy in Tunis that at the point
20 of departure at the airport that they be there to
21 ensure that there would be no problems in terms of
22 her departure.

23 MR. CAVALLUZZO: Her plane left
24 from Tunis, and it went through Charles de Gaulle
25 Airport in Paris. Did you have anybody --

1 MR. PARDY: Yes, we arranged for
2 the senior Canadian consular officer in Paris to
3 be at the airport.

4 The point that you registered, a
5 young woman travelling with two very young kids in
6 these circumstances, even in normal times, can be
7 very difficult, and we tried to assist her to the
8 maximum.

9 MR. CAVALLUZZO: Okay. And then
10 she flew from Paris to Dorval Airport in Montreal?

11 MR. PARDY: To Montreal, yes.

12 MR. CAVALLUZZO: And did you have
13 anyone --

14 MR. PARDY: No, but we had alerted
15 the Immigration authorities at Montreal that she
16 was coming through, because through a mistake we
17 had put the wrong date on the emergency passport
18 that we had provided her son.

19 MR. CAVALLUZZO: Do you know if
20 she had any trouble at the Montreal airport?

21 MR. PARDY: No, I am not aware of
22 that -- no, sorry.

23 After the fact, I have heard that
24 they -- that somebody had gone through her luggage
25 or something like that? But having gone through

1 Canadian Customs myself, going through luggage is
2 not something that --

3 MR. CAVALLUZZO: But do you know
4 why they went through her luggage?

5 MR. PARDY: I have no idea, no. I
6 only learned about that after the fact.

7 I think -- and I am not quite sure
8 where I heard of it. It wasn't from Dr. Mazigh
9 because she came up to Ottawa shortly after her
10 arrival and we met, and I do not recall that she
11 raised it with me in terms of the discussions that
12 we had.

13 MR. CAVALLUZZO: Okay. Just to
14 give time context, this would have been November
15 14th, the middle of November, when Dr. Mazigh
16 returned to Canada?

17 MR. PARDY: Yes, I think that was
18 a Thursday or Friday, if I remember correctly,
19 yes.

20 MR. CAVALLUZZO: Then if we move,
21 Mr. Pardy, to tab 202, this is an e-mail from
22 Jonathan Solomon once again, dated November 15th,
23 which included another e-mail from Reynald Doiron
24 to a number of individuals, and the message is:

25 "As indicated during our

1 phone conversation at lunch
2 time, US side indicated to
3 Canadian side yesterday,
4 during Powell-Graham meeting,
5 that 'US government' had
6 indicated to 'Canadian
7 government' reasons/rationale
8 behind Arar's deportation to
9 Syria. It does not look,
10 however, that
11 reason/rationale was given by
12 State to DFAIT, but rather
13 from one law enforcement
14 agency to their Canadian
15 counterpart."

16 We know -- and we are going to be
17 questioning Mr. Graham on Monday about this
18 meeting he had with Mr. Powell on November 14th.

19 But in terms of this statement,
20 that the reason/rationale was not given by State
21 to DFAIT but rather from one law enforcement
22 agency to their Canadian counterpart, do you know
23 what is being said in this? What is the meaning
24 of that?

25 MR. PARDY: No, I do not know. I

1 mean, I can read the words, and the words are
2 fairly obvious. I have not spoken to Mr. Doiron
3 in terms of this particular message, in terms of
4 trying to find out, and it doesn't really tell the
5 source of his -- where his information came from.
6 He certainly would not have been present during
7 the meeting between Mr. Graham and Mr. Powell.

8 My recollection is that the
9 meeting itself was in Mexico? I think this was on
10 the margins of the trilateral for the NAFTA
11 agreement, although I could stand to be corrected
12 for that.

13 I think the next meeting, I am
14 trying to think, was in Ottawa, and then there was
15 one subsequent to that in Prague.

16 I am trying to see whether --
17 yes -- whether I was even copied on this message.
18 I am trying to do a quick read here of all of
19 this.

20 MR. CAVALLUZZO: Well, if you
21 can't help us there, what you can help us with is
22 obviously you cannot tell us what Mr. Powell told
23 to Mr. Graham in that meeting that was held on
24 November the 14th. But are you aware of any
25 public statements that Mr. Powell made at this

1 time concerning how Mr. Arar ended up in Syria
2 from the United States?

3 MR. PARDY: I am trying to -- I
4 don't think there was a public statement by
5 Mr. Powell at this time. I do not believe. And I
6 know that Mr. Graham was interviewed by the media
7 at this time, and he was very circumspect in what
8 he said Mr. Powell told him.

9 MR. CAVALLUZZO: We will deal with
10 that with Mr. Graham on Monday.

11 If you go to 212, which is the
12 letter --

13 MR. PARDY: Can I just make one
14 other comment on that document?

15 MR. CAVALLUZZO: Certainly.

16 MR. PARDY: When you go to
17 paragraph 2 in the November 15 from Mr. Doiron,
18 the work that we did in the spring of 2003 was in
19 part precipitated by this. This is the work
20 associated with the deck.

21 MR. CAVALLUZZO: Right. And this
22 is the interdepartmental communication that you
23 talk about --

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: -- in the deck in

1 order that Canada might speak with one voice in
2 dealing with foreign countries.

3 Tab 212 is the last document in
4 Volume 2 that we will refer you to.

5 I guess the important point here
6 is the e-mail at the bottom. This is from Scott
7 Heatherington's computer, but the e-mail at the
8 bottom indicates that:

9 "Minister Graham has decided
10 over the weekend to call by
11 telephone his Syrian
12 counterpart sometime Tuesday
13 morning prior to Cabinet...
14 Can you arrange for this call
15 to take place?"

16 What we do know is that on
17 November the 18th Mr. Graham made a phone call to
18 the Minister of Foreign Affairs in Syria relating
19 to Mr. Arar's situation in Syria.

20 We will move then to Volume 3.

21 Mr. Commissioner, it's eleven
22 o'clock. Why don't we go to Volume 3 but before
23 opening Volume 3 --

24 THE COMMISSIONER: Whatever suits
25 you. Do you want to take a break now?

1 MR. CAVALLUZZO: I am fine, I can
2 keep going. It's really up to the witness.

3 THE COMMISSIONER: Why don't we go
4 to 11:15. We will break from 11:15 to 11:30 and
5 then sit from 11:30 to 1:00. That will sort of
6 divide it up.

7 MR. CAVALLUZZO: Thank you.
8 Do you have Volume 3 in front of
9 you, Mr. Pardy?

10 MR. PARDY: Yes, I do.

11 MR. CAVALLUZZO: We are at tab
12 228, and we are now at November 25th.

13 Before we go to this tab, I am
14 advised by government counsel that I can ask you
15 two questions relating to a visit to Syria.

16 The first question is: I
17 understand that officials from CSIS visited Syria
18 some time in November 2002. Is that correct?

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: However, I
21 understand that the official from CSIS did not
22 meet Mr. Arar during that visit. Is that correct?

23 MR. PARDY: That is correct.

24 MR. CAVALLUZZO: And that is the
25 extent of the --

1 THE COMMISSIONER: That is the
2 extent of the information over which the
3 government doesn't claim NSC.

4 MR. CAVALLUZZO: That's correct.

5 MS McISAAC: I should indicate,
6 sir, that as part of our discussions with counsel
7 for Mr. Arar regarding the documents that were at
8 issue, it may be that we would be prepared to
9 allow additional information to be discussed. But
10 I understand at the moment Mr. Arar's counsel does
11 not believe the disclosure would be fair and
12 doesn't wish to have it made.

13 MR. CAVALLUZZO: Well, Commission
14 counsel, in light of the discussion, agrees with
15 Ms Edwardh that there should be more information
16 given rather than what the government is proposing
17 to give at the present time.

18 So I think that we would agree
19 that the information proposed to be disclosed
20 leaves an unfair impression, and we are in the
21 middle of discussions on that point. Hopefully we
22 can encourage government to release a little more.

23 THE COMMISSIONER: Right. And
24 what I can say for the public is that we have
25 heard in camera the complete evidence.

1 That would be a fair statement,
2 Mr. Cavalluzzo?

3 MR. CAVALLUZZO: Yes, complete
4 evidence, and certainly thoroughly and rigorously
5 questioned.

6 THE COMMISSIONER: Right. So
7 those are the two questions to which there is no
8 objection.

9 I take your comment, Ms McIsaac.

10 MR. CAVALLUZZO: If we go to --

11 MS EDWARDH: Excuse me,
12 Mr. Cavalluzzo, if I might just have a moment.

13 I didn't know that these two
14 factual matters were going to be put on the record
15 this morning.

16 THE COMMISSIONER: The two
17 questions that Mr. Cavalluzzo asked.

18 MS EDWARDH: Yes. And Ms McIsaac
19 had agreed that these two matters of fact could be
20 put before you, Mr. Commissioner.

21 In light of our discussion last
22 evening and in light of my expectation that there
23 would be an attempt by Ms McIsaac and her team to
24 get further instructions from her principals, I
25 must admit I am surprised because it's not only --

1 it's helpful to have some information about the
2 visit, but the second answer, that CSIS went to
3 Syria and did not meet with Mr. Arar, is
4 fundamentally misleading, and I am deeply troubled
5 that she can't then go on and indicate other -- I
6 mean, it's not any more subject to national
7 security than what she has admitted.

8 This enures to the government's
9 benefit and misleads the public about Mr. Arar.

10 MR. CAVALLUZZO: What I can say in
11 response to that is there is a good deal more
12 information and no conclusion should be drawn by
13 anybody in respect of those two questions.

14 THE COMMISSIONER: Right. And I
15 think obviously it's a difficult matter for us to
16 deal with when we get, as here, claims that don't
17 permit the full body of evidence to be put
18 forward.

19 I can just reassure the public
20 that we have, in camera, heard all of the
21 evidence. I will be reporting fully on it in
22 reaching my conclusions on the basis of all of the
23 evidence.

24 I understand your point,
25 Ms Edwardh.

1 Carry on.

2 MR. CAVALLUZZO: Thank you.

3 If we go to tab 228, we see an
4 e-mail dated November the 25th. This is a
5 direction from you to Mr. Martel, who is the
6 consular officer who visits Mr. Arar in Damascus,
7 and this just represents your continuing interest
8 in asking Mr. Martel to get certain information
9 relating to Mr. Arar, particularly his medical
10 condition and overall assessment of his wellbeing
11 and so on?

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: Let's move to tab
14 229. We have a consular report of the fourth
15 visit to Mr. Arar by Mr. Martel. This was the
16 visit that took place on November 26th.

17 One thing I notice in these
18 consular visits, and ask you if this is the normal
19 practice, and that is it would appear that
20 Mr. Martel spends time with, as you refer to them,
21 the men with moustaches prior to seeing Mr. Arar,
22 and sometimes spends more time with the men with
23 moustaches than he does with Mr. Arar.

24 Is that normal in this kind of
25 situation?

1 MR. PARDY: In countries like
2 Syria, that is quite normal. When you make visits
3 to -- well, if you look at the report from
4 Ms Girvan in terms of the MDC visit, of course she
5 had no contact or any discussions with the
6 officials inside the prison.

7 But certainly in this context, we
8 consider it important that these people are
9 willing to engage in a conversation with
10 Mr. Martel, and it -- how can I put it? You know,
11 it's not conclusive in any significant way, but
12 it's helpful that -- I mean, one of the things of
13 doing consular visits is to, if I can use the
14 term, humanize the individual in the eyes of the
15 people, of his jailers, and the fact that they are
16 outsiders, the fact that there is family deeply
17 concerned about him, and those kinds of things,
18 that kind of information available, we find it
19 very helpful.

20 MR. CAVALLUZZO: Okay. And the
21 only question that I would ask -- and, please, if
22 you have any other comments that you want to make
23 in respect of this fourth visit, please do.

24 The question that I would have
25 relates to paragraph number 7, and it states:

1 "Maher appeared to be in good
2 physical and mental health.
3 Officials made him stand up
4 to show he was well being
5 taken care of. No change
6 could be seen in his state of
7 health from that of the last
8 visit. Upon being questioned
9 on his current health
10 compared to the day he was
11 first visited he indicated he
12 had been afraid at the
13 beginning as the
14 investigation was more
15 intensive."

16 That statement there, even though
17 it's being made in front of the men with
18 moustaches, certainly is consistent with what I
19 was asking you about before; that is, the initial
20 period where the Syrians may hold somebody
21 incommunicado, extract the information they want,
22 and then disclose his whereabouts.

23 Isn't that correct?

24 MR. PARDY: That is correct. And
25 it's also, I think, consistent with the comments

1 that Mr. Arar made publicly after his return to
2 Canada.

3 MR. CAVALLUZZO: It goes on and it
4 says:

5 "He seemed more relaxed and
6 he said his only moment of
7 joy was when he received our
8 visit."

9 And then finally it says:

10 "He continued to say he was
11 being treated well and when
12 prompted by..."

13 If I could put in "by the men with
14 moustaches":

15 "... he said 'my brothers are
16 treating me very well.'"

17 Now, that prompt I think is
18 obviously a signal to you that Mr. Arar is not
19 exactly in a situation of true freedom of speech?

20 MR. PARDY: No. I can mention at
21 this point -- as you know, the range of behaviour
22 of officials in prison sometimes do not vary from
23 country to country. And one can look at a
24 commonality.

25 I had very direct experience with

1 another case in the Middle East in which a
2 Canadian had been involved, and we subsequently
3 were able to return his release and his return to
4 Canada. I spent a considerable amount of time
5 with that individual in terms of the procedures
6 that were being used, and this was previous to
7 Mr. Arar's case.

8 MR. CAVALLUZZO: Right.

9 MR. PARDY: And I was using some
10 of the signposts that were available to me in that
11 case to measure this information.

12 MR. CAVALLUZZO: Right. And was
13 that -- I am not going to ask you the individual
14 involved. But was that a country that was in the
15 Middle East?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: And was its
18 initials S.A.?

19 MR. PARDY: Yes. It was -- yes.

20 MR. CAVALLUZZO: All right. We
21 can move on.

22 If we could move on from the
23 fourth consular visit to November 28th, and this
24 is tab 233.

25 This is a confidential message to

1 the Head of Mission at Damascus, of course
2 Mr. Pillarella, with copies to the Deputy
3 Minister, GMD, the head of security and
4 intelligence, Mr. Heatherington, Solomon, and
5 yourself, and Ms Pastyr-Lupul.

6 In paragraph 2, much of this is
7 redacted, so I just want to ask you about a couple
8 of sentences here.

9 In paragraph 2 it states:

10 "In view of this information
11 believe that it would be
12 appropriate for you to seek
13 another meeting with General
14 Khalil in order to further
15 explore Syrian intentions."

16 Just to clarify for us, is this a
17 message coming from you to Mr. Pillarella?

18 MR. PARDY: Yes, this is the
19 format.

20 Unfortunately I -- is there any
21 indication of date here?

22 MR. CAVALLUZZO: Well, the date
23 that we are putting to it is November 28th.

24 MR. PARDY: I do not -- I think it
25 might have been a little earlier.

1 MR. CAVALLUZZO: Okay. We may be
2 incorrect.

3 MR. PARDY: Yes. I think it's
4 certainly in November, yes.

5 MR. CAVALLUZZO: It goes on in
6 that paragraph 2:

7 "At the same time, we balance
8 that view against the
9 openness with which the
10 Syrians have permitted
11 consular access and the
12 increasingly easy format for
13 Leo's meetings."

14 Finally, in the third paragraph it
15 states:

16 "At this stage would suggest
17 that you simply explore
18 further the intentions of the
19 Syrian authorities and
20 whether or not their
21 investigation is coming to a
22 conclusion."

23 So, obviously in that you are
24 seeking as much information as possible relating
25 to their investigation which would be of

1 importance, obviously, to you in fulfilling your
2 objectives?

3 MR. PARDY: And that was the key
4 consideration in all of these discussions.

5 MR. CAVALLUZZO: Then you go on,
6 in the last two sentences, to state:

7 "We would want this
8 information as soon as
9 possible as we will want to
10 raise our future approach on
11 the case with the Minister.
12 In all of this, would
13 appreciate your views as to
14 whether or not a direct
15 appeal by the Government of
16 Canada for the release of Mr.
17 Arar and return to Canada on
18 humanitarian and
19 compassionate grounds is
20 worth considering at this
21 time."

22 So at this time, some time in late
23 November, you are considering the option of a
24 direct appeal to the Syrian government?

25 MR. PARDY: Yes.

1 THE COMMISSIONER: Is that a good
2 time then, Mr. Cavalluzzo?

3 MR. CAVALLUZZO: Yes, it is.

4 THE COMMISSIONER: All right. We
5 will break to 11:30.

6 THE REGISTRAR: Please stand.

7 --- Upon recessing at 11:15 a.m. /

8 Suspension à 11 h 15

9 --- Upon resuming at 11:37 a.m. /

10 Reprise à 11 h 37

11 THE REGISTRAR: Please be seated.

12 Veuillez vous asseoir.

13 THE COMMISSIONER: Mr. Cavalluzzo.

14 MR. CAVALLUZZO: Thank you,
15 Mr. Commissioner.

16 Just a question. In November of
17 2002, you stated that you sought information from
18 Dr. Mazigh and Mr. Arar's family concerning
19 Mr. Arar.

20 Do you recall that?

21 MR. PARDY: No, I didn't say
22 November. I said early in 2003.

23 MR. CAVALLUZZO: Right.

24 MR. PARDY: Roughly at the time
25 that the Syrians made suggestions about a possible

1 trial.

2 MR. CAVALLUZZO: Right. And do
3 you recall the kind of information you were
4 seeking from Mr. Arar's family?

5 And of course at this time he is
6 in Syria.

7 MR. PARDY: Right. This relates
8 to the 1993 information. It was very specific to
9 that, and whether the family had any records that
10 related to that particular period in Mr. Arar's
11 life.

12 MR. CAVALLUZZO: And did they ever
13 bring you any records?

14 MR. PARDY: No, they did not. I
15 returned to the issue in August 2003 again, as I
16 said, because at that point the threat of a trial
17 was much more imminent at that point, yes.

18 MR. CAVALLUZZO: We will come to
19 that because it's even to the point of retaining
20 lawyers in Syria at that point in time in terms of
21 the upcoming trial.

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: If we can
24 continue on then with Volume 2 --

25 THE COMMISSIONER: Volume 3?

1 MR. CAVALLUZZO: No, it's
2 Volume -- excuse me, Volume 3, at tab 240.

3 We are now into December of 2002.

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: This is an e-mail
6 from you to Mr. Pillarella?

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: And what is this
9 about?

10 MR. PARDY: We had received
11 information that they were, I think, trying to
12 make another consular visit.

13 The second paragraph, I think,
14 makes reference indirectly to the suggestion that
15 this related in some way to the Muslim Brotherhood
16 and the problems that Mr. Arar was having, and I
17 was asking the ambassador for his views with
18 respect to the Muslim Brotherhood in Syria at that
19 point.

20 MR. CAVALLUZZO: Right. And there
21 was a period of time when there was some
22 suggestion by the Syrians that Mr. Arar was
23 associated with the Muslim Brotherhood and then
24 that changed over time to al-Qaeda, to nothing?

25 MR. PARDY: Yes, and it morphed

1 back and forth there. They moved back and forth,
2 those two points of the Brotherhood.

3 And the other point I think it is
4 important to realize is that in some instances
5 there was direct collaboration between the
6 Brotherhood and al-Qaeda.

7 MR. CAVALLUZZO: If you go to 242,
8 this relates to a question from a journalist
9 concerning a consular visit. Do you see that?

10 And halfway down:

11 "Myra:

12 Question from the journalist:
13 Gar already told me we didn't
14 know where Mr. Arar was being
15 held in Syria (the prison).
16 Do we know if our Consular
17 official has been meeting Mr.
18 Arar at the same place during
19 his visits?"

20 And so on and so forth.

21 So we don't know at this point in
22 time -- and we are in December of 2002 -- that
23 Mr. Arar at that time is being held in the
24 Palestine Branch?

25 MR. PARDY: No, I think we knew

1 that, but the geographic location is what is at
2 issue here.

3 I think the question in our minds
4 was that Mr. Arar was brought to the possibility
5 of another location, and we were not absolutely
6 certain -- we had no information as to the place
7 where he was being held.

8 MR. CAVALLUZZO: Okay. At tab
9 243, the next day, December the 6th, and this is
10 from -- the CAMANT is December the 6th, but the
11 e-mail is dated December the 3rd.

12 This would appear to be ongoing
13 questions concerning Mr. Arar's status and press
14 lines, media lines, and whatnot?

15 MR. PARDY: I think it's an
16 indication, from the level of daily interest, on
17 this matter by Mr. Graham's office.

18 MR. CAVALLUZZO: Okay. Tab 246,
19 there is a message from you.

20 It says:

21 "Pardy called Pastyr-Lupul
22 from BC today. He is away
23 this week on business.
24 He asked if you can follow up
25 on 2 matters:

1 a) Would you be allowed to
2 take a digital photo of Maher
3 on your next visit, that you
4 can send to us via e-mail."

5 Obviously this is to Mr. Martel,
6 the consular official that is visiting Mr. Arar.

7 And secondly:

8 "b) Would the Syrians allow
9 a visit by Mr. Arar's wife,
10 if she is willing to come to
11 Syria?"

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: And I understand
14 that as far as the digital photo is concerned, the
15 answer turned out to be no?

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

17 MR. CAVALLUZZO: We will come to
18 the visit by Dr. Mazigh subsequently.

19 On December the 10th, if we go to
20 tab 248, we come to the fifth consular visit,
21 which occurs on December 10th.

22 Is there anything in this consular
23 visit that gave you concern, that was out of the
24 ordinary or that, indeed, any way you can help us
25 in terms of understanding what was going on at

1 that time?

2 MR. PARDY: No. I think the
3 important thing in this particular message was
4 that Mr. Martel was able to see Maher almost
5 immediately upon arrival. As you know from his
6 reports on the previous visits, the Syrians
7 established that -- I mean, almost an interview
8 with Mr. Martel -- made it a condition almost for
9 Mr. Martel to see Mr. Arar, and he spent some
10 minutes with Syrian officials before Mr. Arar were
11 to arrive. In this case he was taken straight in.

12 MR. CAVALLUZZO: Okay. And it
13 says here in the second paragraph:

14 "He asked to be told again
15 about the Prime Minister's
16 press attache's story."

17 We will hear from Mr. Martel that
18 Mr. Arar liked to be kept abreast of what was
19 going on in Canada during this period of time?

20 MR. PARDY: Yes, we gave him
21 copies of Canadian newspapers and magazines.

22 This was one of the first
23 indications that we had that that material was
24 being given, because I think we had to give it to
25 the guards and they said that they would

1 scrutinize it and then make a decision whether it
2 could go to Mr. Arar.

3 This was certainly an indication
4 that the material was made available to Mr. Arar.

5 MR. CAVALLUZZO: Did you know that
6 he never got to read it because of the location in
7 which he found himself?

8 MR. PARDY: No, I didn't know
9 that, no.

10 MR. CAVALLUZZO: Okay.

11 MR. PARDY: No.

12 MR. CAVALLUZZO: Tab 253 is from
13 Mr. Pillarella. It's dated December 12th. It's
14 to Michael Chesson.

15 Could you remind us again of
16 Mr. Chesson's position?

17 MR. PARDY: Yes. He was the desk
18 officer for Syria in the political division.

19 MR. CAVALLUZZO: I guess this is
20 Mr. Pillarella's response to you when you are
21 asking questions as to the nature and extent of
22 the activities of the Muslim Brotherhood?

23 MR. PARDY: I would need to
24 review --

25 MR. CAVALLUZZO: Particularly in

1 the second paragraph.

2 MR. PARDY: No. He sent me a
3 separate message with respect -- he just makes
4 reference to the fact that I had asked for
5 information about the Muslim Brotherhood, and you
6 will see there that he said:

7 "See my reftel on Muslim
8 Brotherhood."

9 There was a separate message on
10 his comments on the Muslim Brotherhood.

11 MR. CAVALLUZZO: I guess the
12 important comments that I would ask you to comment
13 on would be in the second paragraph.

14 In the middle line it says:

15 "Following his interrogation,
16 Arar is considered to be a
17 case of internal security
18 linked it seems to the Muslim
19 Brotherhood, not to
20 al-Qaeda."

21 And as you said, it says:

22 "... (see my reftel on
23 Muslim Brotherhood) and
24 therefore the Syrians will
25 act with extreme prudence

1 having in mind their national
2 interest as the foremost
3 priority. Should they
4 consider that by releasing
5 Arar and returning him to
6 Canada he could still
7 represent a potential menace
8 for Syria, they will likely
9 refuse to release him."

10 And did you agree with that
11 assessment of Mr. Pillarella: that if the Syrians
12 viewed him to be a menace to Syria, that they
13 would not release him?

14 MR. PARDY: It's not a question of
15 whether I agreed with it or not. It was an
16 assessment done by our ambassador who was closest
17 to the action on this with respect to the possible
18 decisions by the Syrian authorities. And he
19 stated for us -- I mean, the question for us was:
20 How do you get around that assessment, or whether
21 that assessment was correct in any absolute way?

22 MR. CAVALLUZZO: But certainly you
23 would have deferred to the judgment of
24 Mr. Pillarella, who basically said to you that
25 they won't release him if they think he is a

1 menace to Syria?

2 MR. PARDY: He is closest to the
3 action and, yes, that is one of his roles, is to
4 provide us with that kind of an assessment.

5 MR. CAVALLUZZO: We had referred
6 earlier to a phone call that Mr. Graham was going
7 to make to the Syrian Foreign Minister in late
8 November, and we see in the first paragraph that
9 for whatever reason that phone call was cancelled?

10 MR. PARDY: Yes, that is correct.

11 MR. CAVALLUZZO: And it
12 subsequently took place in January?

13 MR. PARDY: That's right.

14 MR. CAVALLUZZO: If we can go now
15 to 258, this is another secret message from
16 Damascus to a number of people at headquarters,
17 including yourself.

18 What is this e-mail about
19 concerning Colonel Saleh Majed?

20 MR. PARDY: I think he was just
21 informing the embassy. As you know, we were
22 trying to see Mr. Arar as often as we possibly
23 could, but all visits were subject to the
24 agreement of the Syrian authorities. And he said
25 that it was not possible.

1 This was the first indication that
2 we had that frequent -- and I will quote from the
3 message:

4 "He also indicated that
5 frequent visits like the ones
6 we have so far been offered
7 were unusual."

8 And an indication that maybe the
9 unusual would not continue.

10 MR. CAVALLUZZO: Let us give some
11 political context to this. We are now in the
12 middle of December of 2002.

13 Would it be fair to say that at
14 this point in time that the second war in Iraq or
15 the second Gulf War is on the horizon?

16 MR. PARDY: Not on the horizon at
17 this point, but certainly a lot of issues were
18 being debated internationally.

19 I am trying to remember when the
20 Security Council was involved with respect to
21 another resolution that would give authority, say,
22 for a coalition to go in. But there was a lot of
23 activity, and certainly the international
24 community was balancing as to where we would go.

25 But it was some time before, I

1 think, anybody had a sense that the United States
2 was going to go into Iraq.

3 MR. CAVALLUZZO: Well, certainly
4 Mr. Powell's famous address to the U.N. was on
5 February 5th of 2003.

6 MR. PARDY: That's right.

7 MR. CAVALLUZZO: So there is that
8 period of time where people are seriously looking
9 at that.

10 MR. PARDY: Oh, absolutely.

11 MR. CAVALLUZZO: And presumably
12 the Syrians --

13 MR. PARDY: What I was commenting
14 on was the specific thing that you said in your
15 question here.

16 MR. CAVALLUZZO: And I guess the
17 other thing at this point in time -- well, we will
18 come to that in terms of the specifics later.

19 If we now go to Exhibit P-85,
20 Volume 3, and look at tab 107.

21 THE COMMISSIONER: P-85?

22 MR. CAVALLUZZO: Yes, P-85, which
23 is the redacted loose exhibits, Volume 3 of 4.

24 THE COMMISSIONER: I have it.

25 MR. CAVALLUZZO: This is a secret

1 information memorandum for the Minister of Foreign
2 Affairs, as well as other cabinet ministers
3 associated with DFAIT. It's dated December 16th,
4 2002, and it's authored by Jonathan Solomon, once
5 again, who is with the S&I Foreign Intelligence
6 Division.

7 I would refer to paragraph number
8 2 wherein it states:

9 "The Canadian embassy in
10 Syria has been granted
11 consular access to Maher Arar
12 and officials have visited
13 him on several occasions.
14 However, visits for this week
15 and next have been put on
16 hold, and there has been some
17 speculation by our embassy in
18 Damascus that this may be
19 linked to ... and possible
20 confusion with 'consular'
21 access."

22 And then on page 5 -- so we are
23 seeing that consular access, as you indicated, is
24 becoming a little problematic at that point in
25 time?

1 MR. PARDY: Yes, that's reflected
2 here.

3 MR. CAVALLUZZO: And in paragraph
4 5, which I think is important, it says:

5 "The Syrians appear to view
6 these connections as
7 sufficient grounds to detain
8 Arar, although
9 activities. It is clear that
10 the Syrian standard of what
11 constitutes a detainable
12 terrorist is lower than
13 ours."

14 And you would no doubt agree with
15 that?

16 MR. PARDY: Yes. I should just
17 mention that I was out of town during this whole
18 period when this memo was under preparation.

19 MR. CAVALLUZZO: Okay. I guess
20 that's something to reflect on, isn't it?

21 If their threshold for detaining
22 somebody for terrorism is lower than ours, and
23 they release Mr. Arar in October of 2003, that is
24 an important comment, one would think, in terms of
25 Mr. Arar's status?

1 MR. PARDY: Yes, and in terms of
2 subsequent issues associated with consular access
3 to Mr. Arar, quite clearly. And as I mentioned
4 earlier, this was the first indication that they
5 were backing away from their initial commitment on
6 October the 22nd.

7 MR. CAVALLUZZO: That commitment
8 on October the 22nd was you could see him every
9 three to four days?

10 MR. PARDY: That's correct.

11 MS EDWARDH: Excuse me,
12 Mr. Commissioner, I don't mean to interrupt my
13 friend, but since we know on the basis of an
14 admission of fact put forward this morning that
15 CSIS went to Syria in November, and if the comment
16 that is blacked out is speculation that the visit
17 of CSIS may have disrupted consular access, it
18 would seem to me there could be no possible basis
19 to not put those words in here, given the
20 admission that has been made this morning.

21 MS McISAAC: I don't actually
22 recall what that refers to. It may actually be
23 something else, but we will look into that.

24 THE COMMISSIONER: Thank you,
25 Ms McIsaac. I can't recall either, actually.

1 MR. CAVALLUZZO: My recollection
2 is that it does relate to something else, which I
3 wouldn't have thought should be -- I don't think
4 should be protected by national security.

5 But in any event, government
6 counsel will review it. I think we can all agree
7 on that.

8 THE COMMISSIONER: Thank you for
9 that.

10 MR. CAVALLUZZO: If we could move
11 on, I am back once again to the chronology in
12 Volume 3, Mr. Pardy, at tab 261.

13 We are still in December of 2003,
14 and we see that there is a memorandum, an internal
15 memorandum, to MINA, which we know is the
16 Minister's office.

17 Just to keep up with what is going
18 on at this particular time, we see in paragraph 3
19 that reference that there are practical
20 difficulties in getting this phone call between
21 Mr. Graham and Mr. Shara'a, who is the Minister of
22 Foreign Affairs in Syria.

23 And then on page 2 we see
24 something that says:

25 "Indications are that Syria

1 has concerns that Mr. Arar's
2 links are not with Al-Qaeda
3 but with ..."

4 I assume that should not be
5 redacted since we saw in the previous document
6 "with the Muslim Brotherhood".

7 Finally in paragraph number 9, we
8 see that this is the beginning of an interest in
9 Canadian parliamentarians having expressed a
10 desire to intervene on Mr. Arar's behalf.

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: Then moving
13 along, if we can go on to 262, in terms of
14 Mr. Graham's activities, this is December 19th.

15 We see that Minister Graham called
16 the Syrian ambassador to Canada, Mr. Arnous, to
17 discuss the Maher Arar case, and this is December
18 the 19th of 2002.

19 MR. PARDY: Yes.

20 MR. CAVALLUZZO: Then I think I
21 should ask you about three paragraphs in the
22 middle of the message.

23 It says:

24 "Minister Graham stated that
25 in the international war

1 against terrorist ..."
2 I guess that's "terrorism".
3 "... it is necessary to
4 respect human rights. He
5 then said was making a
6 representation to the Syrian
7 government to return Arar at
8 the earliest possible time or
9 if Syria suspects that he is
10 guilty, if they would charge
11 him so that he could defend
12 himself against the
13 accusations. He noted that
14 he should not be held in
15 limbo for a long time not
16 knowing what he is accused of
17 doing.
18 Minister Graham added that
19 Canada would be prepared to
20 provide the Syrian
21 authorities the appropriate
22 assistance to get his
23 release.
24 Ambassador Arnous said that
25 this is a complex case and

1 that the Syrian authorities
2 were still investigating. He
3 noted that there were several
4 factors that caused concern,
5 including Arar's travels to
6 Afghanistan. He said he
7 would continue to work on the
8 case."

9 This is a situation where Minister
10 Graham, I think, is clearly saying that the war on
11 terrorism is a very important struggle, but at the
12 same time we have to respect human rights, which I
13 think is a very good message to be giving at this
14 point in time.

15 But then he goes on and says we
16 want Arar released at the very earliest
17 opportunity or charge him as quickly as you can,
18 try him, and so on and so forth.

19 What some people may say is: What
20 is the Minister doing? We know the public record
21 on the legal and judicial process in Syria. We
22 know what kind of due process they have, if any.
23 Why would we suggest to the Syrians that they
24 should charge him and try him in their courts? It
25 doesn't make sense.

1 What would your comment be to
2 that?

3 MR. PARDY: Well, I understand
4 that Mr. Graham is going to appear before the
5 Commission I think next week, and certainly you
6 will have an opportunity to obtain that
7 information, I think, direct from him. I think it
8 would be most appropriate to get it from him
9 rather than my speculating on his motives.

10 MR. CAVALLUZZO: That's fine.
11 The final reference in the
12 memorandum is on page 2. It just says "For
13 Damascus" in the second paragraph from the bottom:

14 "Please do not take any
15 action at this time about a
16 possible telephone call from
17 MINA to Minister Shara'a.
18 This possibility was not
19 mentioned to Ambassador
20 Arnous. We are uncertain
21 regarding the timing of a
22 possible call ..."

23 And so on and so forth, talking
24 about the practical difficulties.

25 "In the meantime, we support

1 your continuing efforts to
2 meet with [an unknown person]
3 to pursue the points raised
4 in your earlier message."

5 And then appended to that is
6 what's called a note verbale. What is this last
7 document of this tab?

8 MR. PARDY: I think this was
9 talking points that had been prepared for
10 Mr. Graham in his meeting with Ambassador Arnous.

11 MR. CAVALLUZZO: So these are the
12 talking points. Okay.

13 MR. PARDY: And may have been --
14 since it is titled "note verbale", it is not
15 uncommon in these situations that you give the
16 ambassador then a piece of paper saying these are
17 the key points here.

18 MR. CAVALLUZZO: In terms of -- I
19 am sorry, were you going to add something?

20 MR. PARDY: I was just going to
21 say that the possibility of a trial, as you will
22 note, is not mentioned in these particular points.

23 MR. CAVALLUZZO: Right. In terms
24 of the phone call between the two Foreign
25 Ministers which was cancelled in November, were

1 you aware as to why it was cancelled?

2 MR. PARDY: My understanding was
3 that it was in December. I think we were -- or
4 was it in November? It first started in November.

5 I think the conflicting schedules
6 of Mr. Graham and the Syrian Foreign Minister was
7 such that it was very difficult to bring them
8 together at the same point.

9 The conversation with the Syrian
10 ambassador in mid-December was in part -- was a
11 reflection of those difficulties. So Mr. Graham
12 spoke to the Syrian ambassador.

13 But then, as you will recall, in
14 mid-January, their schedules permitted such a
15 call.

16 MR. CAVALLUZZO: Okay. The next
17 event which I think is of importance is perhaps
18 274, where we see a continuing problem in seeing
19 Mr. Arar.

20 This is a note from
21 Mr. Pillarella, the Head of Mission, expressing
22 his efforts to get the next consular visit.

23 And then at 275 and 276, we see
24 that the next consular visit takes place the next
25 day.

1 MR. PARDY: 276? Yes.

2 MR. CAVALLUZZO: Tab 276 is the
3 best representation of that visit.

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: This is the sixth
6 consular visit which takes place on January 7th of
7 2003.

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: And I would ask
10 once again, since we are going to have Mr. Martel
11 testifying, whether there is anything in this
12 consular report which we should be interested in
13 in terms of anything unusual in it, anything that
14 we should be concerned about?

15 MR. PARDY: The only point I would
16 bring you is to the information in paragraph 7.

17 Mr. Martel was pushing them on
18 this whole issue of their investigation and we
19 said, well, what's the future here? And he quoted
20 a reply from an official:

21 "We do not think so but at
22 the moment this is a question
23 of national security of
24 Syria."

25 This sort of connects up with the

1 comments that Mr. Pillarella had made to us
2 earlier.

3 MR. CAVALLUZZO: Okay. If we move
4 on at 279, we see --

5 MR. PARDY: I would bring your
6 attention to paragraph 9 again, in terms of it
7 provides a description of the conditions under
8 which Mr. Martel, if you like, had to deal with in
9 terms of these visits. He met with Mr. Arar
10 first, but then the officials were determined to
11 sit him down and talk to him about the "special
12 treatment" that Mr. Arar was receiving at their
13 hands.

14 MR. CAVALLUZZO: And in the last
15 paragraph we see that Mr. Pillarella is seeking a
16 meeting --

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: -- with General
19 Khalil concerning the political events at the
20 time?

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: Okay. If we go
23 then to 279, we see that there is a note to -- or,
24 excuse me, I guess this relates to the request
25 that had been made about a possible phone call.

1 MR. PARDY: A phone call and the
2 questions about the location of Mr. Arar's
3 computer.

4 MR. CAVALLUZZO: Right. At 285 we
5 have a document, once again a secret message,
6 dated January 15th, 2003, to the Head of Mission
7 in Damascus. And it's from GMR?

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: It says:
10 "Minister Graham would like
11 to telephone Syrian Foreign
12 Minister Shara'a to discuss
13 the Maher Arar matter as well
14 as other issues. We have
15 attached for your information
16 a copy of the Briefing Note
17 and Key Messages..."

18 Then it says Mr. Graham will be
19 available to place the call between those periods,
20 and so on and so forth. Please organize this.

21 And in terms of the next document,
22 it's redacted, so that we should move on.

23 And just to note that in terms of
24 this, we will be reviewing this in camera with
25 Mr. Graham.

1 Tab 286 is a contact that you made
2 with Mr. Edelson to review the latest developments
3 in the case. So you were in contact with him
4 throughout the piece as well?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: Okay.

7 MR. PARDY: And I would draw your
8 attention to the second sentence there, at the
9 end, there was increasing publicity about the
10 matter in the Canadian media, which we were
11 concerned with, and I shared our concerns with
12 Mr. Edelson.

13 And as you will see there, he
14 agreed with our concerns that the increased level
15 of attention to the case in the Canadian media was
16 not helpful to Mr. Arar, and he said that he would
17 speak to Dr. Mazigh about this.

18 MR. CAVALLUZZO: This is really
19 the first indication -- and we are going to deal
20 with this issue later on. But it would seem that
21 your view was that the press attention which was
22 being drawn to Mr. Arar's plight in Canada was not
23 necessarily advantageous to your efforts to
24 getting Mr. Arar released as soon as possible.

25 Is that correct?

1 MR. PARDY: That is correct, and
2 it wasn't specific to this case. It was based on
3 experiences in a number of other cases, yes.

4 MR. CAVALLUZZO: We are going to
5 come back to that question, but this is the first
6 indication, in terms of time, that you have
7 indicated that to us.

8 Moving in terms of time at 292, we
9 see another secret message to the Head of Mission
10 in Damascus.

11 It states that Mr. Graham --

12 MR. PARDY: I am sorry, what
13 number?

14 MR. CAVALLUZZO: Two nine -- oh,
15 excuse me. 292, I guess, and I am going to come
16 to 293 as well.

17 But at 292 it says:

18 "Spoke to Monia on January
19 16."

20 This is from you, and you set out
21 a number of items that you discussed with her?

22 MR. PARDY: Yes.

23 MR. CAVALLUZZO: Were you meeting
24 with her at this time, or were you just e-mailing
25 and talking on the telephone?

1 MR. PARDY: All of the above.

2 MR. CAVALLUZZO: All of the above?

3 Okay.

4 I want to refer to 293.

5 This is a secret message from
6 Mr. Hickman to Damascus concerning Mr. Graham's
7 call to the Syrian Foreign Minister on January
8 16th, and it says in the middle paragraphs:

9 "Mr. Graham noted that the
10 Syrians were carrying out an
11 investigation and that he was
12 not commenting on Arar's
13 legal situation. He thought
14 that if charges were brought
15 then Arar could defend
16 himself. Mr. Shara'a assured
17 Minister Graham that if their
18 investigation shows Arar was
19 associated with Al Qaida, he
20 will have a fair trial."

21 And then it states:

22 "Mr. Graham noted that there
23 had been a suggestion that
24 Canada did not want Arar
25 returned. He emphasized that

1 he wanted to make it clear
2 that the preferred option of
3 the Canadian government was
4 that Arar be returned to
5 Canada."

6 This reference in this telephone
7 call between Ministers, that there has been a
8 suggestion that Canada did not want Arar returned,
9 do you know anything about that suggestion?

10 MR. PARDY: Yes, I know about the
11 information, but I am not sure about the NSC claim
12 with respect to this material.

13 MR. CAVALLUZZO: Well, we are
14 going to be dealing with a document dated March
15 24th of 2003, of a conversation that Ms Catterall
16 had with the Syrian ambassador which discusses
17 that point.

18 So there has been no claim as far
19 as that is concerned.

20 Do you know the document I am
21 talking about?

22 MR. PARDY: Yes, I do.

23 MR. CAVALLUZZO: Okay. Maybe we
24 should show it to you now.

25 THE COMMISSIONER: Is this in the

1 material, or do we have a new document?

2 MR. CAVALLUZZO: This is a new
3 document that we have provided to the parties.

4 THE COMMISSIONER: P-99.

5 EXHIBIT NO. P-99:

6 Confidential note on Arar
7 case taken by Myra

8 Pastyr-Lupul, dated 24 March
9 2002, Re: Telecon with

10 Marlene Catterall March 21

11 MR. CAVALLUZZO: This is a note
12 which was taken by Ms Pastyr-Lupul, a confidential
13 note dated March 24th, 2002, and it concerns a
14 telephone conversation with Marlene Catterall on
15 March 21st, which would have been a month before
16 Ms Catterall went to Syria.

17 MR. PARDY: It was part of her
18 preparation. We had originally thought we could
19 get her there in March, but the war occurred and
20 we hoisted the visit until April, yes.

21 MR. CAVALLUZZO: It says in the
22 first paragraph that Ms Catterall and Sarkis
23 Assadourian, who is another parliamentarian, met
24 with the Syrian ambassador on March 21. They
25 discuss the case of Maher Arar and made a personal

1 and humanitarian pitch for his release.

2 And then it goes on:

3 "They learned that initially
4 during this case that CSIS
5 officials told Syrians that
6 they, 'have no interest in
7 Arar'. The Syrians took this
8 to mean that the CSIS have no
9 interest in having Arar back.
10 They may have meant that they
11 have no security reasons to
12 investigate Arar in Canada.
13 Due to miscommunication, the
14 Syrians believed that CSIS
15 did not want Arar back in
16 Canada and therefore decided
17 to detain him, keep him in
18 Syria."

19 If we can bring your mind back to
20 January 16th, is this the suggestion that is set
21 out in this e-mail: that Canada did not want
22 Mr. Arar back?

23 MR. PARDY: Yes, it is my
24 understanding that that's what that relates to.

25 MR. CAVALLUZZO: And what we see,

1 unfortunately, is that our Minister of Foreign
2 Affairs has this telephone conversation with
3 Mr. Shara'a -- and we will discuss this with
4 Mr. Graham on Monday -- and tells Mr. Shara'a
5 there may be a misunderstanding here; Canada wants
6 him back.

7 Two months later, on March 21st,
8 two parliamentarians have a discussion with the
9 Syrian ambassador to Canada, who is keeping a
10 close watch on this file obviously, and he says
11 the same thing. He in effect says the same thing.

12 And I want to know -- I assume at
13 this point in time something must have been done.

14 And before you answer that
15 question, let's look at what Ms Pastyr-Lupul said
16 should be done in the next paragraph.

17 She says:

18 "What we need to do now is
19 send a clear message in
20 writing to the Syrians from
21 CSIS that outlines clearly
22 that we have no information
23 which has led us to believe
24 that Mr. Arar poses a
25 security threat to Canada.

1 Furthermore, the Syrians need
2 to hear from the security
3 people in DFAIT in writing
4 that if we do have any
5 information that shows any
6 involvement in terrorist
7 activity that we will charge
8 him in Canada and deal with
9 his case through the usual
10 law enforcement channels."

11 Now, that's the recommendation of
12 Ms Pastyr-Lupul of DFAIT.

13 Are you aware of any communication
14 that CSIS gave to the Syrians that there is a
15 miscommunication? "You guys have got it wrong.
16 We want Mr. Arar back"?

17 MR. PARDY: I would take some
18 guidance on this issue with regards to NSC as to
19 whether it is an issue to be discussed here or in
20 my testimony with you next month in camera.

21 MS McISAAC: I certainly think you
22 can talk about the letter, Mr. Parady, that you
23 tried to have the Minister send.

24 MR. PARDY: My comments go beyond
25 that letter and my understanding.

1 THE COMMISSIONER: The question,
2 as I understood it -- and there may be an
3 objection. But the question that Mr. Cavalluzzo
4 asked is: Are you aware as to whether CSIS wrote
5 a letter as referred to by Ms Pastyr-Lupul?

6 I don't know the answer -- I am
7 not suggesting. But if the answer was "no", then
8 that wouldn't be subject to the claim, would it,
9 because nothing happened?

10 MS McISAAC: Well, our position
11 would be, depending on what Mr. Pardy is aware of,
12 that he cannot and should not discuss any
13 communications that may or may not have been had
14 by Syrian authorities and the Canadian Security
15 Intelligence Service.

16 THE COMMISSIONER: Even ones going
17 from Canadians to the Syrians as opposed to --

18 MS McISAAC: That's correct, if
19 there were any, and only if he is aware of them.

20 If he is not aware of anything, he
21 may say that.

22 THE COMMISSIONER: The question,
23 it would seem to me, is potentially answered by:
24 "No, I am not aware."

25 MR. CAVALLUZZO: Right. Are you

1 aware of any communication in writing from CSIS to
2 the Syrians which was an attempt to disabuse the
3 Syrians of the confusion they appeared to have in
4 their minds concerning whether Canada wanted
5 Mr. Arar back or not?

6 MR. PARDY: No, I am not aware.

7 MR. CAVALLUZZO: Thank you.

8 If we could go back to where we
9 were in the chronology, at tab 294, we are at
10 January 21, which is a couple of weeks after the
11 consular visit on January the 7th.

12 This is, once again, a
13 communication that you had with Dr. Mazigh on two
14 occasions?

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: And here, once
17 again, you are keeping her abreast of the outlook
18 of the case, what things were happening and so on
19 and so forth?

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: In the bottom
22 paragraph it states, and I just want to ask you
23 about this -- or the second bottom paragraph, it
24 states:

25 "I also mentioned to Monia

1 that I spoke with ... of
2 subject yesterday, who claims
3 the RCMP are requesting a
4 meeting with him to see what
5 he knows about his brother.
6 I advised ... of our consular
7 role, and the fact that we
8 are not controlling what is
9 happening on the RCMP side,
10 nor are we necessarily
11 informed of their
12 investigative procedures. He
13 thought that since we are all
14 'the government', that we all
15 know what each other is
16 doing. I advised him that we
17 are trying to see Maher as
18 often as possible, when
19 granted permission for visits
20 by the Syrians, but that we
21 are not doing the
22 investigation. Monia's
23 comments on the RCMP's
24 activities were to 'stop
25 intimidation of the family,

StenoTran

1 that the RCMP have lack of
2 good intentions and a lack of
3 understanding of the
4 situation, that these are
5 nonsense actions...'"

6 So you became aware at this time,
7 which would be the third week in January, that the
8 RCMP were attempting to interview members of
9 Mr. Arar's family in order to get information on
10 him?

11 MR. PARDY: I presume so, yes.

12 MR. CAVALLUZZO: And presumably
13 advancing their investigation? You don't know
14 that but --

15 MR. PARDY: I don't know that.

16 MR. CAVALLUZZO: At tab 313 we are
17 now into February, and we have the seventh
18 consular visit on February the 18th?

19 MR. PARDY: That is correct.

20 MR. CAVALLUZZO: Is there anything
21 in this consular report, once again, Mr. Pardy,
22 that may give us cause for --

23 MR. PARDY: Can you give me a
24 moment and I will look at it?

25 MR. CAVALLUZZO: Certainly.

1 --- Pause

2 MR. PARDY: The troublesome one is
3 in paragraph 4(b) there.

4 We were still trying to get
5 information about Syrian intentions, and the fact
6 that should charges be laid, then consular access
7 might cease, even on the limited basis that we
8 were dealing with at that point gave us
9 considerable concern.

10 MR. CAVALLUZZO: Okay.

11 MR. PARDY: Even though there is a
12 procedure for this in civil law countries.

13 MR. CAVALLUZZO: Right. Then the
14 last tab in this volume that I want to refer to --

15 MR. PARDY: I should just -- I am
16 still reviewing that previous document.

17 MR. CAVALLUZZO: I am sorry.

18 MR. PARDY: And I think paragraph
19 6 is of interest here as well.

20 MR. CAVALLUZZO: I am sorry. Go
21 on.

22 MR. PARDY: With the statement
23 that Minister Graham had made to the Syrian
24 Foreign Minister, the preferred option that
25 Mr. Arar be returned to Canada, and the comment by

1 Mr. Martel and Mr. Pillarella that that is
2 something, certainly at that point, that finds no
3 echo on the part of the Syrians.

4 MR. CAVALLUZZO: And then if we go
5 on, I think this is important where it goes on to
6 say:

7 "We suspect that the only
8 possibility of a return to
9 Canada could happen only at
10 the end of an investigation
11 that could not justify the
12 laying of charges against
13 Arar."

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: Which ultimately
16 happened.

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: Tab 317 is what
19 we have calling "the deck", which is really a
20 PowerPoint presentation. There are a number of
21 versions on this, and I don't think they are that
22 different. And I would, without objection
23 hopefully, like to take you through the one that
24 is in the book itself, which appears to be the
25 eighth version, February 28, 2003.

1 If you could, just before I ask
2 you some questions relating to the deck, what is
3 the purpose of this PowerPoint presentation?

4 MR. PARDY: The purpose here was a
5 suggestion by one of our Deputy Ministers that
6 given the issue of Canadian government
7 coordination in terms of cases like this -- and
8 you will recall that earlier on I mentioned there
9 was a message from Mr. Doiron regarding an earlier
10 case where there was some confusion.

11 That case and then this one I
12 think gave rise in the minds of the Deputy
13 Minister -- the associate Deputy Minister, I
14 should say -- that we should try to sit down and
15 reflect the variety of interests within the
16 Canadian government with respect to those cases.

17 And you made allusions to this in
18 one of your questions earlier this morning.

19 MR. CAVALLUZZO: Right.

20 MR. PARDY: And I was tasked with
21 the job of trying to bring this together in a
22 coherent way.

23 MR. CAVALLUZZO: And in the course
24 of preparing the deck, did you consult with other
25 agencies, such as CSIS, RCMP and PCO?

1 MR. PARDY: I did not consult
2 direct myself, but other parts of the small group
3 that I had working with me on this did make such
4 consultations.

5 MR. CAVALLUZZO: And I think it's
6 important that we spend a little bit of time on
7 this because based on your years of experience in
8 the foreign service, you raise some very important
9 and crucial points that are relevant to the public
10 inquiry that we have.

11 I am going to start at page 2 of
12 7.

13 Under "Detention Cases" you say
14 that:

15 "Most consular cases do not
16 engender public debate or
17 bring into question issues of
18 public policy. Only the
19 client, the consular officer
20 and the immediate family are
21 involved."

22 Then it goes on:

23 "The standard approach to
24 detention cases is threefold
25 (a) to ensure the wellbeing

1 of the person and to provide
2 a channel of communications
3 with their family. (b) to
4 assist the detained Canadian
5 in receiving equitable
6 treatment, and (c) to have
7 charges adjudicated as
8 quickly as possible by an
9 appropriate judicial body.
10 We do not make judgment as to
11 whether or not persons are
12 guilty or innocent. We do
13 not seek preferential
14 treatment for Canadians."

15 And then you go on:

16 "Cases related to terrorism
17 and certain cases in the
18 armed conflict in Afghanistan
19 engender public debate and
20 raise issues of public
21 policy."

22 And then it goes on at the bottom:

23 "The exercise of Canada's
24 Consular responsibility in
25 support of these persons has

1 not affected bilateral
2 relations with the countries
3 concerned. However, such
4 cases have the potential to
5 affect bilateral relations
6 depending on the manner in
7 which representations are
8 made or harsh actions
9 (torture, death penalty) by
10 the arresting state or fact
11 Canadian security played a
12 role in the detention of the
13 Canadian."

14 Just that last part there, what do
15 you mean by what you have stated there in terms of
16 the exercise of Canadian consular responsibility
17 and possible problems in these kinds of cases?

18 MR. PARDY: Before answering that,
19 can I just make one comment on the paragraph, and
20 particularly the sentence "We do not seek
21 preferential treatment for Canadians".

22 While legally that is correct, in
23 practice we do, almost in every case, seek to
24 provide some measure almost of preferential
25 treatment, and whether that is a hastening of the

1 laying of charges, or the timing of a trial and
2 things like that, or prison conditions. Certainly
3 that has always been an element in our work.

4 Our responsibility -- I mean, for
5 the most part, consular activities, and its name
6 "consular activities", for a very specific reason
7 it is not meant to cut across in terms of
8 political and economic relationships that we have
9 with other countries. That is why under
10 international law you see a two-tiered system with
11 respect to all of this.

12 And for the most part, in about 11
13 years that I was dealing with, I think there was
14 only two or three cases where there was a serious
15 impact on a bilateral relationship as a result of
16 a consular case. So it is extremely rare for this
17 to happen.

18 Usually what gives rise to that
19 effect on bilateral relationships is some unique
20 feature of that case.

21 One particular case which I can
22 mention to you was the execution of a Canadian
23 citizen in Vietnam, despite assurances that we had
24 from the Government of Vietnam that that would not
25 take place, and as a result of that execution,

1 quite literally we tore apart the bilateral
2 relationship as part of our reaction.

3 MR. CAVALLUZZO: Right.

4 MR. PARDY: We had other cases.

5 But here the issue never rose -- I
6 think Mr. Arar never rose to a point where there
7 was -- how can I put it? -- the same level with
8 respect to the Government of Syria.

9 MR. CAVALLUZZO: Where you say
10 here on this same page -- you say under the title
11 "Canadians Detained On Terrorist Activity":

12 "Consular responsibilities
13 overlap and sometimes are in
14 conflict with the role and
15 responsibilities of other
16 agencies of the government
17 such as CSIS, RCMP and
18 Justice."

19 What do you mean by that, or what
20 did you mean by that?

21 MR. PARDY: By that what we are
22 trying to achieve here is direct assistance to the
23 individual that finds themselves in difficulty in
24 a foreign country. That responsibility is very
25 specific to us and it's not necessarily specific

1 to other parts of the Canadian government, who
2 have other responsibilities and other issues to
3 deal with that have been legitimately given to
4 them by the Government of Canada.

5 Not surprisingly, and particularly
6 in this area of terrorism, where since 9/11 I
7 think most governments are still trying to work
8 their way through this new environment --

9 MR. CAVALLUZZO: Right.

10 MR. PARDY: -- and certainly in
11 this case, that was -- and this document, I should
12 say, was trying to reflect to the Deputy Ministers
13 and others, and possibly to the Minister, these
14 elements and these new types of cases.

15 MR. CAVALLUZZO: Let me just take
16 that one head on, where you are talking about
17 overlapping responsibilities and possibilities of
18 conflict. On the one hand, the consular official
19 may be trying to get the release of an individual,
20 having them come back to Canada on whatever ground
21 it might be, and on the other hand you have other
22 agencies, such as the police or CSIS wanting to go
23 there into this country and question the
24 individual in order to advance their
25 investigation.

1 It would seem to me, as I said
2 before, that that kind of to and fro would leave a
3 mixed message in the mind of the detaining
4 country, saying: "What do these guys want? Do
5 these guys want him back or do they want to
6 advance the investigation of him?"

7 Do you agree that that could be a
8 problem?

9 MR. PARDY: I agree with it up to
10 a point. But I think, as we indicated earlier,
11 that what I was interested in was trying to manage
12 all of those things to try and ensure that those
13 misunderstandings did not occur because the
14 efforts that other parts of the Canadian
15 government were making here were legitimate ones,
16 and would -- yes.

17 MR. CAVALLUZZO: You go on and you
18 talk about Canadians detained for terrorist
19 activities on slide 5.

20 And if you go on to the next page,
21 under that title, it says:

22 "Syria/Arar: Unusual
23 deportation procedures by the
24 United States; lack of
25 confirmed information on his

1 role, in any, terrorism.
2 Uncertainty as to what the
3 Syrians may do."

4 That is just a comment at that
5 particular point in time, in February of 2003, of
6 Mr. Arar's case.

7 What I would like to refer to,
8 though, is at the bottom, under "Terrorism Cases",
9 the next slide.

10 It says:

11 "Many of these
12 terrorism-related consular
13 cases engage the interests of
14 other agencies of the
15 Government of Canada,
16 including the RCMP, CSIS and
17 the Department of Justice.
18 There is occasional
19 consultation with these
20 agencies on all such cases.
21 Nevertheless, the differing
22 mandates and responsibilities
23 and associated laws limits
24 the full exchange of
25 information in some

1 instances. For example the
2 Privacy Act protects consular
3 information except in
4 specified circumstances."

5 And we dealt with that yesterday.
6 You mentioned the two exceptions were consistent
7 use disclosure and when the individual consents to
8 the sharing of information.

9 MR. PARDY: And by this time I
10 would add a third factor: that the Privacy Act
11 provides authority to share this kind of
12 information with Members of Parliament.

13 MR. CAVALLUZZO: Okay. And then
14 it goes on in the final bullet -- or the
15 second-last bullet:

16 "The problems are exacerbated
17 when there is a Canadian law
18 enforcement interest (and
19 there usually is) in the
20 individual."

21 And then the next part is taken
22 out.

23 And finally it states:

24 "In these cases there is an
25 inter-departmental coherence

1 problem. Senior level and
2 where necessary ministerial
3 consultations should be more
4 common on terrorism related
5 cases."

6 And I guess what you are saying
7 there, that in these kinds of situations where
8 there could be conflicting mandates, that the
9 situation is too important to be dealt with at the
10 front line level but should be brought upscale,
11 indeed to the ministerial level, to people that
12 are accountable.

13 Is that correct?

14 MR. PARDY: Yes, you could read
15 that into these comments, yes.

16 MR. CAVALLUZZO: And then at the
17 bottom of the page -- and we are at 5 of 7:

18 "In cases such as that of Mr.
19 Arar which is an exception,
20 ministerial involvement has
21 taken place due to the
22 involvement of the US
23 government and its unusual
24 action in deporting Mr. Arar
25 to Syria, the alleged

1 complicity of Canadian police
2 and security officials in
3 that process and the
4 increasing demands for
5 political action."

6 You are referring there to the
7 involvement of Mr. Graham that we have been
8 reviewing as time goes on?

9 MR. PARDY: Yes and, to a limited
10 extent, the Prime Minister.

11 MR. CAVALLUZZO: Finally, at page
12 6 of 7, there is a section dealing with
13 "Communicating a Government Response to the
14 Media", and I just refer to the last two bullet
15 points.

16 It states:

17 "The RCMP and CSIS do not as
18 a rule provide the media with
19 substantive comment (although
20 'leaks' do occur)."

21 MR. PARDY: I am sorry, where are
22 you reading?

23 MR. CAVALLUZZO: This is page 6 of
24 7, the second bullet point from the bottom.

25 MR. PARDY: Oh, I am sorry. Yes,

1 from the bottom.

2 MR. CAVALLUZZO: I will just
3 repeat:

4 "The RCMP and CSIS do not as
5 a rule provide the media with
6 substantive comment (although
7 'leaks' do occur) on their
8 involvement in specific
9 cases. As a result, often
10 only the consular work of the
11 department is highlighted by
12 the media.
13 Without a coordinated
14 approach, differences in
15 mandates and responsibilities
16 are exploited by the media as
17 differences within the
18 government."

19 And then you make certain
20 recommendations relating to these
21 intergovernmental issues.

22 Then if we go to tab 325 in Volume
23 4 --

24 MR. PARDY: Will we come back to
25 this document at some subsequent time?

1 MR. CAVALLUZZO: No. If you want
2 to comment on it, I would ask you to do it right
3 now.

4 MR. PARDY: No. I think the only
5 comment I would make, of course, was that none of
6 these recommendations went beyond the Department
7 of Foreign Affairs --

8 MR. CAVALLUZZO: We are coming to
9 that now.

10 MR. PARDY: Okay.

11 MR. CAVALLUZZO: If you go to tab
12 325, Volume 4.

13 MR. PARDY: 325?

14 MR. CAVALLUZZO: That's correct.

15 --- Pause

16 MR. CAVALLUZZO: This is entitled
17 "Action Memorandum for the Minister".

18 The issue is: "Consular Cases
19 Related to Terrorism: Need
20 for better, more consistent
21 coordination and consultation
22 across government."

23 And the recommendation is:

24 "You agree that the deputy be
25 authorized to consult with

1 his colleagues. as the need
2 arise, and ensure that there
3 is inter-departmental
4 coherence in the management
5 of such cases; and
6 That the exchange of
7 information for such cases be
8 done in full conformity with
9 the appropriate laws and
10 regulations."

11 And then the remainder of the memo
12 just cribs really what we have referred to already
13 in the deck itself.

14 So this was the recommendation
15 that you made. Why don't you tell us what
16 happened to the recommendation?

17 MR. PARDY: Well, my
18 understanding -- this memorandum was done in draft
19 here. It was finalized and went to the Minister.
20 I think it was considered by the Minister, and for
21 reasons that perhaps he will discuss with you
22 during his testimony, he decided that this was not
23 something that he wanted to see leave the
24 department.

25 My understanding was that one of

1 the considerations in play here, and certainly was
2 one that I shared, was that we should not yield up
3 our consular responsibilities to decision-making
4 made elsewhere in the government.

5 MR. CAVALLUZZO: And as a result
6 of that concern -- at least that's one
7 consideration, you are saying; and as you say, we
8 will deal with Mr. Graham on this -- the
9 recommendation was not accepted?

10 MR. PARDY: That's right. But,
11 nevertheless, the exercise was a beneficial one I
12 think in terms of sensitizing other people in the
13 government to these sets of issues that were
14 discussed in the deck.

15 MR. CAVALLUZZO: Right. If we
16 could go back to Volume 3 for the last three tabs,
17 and then we will move on to Volume 4.

18 Tab 318 is dated February 27,
19 2003, and these are just really older e-mails
20 relating back to January 7th, because as your
21 CAMANT system quite frequently --

22 MR. PARDY: It's not the system;
23 it's the way we use it.

24 MR. CAVALLUZZO: It's the person
25 using it, okay. These are just once again

1 communications, and I just bring them to the
2 attention of the Commissioner and counsel; e-mails
3 between you and Ms Mazigh and Mr. Pillarella and
4 so on as to what is going on in Damascus

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: Tab 319 is, once
7 again, older e-mails back in January concerning
8 discussions between you and Ms Mazigh.

9 Of course, there was a consular
10 visit on January 7th which is being referred to.

11 And then finally tab 320 is a late
12 January e-mail from Alex Neve of Amnesty, and it
13 would appear that at this point in time you are
14 communicating with some organizations who are
15 making representations on behalf of Mr. Arar.

16 MR. PARDY: Yes. With Amnesty, it
17 started quite early on in the process, yes.

18 MR. CAVALLUZZO: Okay.

19 We can move to Volume 4.

20 Just to give us a realistic idea
21 of what is going on in your life at this
22 particular point in time, in tab 321 we see that
23 you are dealing with Alexa McDonough. She is
24 obviously asking a number of questions about
25 Mr. Arar, and you are providing responses to her.

1 Is that correct?

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: Okay. Tab 322 is
4 a situation where both you and Myra call
5 Dr. Mazigh on February 21st as a follow-up to the
6 visit of February 18th?

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: This is where you
9 asked if she would be interested in visiting
10 Mr. Arar, if that could be arranged, in Syria?

11 MR. PARDY: Yes, because earlier
12 the Syrians had indicated to Mr. Martel that such
13 a visit would be possible.

14 MR. CAVALLUZZO: Okay. Now tab
15 323, this is a message from Mr. Martin, and he is
16 raising a few concerns about the upcoming visit of
17 two Members of Parliament; that is, Marlene
18 Catterall, who is Mr. Arar's Member at that point
19 in time, and Mr. Assadourian.

20 So this is the beginning of the
21 preparations for that particular visit. There are
22 a number of e-mails relating to that, and I am not
23 going to take you through each and every one,
24 other than just to say that the arrangement was
25 originally set for March of 2003.

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: And in terms of
3 the political context, of course, the second Gulf
4 War breaks out in March.

5 MR. PARDY: I think the 21st or --
6 somewhere in that time frame, yes.

7 MR. CAVALLUZZO: And presumably
8 the Syrians had more on their mind than awaiting a
9 visit from two parliamentarians from Canada, and
10 as a result of that, the meeting was deferred
11 somewhat.

12 MR. PARDY: And I think, as the
13 record would indicate, what we were concerned
14 with -- we still tried to push the visit in that
15 time frame because we considered it to be
16 important, yes.

17 MR. CAVALLUZZO: Okay. Tab 327 is
18 a note to you, and it's dated, I guess, February
19 27th, is the date of that.

20 MR. PARDY: I think so, yes.

21 MR. CAVALLUZZO: And it's related,
22 once again, to the Catterall visit. I just want
23 to make reference to the message.

24 About halfway down, it says:

25 "I spoke to Ms Marlene

1 Catterall last evening.
2 Following points were
3 covered:
4 (a) In her conversation with
5 Mr. Easter..."

6 Mr. Easter, at this point in time,
7 is the Solicitor General?

8 MR. PARDY: That is correct, yes.

9 MR. CAVALLUZZO: Okay.

10 "... with Mr. Easter, he
11 checked with both the RCMP
12 and CSIS before providing her
13 with a green light for the
14 visit. Neither organization
15 objected to Ms Catterall's
16 visit. Mr. Easter
17 cryptically seemed to remark
18 that Mr. Arar's problems were
19 caused by this department! I
20 will follow up further on
21 this one."

22 Mr. Easter has made a cryptic
23 comment here that Mr. Arar's problems seem to be
24 caused by this department. I assume that
25 reference is being made to DFAIT.

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: Did you have
3 anyone ever follow up with Mr. Easter as to what
4 his cryptic comment meant?

5 MR. PARDY: I tried to, but I did
6 not have any success. I tried to establish what
7 he meant by this.

8 Ms Catterall could not elaborate
9 on what he meant by all of this, and she was
10 puzzled by it equally.

11 MR. CAVALLUZZO: Okay.

12 Tab 329 is a note in which you are
13 attaching a message from Monia, Dr. Mazigh, who is
14 requesting a meeting with the Minister?

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: And at this point
17 in time, Mr. Graham had not met Dr. Mazigh, to
18 your knowledge?

19 MR. PARDY: I am not sure about
20 that. If not a meeting, certainly a telephone
21 call? But I would stand to be corrected on that.

22 MR. CAVALLUZZO: Okay. Tab 331,
23 dated March 2nd or 3rd, once again is a reference
24 to -- Dr. Mazigh says:

25 "Hello,

1 Now that I heard that the
2 Canadian diplomatic missions
3 in the Middle East will come
4 back to Canada, I have hard
5 time to think how this is
6 going to be the fate of Maher
7 Arar? I have the impression
8 that the Syrian reply will
9 never come. Mr. Pardy, I am
10 so disappointed. I would
11 like to have a meeting with
12 Mr. Bill Graham. I don't
13 find the actions being taken
14 so far having any effects.
15 The war in the Gulf is more
16 and more becoming true and my
17 chances to see my husband
18 back are diminishing."

19 And what were your views on that?

20 Was your view that, "Holy God, I
21 am working hard on this case, and I get this kind
22 of message, which doesn't show any appreciation?"

23 What is your reaction?

24 MR. PARDY: I mean, she was right.
25 She was observing that we were drawing down our

1 staff at all of our Middle East missions in the
2 expectation that a war was going to occur. And
3 not knowing the full ramifications of that war, we
4 wanted the embassies to be as small as possible.

5 I think in Damascus we removed --
6 we had, as you know, a very large immigration
7 staff there. Those people were removed.

8 But the key people with respect to
9 Mr. Arar stayed in Damascus, the ambassador and
10 Mr. Martel, plus two or three other people, and so
11 I think -- I am not sure whether it's reflected,
12 but I did speak to her and tell her that while
13 these events were occurring, they did not affect
14 in any material way our efforts with respect to
15 her husband.

16 MR. CAVALLUZZO: Okay. Tab 332 is
17 a letter -- I guess it's just a series of messages
18 wherein, once again, Dr. Mazigh is seeking a
19 meeting with Mr. Graham?

20 MR. PARDY: Yes. Again, I would
21 pass those on to Mr. Graham's office, yes.

22 MR. CAVALLUZZO: Tab 333 is a
23 diplomatic note to the Syrian Embassy, which is
24 dated March 5th of 2002.

25 Could you give us an idea of what

1 is this diplomatic note and what is its purpose?

2 MR. PARDY: We were giving
3 Canadian government sanction to the visit by
4 Ms Catterall and Mr. Assadourian, and we are
5 asking the Syrian ambassador to issue visas for
6 them.

7 Normally this would be a standard
8 thing that one would do in these circumstances,
9 because normally Members of Parliament are in a
10 special category, as you probably know.

11 MR. CAVALLUZZO: Right.

12 If we could just move along, the
13 next documents I am going to take you through
14 quickly because they relate to the visit.

15 At tab 338, this is dated, we
16 estimate, as March 9th, and this is from the Head
17 of Mission, Mr. Pillarella, to head office.

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: He is saying
20 that:

21 "Neither the President nor
22 the Foreign Minister had
23 given any indication of their
24 willingness to meet with our
25 visitors. Vice-Minister

1 Mouallem gently reminded me
2 that everyone in Damascus,
3 from the President down, was
4 concentrating solely on one
5 issue at present: Iraq and
6 the U.N. Security Council."

7 MR. PARDY: Yes, this was a debate
8 on the resolution.

9 MR. CAVALLUZZO: Tab 340 is --

10 MR. PARDY: Can I just point out
11 one additional fact in terms of the middle of
12 paragraph 2?

13 MR. CAVALLUZZO: Please do.

14 MR. PARDY: I think the deference
15 to the general here with respect to these
16 activities by the Foreign Ministry.

17 MR. CAVALLUZZO: So what you are
18 saying is that your view was probably concurred in
19 by Mr. Pillarella, who is right on the front
20 lines, is that the Foreign Ministry would be, to
21 put it nicely, subservient to the wishes of
22 General Khalil?

23 MR. PARDY: They would certainly
24 take the general's concerns into consideration,
25 yes.

1 MR. CAVALLUZZO: Okay. At 340 is
2 another note relating to the upcoming visit.

3 Tab 342 is a message to Franco
4 Pillarella, and this is from you -- excuse me,
5 from Tim Martin --

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: -- who is the
8 Acting Director, GMR, if you could remind us what
9 GMR is?

10 MR. PARDY: It's the Political
11 Relations Division for the Middle East countries.

12 MR. CAVALLUZZO: Right. And this
13 just relates to him dealing with the Syrian
14 ambassador in Canada, laying down the groundwork
15 for the upcoming meeting of the two politicians?

16 MR. PARDY: Yes. And it sort of
17 follows on, to a certain extent, from the message
18 that I -- I guess it's the March 10th one from
19 myself. I was going to meet with Ms Catterall and
20 Mr. Assadourian on the following morning, and I
21 was hoping that I could get some definitive word
22 as to whether the visit was going to be on or not.

23 Ms Catterall was leaving for, I
24 think, a trip to Australia at this point.

25 MR. CAVALLUZZO: And then there

1 are other e-mails relating to that.

2 I just want to bring you to 344.
3 This is to Ms Catterall and copies to you. The
4 subject is "Canadian delegation visit to Syria
5 this week".

6 What is this? These are just
7 talking points or directions or instructions given
8 to the two parliamentarians?

9 MR. PARDY: Yes. This was
10 prepared by our colleagues in the Political
11 Division. I mean, there is a certain sharing of
12 labours here in terms of the sheer intensity of
13 activity that was under way here, and they
14 prepared this as a piece of paper that we gave to
15 Ms Catterall and Mr. Assadourian with respect to
16 this visit, and the context of this visit of
17 course, as well, in terms of what was going on in
18 the international arena on the war.

19 MR. CAVALLUZZO: Okay. Tab 345,
20 dated March 12th, from Mr. Pillarella. He advises
21 that:

22 "Not unexpectedly (now that
23 the departure date of our MPs
24 has passed) I received a call
25 this morning from

1 Vice-Minister Mouallem. He
2 did not offer any explanation
3 for the non issuance of visas
4 for Mrs. Catterall and
5 Assadourian."

6 And it goes on:

7 "When I confirmed to him that
8 neither the President nor the
9 Foreign Minister would be
10 solicited for a meeting,
11 Mouallem immediately said
12 that not only would he meet
13 with the MPs, he would also
14 make arrangements so that
15 they could meet with Arar."

16 And the last visit with Mr. Arar
17 was February 18th. So this is some good news that
18 you are receiving.

19 MR. PARDY: And that was one of
20 the reasons for pushing the visit, was to try to
21 get another visit with Mr. Arar as quickly as
22 possible, yes.

23 MR. CAVALLUZZO: So it would
24 appear that the two parliamentarians would be
25 dealing with the Vice-Minister, Mr. Mouallem.

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: Tab 349 is a
3 note, or I guess e-mails back and forth between
4 you and Dr. Mazigh about the situation of
5 Mr. Arar.

6 Tab 351, once again a series of --
7 and I am not going to take you through them, but a
8 series of e-mails between you and Dr. Mazigh.

9 Tab 352 is an e-mail going back to
10 March 19th relating to your following up with the
11 Americans about, I guess, the money that they were
12 withholding, and so on?

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: Okay. Tab 354
15 is, once again, communications between you and
16 Dr. Mazigh concerning the call that she was
17 supposed to get from Marlene Catterall?

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: And then, of
20 course, just in terms of time, March 24th is the
21 date that we have this communication that we have
22 referred to between Catterall -- it was actually
23 March 21st, between Catterall and Assadourian and
24 Mr. Arnous.

25 This would give context to what we

1 talked about earlier. We don't have to review it
2 again.

3 MR. PARDY: Yes. It was part of
4 their efforts. When the visit didn't take place
5 as scheduled, Ms Catterall took the initiative to
6 set up a meeting with Ambassador Arnous.

7 MR. CAVALLUZZO: Then if we go to
8 356, we see a change in Syrian procedures. This
9 is a secret message from Damascus to Ottawa, and
10 could you tell us what this is about?

11 MR. PARDY: Well, as you know, up
12 until now, the General really said, "Look, when
13 you want a visit, deal with my people, and we will
14 make the arrangements outside of dealing with the
15 Foreign Ministry."

16 This message -- and this, I
17 assume, came from some official in the General's
18 office, and basically they told us we had to go to
19 the Foreign Ministry and deal with them any time
20 we wanted to arrange a visit.

21 MR. CAVALLUZZO: And this was not
22 good news, was it?

23 MR. PARDY: If you look at the
24 first part or the latter part of 2002 and the
25 frequency of visits and then the increasing space

1 between the visits in the early part of 2003, this
2 was not good news.

3 And as you will know from the
4 record, we had seven visits up until February
5 18th, and then we had another visit on April 23rd,
6 and then we had another visit on August 14th.
7 They were extremely tenuous, yes.

8 MR. CAVALLUZZO: Tab 358 is an
9 e-mail to you and it's from Myra, who tells you:

10 "Just to let you know that I
11 had a long conversation with
12 Monia today. We discussed
13 the MDC and the lack of
14 attention to the refund."

15 Once again, this was dealing with
16 the money that you were trying to retrieve from
17 the Americans; is that correct?

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: Now tab 363 is
20 dated March 30th, and it's about the possibility
21 of visiting. There is an exchange of messages
22 between you to somebody.

23 Do you know who this is to?

24 MR. PARDY: Well, on page 1 of
25 this is certainly messages from Dr. Mazigh.

1 But I think they are also -- I
2 think they are almost -- yes, I think they are all
3 from Dr. Mazigh, and she included a press clipping
4 there as well and that sort of thing.

5 But I think they are all from Dr.
6 Mazigh.

7 MR. CAVALLUZZO: At tab 364 you
8 are communicating now with a person whose name has
9 been removed for privacy reasons.

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: And this relates
12 to, once again, the upcoming visit of the
13 parliamentarians, and we are going to move to that
14 meeting fairly quickly.

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: I am just going
17 to refer to counsel now, that in terms of the
18 visit tabs 369 and 370 deal with that.

19 Tab 373 is somewhat different.

20 Tab 373 is an e-mail from Monia,
21 and it says:

22 "For the record, Pardy and
23 Pastyr-Lupul called Monia on
24 April 7 to provide her with
25 reassurances that we are

1 still trying to arrange a
2 visit to Maher. We explained
3 to her the difficulty of
4 making contact with the
5 Syrians at this time of war
6 so close to their borders.
7 We advised that we are also
8 pursuing the visit by the MPs
9 ... during Easter week."

10 MR. PARDY: Yes. Certainly the
11 shock part of the war was still under way, and we
12 were still trying to elbow our way in, in the
13 minds of the Syrians, with respect to Mr. Arar.

14 And in the meantime, of course,
15 the press was made aware of the fact that there
16 was a lack of consular access.

17 MR. CAVALLUZZO: Just one final
18 document before we break for lunch.

19 If you would go to 376, it is an
20 e-mail from you to Dr. Mazigh and it opens by
21 saying:

22 "Monia, following the refusal
23 of the Syrian authorities to
24 authorize a visa ..."

25 And this is dated April 14th.

1 "... authorize a visa for Ms
2 Catterall and Mr. Assadourian
3 in early March, they
4 subsequently informed the
5 Canadian ambassador that
6 visas would be issued..."

7 And then if you go to the second
8 paragraph from the bottom, it states:

9 "I do not agree with your
10 analysis of the relationship
11 between Syria and Canada, or
12 Syria and any other country
13 for that matter. A major
14 part of the problem here is
15 that not everyone in the
16 Government of Canada agrees
17 with what we are doing in
18 support of Maher. The
19 Syrians are well aware of
20 that and that undoubtedly
21 influences their willingness
22 to be more cooperative."

23 Just that statement there, I would
24 ask you to comment on that because you are clearly
25 indicating that not everyone in the government is

1 agreeing with the support that you are showing for
2 Mr. Arar and that the Syrians are aware of that,
3 and that obviously impacts on their willingness to
4 be more cooperative.

5 MR. PARDY: I would point out that
6 the message was sent at 11:32 p.m. The SARS
7 outbreak in Canada was increasingly occupying some
8 of my time, and I can say that it is the only
9 cranky message I ever sent to Dr. Mazigh.

10 I was tired and frustrated myself
11 in terms of the lack of progress. But I did want
12 to indicate to her -- and she was fully aware of
13 this information, by the way. This was not news
14 to her, but I wanted to bring her back to that
15 focus, that part of the problem here -- and I said
16 "part of the problem" or "a major part of the
17 problem" was that we needed to have the Canadian
18 government speak with one voice.

19 I thought we were by and large
20 doing so in terms of Mr. Graham who is, under
21 Canadian law, the spokesperson internationally for
22 the Government of Canada, and I just wanted to
23 bring home to her this issue.

24 And in a sense, this is reflected
25 in our efforts with respect to the deck that we

1 discussed earlier this morning as well. All of
2 these things were coming together.

3 But I did want her to know that,
4 look, there was no lack of effort on our part;
5 that we were still Mr. Arar's champions and this
6 was something that we were not going to give up on
7 in any circumstances, and she should take heart
8 from that.

9 MR. CAVALLUZZO: But certainly not
10 an unreasonable message to her in light of the
11 fact that we have that document three weeks
12 earlier on March 24th of what Catterall and
13 Assadourian are learning from the Syrian
14 ambassador, that they are confused as to what
15 Canada wants.

16 MR. PARDY: Yes, and I don't
17 think -- I think this particular message was given
18 to the media I think in June. But certainly I
19 received no comment from anyone within the
20 Canadian government as to what I had said to
21 Dr. Mazigh at this time.

22 MR. CAVALLUZZO: No one corrected
23 you?

24 MR. PARDY: Nobody corrected me.

25 MR. CAVALLUZZO: I have no further

1 questions at this time, and perhaps we could
2 resume, Mr. Commissioner, at 2:15?

3 In terms of my progress, if we
4 continue at the pace that we are going at, I will
5 complete Mr. Pardy's examination today.

6 THE COMMISSIONER: That will be
7 good. And then we can do the cross-examinations
8 tomorrow.

9 We will rise until 2:15.

10 THE REGISTRAR: Please stand.

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

12 Suspension à 13 h 03

13 --- Upon resuming at 2:18 p.m. /

14 Reprise à 14 h 18

15 THE REGISTRAR: Please be seated.

16 Veuillez vous asseoir.

17 THE COMMISSIONER: Mr. Cavalluzzo?

18 MR. CAVALLUZZO: Thank you,

19 Commissioner.

20 Mr. Pardy, we've reached to the
21 point in April of 2003, when the two
22 parliamentarians are going to visit Mr. Arar in
23 Damascus.

24 But prior to asking you about
25 that, just one question relating to our discussion

1 this morning, particularly in regard to the CSIS
2 visit which, you advised us, took place in
3 November of 2002.

4 I've got a couple of questions
5 relating to that. First of all, at the time of
6 the visit, were you aware that it was going to
7 take place?

8 MR. PARDY: I think this is
9 covered by NSC.

10 MS McISAAC: Maybe you can answer
11 what you knew -- whether you knew it was going to
12 take place.

13 MR. PARDY: Thank you. I have
14 searched my memory for that period in November of
15 2002, and I cannot recall any specific
16 consultation taking place with me on that visit.

17 MR. CAVALLUZZO: And if you were
18 consulted at that point in time by CSIS, that they
19 wanted to visit Syria, would you have objected?

20 MR. PARDY: Yes, I would have.

21 MR. CAVALLUZZO: And could you
22 tell us why you would have objected?

23 MR. PARDY: For the reasons that
24 we discussed this morning when we discussed the
25 two messages that I sent to Damascus with respect

1 to possible other visits by liaison officers from
2 CSIS and the RCMP.

3 MR. CAVALLUZZO: Okay. Now, if we
4 come back to the middle of April of 2003, and pick
5 up once again in volume 4. Just prior to getting
6 to that meeting on April 23, if you initially
7 refer to tab 382. And this, if you go on the
8 second page, incorporates what appears to be a
9 draft letter from Mr. Graham?

10 MR. PARDY: Yes, it is.

11 MR. CAVALLUZZO: To the -- I guess
12 the Minister of Foreign Affairs of Syria relating
13 to the visit of the two parliamentarians?

14 MR. PARDY: That's correct.

15 MR. CAVALLUZZO: Would that letter
16 have gone, have been transmitted, to the Minister
17 through the parliamentarians?

18 MR. PARDY: Yes, it was finalized
19 and it was given to Ms Catterall, and she
20 delivered it to the -- I think -- was it the
21 Deputy Minister of Foreign Affairs? Yes.

22 MR. CAVALLUZZO: We've been
23 referring to him as the Vice-Minister; is that the
24 same person?

25 MR. PARDY: Yes.

1 MR. CAVALLUZZO: Okay. Tab 383,
2 we see that finally the two parliamentarians are
3 permitted to visit so that it's going to take
4 place. At 384 is a letter that is forwarded to
5 Mr. Martel by you?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: Which is a letter
8 from Monia to Maher.

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: That the two
11 parliamentarians would carry with them?

12 MR. PARDY: Or would be given to
13 them upon arrival in -- I think at this point
14 Ms Catterall was in North Africa on a separate
15 visit, and we were filling in some of the gaps
16 here, so that this material was available to her
17 when she arrived in Damascus.

18 MR. CAVALLUZZO: And finally, at
19 389, we see that there's a message to you, and it
20 says:

21 "Gar, I..."

22 This is from --

23 MR. PARDY: Tim Martin.

24 MR. CAVALLUZZO: Tim Martin.

25 "Gar, I spoke with Ambassador

1 Arnous today who said that
2 Mrs. Catterall and
3 Mr. Assadourian would be able
4 to visit with Mr. Arar."

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: So that brings us
7 to the meeting itself, and if we would go to tab
8 395.

9 I guess we could refer to this as
10 the eighth consular visit, the second-last visit,
11 to Mr. Arar?

12 MR. PARDY: That is correct, yes.

13 MR. CAVALLUZZO: In terms of the
14 meeting -- we'll come to that -- but the first
15 note at the top is from Pierre, and I assume
16 Pierre is with the Minister's office?

17 MR. PARDY: It's Pierre -- he is
18 the -- yes, he's in MINA.

19 MR. CAVALLUZZO: And his note to
20 you and Dan Livermore is.

21 "Further to the report below
22 and the apparent unhappiness
23 of Ms. Catterall,
24 O/MINA/Fry..."

25 That's Mr. Fry, the executive

1 assistant.

2 "...would like a more
3 complete read out of what the
4 Syrian intelligence would
5 have told her and how this
6 corresponds to the most
7 recent information we, in
8 this government, have about
9 Mr. Arar. We would need a
10 complete report from Damascus
11 on what the Syrians told
12 Ms Catterall about Mr. Arar
13 and how much of it we believe
14 to be accurate."

15 And we'll come, in particular, to
16 the point in the memo --

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: -- which
19 summarizes that.

20 MR. PARDY: That's paragraph 9 in
21 the reporting memo.

22 MR. CAVALLUZZO: Okay. So just in
23 terms of the summary, we see that the Deputy
24 Foreign Minister, Mr. Mouallem, meets with the two
25 parliamentarians before Mr. Arar's arrival.

1 Mr. Pillarella, we understand,
2 accompanies them, along with Mr. Shaw, who's the
3 political officer --

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: -- in the
6 Damascus embassy.

7 And if we go to the second page, I
8 guess -- if we can just pick up at paragraph 5.

9 Initially there's a great deal of
10 discussion concerning world affairs, Middle East
11 affairs, and so on, and Mr. Arar becomes the
12 subject of attention in paragraph 5.

13 MR. PARDY: He's also discussed in
14 paragraph 3 as well.

15 MR. CAVALLUZZO: The reference in
16 paragraph 3, do you think this is in terms of --

17 MR. PARDY: Handing over the
18 letter to the Foreign Minister.

19 MR. CAVALLUZZO: Okay. It says
20 that -- if we can just pick it up about halfway
21 through, it says:

22 "She..."

23 That obviously is Marlene
24 Catterall.

25 "...thanked Mr. Mouallem for

1 the opportunity to discuss
2 the Arar case, and handed
3 over a letter from Foreign
4 Minister Graham to Foreign
5 Minister al-Sharaa, in which
6 the former reiterated
7 Canada's hope that Mr. Arar
8 would be permitted to return
9 to Canada. She explained
10 that Mr. Arar was not wanted
11 in Canada for any criminal
12 activity and that Mr. Arar's
13 wife and two young children
14 were experiencing a very
15 difficult time since his
16 deportation to Syria.
17 Mr. Arar was the
18 breadwinner..."

19 And so on and so forth.

20 In paragraph 5 it says:

21 "Turning to the Arar case,
22 the Deputy Foreign Minister
23 explained that the US
24 decision to deport Arar to
25 Syria via Jordan had taken

1 his government by surprise."

2 This is no surprise, they have
3 said that in the past, consistently.

4 MR. PARDY: What was surprising in
5 this particular thing was that the Syrians said
6 they had expected him to be deported to Canada.

7 MR. CAVALLUZZO: Right.

8 How they would have been involved
9 in that, I ask you. A very interesting question?

10 MR. PARDY: I have no idea.

11 MR. CAVALLUZZO: You have no idea
12 either?

13 MR. PARDY: No.

14 MR. CAVALLUZZO: Okay. And then
15 it goes on to deal with his dual citizenship and
16 so on, and it talks about his alleged affiliation
17 with al-Qaeda, and then it goes on:

18 "The result of this
19 questioning was that the
20 Syrian Security Services
21 still had concerns that
22 Mr. Arar could be connected
23 to al-Qaida. Then in the
24 presence of the MPs, the
25 Deputy Foreign Minister

1 phoned General Hassan Khalil,
2 the head of Syria Military
3 Intelligence, to arrange for
4 an immediate visit with
5 Mr. Arar."

6 And then I guess they -- it says:
7 "At Syrian Military
8 Intelligence..."

9 Presumably they may have left to
10 move to the location of the SMI?

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: And it's stated:
13 "The Colonel explained that
14 they had finished their
15 investigation of Mr. Arar and
16 would shortly be sending him
17 to stand trial on charges of
18 belonging to al-Qaida and
19 having received military
20 training in al-Qaida camps in
21 Afghanistan."

22 Now, do you know how they moved
23 from the Muslim brotherhood to al-Qaeda? Do you
24 know the point in time that that --

25 MR. PARDY: No, and they came back

1 to the Muslim brotherhood later on as well.

2 One, I think, piece of information
3 that is worth noting is that, I think, it was in
4 1980, when the Muslim brotherhood was extremely
5 active in Syria, and there was -- the Syrian
6 government enacted a series of regulations and
7 laws to deal with the Muslim brotherhood, which
8 basically allowed them to pretty much do what they
9 wanted with anybody suspected of being a member of
10 the Muslim brotherhood.

11 So I think the government found it
12 fairly convenient to use the Muslim brotherhood
13 label to keep people in prison.

14 MR. CAVALLUZZO: Okay. Then it
15 goes on, and Ms Catterall once again explains that
16 the Solicitor General indicated that Arar was not
17 wanted in Canada for criminal activity and talks
18 about the young family he has and the impact it
19 had on his family.

20 And the Colonel said that the case
21 would now be the responsibility of the Syrian
22 courts.

23 And then in paragraph 7 we see
24 that Mr. Arar is brought into the room, introduced
25 to the Mps and the embassy staff. He appeared

1 tired and disoriented, but generally in good
2 health.

3 He was instructed by Colonel
4 George to speak only in Arabic so that the Syrian
5 staff could understand what he was saying, and
6 then it says:

7 "During the interview, this
8 restriction was relaxed
9 several times, especially
10 when it came for Mr. Arar to
11 dictate a letter to his wife.
12 The Colonel also told
13 Mr. Arar to refrain from
14 commenting on security
15 aspects of this case and to
16 speak about his health,
17 prison conditions and family
18 matters."

19 And then the comments which gave
20 rise to that e-mail at the top of this document,
21 in paragraph 9, it states:

22 "In a debriefing with the
23 Ambassador, Mrs. Catterall
24 and Mr. Assadourian expressed
25 disappointment that all the

1 security aspects of the Arar
2 case, as seen by the Syrians,
3 had not been explained to
4 them earlier. Mrs. Catterall
5 even suggested that perhaps
6 Minister Graham had been kept
7 in the dark concerning some
8 of this information, a view
9 that was not shared by
10 Mr. Assadourian. Both Mps
11 indicated that had they had
12 been more fully briefed in
13 Ottawa, they would have
14 reconsidered undertaking
15 their mission to Damascus.
16 On the humanitarian side,
17 Mrs. Catterall was very
18 concerned the news of an
19 impending trial against
20 Mr. Arar on charges of
21 terrorism would devastate
22 Mrs. Arar. She has requested
23 that no part of this report
24 be conveyed by DFAIT to
25 Mrs. Arar before she has the

1 chance to speak to her
2 directly."

3 And I'm wondering if you wanted to
4 comment on these statements -- at least the --

5 MR. PARDY: Yes, when I read
6 these --

7 MR. CAVALLUZZO: Go on.

8 MR. PARDY: Yes, when I read this
9 particular section of the report, I was clearly
10 surprised because it was my view, and the view of
11 others in the department who had met with
12 Ms Catterall and Mr. Assadourian before they left,
13 that we had provided them with all information
14 that we had received and the briefing was
15 complete.

16 And Mr. Graham, as you can see
17 from the material that we've gone over, over the
18 last day and a half, there was absolutely nothing
19 that we knew that was not communicated to
20 Mr. Graham.

21 When Ms Catterall returned to
22 Ottawa, I raised this issue with her, and she told
23 me that, that was not an accurate reporting of her
24 views, or what she had said, and we -- I think I
25 spoke to the ambassador, and I think there was

1 some subsequent correspondence on this, and I
2 think the best I can say is that there's some
3 genuine misunderstanding here with respect to
4 this.

5 And certainly in terms of
6 Ms Catterall's activity, after she returned to
7 Ottawa from this visit, there was no diminution in
8 her interest or activities and, as a matter of
9 fact, there was a marked increase in her
10 involvement in the case.

11 MR. CAVALLUZZO: Okay. Now, this
12 e-mail from the Minister's office at the top,
13 beginning of the document --

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: -- wherein he is
16 basically saying, "I want to meet you and
17 Mr. Livermore to get a more complete understanding
18 as to what's going on in light of the information
19 that seems to be disclosed in the report", did you
20 meet with the Minister's office pursuant to this
21 e-mail request?

22 MR. PARDY: Most likely, yes.

23 MR. CAVALLUZZO: And what was the
24 concern, if any, that the Minister's office had,
25 as a result of the information disclosed?

1 MR. PARDY: I think the comments
2 in paragraph 9 was a genuine concern, where -- I
3 mean, we -- a Member of Parliament had gone out to
4 Syria to meet with Mr. Arar, and the idea that she
5 had gone and was not completely briefed on what
6 was going on I think was of concern.

7 Certainly I didn't -- it became my
8 concern the moment I read this, and that it
9 certainly was not my view, nor the view of other
10 people, when we briefed both Ms Catterall and
11 Mr. Assadourian previous to this visit.

12 MR. CAVALLUZZO: Right. So, in
13 effect, that was clarified, and it was left on the
14 basis that there appeared to be a genuine
15 misunderstanding, and as a result of that, things
16 moved on?

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

18 MR. CAVALLUZZO: Okay. Tab 397,
19 once again, shows the history of the evolution of
20 these Q&A's. As time goes on, new information is
21 added as you obtain more information on the file.

22 At tab 405, I see that this is an
23 e-mail in early May --

24 MR. PARDY: I'm sorry, the tab
25 number again?

1 MR. CAVALLUZZO: 405.

2 MR. PARDY: No, the tab number 405
3 fast-forwards to August 13, in my book.

4 MR. CAVALLUZZO: That is a
5 fast-forward.

6 THE COMMISSIONER: Mine, too.
7 --- Off Record Discussion / Discussion officieuse

8 MR. CAVALLUZZO: This is where
9 experience will show, Mr. Pardy.

10 We're at May, and I guess it's 408
11 in your documents, and this would appear to be
12 another communication with Amnesty International
13 where there seems to be an open letter to
14 Mr. Graham?

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: I'd like to deal
17 with the last document before dealing with another
18 discrete issue. This is tab 409 in your volume,
19 and just let me read it to you, as part of it is
20 redacted. This is May 15, 2003:

21 "On Wednesday May 15th,
22 Canada's Ambassador to Syria,
23 Franco Pillarella, handed
24 over to DFAIT/ISI a document
25 received earlier that month

1 from... The document, an
2 undated three-paragraph *bout*
3 *de papier* in Arabic, alleges
4 that Arar spent time..."

5 This is obviously the document
6 that we referred to earlier in November 2002.

7 MR. PARDY: The November 3
8 document, yes.

9 MR. CAVALLUZZO: Now, do you know
10 why -- the question that I have is that, we have
11 the date of May 15, 2003, which is incorporating
12 the very same e-mail that we reviewed in early
13 November, and I'm just wondering if you know
14 what's going on within the DFAIT as to this
15 particular document?

16 MR. PARDY: I know many things,
17 but the intricacies of DFAIT filing is still a
18 great mystery to me.

19 MR. CAVALLUZZO: Right. I guess
20 the point is this -- I just want to be sure that
21 we're on the same page on this. This is just --
22 this is just a mistake -- unless we're dealing
23 with another document?

24 MR. PARDY: It's dated twice on
25 May 15, above the text and then in the text

1 itself, which I find -- but the document -- but
2 message itself, it strikes me there was an earlier
3 message that is almost the same as this.

4 MR. CAVALLUZZO: It is identical.

5 MR. PARDY: It's identical, is it?

6 Yes.

7 MR. CAVALLUZZO: So there is no
8 explanation for that that you can help us with?

9 Okay. That's fine.

10 I would like to move to a discrete
11 area, and this is what I am going to refer to, an
12 area of your efforts to make or have Canada speak
13 with one voice.

14 I am leading up to the May 5th,
15 2003 document which can be found in Exhibit P-85,
16 the loose exhibits, at tab 7.

17 MR. PARDY: P-84 or P-85?

18 MR. CAVALLUZZO: Volume 1, P-85.

19 We are leading up to that
20 memorandum of May 5th, but I want to give some
21 context to it in terms of the evidence that we
22 have covered with you in the last day and a half.

23 Just to refresh our memories, on
24 October the 16th of 2002, you met with CSIS and
25 RCMP concerning information you needed, the day

1 after the Minister's meeting. What you were
2 trying to do is trying to get as much information
3 as possible dealing with Mr. Arar's activities.

4 On November the 4th of 2002, we
5 received an alleged confession from Syria, which
6 is actually the document we just looked at, the
7 May 15th document, wherein the Syrians said, "We
8 got this statement from Mr. Arar", and
9 Mr. Pillarella brought that statement back to
10 Canada.

11 We now know that in late November
12 2002, there was a visit by CSIS to Syria.

13 On December the 10th of 2002, we
14 see that there is a letter from the RCMP,
15 Assistant Commissioner Proulx, telling us that
16 Mr. Arar is a person of interest, and as a result
17 they are refusing to give Mr. Edelson the letter
18 he requested, and we took you through that as
19 well.

20 On February the 20th of 2003, we
21 see that you are thinking about -- this is the
22 deck -- how to get Canada speaking with one voice
23 when we are dealing with a terrorist, an alleged
24 terrorist activity.

25 That's tab 317, by the way.

1 On February 24, 2003, we saw the
2 action memo to the Minister, tab 325, and this was
3 after there were consultations with CSIS, the RCMP
4 and the Department of Justice and PCO.

5 MR. PARDY: That was not a memo
6 from me, I do not believe, was it?

7 MR. CAVALLUZZO: Well, the --

8 MR. PARDY: I am sorry, yes. That
9 was the covering.

10 MR. CAVALLUZZO: Right. It was
11 the covering memo at 325. It's back in Volume 3,
12 I believe, if you want to look at.

13 It is Volume 4.

14 MR. PARDY: 324?

15 MR. CAVALLUZZO: Tab 325.

16 MR. PARDY: Yes. I think my only
17 concern -- you used a date in February for this,
18 and I don't think that that is correct.

19 MR. CAVALLUZZO: Oh, I am sorry.
20 The middle paragraph says:

21 "You will recall on February
22 24th that there is a
23 briefing."

24 Presumably it was shortly after
25 that.

1 MR. PARDY: I don't -- it went on
2 for a little bit here. It strikes me that -- I
3 only started the deck, I think, it was in
4 February. And I think the one we used this
5 morning, there were eight versions of that. I
6 think it was a little later than February when
7 this all came together, yes.

8 MR. CAVALLUZZO: Okay. That's
9 helpful.

10 Then on March 21st, we have this
11 conversation between the Syrian ambassador and the
12 two parliamentarians concerning the
13 miscommunication and the misimpression --

14 MR. PARDY: That's right.

15 MR. CAVALLUZZO: -- that Syria has
16 concerning what Canada wants in respect of
17 Mr. Arar?

18 MR. PARDY: Mm-hmm.

19 MR. CAVALLUZZO: We also have the
20 April 12, 2002 e-mail -- that we just reviewed
21 prior to lunch -- to Monia saying that a major
22 part of the problem is that not everyone in the
23 Government of Canada agrees what we are doing in
24 support of Mr. Arar.

25 And indeed throughout we have

1 these Q&As where it is consistently stated that
2 there is no information that Mr. Arar is engaged,
3 or has engaged, in terrorist activities or
4 terrorist organizations.

5 So that that is the backdrop we
6 have. We are now in May. That's about, I guess,
7 eight or nine months while Mr. Arar has been in
8 prison in Syria, and as a result of that --

9 MR. PARDY: The war was winding
10 down at this point, in terms of that particular
11 issue.

12 MR. CAVALLUZZO: You decide to
13 draft a memorandum, and that brings us now to tab
14 7, the May 5th, 2003 memo.

15 And it has your name at the top.
16 It is another action memorandum for the Minister
17 of Foreign Affairs and with other Ministers
18 associated with Foreign Affairs?

19 And then I just read to you the
20 first page.

21 It says in the first bullet point
22 under "Recommendations":

23 "Efforts continue to
24 establish a common
25 understanding within the

1 government of Canada on this
2 case with the objective of
3 the issuance of a statement
4 signed by the Solicitor
5 General and the Minister of
6 Foreign Affairs that could be
7 used with the Syrian
8 authorities."

9 In effect what you are looking for
10 is a joint letter, signed by both Ministers, the
11 Minister responsible for Foreign Affairs and the
12 Minister responsible for the RCMP and CSIS, to
13 send to the Syrians.

14 Secondly:

15 "The visit to Syria by the
16 Deputy Minister be used to
17 again impress upon the
18 Syrians the seriousness with
19 which we view this case, make
20 an appeal that charges not be
21 laid and that Mr. Arar be
22 released and permitted to
23 return to Canada."

24 I guess that is an interesting one
25 to me, because what you seem to be suggesting is

1 you don't want charges laid. What you want is his
2 return to Canada, presumably because you are quite
3 aware of the track record of the Syrians as far as
4 the judicial process is concerned?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: The third
7 recommendation is:

8 "That you call in the Syrian
9 ambassador at an appropriate
10 time and provide a response
11 to the Syrian stated
12 intentions to prosecute."

13 And the final recommendation is:

14 "If necessary that you meet
15 with the Solicitor General
16 and the Deputy Prime Minister
17 to arrive at a common
18 understanding on the case."

19 So those were the recommendations.

20 Then the body of the document
21 itself gives a background in terms of what has
22 happened, and obviously I leave that to counsel to
23 read. But I want to focus on a couple of points.

24 The first is at page 3 of 5, and
25 in paragraph 6 it states:

1 "The central issue in our
2 dealing with the case is the
3 fact that there are
4 inconsistencies in what we
5 are being told by the
6 American authorities and what
7 the Canadian police and
8 security officials have
9 reported."

10 What are you talking about there?
11 Are you talking about what Mr. Cellucci has said
12 publicly and what you are hearing from the RCMP
13 and CSIS?

14 MR. PARDY: Yes, primarily it's
15 Mr. Cellucci's comments to the media. Up to this
16 point I think he had made three public statements
17 to the media. The gist of all of those statements
18 were to the effect that American actions were
19 predicated upon information that came from Canada
20 and that the Canadian government should look to
21 its own house first in dealing with this matter.

22 MR. CAVALLUZZO: If we stay on
23 that page, we see in the next unredacted portion
24 it states:

25 "Initially, the Syrians

1 advised us they had
2 established that Mr. Arar was
3 a member of the Syria Muslim
4 Brotherhood but as indicated
5 above they informed Ms
6 Catterall that they believed
7 he was a member of al-Qaida
8 which corresponds to what the
9 Americans claimed at the time
10 of his deportation."

11 And then in paragraph 9, which is
12 the next unredacted portion, it states:

13 "It remains our view that the
14 following elements need to be
15 in place if there can be any
16 expectation that the Syrians
17 might be prepared to release
18 Arar and permit him to return
19 to Canada."

20 And the first point at the top of
21 page 4 is that:

22 "There is a need for an
23 unambiguous statement by the
24 government of Canada,
25 preferably signed by the

1 Solicitor General and the
2 Foreign Minister, to the
3 effect that we have no
4 evidence in Canada, or from
5 foreign sources, that Mr.
6 Arar is or was a member of
7 al-Qaida, that we do not
8 believe that such information
9 exists and that Mr. Arar
10 should be permitted to return
11 to Canada."

12 And secondly:

13 "In the above statement we
14 should also state
15 categorically that the
16 information used by the
17 United States in deciding to
18 deport Mr. Arar did not
19 originate with the Canadian
20 authorities since we have no
21 information that he was a
22 member of al-Qaida."

23 And then the final portion, in
24 terms of what has to be done, is in paragraph 10:

25 "In the days ahead, our

1 efforts will concentrate on:
2 - convening a meeting of
3 Canadian officials
4 representing CSIS, RCMP, PCO,
5 and office of the Deputy
6 Prime Minister to adopt a
7 common Canadian approach that
8 could be sufficiently clear
9 to communicate to the Syrians
10 authorities.
11 - communicating that approach
12 to the Syrian authorities.
13 This could be done in calling
14 in ... and as well have the
15 Deputy Minister raise the
16 matter...
17 - making representations to
18 the Syrians not to charge Mr.
19 Arar and put him on trial.
20 If a trial were to take place
21 we must assume that it will
22 take place in secret, Mr.
23 Arar will not have
24 appropriate representation
25 and it is certain he will be

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1 convicted and sentenced to a
2 lengthy period of
3 imprisonment."

4 So that clearly sets out your view
5 because of, as I said before, the track record of
6 judicial process in Syria: that, obviously, the
7 route to go is to have his immediate release from
8 Syria.

9 I accordance with this memorandum,
10 I understand that a meeting was held on or about
11 May 12th?

12 MR. PARDY: Yes, that is correct.

13 MR. CAVALLUZZO: And the meeting
14 was attended by PCO, DFAIT, Solicitor General,
15 CSIS and RCMP?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: Just let me --

18 MR. PARDY: There might have been
19 other people in that room. There was quite a
20 crowd.

21 MR. CAVALLUZZO: And just let me
22 read a portion from the Garvie report to you.

23 This is Exhibit P-19.

24 MR. PARDY: The page?

25 MR. CAVALLUZZO: We are going to

1 start at page 40.

2 THE COMMISSIONER: Page?

3 MR. CAVALLUZZO: Forty, four-zero.

4 It says 03/05/14 at the bottom of
5 the page. This could be incorrect. It's our
6 supposition that this should really be May 12th,
7 but in any event, it's around that time.

8 It states:

9 "A briefing note to the
10 Commissioner was prepared by
11 Inspector Reynolds, and
12 provided an update following
13 a meeting ..."

14 Excuse me, that is the correct
15 date.

16 "... following a meeting that
17 took place on 03/05/12 with
18 ... RCMP, PCO, DFAIT and
19 SOLGEN in attendance. The
20 discussion at the meeting was
21 about the current status of
22 ARAR and the current
23 interest, if any, of the RCMP
24 and ... with respect to him.
25 Also, Mr. Gar Pardy presented

1 the contents of the action
2 memorandum that he had
3 prepared, and the RCMP ...
4 and SOLGEN expressed concern
5 about certain wording
6 contained therein. With
7 respect to the position of
8 the RCMP at this time
9 regarding ARAR, the following
10 excerpt from the briefing
11 note is relevant:"

12 And then the top of page 41, there
13 is a redacted portion, and then it picks up after
14 the redaction:

15 "RCMP was asked by DFAIT if
16 we were interested in
17 interviewing ARAR. RCMP
18 advise that while we are
19 interested in interviewing
20 ARAR, it is not a priority at
21 this point. DFAIT advised
22 that they had earlier
23 indications from Syrian
24 authorities that they would
25 not be open to law

1 enforcement contact with
2 ARAR. (He is being held by
3 military intelligence.)"

4 That is a public description of
5 the meeting that was held on May the 12th by
6 Mr. Garvie.

7 It would appear that no consensus
8 was reached at this meeting on May the 12th
9 concerning your action memorandum and
10 recommendations?

11 MR. PARDY: No consensus in the
12 largest sense, but people were willing to look at
13 what I was trying to achieve through this memo and
14 were to get back to me with specific comments on
15 the memo itself.

16 I did receive some comments from
17 different people in that room, that they suggested
18 as changes to my memorandum.

19 MR. CAVALLUZZO: I understand that
20 the proposed language brought forward by the other
21 agencies, in particular the proposed language of
22 CSIS and the RCMP, was not helpful in terms of
23 what your view would be in terms of the Syrians?

24 MR. PARDY: No, not at this point.
25 We achieved a consensus which I thought I could

1 live with on the language in the letter that
2 Mr. Graham would be sending. That letter went up
3 to the Minister's office, and the Minister's staff
4 felt that it was not strong enough and then asked
5 me to go back to the charge again on all of this,
6 after labouring up the hill with this thing for
7 almost a month, and I did so.

8 Nothing really changed.

9 MR. CAVALLUZZO: But I want to
10 know in respect of the language proposed by the
11 police agency or the security intelligence agency,
12 do you think it would have helped you in terms of
13 your efforts of getting Mr. Arar released?

14 MR. PARDY: Not the language that
15 was suggested the second time around, no.

16 MR. CAVALLUZZO: And we will come
17 to this; we will look at the letter itself.

18 But eventually what happens is
19 that no letter ever went from the Minister --
20 joint letter went from the Minister and the
21 Solicitor General. No letter went from the
22 Minister. And eventually what happened is a
23 letter went from the Prime Minister on July 22nd.

24 MR. PARDY: Yes. This initiative
25 then overlapped with another initiative that I had

1 in play, and this was with the Prime Minister --
2 well, the initial part of all of that was the
3 Prime Minister, I think on June 13, signed a
4 letter to Dr. Mazigh giving a commitment on the
5 part of the government in terms that we would be
6 extremely active in all of this.

7 And I had another initiative under
8 way with respect to another country, with a Prime
9 Ministerial envoy being named, and I talked to the
10 people at the Privy Council Office and they agreed
11 that we would overlap and have -- Mr. De Bane had
12 been named as the special envoy. It was agreed
13 that Mr. De Bane would add Damascus to his
14 itinerary, and we were able to put that together
15 and out of that got a Prime Ministerial letter.

16 MR. CAVALLUZZO: We will take you
17 to that, but if we could just stay with this May
18 3rd memo, which eventually turns into another memo
19 on June the 3rd, or June the 5th, which we will
20 come to, eventually it would appear, as you say in
21 the second attempt, the language proposed by the
22 RCMP and CSIS was not helpful in terms of your
23 efforts in getting Mr. Arar returned.

24 You must have been disappointed
25 after all of your efforts. Or is this just

1 another day in government?

2 MR. PARDY: Another day in the
3 office. One door is shut and you open another.

4 MR. CAVALLUZZO: If you could give
5 me a second, Mr. Commissioner, I want to make sure
6 my book is correct.

7 --- Pause

8 MR. CAVALLUZZO: Somehow the
9 photocopying of our book has mixed up. It seems
10 to be the only book that is -- how that happened,
11 I won't question.

12 We are in Volume 5 now. Why don't
13 we start at tab 412?

14 If we go to 412, we have some
15 handwriting, and I wonder if you can identify that
16 handwriting?

17 MR. PARDY: I think it's Miss
18 Pastyr-Lupul.

19 MR. CAVALLUZZO: Okay. And what
20 it seems to say is that:

21 "- we need to send a clear
22 message to Syrians that
23 speaks on behalf of the whole
24 government
25 - Syrians may not take

1 message seriously if it does
2 not come from all
3 departments/agencies
4 - Still send memo to Min.
5 Graham."

6 There is no date on it,
7 unfortunately.

8 MR. PARDY: May 15th. I can help
9 you here on this one. I think this was a
10 telephone call that came in to my assistant,
11 Ms Cyr, and we had a recording of those incoming
12 calls. If I was not there, she did.

13 Ms Cyr passed it on to
14 Ms Pastyr-Lupul, and she spoke to Dr. Mazigh, and
15 these notes I think reflect the conversation with
16 Dr. Mazigh and Ms Pastyr-Lupul.

17 MR. CAVALLUZZO: Okay. And this
18 is the information that she has taken from
19 Dr. Mazigh?

20 MR. PARDY: That is correct. That
21 is my understanding, yes.

22 MR. CAVALLUZZO: You didn't attend
23 the meeting?

24 MR. PARDY: No. It's a telephone
25 call.

1 MR. CAVALLUZZO: Okay.

2 MR. PARDY: I wasn't there when
3 the message came in, and I think Ms Cyr said --
4 and probably, I don't know, maybe I was not going
5 to get back to the office in any reasonable time,
6 so she gave the message to Ms Pastyr-Lupul to
7 return the call.

8 MR. CAVALLUZZO: So you did meet
9 with Dr. Mazigh and Bassam Arar on May the 9th to
10 discuss Dr. Mazigh's concerns.

11 That is, unfortunately, in the
12 previous volume, if you could give the witness the
13 previous volume. It is the last tab, 407?

14 Do you see that there on May 9th?

15 MR. PARDY: Yes.

16 MR. CAVALLUZZO: When you met
17 Mr. Arar's brother and spouse to discuss Monia's
18 concerns and to advise what options you are
19 pursuing at this particular point in time.

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: You mention the
22 visit of J. Lavertu to Syria, and that was
23 referred to earlier in your action memorandum of
24 May 3rd? That's the Deputy Minister. He would be
25 travelling to Syria in the near future, and he was

1 going to raise Mr. Arar's situation with the
2 Syrians?

3 MR. PARDY: That was the
4 intention, and I think that the record will show
5 that for a variety of reasons, that did not
6 happen.

7 MR. CAVALLUZZO: Okay. At tab
8 414, if we can just move along now in Volume 5,
9 this is an e-mail from Dr. Mazigh on either May 20
10 or 21. Do you see that?

11 Really, this is once again a
12 troubled partner expressing concerns about
13 Mr. Arar and frustrations and whatnot as to what
14 is happening to her husband?

15 MR. PARDY: Yes. That is an
16 e-mail message to me from Dr. Mazigh, yes.

17 MR. CAVALLUZZO: And you would
18 regularly respond to those e-mails, either by
19 responding e-mail, or telephone, or meetings?

20 MR. PARDY: Or meetings, yes. I
21 am not quite sure just what the delay was during
22 this period. I was in Toronto on the 20th and
23 21st, and I think that occasioned the delay in
24 responding to it, yes.

25 MR. CAVALLUZZO: At 416 there is

1 another e-mail, but there is a draft letter. I
2 think we may have seen this letter before.

3 There is a series of e-mails that
4 are going back and forth between you and
5 Dr. Mazigh.

6 The second page there, the Bill
7 Graham letter to Shara'a, who is the Minister of
8 Foreign Affairs for Syria -- do you see that
9 letter?

10 MR. PARDY: Yes, I do.

11 MR. CAVALLUZZO: Was this letter
12 ever sent?

13 MR. PARDY: No, I think this was
14 all sort of part and parcel of the actions
15 associated with the May 5th memorandum, the June
16 3rd and June 5th memorandum, and this also was
17 overtaken by the agreement that we had from the
18 Prime Minister's Office that he would become
19 involved in all of this, yes.

20 MR. CAVALLUZZO: At tab 419 --
21 excuse me, let's go to 418 first, which is
22 something called "Canadian Eyes Only - The Maher
23 Arar Case", and there are three points made.

24 Do you know what this document is?

25 MR. PARDY: It looks to me like

1 these are speaking points that were usually set up
2 for the Minister, and he might have been having
3 either the possibility of a discussion with the --
4 it strikes me the Syrian Foreign Minister -- or
5 the Syrian ambassador.

6 Normally that sort of -- when you
7 look at the language of it, it strikes me that
8 that is what this was meant to do, was to give
9 Mr. Graham some talking points, although I am not
10 absolutely certain of that.

11 MR. CAVALLUZZO: All right. We
12 will ask him that on Monday.

13 Tab 419 seems to be some kind of a
14 PowerPoint presentation?

15 MR. PARDY: That's the deck.

16 MR. CAVALLUZZO: This is what the
17 deck looks like in reality.

18 MR. PARDY: We project it on the
19 wall, and we have talking points that go along
20 with it.

21 A lot of the talking points you
22 saw earlier are not necessarily reflected in the
23 deck itself but are talking points for the person
24 making the presentation.

25 MR. CAVALLUZZO: Okay. And that

1 makes the presenter look much smarter than the
2 person looking at the screen?

3 MR. PARDY: Absolutely.

4 MR. CAVALLUZZO: Thank you.

5 Tab 423 is the next attempt at the
6 action memorandum. We saw the first one, which
7 was May 5 of 2003, and this one is dated June 3rd
8 of 2003, and was also authored by you?

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: Why are you now
11 at a second draft? What would have happened?

12 You obviously had the meeting on
13 May the 12th.

14 MR. PARDY: Yes.

15 MR. CAVALLUZZO: No consensus was
16 reached. As a result of that, what happened?

17 MR. PARDY: At this point I am
18 still trying to rescue something out of that
19 effort which we started on May 5. As you can see,
20 the recommendations have been reduced down to one,
21 versus the four in the earlier memo. There was
22 some language changes.

23 Still, if I can use that term, the
24 focus was still a letter from Mr. Graham to the
25 Foreign Minister at this point.

1 MR. CAVALLUZZO: Right. And was
2 it a joint letter, or just a letter from
3 Mr. Graham?

4 MR. PARDY: It was just a letter
5 from Mr. Graham.

6 MR. CAVALLUZZO: There are a
7 couple of points in this memo. It is shorter than
8 the other; information is taken out.

9 But there is some new information
10 that I think we should raise with you.

11 In particular at page 3 of 4, we
12 see what happened in fact to the visit of the
13 Deputy Minister that we just talked about.

14 In paragraph 6 it states that:

15 "The Deputy Minister visited
16 Syria during the week of May
17 19 and while it was intended
18 that he raise Mr. Arar's
19 case, the end conditions were
20 such that it was not possible
21 for him to do so. His
22 meeting with the Vice Foreign
23 Minister was cancelled at the
24 last moment and his
25 discussions with the Foreign

1 Minister were short and
2 preoccupied with the Syrian
3 position in Security Council
4 on the lifting of sanctions
5 and the American and British
6 mandate for Iraq."

7 So we see that through extraneous
8 circumstances Mr. Lavertu did not raise Mr. Arar's
9 case with the Syrians?

10 MR. PARDY: That is correct.

11 MR. CAVALLUZZO: And then in terms
12 of what you might be able to achieve, if you go to
13 the final page, page 4, in the paragraph under the
14 redactions it says:

15 "As such, the best we can do
16 in these circumstances is to
17 again raise the matter direct
18 with the Syrian Foreign
19 Minister and to that end we
20 have attached a letter for
21 your signature. We would
22 also recommend that you call
23 in the Syrian Ambassador and
24 deliver the letter."

25 If we go to 439, we see the letter

1 that was appended to these memos.

2 Is that correct?

3 MR. PARDY: Yes, that is the
4 letter, yes.

5 MR. CAVALLUZZO: At tab 429 we see
6 another, and the final, action memorandum. This
7 is the final draft. This is signed by yourself
8 and Mr. Lavertu?

9 MR. PARDY: Yes.

10 MR. CAVALLUZZO: We see that the
11 recommendations now are twofold, not just
12 recommending that he sign the attached letter to
13 the Syrian Foreign Minister but, second:

14 "We also recommend that you
15 meet with Mrs. Arar at a
16 mutually convenient time."

17 MR. PARDY: Yes.

18 MR. CAVALLUZZO: And ultimately
19 this is the final memorandum?

20 MR. PARDY: Yes, it is.

21 MR. CAVALLUZZO: Okay.

22 MR. PARDY: But it was -- well, we
23 will come to that later, I am sure.

24 MR. CAVALLUZZO: Certainly as far
25 as that is concerned, there was further -- and

1 this is what you related before so that we can put
2 this in context. There were further discussions
3 with the agencies, the RCMP and CSIS?

4 MR. PARDY: Not discussions. They
5 provided language that they thought was
6 appropriate for their position in the memo, and I
7 think in the letter itself as well.

8 MR. CAVALLUZZO: Once again that
9 was the language that you thought would clearly be
10 of no assistance to Mr. Arar and as a result of
11 that another avenue was pursued. And we will come
12 to that in terms of the --

13 MR. PARDY: That was a subsequent
14 development, yes.

15 MR. CAVALLUZZO: In fact, it is on
16 the public record, and just to complete that
17 picture, if you go to the Garvie report, which
18 once again is P-19 -- you should have that in
19 front of you.

20 MR. PARDY: Page 40, I guess, is
21 it?

22 MR. CAVALLUZZO: No, it's 41.

23 MR. PARDY: Forty-one this time.

24 MR. CAVALLUZZO: You know the
25 Garvie report well.

1 MR. PARDY: First time I have seen
2 it.

3 MR. CAVALLUZZO: You must be
4 referring to the first edition. I have got the
5 second.

6 MR. PARDY: Okay.

7 MR. CAVALLUZZO: I am looking in
8 particular at the middle of the page there, June
9 17, 2003.

10 MR. PARDY: Yes.

11 MR. CAVALLUZZO: It says:

12 "Mr. Gar Pardy, Director
13 General, Consular Affairs
14 Bureau, was asked by his
15 Minister's advisors to
16 clarify with SOLGEN, RCMP
17 and... an aspect of the text
18 in his memorandum and draft
19 letter from Minister Graham
20 to Syrian Foreign Minister
21 Shara'a. The new suggested
22 text was:

23 'I assure you that there
24 is no evidence he is
25 involved in terrorist

1 activity nor is there any
2 Canadian Government
3 impediment to Mr. ARAR's
4 return to Canada.'"

5 And we will see that that language
6 was not satisfactory either to the unknown agency
7 and the RCMP?

8 MR. PARDY: Sparked a reaction,
9 yes.

10 MR. CAVALLUZZO: Right. And the
11 unknown agency and RCMP came back with language
12 which would not have assisted Mr. Arar?

13 MR. PARDY: Clearly unacceptable
14 to the efforts that were under way.

15 MR. CAVALLUZZO: At 425, we need
16 not -- you may refer to it briefly -- but you will
17 see there that Dr. Mazigh expresses frustration
18 that the Deputy Minister did not deal with the
19 Arar issue when he was in Syria, and you explained
20 the circumstances that we have just related?

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: And at 426, we
23 see an e-mail to you from Mr. Heatherington, Scott
24 Heatherington, who is in ISI, the Director of
25 Foreign Intelligence.

1 MR. PARDY: Yes.

2 MR. CAVALLUZZO: And he says --
3 this once again relates to the language in those
4 proposed letters.

5 He says:

6 "Gar, I suggest that you
7 amend the text of paragraph 8
8 beginning with 'it is clear
9 the RCMP...' I suggest the
10 following text be inserted in
11 place of the last four lines
12 of paragraph 8. The new text
13 would read 'The RCMP has
14 confirmed that the Americans
15 consulted them prior to
16 deporting Arar, but did not
17 raise the issue of possible
18 deportation of Arar to Syria
19 nor did the RCMP give any
20 indication that such a course
21 of action would be acceptable
22 to them.' "

23 Do you know whether
24 Mr. Heatherington was doing that after consulting
25 the RCMP as to what the appropriate wording of

1 paragraph 8 should be?

2 MR. PARDY: Yes, that would be as
3 a result of language provided by the RCMP.

4 MR. CAVALLUZZO: Could you go to
5 June 24th at tab 451.

6 This is dated June 24th, and the
7 subject matter title is "Maher ARAR: What to do?"

8 MR. PARDY: Yes.

9 MR. CAVALLUZZO: And this is a
10 memorandum. Who was it composed by, and who was
11 it sent to?

12 MR. PARDY: I think you need to
13 help me here. This is a format that I have not
14 seen before.

15 MR. CAVALLUZZO: You will see the
16 J.F. Gould, under "Comment" on the first page.
17 Under "Header A" it says:

18 "Comment: This memorandum
19 was composed by Zmemo..."

20 And then it goes:

21 "jfgould/995-0750."

22 MR. PARDY: Mr. Gould was an
23 officer in ISI.

24 MR. CAVALLUZZO: Okay. Obviously
25 the subject matter was a memo that was to be

1 signed by MJW. That is Jim Wright, who is an
2 Assistant Deputy Minister?

3 MR. PARDY: That's right, yes.

4 MR. CAVALLUZZO: And KM, that's
5 Kathleen or --

6 MR. PARDY: Katherine McCallion.

7 MR. CAVALLUZZO: Katherine
8 McCallion, and she is an Assistant Deputy Minister
9 as well?

10 MR. PARDY: Right.

11 MR. CAVALLUZZO: What it says in
12 the opening paragraph is:

13 "It is very clear there has
14 not been, on the
15 institutional level, a
16 meeting of the minds between
17 the Department of Foreign
18 Affairs on the one hand and
19 CSIS and the RCMP on the
20 other with regard to the case
21 of Maher Arar. Recent
22 exchanges have been almost
23 testy and there is a fear
24 that the working relationship
25 between DFAIT and CSIS, in

1 particular, might be poisoned
2 if agreement is not reached
3 on a government-wide approach
4 to this case."

5 And then he reviews what the
6 situation is in terms of the background.

7 And if you pick up on the second
8 page, you will see in paragraph 3:

9 "It is important that the
10 Minister and his staff be
11 made aware of the evidence
12 that can be marshalled
13 against Arar and a way must
14 be found for the Department
15 to respond to allegations
16 that there is no evidence
17 suggesting that Arar has a
18 connection to the activities
19 of Muslim extremists."

20 And then there is a redaction.

21 And then it goes on:

22 "The Minister should seek a
23 briefing from his colleague,
24 the Solicitor General, about
25 the evidence facing Mr Arar.

1 In that same meeting, the
2 Minister should spell out
3 Mr. Arar's consular rights.
4 The two Ministers should also
5 agree on a plan of action to
6 deal with Mr. Arar and
7 wording to used with the
8 public and the media."

9 So that this is clearly --
10 although not signed, it's a draft -- a memorandum
11 from people in the ISI suggesting that, first of
12 all, there hasn't been a meeting of the minds. In
13 fact the relationship with CSIS and the RCMP is to
14 the point of becoming testy, and goes on to
15 suggest that the Minister should get a briefing
16 from the Solicitor General, who is responsible for
17 the two other agencies, that is RCMP and CSIS, and
18 get a briefing, in other words, as to what
19 information do they have so that he can perform
20 his functions as the Minister of Foreign Affairs.

21 The question I have for you is
22 whether that meeting ever occurred, to your
23 knowledge?

24 MR. PARDY: This, I think, is
25 dated June 24. Some time earlier than this, and I

1 think it might be in March or April, and maybe the
2 Minister or Mr. Fry can give you something, I had
3 suggested to Mr. Fry that arrangements be made for
4 the Minister to receive a briefing from the RCMP
5 and CSIS using the fact that he was a Privy
6 Councillor and was entitled to receive all
7 information that might be available on this issue.

8 And my recollection is that a
9 briefing was done at that time, but not in the
10 context of what's been said here on June 24. This
11 is very late in the day and other initiatives were
12 underway at this time.

13 MR. CAVALLUZZO: Right. So at
14 this point in time and, in fact, during that
15 course, we're talking about the beginning of May
16 when your first action memo is drafted through the
17 final piece, you're unaware of any briefing that
18 the Solicitor General gave the Minister of Foreign
19 Affairs?

20 MR. PARDY: That's correct. And
21 at this point, like others have done, I'm
22 appealing to the Prime Minister to get involved.

23 MR. CAVALLUZZO: Okay. Now, June
24 24 is also a significant day because you also
25 received -- or there was also a letter that was

1 sent to the National Security Directorate,
2 Mr. Michel D'Avignon, and if you again refer to
3 P-19, the Garvie report, at page 41?

4 This is a letter from Deputy
5 Commissioner Loepky of the RCMP, and he advised
6 the National Security Directorate that the RCMP
7 had major concerns about the text of the proposed
8 letter of DFAIT, and the concerns were, and he --
9 I'm quoting now from the Garvie report:

10 "with the misleading
11 statement made in paragraph 2
12 of the attached letter "*I*
13 *assure you that the*
14 *Government of Canada has no*
15 *evidence Mr. Arar was*
16 *involved in any terrorist*
17 *activities...*"

18 It goes on:

19 "These concerns have been
20 expressed on a number of
21 occasions to DFAIT officials
22 by the RCMP... and the
23 Solicitor General. Mr. Arar
24 is currently subject of a
25 national security

1 investigation in Canada."
2 And there's a redaction.
3 "He remains a subject of
4 great interest..."
5 Redaction.
6 "...given this situation, we
7 do not believe it would be
8 advisable for Mr. Graham to
9 send his letter to his Syrian
10 counterpart."
11 And it goes on, on the next page:
12 "Additionally,
13 D/Comm. Loepky addressed his
14 concerns by PCO for the Prime
15 Minister's signature in his
16 correspondence to D'Avignon.
17 This issue was with respect
18 to the apparent release of
19 information, by DFAIT, to
20 Dr. Monia MAZIGH, ARAR's
21 wife. D/Comm. Loepky
22 concludes by stating, "It is
23 important to emphasize,
24 however, that any information
25 concerning the RCMP's

1 investigative interest in
2 this individual should not be
3 relayed to ARAR's family, his
4 supporters, or Syrian
5 political authorities."

6 Now, did you ever see a copy of
7 the letter that Deputy Commissioner Loepky sent,
8 which was dated June 24, 2003?

9 MR. PARDY: No, I did not.

10 MR. CAVALLUZZO: No one ever
11 shared that letter with you?

12 MR. PARDY: No. But, again, I
13 emphasize to you, by this time, the issues that
14 are being dealt with here by and large are gone by
15 the board, and we had underway an effort to forge
16 a consensus at the top of the Canadian government.

17 The first element in that, of
18 course were the -- I think there were two letters
19 from the Prime Minister to Dr. Mazigh in June, and
20 that was the basis under which in effect we forced
21 the -- did away, if you like, with the differences
22 at the working level.

23 MR. CAVALLUZZO: Okay. Now, in
24 terms of the diverging opinions, if we can call it
25 that, in the Canadian government, we see that the

1 press reported that, at tab 452, on June 25.

2 --- Pause

3 You see on the second page,
4 there's a note there -- Renaud, once again, is
5 your communications person?

6 MR. PARDY: On page 2, you said?

7 MR. CAVALLUZZO: Mm-hmm.

8 MR. PARDY: Oh, yes, we're now
9 the -- okay. This concerns a Globe and Mail
10 reporter, Mr. Freeman.

11 MR. CAVALLUZZO: That's right.

12 Why don't we just pick it up
13 actually at the beginning, which is the last page.
14 Unfortunately, it goes backwards, as usual, and
15 this is 24, June?

16 MR. PARDY: Yes.

17 MR. CAVALLUZZO: And it says --
18 this is in paragraph 1 of this e-mail from your
19 communications person:

20 "The reporter above contacted
21 BCM..."

22 And "BCM" stands for -- if you can
23 help us?

24 MR. PARDY: Sorry. I was
25 daydreaming for a moment there. This is the Media

1 Relations Division at the Department of Foreign
2 Affairs.

3 MR. CAVALLUZZO:

4 "...and indicated, that
5 subject's wife had
6 retransmitted to him an
7 e-mail that you had sent her
8 in which it was suggested
9 that there are diverging
10 views within Cdn govt circles
11 on her husband's case.
12 Sallott..."

13 Of The Globe and Mail.

14 "...wants to interview on the
15 record and obtain more
16 info/precisions on those
17 diverging views."

18 And that's the e-mail that I
19 referred you to just prior to the luncheon break?

20 MR. PARDY: Yes, April 14.

21 MR. CAVALLUZZO: April 14, which
22 was subsequently, as you said, reported in June of
23 2003?

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: Let's come to the

1 intervention --

2 MR. PARDY: May I ask one question
3 of you? Will we come to the whole issue of
4 information in the media as a separate discrete
5 item or -- because we touched on it briefly
6 earlier in terms of a conversation I had with
7 Mr. Edelson back in January, and one of my --

8 MR. CAVALLUZZO: Yes, that's one
9 of the issues I want to ask you at the end.

10 MR. PARDY: Yes, please.

11 MR. CAVALLUZZO: I think your
12 views would be very important --

13 MR. PARDY: Yes.

14 MR. CAVALLUZZO: -- to the
15 Commissioner.

16 Now, let us come to -- I was going
17 to say the divine intervention, but let us come to
18 the intervention of the Prime Minister, beginning
19 on July 1, and if we start now at tab 459.

20 MR. PARDY: I would not quibble
21 with your characterization at this point.

22 MR. CAVALLUZZO: That's how you
23 lasted 36 years in the public service.

24 --- Laughter / Rires

25 MR. CAVALLUZZO: Why don't you

1 tell us what this document is? Obviously the PCO
2 is now involved and there's the appointment of
3 Senator De Bané. Why don't you tell us the
4 background on this?

5 MR. PARDY: I'm trying to see
6 whether there is a date on when I actually sent
7 this. Is there somewhere a date here? But I
8 think this is early July --

9 MR. CAVALLUZZO: Yes, we estimate
10 it to be July.

11 MR. PARDY: July 4, it may be.

12 MR. CAVALLUZZO: Early July, yes.

13 MR. PARDY: Early July in any
14 event. But all of the elements in terms of the
15 involvement of the Prime Minister had come
16 together here.

17 By this time we had the two
18 letters from the Prime Minister to Dr. Mazigh, we
19 had approached Senator De Bané about adding
20 Damascus to his itinerary, the Prime Minister had
21 agreed to his appointment as a special envoy to
22 the President of Syria, and here I'm putting all
23 of this together in a message of instructions to
24 Mr. Pillarella in Damascus, and including a draft
25 letter from the Prime Minister to the President of

1 Syria.

2 MR. CAVALLUZZO: Is that the same
3 letter that can be found behind tab 469?

4 MR. PARDY: 469?

5 MR. CAVALLUZZO: Yes.

6 MR. PARDY: There is no letter
7 there -- below is a draft, yes.

8 I'm not sure. But in the end,
9 there were two letters --

10 MR. CAVALLUZZO: Right.

11 It's redacted. But can you
12 explain to us, how were there two letters going to
13 the Syrian President from the Prime Minister?

14 MR. PARDY: The letter that I
15 drafted, of course, was very specific to Mr. Arar,
16 and had the Prime Minister making a request to the
17 President of Syria.

18 As we got into the actual
19 negotiations over the visit, it was suggested that
20 perhaps we -- the Prime Minister would have
21 Mr. De Bané, as well, discuss with the Syrian
22 authorities the geopolitical situation in the
23 Middle East as seen from the perspective of the
24 Canadian government.

25 And that second letter, which was

1 a short one, was saying to the President that
2 Mr. De Bané is available to discuss these issues
3 with you as well.

4 MR. CAVALLUZZO: And I understand
5 that Mr. De Bané did travel to Syria?

6 MR. PARDY: Yes, he did.

7 MR. CAVALLUZZO: And on or about
8 July 22 delivered the letters to Syria officials?

9 MR. PARDY: Both letters, yes.
10 Yes.

11 MR. CAVALLUZZO: And did he
12 deliver it directly to the President of Syria, or
13 was it to a lower official?

14 MR. PARDY: No, it was not
15 possible for him to see the President but he did
16 meet with the Deputy Foreign Minister,
17 Mr. Mouallem, and delivered both letters and had a
18 substantive conversation with him.

19 And I think there was, from the
20 report, a meeting of minds on this issue.

21 MR. CAVALLUZZO: Okay. And one of
22 the letters that was delivered presumably can be
23 found behind tab 472, which is dated July 17,
24 "Dear Mr. President," a letter from Mr. Chrétien?

25 MR. PARDY: Yes, that's the second

1 letter.

2 MR. CAVALLUZZO: And the first
3 letter, I don't think we have unredacted.

4 MR. PARDY: I don't think there
5 was a lot of changes to the draft that you see
6 under tab 459.

7 MR. CAVALLUZZO: Right, okay.

8 MR. BAXTER: I believe the other
9 letter is among the loose exhibits, and it may be
10 in P-85 or in the PCO exhibits, one way or the
11 other.

12 MR. CAVALLUZZO: Okay. We will,
13 during the break, Mr. Commissioner, we will find
14 that tab for you.

15 Okay. Now, I'd like to move on.
16 We're still in July -- and move on to another area
17 of interest, Mr. Pardy, and ask you to refer to
18 tab 478, and this is the 2003 annual report of the
19 Syrian Human Rights Committee, and in this
20 document, as you know, there are statements to the
21 effect that Mr. Arar is being tortured in Syria,
22 and the date that this became public was sometime
23 in July of 2003?

24 There is a date at the bottom.
25 Whether this is the correct date, I don't know. I

1 assume it is July 24 of 2003?

2 MR. PARDY: Yes. My recollection
3 was that I may have seen it on July 29.

4 MR. CAVALLUZZO: Okay. And how
5 did this particular report come to your attention?

6 MR. PARDY: Ms Pastyr-Lupul, who
7 was following these kind of issues, brought it to
8 my attention.

9 MR. CAVALLUZZO: Okay. And just
10 for counsel's purposes, and for yours, if you go
11 to page 4 of 8, you'll see under the title, "The
12 forcibly deported," it states:

13 "Security forces continue to
14 hold Maher Arar, who is also
15 a Canadian national, and was
16 forcibly deported by American
17 Immigration authorities to
18 Syria whilst passing by a
19 Transit lounge on his way
20 back to Canada. SHRC had
21 received confirmed reports
22 that Mr. Arar has been
23 subject to severe torture and
24 intensive interrogation and
25 charged with cooperating with

1 Al-Qaeda."

2 It goes on and deals with other
3 persons.

4 You're saying that on or about
5 July 29, this was brought to your attention by
6 Ms Pastyr-Lupul?

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: And how was it
9 brought to your attention? Was it --

10 MR. PARDY: Well, I think if you
11 see on page 1 of 8 there, she says, "Gar, see page
12 4, MPL." I think she put it into the interoffice
13 mail for me.

14 MR. CAVALLUZZO: Okay. And did
15 you do anything as a result of receiving this
16 annual report from the committee?

17 MR. PARDY: Not at that time, no.
18 That day -- I think it was July 29 -- I flew to
19 Toronto with a Canadian ambassador from Iran and
20 met with Ms Edwardh on another case.

21 MR. CAVALLUZZO: I may call
22 Ms Edwardh to testify and therefore avoid
23 cross-examination.

24 --- Laughter / Rires

25 I won't do that.

1 On July 24 as well, if you go to
2 tab 4 -- or 28, excuse me, July -- 479 --

3 MR. PARDY: Can I go back, though,
4 in terms of -- provide you some general comments
5 about organizations like SHRC?

6 MR. CAVALLUZZO: Absolutely, I was
7 going to do that later. Why don't we do it now,
8 that's fine.

9 MR. PARDY: I was going to
10 volunteer. Emigre organizations are
11 particularly -- how shall I put this? -- unusual
12 organizations in dealing with information that
13 they provide.

14 It has been my experience that
15 their information is perhaps less reliable than
16 that from other people.

17 One, you're never quite sure who
18 is running the emigre organization. I've seen
19 instances, I think, where the government has run
20 emigre organizations and used these emigre
21 organisations for a variety of purposes, or
22 there's even been suggestion that this
23 organization is run by the Government of Israel.
24 There's any number of these suggestions out there.

25 So there's a tendency here, and

1 particularly in terms of the briefness of the
2 reference to Mr. Arar on page 4 -- you know, it's
3 not a lot of -- I mean, they make certain
4 statements, but I mention to you that -- I didn't
5 react to this -- but a few days after this, they
6 sat down and wrote a letter to Dr. Mazigh, which
7 had a lot more detail into it, and it's that
8 letter that we reacted to, and then I was able,
9 within a few days, to arrange for a visit with
10 Mr. Arar on August 14.

11 MR. CAVALLUZZO: Now, you say
12 you're somewhat sceptical with emigre
13 organizations and presumably you were aware
14 that -- or you're of the view that the Syrian
15 Human Rights Committee was an emigre organization?

16 MR. PARDY: Yes, yes.

17 MR. CAVALLUZZO: And had you had
18 experience with them in the past?

19 MR. PARDY: No, but I would go
20 into their site from time to time. They would
21 carry information on their site about developments
22 in Damascus and would look at them, yes.

23 MR. CAVALLUZZO: Okay. Now, you
24 made reference to a letter -- a more detailed
25 letter that you received, and I'm looking at --

1 it's tab 573 in the next volume, I believe. This
2 is volume 6. You'll see behind tab 573 there are
3 a number of tabs. If you go to tab 11?

4 MR. PARDY: Yes.

5 MR. CAVALLUZZO: And this is also
6 a letter dated July 29, 2003, re Maher Arar, and
7 it's sent to Dr. Mazigh from the Syrian Human
8 Rights Committee.

9 Is that the letter to which you
10 made reference?

11 MR. PARDY: That's correct.

12 MR. CAVALLUZZO: And how did you
13 get a copy of this letter, the letter from the
14 committee to Dr. Mazigh?

15 MR. PARDY: I think on August 6,
16 Dr. Mazigh decided that she would have a press
17 conference on August 7 in order to release this
18 letter, and we, I think, were provided a copy on
19 August 6.

20 MR. CAVALLUZZO: Okay. If you go
21 to tab 486, that I guess gives reference to that
22 press conference, presumably. This is an
23 e-mail --

24 MR. PARDY: 486.

25 MR. CAVALLUZZO: 486 in the

1 previous volume, volume 5.

2 --- Pause

3 It says in the August 6 e-mail
4 from Mr. Dorion, the communications person:

5 "My understanding now is that
6 Monia Mazigh is speaking
7 abundantly to the
8 Ottawa-based media today,
9 even if her formal press
10 conference is set for
11 tomorrow."

12 So it would appear that perhaps
13 the press conference was August 7?

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

15 MR. CAVALLUZZO: Okay. And then
16 in terms of -- in terms of how you were going to
17 deal with that, if you go to 489, there seems to
18 be some internal discussion, e-mails back and
19 forth, and in particular -- this is from Scott
20 Heatherington's computer, but it's an e-mail dated
21 August 6, from Myra Pastyr-Lupul to a number of
22 people, and it says:

23 "Since I did not yet do the
24 Q&a due to handling a myriad
25 of cases in the Middle East

1 today... here is the line
2 from Gar:"

3 And it says:

4 "'We are equally troubled by
5 the statements regarding the
6 use of torture as noted in
7 the report of SHRC, and are
8 very concerned that we have
9 not had consular access to
10 Mr. Arar since April, despite
11 repeated efforts by our
12 Embassy in Damascus to obtain
13 access. We will not relent
14 in our efforts to seek
15 consular access to
16 Mr. Arar.'" "

17 So that became the press line, the
18 media line, that the Minister would have in
19 response to questions relating to the allegations
20 in the Syrian human rights report.

21 MR. PARDY: Yes.

22 MR. CAVALLUZZO: At 490, we do
23 have the Q&A's prepared?

24 MR. PARDY: Yes.

25 MR. CAVALLUZZO: And the very

1 first question we see deals with that issue. It
2 says:

3 "What is the Canadian
4 government's response to the
5 reports of the Syrian Human
6 Rights Committee that
7 Mr. Arar is being tortured?"

8 And then the answers are set out
9 below.

10 Once again, you would have
11 participated in the drafting of these Q&A's?

12 MR. PARDY: Yes. The last page
13 refers to that fact.

14 MR. CAVALLUZZO: Mr. Commissioner,
15 it's a quarter to four. I don't know if you want
16 to have the afternoon break, and then if we return
17 at about four o'clock, I should be finished in an
18 hour.

19 THE COMMISSIONER: Okay. Well,
20 that's good. We'll take a fifteen-minute break.

21 THE REGISTRAR: Please stand.

22 --- Upon recessing at 3:42 p.m. /

23 Suspension à 15 h 42

24 --- Upon resuming at 4:04 p.m. /

25 Reprise à 16 h 04

1 THE REGISTRAR: Please be seated.
2 Veuillez vous asseoir.

3 MS EDWARDH: Mr. Commissioner,
4 before my friend begins, as he's looking through
5 his volumes, there was a moment this morning when
6 we referred to a document that was identified as
7 P-98, and this is a document that Ms McIsaac was
8 hoping to produce after the break.

9 THE COMMISSIONER: Right.

10 MS EDWARDH: We have not yet
11 received a copy and I am just wondering whether
12 any progress has been made.

13 MS McISAAC: Ms McIsaac left it
14 upstairs. I will send somebody up to get it right
15 away.

16 MS EDWARDH: Thank you.

17 THE COMMISSIONER: If you were
18 thinking of preparing for your cross-examination
19 tonight, we were just served with the material
20 from the Clerk of Parliament, which has 29
21 authorities in it. So you will probably have to
22 spend the night reading those.

23 MR. WALDMAN: I have to spend the
24 night reading those.

25 --- Laughter / Rires

1 THE COMMISSIONER: I will speak to
2 that issue later because I have some specific
3 questions -- I know their counsel is not
4 here --that I think might shorten the argument of
5 that motion.

6 Go ahead, Mr. Cavalluzzo.

7 MR. CAVALLUZZO: Thank you.

8 We have four volumes to go through
9 in about an hour, Mr. Pardy. Fortunately, there
10 are only a few tabs in each, so let's take you
11 through it.

12 MR. PARDY: I still have lots of
13 energy.

14 MR. CAVALLUZZO: Good. More than
15 me.

16 MR. PARDY: I noticed.

17 MR. CAVALLUZZO: You noticed, did
18 you?

19 --- Laughter / Rires

20 THE COMMISSIONER: You think you
21 can wear him down, Mr. Pardy.

22 MR. PARDY: Absolutely.

23 MR. CAVALLUZZO: I usually get a
24 fresh breath around four o'clock and am raring to
25 go.

1 If we go to tab 496, once again we
2 are dealing with the press conference.

3 I just wanted to point out to
4 counsel that at page 5 of tab 496, at 5 of 8, we
5 have a transcript of the press conference that was
6 held on August 7th concerning the Syrian Human
7 Rights Committee report, so that you have that
8 available for you.

9 Then if you go to tab 500, which
10 is the last tab in Volume 5, this seems to be a
11 communication between you and Myra Pastyr-Lupul as
12 to the report itself. She said that she showed it
13 to you a couple of weeks ago.

14 What is going on in terms of the
15 exchange of these e-mails?

16 MR. PARDY: When the issue of the
17 letter came up, I knew that she had shown me
18 something and I had read it, that one paragraph
19 out of the SHRC report, and I asked her to
20 reacquaint me with exactly what happened on July
21 29th or thereabouts. And she refreshed my memory
22 then in terms of what she had actually showed me,
23 yes.

24 MR. CAVALLUZZO: Then if you go to
25 the next volume, Volume 6, it is tab 504.

1 This is an e-mail from yourself --
2 it looks like from yourself to yourself?

3 MR. PARDY: No, it's to Peter
4 Harder, who is the Deputy Minister at this point.

5 MR. CAVALLUZZO: Okay. So he has
6 replaced Mr. Lavertu as of early June of 2003?

7 MR. PARDY: June 15th is my
8 recollection.

9 MR. CAVALLUZZO: And it concerns
10 an article that Mr. Cotler, who was not then in
11 the Cabinet, had written in the Ottawa Citizen.

12 Is that correct?

13 MR. PARDY: I'm sorry, what tab
14 are you looking at?

15 MR. CAVALLUZZO: Tab 504.

16 MR. PARDY: Oh, 504; sorry.

17 No, I take it back. I was looking
18 at 501 when I said Mr. Harder.

19 Tab 504 is --

20 MR. CAVALLUZZO: It's to Donald
21 Sinclair from yourself?

22 MR. PARDY: No. I think the start
23 of this issue is the message from a man by the
24 name of Jean-Paul Ruszkowski, and he was an
25 executive assistant to what is known as a

1 Secretary of State, one of our Ministers in the
2 department.

3 He sent down this and he had a
4 series of questions arising out of the article
5 that Mr. Cotler had written that morning.

6 The questions are there, and in
7 between the questions you will see my replies.

8 MR. CAVALLUZZO: So the first
9 question is:

10 "Did our government make any
11 representations to the U.S.
12 Government? What was done?
13 Did you have any input?"

14 Your answer was.

15 "Yes, the Minister raised the
16 matter both with the American
17 Ambassador and Secretary
18 Powell. As well, the matter
19 was raised with officials in
20 the Department of Justice and
21 there were exchanges between
22 the RCMP and FBI."

23 The second question that is posed:

24 "Did the US Government share
25 any of the information they

1 may have on Maher Arar?"

2 The answer is:

3 "No, the Americans
4 consistently claim that Mr.
5 Arar's arrest and deportation
6 was based on information
7 provided by Canadian security
8 organizations."

9 What are you relying upon for that
10 statement, which is a response to Question 2?

11 MR. PARDY: On August the 12th?
12 The last ten months of involvement in the issue.

13 MR. CAVALLUZZO: The third
14 question:

15 "Is it possible that our
16 Ambassador was not able to
17 meet the Canadian prisoner?
18 If accurate how can this be?"

19 And the answer:

20 "Not true."

21 It goes on.

22 And then Question 4:

23 "How did you react to the
24 article?"

25 And your response is:

1 "Typical Cotler article.
2 Gar."

3 I won't ask you --

4 MR. PARDY: I am glad I am not
5 working for the government today.

6 MR. CAVALLUZZO: And we will be
7 introducing that article as an exhibit to these
8 proceedings.

9 MR. PARDY: And I would assume at
10 that point I would have an opportunity to comment
11 on the article to justify the comment.

12 MR. CAVALLUZZO: Yes, we will
13 recall you for that.

14 If you go then to tab 507, we
15 reach the final consular visit in respect of
16 Mr. Arar. Once again, this is the ninth visit?

17 MR. PARDY: That's correct, the
18 ninth and last visit, yes.

19 MR. CAVALLUZZO: The ninth and
20 last visit, thank you.

21 The first two pages deal with a
22 meeting between Mr. Pillarella and, as stated,
23 General Khalil, and you notice in the third
24 paragraph it talks about:

25 "... according to General

1 Khalil, Arar will be put on
2 trial within one week."

3 MR. PARDY: Yes.

4 MR. CAVALLUZZO: So obviously the
5 situation at that point in time, by August 14th,
6 is becoming quite serious.

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: As to the
9 consular visit itself, we can find that at the
10 third page of tab 507?

11 MR. PARDY: Yes.

12 MR. CAVALLUZZO: And I guess the
13 important portion of that consular report is the
14 third paragraph, where Mr. Martel writes that:

15 "He was able to express
16 himself freely at times and
17 he indicated that prison
18 conditions had been more
19 difficult in the past than
20 now. He mentioned he did not
21 wish to have adverse media
22 publicity as he felt this
23 would only harm his case."

24 And he i's quoted:

25 "'The Press will know the

1 truth when I return home.'
2 He confirmed he had not been
3 beaten nor tortured. He also
4 said he had not been
5 paralysed. When asked to
6 explain he could not find
7 another word for it. He also
8 said his long detention had
9 destroyed him mentally. He
10 indicated that as far as he
11 knows he was not receiving
12 worse treatment than that
13 given to other prisoners."

14 What were your general
15 observations concerning this final consular
16 report, particularly after having heard the
17 allegations made by the Syrian Human Rights
18 Committee?

19 MR. PARDY: I think the comments
20 that were made in paragraph 3 were not unlike some
21 of the comments that Mr. Martel had made during
22 earlier visits, and the comments arising out of
23 the visit by the two Members of Parliament.

24 I think, in terms of looking at
25 this in terms of what SHRC had said in their

1 annual report, what they said in their letter to
2 Dr. Mazigh, SHRC did not attach a time frame to
3 their comments with respect to the torture.

4 And while nothing was confirmed at
5 this point, the understanding we had was that the
6 abusive treatment usually took place very early on
7 in the incarceration, and certainly our assessment
8 that we made over the subsequent months was that
9 it was very difficult times but I don't think it
10 was quite as bad as it was in the early days.

11 MR. CAVALLUZZO: Right. So that
12 certainly as of August 14th, in respect of
13 somebody that may have been held incommunicado
14 between October 8th and October 21st of 2002, it
15 would be very difficult to observe somebody,
16 almost a year later, and come to a conclusion as
17 to whether in fact they had been tortured in the
18 previous October?

19 MR. PARDY: Yes. There are some
20 medical tests that one can do, but that's
21 something that you need access to. There is a
22 couple of institutes around the world that can do
23 that kind of work.

24 MR. CAVALLUZZO: I have a couple
25 of questions related to that.

1 In terms of the way you were
2 performing your job in trying to get Mr. Arar
3 back, the first question I have is: Does it
4 matter whether Mr. Arar, or indeed any Canadian,
5 in terms of the conditions in which they find
6 themselves, does it matter whether they are guilty
7 or not in terms of their rights to consular
8 access?

9 MR. PARDY: None whatsoever. The
10 issue is not one that we pay any attention to,
11 other than in this kind of a case, of course, it's
12 not a case, strictly speaking, in terms of guilty
13 or innocence here. Allegations have been made.

14 Most of the cases we deal with are
15 normally adjudicated into some system of law, and
16 you take note of those things, but at the end of
17 the day, the care and attention that you pay to
18 Canadians has really nothing to do with it. And
19 that's the vast majority of our cases.

20 MR. CAVALLUZZO: The second
21 question I would have: In terms of you attempting
22 to seek the immediate release of Mr. Arar through
23 your efforts, did the issue of torture have any
24 bearing on that?

25 MR. PARDY: It didn't have a

1 bearing on my activities. It's something that you
2 lend -- or lent urgency to your work. You wanted
3 this to be achieved as quickly as possible,
4 irrespective of whether there was torture
5 throughout the whole period that he was there.
6 You knew that the conditions in prison were quite
7 difficult. I mean, that was an assumption that
8 you made. And that's what lent urgency to the
9 work.

10 Making public allegations about
11 these conditions was what concerned me more,
12 because those were issues then that could delay
13 our action.

14 MR. CAVALLUZZO: Right. And we
15 are going to come back to that when we talk about
16 methodologies or methods in terms of diplomatic
17 efforts to retrieve or get Canadians released from
18 prison.

19 MR. PARDY: Right.

20 MR. CAVALLUZZO: Are there any
21 other comments you want to make relating to this
22 consular report? As I said before, Mr. Martel
23 will be testifying.

24 MR. PARDY: The key thing, of
25 course, was the previous report from

1 Mr. Pillarella, which said that within a week
2 Mr. Arar was going to be in trial in downtown
3 Damascus, that spurred us into action immediately,
4 and as you can see there, quite a number of things
5 were achieved in a very short period of time.

6 MR. CAVALLUZZO: Let me take you
7 briefly through those, and at tab 512 we see that
8 the Ministry is talking about lawyers. He is
9 going to be allowed a lawyer of his choice at the
10 civil court next week and has asked for you to
11 take care of his defence through his family, given
12 his wish --

13 MR. PARDY: I am sorry, what tab
14 is this?

15 MR. CAVALLUZZO: I am sorry, tab
16 512, five-one-two.

17 MR. PARDY: That's different from
18 what I have here.

19 MR. CAVALLUZZO: Okay. What do
20 you have?

21 MR. PARDY: I have an e-mail
22 message from Ms Pastyr-Lupul to Dr. Mazigh -- oh,
23 I see what you are referring to, is that
24 paragraph, which is a summation.

25 There is a better message there

1 which summarizes all of these activities, yes.

2 MR. CAVALLUZZO: You have the same
3 thing?

4 MR. PARDY: Yes, now I do.

5 MR. CAVALLUZZO: You were just
6 trying to trick me, were you?

7 MR. PARDY: No.

8 --- Laughter / Rires

9 MR. CAVALLUZZO: But you are
10 starting to get the process in motion. The
11 Syrians have advised you that there is going to be
12 a civil court suit, and you are starting to
13 attempt to procure legal services or help to
14 procure legal services on behalf of Mr. Arar.

15 At tab 513 --

16 MR. BAXTER: Mr. Cavalluzzo,
17 before you leave that, I think the witness was
18 referring to the -- the summarizing memo is the
19 last page of tab 507, if that is what the witness
20 was referring to. Perhaps that would be
21 appropriate to cover before you move forward?

22 MR. PARDY: Yes, that was my
23 response to the reporting messages from Ambassador
24 Pillarella and Mr. Martel on the visit. I went
25 right back to them almost immediately with a list

1 of instructions.

2 MR. CAVALLUZZO: Okay.

3 Tab 515, you have an e-mail there,
4 dated August 15?

5 MR. PARDY: Yes, that is correct.

6 MR. CAVALLUZZO: And what is this
7 about? This is from you to Damascus?

8 MR. PARDY: Yes. I think they had
9 replied to this message, which is found under tab
10 507, and I had gone back to them with some
11 additional -- no, I am sorry, that's the same
12 message. I am sorry.

13 Yes, it is the same --

14 MR. CAVALLUZZO: It is the same
15 message?

16 MR. PARDY: It is the same
17 message, just a slightly different format. Yes.

18 MR. CAVALLUZZO: Okay. Tab 518
19 relates to a meeting that you had with Dr. Mazigh?

20 MR. PARDY: Yes.

21 MR. CAVALLUZZO: Okay. And this
22 meeting was held on August 18th?

23 MR. PARDY: Yes, it was, and
24 Ms Pastyr-Lupul wrote it up and entered it into
25 the system on the 19th, yes.

1 MR. CAVALLUZZO: In particular,
2 there seem to be eight issues or eight questions
3 that were posed by Dr. Mazigh and Kerry Pither,
4 who accompanied her to the meeting?

5 MR. PARDY: Yes.

6 MR. CAVALLUZZO: And we see that
7 he is in Sidneyia prison now from the Palestine
8 branch?

9 MR. PARDY: Well, there were
10 suggestions to that effect, yes, that he had been
11 transferred from the SMI group.

12 MR. CAVALLUZZO: Right. And it
13 says:

14 "The meeting lasted two
15 hours, and we agreed to be in
16 touch on a regular basis over
17 the next few days to see what
18 transpires with respect to
19 the court date and
20 preparations for trial."

21 It goes on:

22 "Myra also spoke to Bassam
23 Arar ... last Friday, during
24 intermittent power
25 outages..."

1 MR. PARDY: That's when Toronto
2 turned off the lights in Ottawa.

3 MR. CAVALLUZZO: Toronto turned
4 off the lights, right.

5 I would like to introduce as an
6 exhibit minutes of this meeting which were taken
7 by Kerry Pither.

8 THE COMMISSIONER: One hundred?
9 P-100.

10 EXHIBIT NO. P-100: Minutes
11 of meeting with Consular
12 officials at DFAIT on 19
13 August 2003

14 MR. CAVALLUZZO: In the early part
15 of the minutes there is a discussion of lawyers,
16 and you give your advice as to the appropriateness
17 of going with certain kinds of lawyers which may
18 aggravate the Syrian government.

19 Do you recall that?

20 MR. PARDY: Very much so, yes.

21 MR. CAVALLUZZO: And I don't want
22 to take you through the whole thing, but if you
23 stay at page 2 of 8 --

24 MR. PARDY: But can I just add to
25 that on my position with respect to the selection

1 of lawyers, one of the scenarios that certainly
2 you always bear in mind is that this would be a
3 trial that would reach a certain conclusion, and
4 then following that conclusion there would be an
5 executive decision made by the Syrian government
6 for deportation.

7 What I was concerned with is that
8 the trial not become an opportunity where the
9 Syrian government itself is attacked by people who
10 had other agendas to play other than the wellbeing
11 of Mr. Arar.

12 MR. CAVALLUZZO: Okay. In terms
13 of page 2, about five paragraphs down it says:

14 "Monia asked when the Syrians
15 would tell us the charges,
16 and Pardy replied that we can
17 never tell with Syria, and
18 that Arnous..."

19 Of course, that is the ambassador.

20 "...told them he would do
21 what he could to get the
22 answers to their questions."

23 Then it says:

24 "Pardy said that a theory is
25 that this is now happening as

1 a result of the letter from
2 the Prime Minister, and that
3 the Syrians now know they
4 cannot just drift forever
5 without doing something."

6 I just want to know, first of all,
7 if that fairly captures what you said at the
8 meeting; and, secondly, whether that is still your
9 view, that the Prime Minister's intervention had
10 an effect on the Syrians?

11 MR. PARDY: I would not use the
12 term "theory". It certainly was my view that once
13 we had the Prime Minister involved in writing to
14 the President of Syria, I think a new dynamic had
15 been added to the case. And my view was that this
16 was certainly more than a theory.

17 MR. CAVALLUZZO: Okay. If you go
18 down about five or six lines, it goes on and it
19 states that:

20 "Monia noted that it was her
21 preference not to have a
22 trial in Syria."

23 And it states:

24 "Pardy responded that he did
25 not know how he could be

1 tried anywhere else,
2 especially here..."

3 Obviously in Canada.

4 "... because 'there is no
5 basis for charging him in
6 Canada.'"

7 Do you recall saying that?

8 MR. PARDY: Well, my preference
9 was not to have a trial in Syria either, but there
10 was a force majeure at work here, and the
11 suggestion that there was going to be something
12 that could be done elsewhere on these issues, I
13 think, was just a chimera.

14 MR. CAVALLUZZO: But do you recall
15 saying words to the effect that there was no basis
16 for charging him in Canada?

17 MR. PARDY: I can't recall
18 specifically, but certainly this would be
19 something that would be a conclusion that I had
20 reached based on the information available to me,
21 yes.

22 MR. CAVALLUZZO: Then at the
23 bottom, in terms of as to why a trial might take
24 place, it states:

25 "Pardy said that the Syrians

1 need to save face by
2 legitimizing what they have
3 done to him -- this may be
4 what the trial is about."

5 Do you recall words to that
6 effect?

7 MR. PARDY: Yes.

8 MR. CAVALLUZZO: And then on page
9 3 of 8, eight lines down, it states:

10 "Pardy said that this is
11 Syria there is no question it
12 will be a sham. The
13 important question is what
14 the results of the sham will
15 be."

16 Do you recall saying that?

17 MR. PARDY: Yes, and I think when
18 I say "results" in this context, it wasn't the
19 results in terms of the actual trial itself but
20 the actions that could flow from having that
21 trial.

22 MR. CAVALLUZZO: Right. And then
23 about a paragraph below that it says:

24 "Gar Pardy said that it is
25 all about the objective. The

1 objective is to get Arar out,
2 not to beat on Syria. Pardy
3 said that this could be done
4 when Maher is back at home.
5 Now is important to give
6 Syria the benefit of the
7 doubt."

8 MR. PARDY: Yes. I return to this
9 theme, I think, a couple of times in this
10 document: that there was a need to be very focused
11 in what we were doing here, and the focus had to
12 be Mr. Arar and no other extraneous issue.

13 MR. CAVALLUZZO: Okay. Below that
14 there is reference that Mr. Lockyer has agreed to
15 be an independent observer at any trial which is
16 held?

17 You have arranged that yourself?

18 MR. PARDY: Yes, I did.

19 MR. CAVALLUZZO: And at the
20 bottom, it says:

21 "Pardy assured her that both
22 the ambassador, and Leo
23 Martel (consular official who
24 had been at all of the
25 visits) would be present

1 throughout the proceedings.
2 He said that the current
3 ambassador was supposed to
4 have left Syria last month,
5 but they have kept him there
6 because of this case. The
7 new ambassador goes in at the
8 end of September."

9 Do you recall making that
10 assurance as well?

11 MR. PARDY: Yes, I think we had --
12 Mr. Pillarella had made arrangements for him to
13 stay on. But then, as you know, the idea of a
14 trial became fairly elastic, and in the end I'm
15 not sure whether there was a trial as such or a
16 decision by the -- for want of a better name in
17 this context, a prosecutor, that there was no
18 basis on proceeding and certainly led to then the
19 release of Mr. Arar.

20 MR. CAVALLUZZO: Then if we go to
21 page 5 of the minutes, about a third of the way
22 down, it states:

23 "Kerry asked if the Canadian
24 government had requested a
25 private meeting with Arar.

1 Pardy said that private
2 meetings never happen in
3 these countries, they can
4 never expect that."

5 Do you recall saying that?

6 MR. PARDY: Yes.

7 MR. CAVALLUZZO: And then portions
8 of the report, the consular report that we have
9 reviewed, were read to Kerry Pither and Monia
10 Mazigh by Myra Pastyr-Lupul.

11 Do you recall that happening?

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: And then if you
14 go to page 6, about halfway down it states:

15 "Monia asked about the
16 assertion by the Syrian Human
17 Rights Committee that there
18 had been foreign
19 interrogators present during
20 his interrogation."

21 And then it states:

22 "Pardy said it was possibly
23 the United States. CSIS had
24 made a routine visit earlier,
25 in October or November, but

1 it was probably not them.
2 The RCMP had initially
3 thought they would go to
4 question him and ended up not
5 going. Pardy said that as we
6 knew these issues were a
7 problem before (referring to
8 RCMP and CSIS thwarting
9 efforts to help Arar) but
10 that the Prime Minister had
11 'come down on our side' by
12 sending the letter to the
13 Syrian President, and
14 speaking for the whole
15 government."

16 Do you recall saying that at this
17 meeting?

18 MR. PARDY: I have some trouble
19 with some of the comments there in terms of this
20 particular statement, but I think the general
21 thrust of it certainly would reflect my views.

22 But I subsequently have tried to
23 find out where this allegation was with respect to
24 foreign interrogators. It certainly was not in
25 the SHRC report itself, nor do I believe was it in

1 the letter from SHRC to Dr. Mazigh.

2 I haven't had a chance to follow
3 it through, but certainly I wasn't sure where this
4 particular statement had come from.

5 MR. CAVALLUZZO: I do not recall
6 it being said either. We will check it this
7 evening and --

8 MR. PARDY: It could have been.
9 Is it in the letter itself?

10 MR. CAVALLUZZO: Oh, it is in the
11 letter.

12 MR. PARDY: Yes.

13 MR. CAVALLUZZO: Where it says
14 SHRC was told also that Syrian and foreign
15 investigators interrogated Mr. Arar.

16 MR. PARDY: Okay. I stand
17 corrected.

18 MR. CAVALLUZZO: Finally, on page
19 7 --

20 MR. PARDY: I would just bring
21 your attention to the next paragraph below that,
22 what we have just mentioned on page 6 of 8, and
23 this was the fact that Mr. Edelson was well aware
24 of some of the discussions that were going on in
25 the Government of Canada here.

1 MR. CAVALLUZZO: And just for the
2 public, what that says is:

3 "(Note: this is very, very
4 interesting - Monia said that
5 she had also heard from
6 Michael Edelson, Arar's past
7 lawyer, that the RCMP had
8 hoped to go there. This is
9 quite alarming, and raises
10 the possibility that the RCMP
11 are considering mimicking the
12 US tactic of participating in
13 overseas interrogations."

14 And that of course wasn't said at
15 the meeting, but was an observation made by the
16 taker of the minutes?

17 MR. PARDY: Yes. My particular
18 point was the information that was becoming
19 available to Mr. Edelson on some of these issues,
20 but the last observation is not one that I
21 necessarily share.

22 MR. CAVALLUZZO: Finally, in the
23 last page of Exhibit 100, there is discussion
24 concerning methodology in terms of -- I guess in
25 terms of diplomacy, and about a third of the way

1 down:

2 "Monia asked if we are
3 effectively using bilateral
4 relations.
5 Pardy responded that our
6 trade relations are
7 insignificant and that we
8 have little leverage. Syria
9 sees Canada as positive on
10 the Middle East generally.
11 Their key issue is the Golan
12 Heights. Syria has an
13 overall sense that Canada is
14 at least trying to be
15 balanced. Canada is chair of
16 a refugee committee formed
17 out of the Oslo or Madrid
18 process and there was an
19 informal meeting of this
20 committee two months ago in
21 Ottawa."

22 Do you recall expressing those
23 views?

24 MR. PARDY: Yes, we had a
25 discussion in terms of Syria and its role in the

1 Middle East and its relationship to Canada on
2 Middle Eastern issues, and I think I was trying to
3 convey to them that we were generally -- how can I
4 put this? -- well-regarded.

5 And I think it is important to
6 realize at this point as well the Syrian
7 relationship with the United States was going
8 downhill at an ever-increasing rate at this point,
9 and in some ways I think the relationship with
10 Canada took on additional importance for Syria in
11 this process.

12 MR. CAVALLUZZO: And this is at
13 the time that the Americans had put an embargo on
14 Syria?

15 MR. PARDY: Yes, the American
16 Congress had passed legislation that provided for
17 economic and -- I think there were mainly economic
18 sanctions against Syria, and I think the Syrians
19 were quite nervous about that, yes.

20 MR. CAVALLUZZO: Just a couple of
21 final points in these minutes I would ask you to
22 confirm.

23 Halfway down it says:

24 "Monia asked why the
25 President had not replied to

1 the Prime Minister's letter.
2 Pardy replied that he is
3 going to reply about this
4 process -- this is his reply.
5 The question is whether it is
6 going to come out in our
7 favour. Are they putting him
8 on trial to establish if he
9 committed a crime? Pardy
10 said that if he is found
11 guilty the next step will be
12 to put in a request for
13 executive clemency."

14 Do you recall saying that?

15 MR. PARDY: Yes, that was one of
16 the scenarios that certainly I saw as possibly
17 playing out here in the aftermath of any trial.

18 MR. CAVALLUZZO: Okay. Then let
19 us move on.

20 I am not going to take you through
21 this, but at tab 526, we see that you did appoint
22 Mr. Lockyer as Canada's observer at the trial in
23 Syria.

24 I would like to go now to tab 527.
25 You should have a CAMANT note

1 dated August 22nd. Is that correct?

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: I would refer
4 your attention to the third page.

5 This is a message dated August the
6 19th of 2003, and it's from one Sylvia Thomson.

7 Could you tell us who she is?

8 MR. PARDY: She was a producer for
9 the CBC, documentary producer -- I'm not quite
10 sure, but certainly CBC Television as well, yes.

11 MR. CAVALLUZZO: And she says:

12 "Hi again.

13 How do you know that Arar
14 went to Pakistan/Afghanistan?

15 What is the source of this
16 information?"

17 And your answer is:

18 "Sylvia, it was and is my
19 understanding that hundreds
20 of Canadians went to Pakistan
21 and Afghanistan either for
22 religious training at the
23 madrassas or to offer support
24 to the Taliban which at that
25 time was not as closely

1 associated with al Qaida as
2 it subsequently became. My
3 understanding of this is
4 limited and based on
5 occasional references to the
6 movement in various articles
7 and case files."

8 And then you go on to recommend
9 that:

10 "I would suggest that you
11 speak to one of the Imams at
12 a mosque who may be prepared
13 to provide more detail. It
14 is a difficult area to obtain
15 precise information in that
16 most of the madrassas were in
17 Pakistan but the flow of
18 persons into Afghanistan from
19 Pakistan was regular and in
20 those days was probably
21 furthered by the Pakistani
22 authorities. The information
23 on Maher was that he went to
24 Pakistan but then on to a
25 Taliban military training

1 camp south of Kabul. Hope
2 this helps. Gar."

3 And I assume that she is in the
4 process of producing some kind of --

5 MR. PARDY: The time line here was
6 something in the fall. She had been referred to
7 me by our press offices to speak to her, to
8 provide background information, yes.

9 MR. CAVALLUZZO: Okay.

10 At tab 528, you seem to be talking
11 to Maureen, and you are talking to Mr. Watt of the
12 Centre for Constitutional Rights about the
13 litigation about, in particular, Mr. Arar's claim
14 in the U.S.?

15 MR. PARDY: Yes. This goes back
16 to an earlier exchange with Mr. Watt, I think, in
17 May or June, I think it was, where he provided a
18 very rough draft of a Statement of Claim that he
19 wanted to file and was asking whether or not we
20 could contribute information to that.

21 MR. CAVALLUZZO: Okay. If we go
22 to 530, we see another e-mail exchange between you
23 and Sylvia Thomson, the producer for the CBC, and
24 she is giving you the name of the BBC producer and
25 is asking certain questions about the information

1 about Arar having spent time in Afghanistan, and
2 your response is:

3 "Sylvia, the information on
4 Afghanistan was provided to
5 the embassy in Damascus last
6 fall. What was reported was
7 that he received military
8 training at a base south of
9 Kabul. Very thin but was the
10 only bit of time and location
11 specific information that was
12 provided. Will be available
13 later this morning for call.
14 Gar."

15 What are you referring to here,
16 where you talk about "provided to the embassy last
17 fall"? Is that the document that Mr. Pillarella
18 came back to Canada with?

19 MR. PARDY: No, that was the
20 conversation I had on November the 3rd with
21 Ambassador Pillarella, and that's the context and
22 the information which had then been provided to
23 the family, yes.

24 MR. CAVALLUZZO: And we have
25 discussed the reliability of that statement --

1 MR. PARDY: Absolutely, yes.

2 MR. CAVALLUZZO: -- and we need
3 not go back into that.

4 I wonder if you might identify
5 this note at tab 535. It looks like an article
6 entitled "Canadians Abroad" or some type of
7 periodical or publication?

8 MR. PARDY: I think that was
9 something that I wrote. Somebody had asked for
10 some general information, and I think this was put
11 together after I retired, and it subsequently got
12 turned into an article that was published in a
13 magazine called Beau de Papier. Not quite in this
14 form, but basically it was to try to provide an
15 overview of the consular process.

16 MR. CAVALLUZZO: Right. Your
17 counsel did provide us with one article that you
18 could retrieve called "Canadians".

19 Is that the article --

20 MR. PARDY: Yes, that's the
21 article there, yes.

22 MR. CAVALLUZZO: Okay. I
23 wonder -- we may share that with counsel. We
24 already have? Okay.

25 I guess we could refer to the

1 article, or we could refer to tab 535. This may
2 be an opportunity for you to share with us your
3 views about how we deal with countries like Saudi
4 Arabia, Syria, or Iran?

5 In particular, I'm looking at page
6 3 of 4. This is two paragraphs from the bottom,
7 and I quote to you, and then I will ask you for
8 your comments. It says:

9 "Nevertheless, we accept that
10 the best measure of the
11 quality of such service is
12 when we act on behalf of
13 Canadians who have the
14 misfortune to encounter
15 unusual difficulties, whether
16 caused by governments, by god
17 or by their own hand.
18 Helping persons such as
19 Mr Sampson, Mr. Arar or
20 Ms Kazemi is not and cannot
21 be through raised voices or
22 raised fists. To do so would
23 only make their difficulties
24 and those of their families
25 worse. And indeed, it would

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1 bring into question the
2 safety and security of other
3 Canadians."

4 At this point in time, with that
5 context in mind, I would like to ask you as to
6 your view, based on your experience, as to the
7 effectiveness, when a Canadian is detained in a
8 country like Saudi Arabia, Syria or Iran, the
9 effectiveness of press strategies and so on and so
10 forth in Canada, trying to embarrass the foreign
11 government so that they will release the Canadian?
12 Do you have any views on that?

13 MR. PARDY: My experience has been
14 just about in all cases it made the situation
15 worse and our job much more difficult.

16 MR. CAVALLUZZO: And let me just
17 ask you some further questions on that.

18 What do you feel was the important
19 event, intervening event, which gave rise to the
20 Syrians' response to finally release Mr. Arar in
21 October of 2003?

22 MR. PARDY: I think it was -- a
23 letter from the Prime Minister was the key one, in
24 the sense that we raised the level and it was a
25 clear articulation of a position by the very top

1 of the Canadian government. I think that was a
2 key element in all of that.

3 The second element, I think, that
4 played some part in all of this was the serious
5 erosion of the relationship between Syria and the
6 United States. I think those two together.

7 And Syria does not have a lot of
8 friends in the world, and particularly in the
9 Western world, and I think they saw taking action
10 on this case being of some significance to them.

11 MR. CAVALLUZZO: Now, leaving
12 aside -- if we could isolate the deteriorating
13 relationship with the Americans, I want to focus
14 on the letter from the Prime Minister.

15 Most people would say -- most
16 Canadians would say, "The only reason the Prime
17 Minister sent that letter was because he was
18 getting a lot of pressure from the public through
19 the strategies in the press, and that is that the
20 Prime Minister of the country wouldn't have looked
21 at this case unless it was a public or political
22 issue, and as a result of that, he did something."

23 Would you agree with that?

24 MR. PARDY: Yes, he did something,
25 and I'm -- one can always discuss what was the

1 motivation in the Prime Minister coming on board,
2 but certainly in terms of my own discussion, and I
3 think that there has been some documents that have
4 been released, PCO documents, where the advice
5 from senior officials in the PCO was not to get
6 involved in all of this, but I think, at the end
7 of the day -- and the first step in this process
8 was the decision by the Prime Minister to write to
9 Dr. Mazigh on this set of issues.

10 And I think it's fair to say that
11 the Prime Minister, given his experience on a
12 previous consular case and his own involvement in
13 that case, and he is still being criticized today
14 for the action that he took, I think he -- this
15 goes back to 1996, that particular thing, and the
16 press have been quite unmerciful in terms of their
17 criticism of the Prime Minister as far as
18 involvement.

19 So I saw, in my view, the key
20 thing for the Prime Minister was when we went to
21 his people and said to him, "Look, it is not
22 possible for officials at our level to come to a
23 conclusion with respect to a position. The only
24 way out of this was for you to intervene, Prime
25 Minister, send a letter to the President of Syria.

1 Then we sort out the issues once Mr. Arar is back
2 in Canada, assuming that there were issues to be
3 worked out at that time."

4 MR. CAVALLUZZO: Right. But
5 wouldn't you agree with me that the Prime Minister
6 is a politician, who are sometimes susceptible to
7 political or public pressure, and that, as a
8 result of Mr. Arar's case being such a public
9 issue, the Prime Minister, at least in part, was
10 responding to the press or public strategy that
11 was pursued by Mr. Arar's friends and family?

12 MR. PARDY: The ultimate decision
13 on the case, of course, was taken by the
14 Government of Syria, and I think the balance, the
15 positive aspect of publicity in Canada on our
16 Prime Minister, has to be balanced with the
17 negative impact of that publicity on the
18 Government of Syria.

19 MR. CAVALLUZZO: I guess you don't
20 know in particular what the reaction of the Syrian
21 officials were. I would put it to you it's
22 probably reasonable to assume, from reading the
23 documents from Syria, that they were, as I pointed
24 out in the earlier consular report, the Syrians
25 were sensitive to political pressure which was

1 being expressed in Canada through the press. We
2 saw that. You would agree with that?

3 MR. PARDY: Sensitive in the sense
4 that they were a bit -- in their eyes I think it
5 would be that they were being very forthcoming and
6 very helpful on this case, and yet at the same
7 time they were being roundly criticized in Canada
8 for everything that they did.

9 MR. CAVALLUZZO: Right.

10 MR. PARDY: And so I think the
11 balance as far as that side of the equation is
12 concerned, it was entirely negative.

13 MR. CAVALLUZZO: But whether it's
14 negative or positive, the fact is that -- I think
15 that you would agree from the reports and from
16 Mr. Pillarella's reporting back, that the Syrians
17 were closely watching the public reaction to
18 Mr. Arar's plight in Canada through the Syrian
19 ambassador, Mr. Arnous, back to Damascus --

20 MR. PARDY: Yes, they were
21 following these events. I think there's good
22 evidence of that.

23 MR. CAVALLUZZO: Now, are there
24 any other views that you want to express on the
25 role of press strategies in terms of assisting

1 Canadians who are detained abroad?

2 MR. PARDY: Yes, I'd come back to
3 the basic premise here -- I mean, you can have
4 publicity -- the problem is that press comment is,
5 for want of a better word, a beast that has a
6 smiling cat at one end and a snarly dog at the
7 other, and the press did both in terms of this
8 particular case.

9 You know, they reported faithfully
10 the various statements made by Dr. Mazigh and
11 those of her supporters, but by the same token,
12 the press was also reporting very negative stories
13 with respect to Mr. Arar, and it's that dichotomy,
14 if you like, in terms of the reflection.

15 And I would refer to one press
16 report in particular of July 24 of 2003, where a
17 reporter put together two quite separate
18 stories -- I withdraw the -- it wasn't
19 necessarily -- but there were two separate stories
20 that were certainly current at that time, and
21 somebody at the paper put those two stories
22 together and made connections for which there was
23 absolutely no evidence.

24 MR. CAVALLUZZO: And certainly,
25 you would agree, that even more negative reports

1 in the press were the leaks relating to Mr. Arar,
2 in particular the leak into the Ottawa Citizen on
3 November 8, and the leak to the CTV network on or
4 about October 23 of 2003?

5 MR. PARDY: Yes, certainly those
6 leaks were, you know -- I think -- but this is the
7 problem. Once you get the media involved, it is a
8 situation over which nobody has control anymore.
9 And so the balance, in my experience, has never
10 been such that is a force for good with respect to
11 the Canadian that is -- finds himself in a foreign
12 jail.

13 And the classic case on this,
14 which the Commission might refer to here, is a
15 case of a number of years ago in Brazil involving
16 two Canadians. There has been a couple of very
17 good books written about this case, and clearly
18 these two Canadians spent several years longer in
19 a Brazilian jail than was necessary as a result of
20 the publicity -- or the activities in Canada of
21 their supporters.

22 MR. CAVALLUZZO: Okay. Now, if we
23 could just move on. There are a couple of related
24 questions I would like to ask you.

25 Leaving aside the impact of press

1 strategies and publicity back home when we have
2 Canadians detained abroad, and that is in the case
3 of Mr. Arar. Do you have any views as to what
4 made his stay in Syria so long? Why did it take
5 close to a year to get Mr. Arar back?

6 MR. PARDY: Well, as you know,
7 issues in this area, whether there is a direct
8 involvement of the courts, or if you want to use a
9 loose term, criminal justice system, it is not
10 known for the speed in which it works. I have
11 been in -- well, I would make one comment.

12 Fifty-odd years ago, a
13 fourteen-year-old Canadian was sentenced to death
14 in a court in Ontario. Fifty years later, the
15 judicial system in Canada is still trying to come
16 to grips with this.

17 While that is a very extreme case,
18 it's illustrative that when somebody is involved
19 in these situations, the action to get something
20 done in about a year is quite remarkable.

21 Certainly what delayed the action,
22 certainly in our view, was a certain amount of
23 bewilderment on the part of the Syrians as to what
24 they were dealing with here. In the end, the
25 conclusions that they had told us they had

1 reached, that -- they said there was nothing here
2 with which they should be concerned about, which
3 was quite contrary to everything that they had
4 said to us previously.

5 But I think what was playing out
6 here was a number of larger issues in terms of
7 Syria's relationship with the United States,
8 Syria's position in the Middle East, and Syria's
9 relationship with Canada, and I think the key
10 thing was to take action at the most opportune
11 time.

12 One can argue whether that should
13 have happened a bit earlier. I'm not sure whether
14 that -- if you acted too soon, whether you would
15 have had the same results. So, again, it's a
16 balancing act that you're doing.

17 But certainly in my experience, in
18 dealing with these cases, to get a Canadian
19 returned to Canada in just about a year, that is a
20 remarkable achievement on these kinds of cases.

21 MR. CAVALLUZZO: Now, you would
22 agree with me, though, that one factor that you
23 didn't mention, that I'm putting to you would have
24 had an impact, a negative impact on Mr. Arar's
25 return, is the mixed messages the Syrians were

1 getting from Canada, that certainly was not
2 speaking with one voice until July of 2003, when
3 the Prime Minister intervened. You would agree
4 with that, that that would have impacted --

5 MR. PARDY: It could have had an
6 impact, but again I have no direct information.

7 As you know, the record is muddied
8 with respect to that information. But certainly
9 what I was working towards constantly here was to
10 try to achieve a consensus within the Canadian
11 government on this issue, and it was difficult to
12 achieve, and in the end, we didn't achieve it,
13 other than through the Prime Minister intervening
14 directly.

15 MR. CAVALLUZZO: But you would
16 agree with me that if you reached a consensus
17 earlier, if you reached a consensus earlier, so
18 that the Syrians saw Canada speaking with one
19 voice, that it's reasonably likely that Mr. Arar's
20 return would have been quicker than it eventually
21 was?

22 MR. PARDY: Possibly. But, again,
23 as you know, we're balancing a number of different
24 factors here, and whether the Syrians earlier on
25 were prepared to cut their losses with the

1 Americans, no matter what the position of the
2 Government of Canada's concern, I think that's an
3 issue open to debate.

4 MR. CAVALLUZZO: Now, do you think
5 that the fact that while these consular efforts
6 were going on, the visit of CSIS that we've
7 learned about today impacted the length of time
8 that Mr. Arar spent --

9 MR. PARDY: There is no evidence
10 in the record to suggest that it had any specific
11 impact.

12 As you know, the timing and then
13 the subsequent action of the Syrians, it was later
14 in January and February that the Syrians started
15 to withdraw their earlier level of cooperation,
16 and there is no evidence in the record that that
17 is directly related to that visit.

18 MR. CAVALLUZZO: Okay. And let me
19 put another question to you, and that is, that we
20 saw a very clear -- a very clear -- memorandum
21 from your employee, your assistant, Myra
22 Pastyr-Lupul, which is around March 24, 2003,
23 where she clearly set out that the Syrians
24 misinterpreted -- there was some
25 miscommunication --

1 MR. PARDY: Mm-hmm.

2 MR. CAVALLUZZO: -- and that CSIS
3 should clearly and unequivocally in writing
4 disabuse the Syrians of the notion that Canada did
5 not want Mr. Arar back.

6 I'm putting it to you, if CSIS had
7 sent a letter in or about March of 2003, clearly
8 and unequivocally stating the position of the
9 Government of Canada is "We want Mr. Arar back",
10 that Mr. Arar would have returned to Canada
11 earlier than October of 2003?

12 MR. PARDY: Well, I took action on
13 that suggestion through Ms Catterall, who had
14 access into rooms at the Canadian government that
15 I did not have direct access to, and she sought to
16 achieve that, and you will have a chance to talk
17 to her next week about all of these, and she did
18 not succeed either on that point --

19 MR. CAVALLUZZO: And please do
20 not -- you know, do not take this as a criticism
21 of you --

22 MR. PARDY: No, no, I'm not.

23 MR. CAVALLUZZO: Do not take it as
24 a criticism of Ms Catterall.

25 What I am suggesting to you though

1 is that, if CSIS had sent a letter clearly and
2 unequivocally stating to the Syrians, "You have
3 misunderstood us. We, like the rest of the
4 Canadian government, want Mr. Arar back
5 forthwith", I'm putting it to you that Mr. Arar
6 would have returned to Canada much earlier than he
7 did?

8 MR. PARDY: No, I do not believe
9 that that would necessarily be the case because I
10 think the Syrian relationship with the United
11 States at that point was still of some
12 significance to them.

13 They were still trying to achieve
14 some operational -- what's the word here? -- some
15 operational agreements with the United States on a
16 number of issues, and it was only when the demands
17 of the United States reached the point that the
18 Syrians felt they could not accede to them that
19 basically the relationship with the United States
20 went downhill and that was I think in July -- the
21 June-July period, yes.

22 MR. CAVALLUZZO: Right. But I'm
23 putting it to you, Mr. Pardy, March 24, the
24 Americans were already on the road --

25 MR. PARDY: That's right. And the

1 relationship --

2 MR. CAVALLUZZO: -- to Baghdad.

3 MR. PARDY: Yes.

4 MR. CAVALLUZZO: They were in
5 Baghdad. In fact, it took them about three
6 minutes to get into Baghdad. And it was clear to
7 the Syrians at that point in time, it would seem
8 to me, that the American relationship had gone
9 kaput, so I don't think the relationship in late
10 March would have impacted on --

11 MR. PARDY: I do not believe that
12 the record will support your conclusions on that.

13 MR. CAVALLUZZO: Okay. I just
14 wanted to give you an opportunity to comment --

15 MR. PARDY: Okay.

16 MR. CAVALLUZZO: -- on these
17 issues.

18 Just a couple of final matters,
19 Mr. Pardy.

20 If we go back then to the books at
21 tab 535 -- or, excuse me, not 535, but 602. This
22 would be in volume 7.

23 This is dated October --
24 obviously, in order to have some context here, you
25 left the employ of the Canadian government on

1 August 31, 2003?

2 MR. PARDY: Yes.

3 MR. CAVALLUZZO: Okay. So this is
4 dated October 7, 2003. It's an e-mail which
5 incorporates what is called a rough transcript of
6 an interview with Gar Pardy based on closed
7 captioning of CBC Newsworld on October 6, and
8 there are a couple of portions that I would refer
9 to.

10 In the second paragraph, this is
11 presumably you speaking, in response to some
12 questions:

13 "I think the release..."

14 That's obviously of Mr. Arar.

15 "...is a culmination of many
16 months of intense work on the
17 party of Canadian officials.
18 But I think it's also
19 important to accept that his
20 detention in Syria must be
21 looked at in the backdrop of
22 American/Syrian relations
23 an..."

24 I guess that's "and".

25 "...things generally in the

1 middle east. And certainly
2 on the war on terrorism. I
3 think at the end of the day,
4 I think the Syrians took a
5 hard look at this. Largely
6 as a result of the
7 representations that the
8 prime minister made through
9 the senator earlier this
10 summer and I think came to
11 the conclusion that look, it
12 made no sense to continue
13 with Mr. Arar's detention in
14 Syria and so they released
15 them."

16 Which somewhat mirrors what you
17 have just told us.

18 MR. PARDY: Yes.

19 MR. CAVALLUZZO: And then the
20 questioner, his name is Harry, says:

21 "What do you think Canadian
22 authorities would have said
23 at this late date, 374 days
24 after his initial seizure
25 that would have changed

1 just at the bottom of the page, Harry asks:

2 "Knowing this case as you do,
3 and understanding Syria as
4 you do and without asking you
5 to pronounce a yumt before
6 you know all the details, do
7 you think it is likely that
8 Mr. Arar may have been
9 tortured in detention given
10 the past record of Syria?"

11 And the answer is:

12 "Oh, you look at the record
13 of Syria in terms of the
14 various reports that have
15 been done by organizations
16 that look at these things
17 very carefully, I think there
18 is -- I mean, there's no
19 reason to believe that this
20 is beyond the realm of
21 possibility. The only
22 specific information that we
23 have on Mr. Arar of course
24 was a report -- or a
25 letter..."

1 Referring to that Syrian agency.

2 Do these answers capture, in fact,
3 what you responded to on that --

4 MR. PARDY: Yes, I think they
5 reflect the comments that I made to you earlier
6 this afternoon as well.

7 MR. CAVALLUZZO: All right.

8 MR. PARDY: But I think going down
9 on page 2 of that report, again I came back to the
10 issue of the involvement of the Prime Minister.

11 MR. CAVALLUZZO: Right.

12 There is another interview on CPAC
13 at C12 which was given on October the 9th on the
14 show "Talk Politics".

15 MR. PARDY: Is there a tab on
16 that?

17 MR. CAVALLUZZO: Tab 612.

18 MR. PARDY: I have it.

19 MR. CAVALLUZZO: And that is about
20 four or five days after Mr. Arar returned?

21 MR. PARDY: Yes. And I think
22 again it reflects my -- and as you know, another
23 case was successfully concluded a little while
24 earlier than this and the two were certainly
25 active in the public minds, yes.

1 MR. CAVALLUZZO: Okay. And I am
2 not going to take you through that but just
3 pointing out to counsel that this is another
4 interview that Mr. Pardy has given respecting the
5 situation of Mr. Arar.

6 There is one news article, though,
7 that I would like to file from The Globe and Mail.

8 THE COMMISSIONER: That will be
9 P-101.

10 EXHIBIT NO. P-101: Globe and
11 Mail article entitled "RCMP
12 passed along Arar's name,
13 U.S. says", written by Jeff
14 Sallot and Colin Freeze

15 MR. CAVALLUZZO: This is an
16 article in The Globe and Mail by Jeff Sallot and
17 Colin Freeze, and it is dated Saturday, November
18 the 8th, which is the ominous date of the other
19 report.

20 I am referring now to page 2 of 3
21 where you are quoted at the bottom of the page, at
22 page 2:

23 "'The fundamental issue is
24 the standards that are used
25 here,' said Gar Pardy, former

1 head of consular services at
2 the Department of Foreign
3 Affairs. 'Particularly the
4 standards when information is
5 transferred between
6 countries. That's the key
7 issue here.'

8 And they go on to quote you:

9 "Nobody is saying that
10 police shouldn't co-operate
11 with one another,
12 particularly given the issue
13 of the bloody world out
14 there. But there is a
15 requirement for standards to
16 be in place,' he said."

17 And then it's referring to you:

18 "He argued that Canadian
19 agencies must place clear
20 conditions on how other
21 countries use the information
22 Canada swaps."

23 And you are quoted:

24 "'The standards that you use,
25 with respect to the

1 information that is passed,
2 and the hold you put on that
3 information in terms of its
4 use by another country:
5 That's what you have to look
6 for,' he said."

7 Referring to your quote.

8 "'If those two elements are
9 not active in terms of the
10 exchange of information, then
11 you are going to get cases
12 like Arar.'"

13 The quote is continued:

14 "'You do it all the time.
15 These are part of the
16 agreements one works out with
17 foreign governments. And if
18 police are not prepared to
19 place conditions on it, then
20 we've got a problem.
21 '... We don't have a lot to
22 bring to the table in these
23 areas other than information
24 about possible Canadian
25 citizens. We're not active

1 internationally in the way
2 the agency or FBI is.'" "

3 And finally you are quoted as
4 saying:

5 "'All of these issues take
6 place in the shadows. It's
7 not something that government
8 stands up and talk about.
9 And there is no question the
10 American agencies have been
11 given a lot more freedom to
12 act in the nasty areas of
13 this business after September
14 11.'" "

15 Does this newspaper article
16 accurately reflect the statements that you made to
17 The Globe and Mail, reflected in that article on
18 November 8, 2003?

19 MR. PARDY: Yes, but it's based on
20 whether -- I had no knowledge at that point
21 whether or not I was commenting in -- well, in
22 part in the abstract about such standards based on
23 my own experience over the years, because I was
24 involved in the exchange of information with
25 foreign governments on a number of occasions.

1 MR. CAVALLUZZO: Right.

2 MR. PARDY: And I was coming back
3 to the fact that the absence of those standards
4 could be a problem and could create problems for
5 individual Canadians.

6 I think it's also important to
7 understand that the changes that occurred in
8 Canadian law in December of 2001, where the
9 Canadian anti-terrorism Act criminalized a number
10 of activities in this area and as a result of that
11 was transferred from the responsibility of CSIS to
12 the RCMP, and whether or not the people directly
13 concerned had the opportunity to look at these
14 issues.

15 MR. CAVALLUZZO: The final
16 question, Mr. Pardy -- I said you would be
17 finished by five o'clock. I'm five minutes late,
18 so I apologize.

19 MR. PARDY: I will stay until six
20 o'clock.

21 MR. CAVALLUZZO: Thank you. The
22 final reference I will make unfortunately is back
23 to Volume 8 of 9, and in particular, at tab 706.

24 There are a number of articles
25 which are set out. I would like to refer to the

1 article at page 6 of 11.

2 If you look to the bottom
3 right-hand --

4 MR. PARDY: I'm sorry, the tab?

5 MR. CAVALLUZZO: The tab is 706
6 and the page is 6 of 11. And it happens to be the
7 article of November 8, 2003, in the Ottawa Citizen
8 by Juliet O'Neill, which is the subject matter of
9 other proceedings.

10 But the reference that I would ask
11 you about is in her article at page 8, and at the
12 bottom of the page, reference is made to you, and
13 it says:

14 "Gar Pardy, the recently
15 retired consular affairs
16 chief from Foreign Affairs,
17 says the RCMP and CSIS
18 persistently opposed Foreign
19 Affairs' efforts to bring Mr.
20 Arar's case to the prime
21 minister for intervention."

22 And then there's a quote:

23 "'The RCMP and the security
24 people, that's where the
25 division came down,' Mr.

1 Pardy said in an interview.
2 'They were saying we have our
3 responsibilities and we don't
4 agree. I think it delayed
5 our efforts to get him out of
6 there to some extent,
7 although I don't think by a
8 heck of a lot quite
9 frankly.'"

10 And I would ask you whether that
11 is a fair reflection of what you advised the
12 reporter --

13 MR. PARDY: I did not speak to
14 Ms O'Neill. Another reporter called me and was
15 asking for more general comments about this.

16 The first paragraph you read, I
17 don't think it was that specific, but the quote
18 itself is certainly in character with the kind of
19 things that I was saying, yes.

20 MR. CAVALLUZZO: Mr. Pardy, it's
21 been a long two days. Thank you very much for
22 your evidence. That would complete the direct
23 examination of you.

24 THE COMMISSIONER: You may step
25 down. I am going to deal with a couple of other

1 matters, but you may step down from the witness
2 box.

3 MR. PARDY: Thank you.

4 THE COMMISSIONER: You are excused
5 until -- what time do you think we would start the
6 evidence tomorrow, Mr. Cavalluzzo?

7 How long are the
8 cross-examinations likely to be? Do you know how
9 long you might be, Ms Edwardh?

10 MS EDWARDH: I will certainly be
11 three quarters of a day.

12 THE COMMISSIONER: Do you know how
13 long you might be, Ms McIsaac or Mr. Baxter?

14 MR. BAXTER: Part of it will
15 depend, Mr. Commissioner, on the issue of the
16 order of examinations.

17 THE COMMISSIONER: We will deal
18 with that shortly.

19 MR. BAXTER: Of course. I would
20 assume in the range of an hour to an hour and a
21 half.

22 THE COMMISSIONER: We will start
23 this evidence at 9:30 tomorrow, and we have to
24 finish it and I have a plane at seven o'clock
25 so...

1 MR. CAVALLUZZO: Good. Let us
2 recall that we have a motion at 8:30.

3 THE COMMISSIONER: The argument of
4 the motion will be finished by 9:30.

5 MR. CAVALLUZZO: That's fair. So
6 we will start the evidence at 9:30 then. That's
7 fine.

8 THE COMMISSIONER: All right. So
9 if you come back at 9:30 tomorrow, Mr. Pardy, that
10 would be fine.

11 MR. PARDY: Yes.

12 THE COMMISSIONER: Thank you very
13 much. Then you are excused for this evening.

14 I think there are two matters that
15 we can deal with, actually, if people are prepared
16 to sit for a bit longer.

17 Let me lead off, and don't take it
18 wrongly that I've prejudged anything. But let me
19 tell you my thoughts and it may shorten the
20 matter.

21 Dealing first of all with the
22 issue that has been raised, that came up the other
23 day when Mr. Waldman was cross-examining and
24 whether certain questions could be put to a
25 witness without making a commitment to call

1 Mr. Arar to testify. Let's deal with that issue
2 first?

3 Ms Edwardh has given me the case
4 of Little v. The Supreme Court of Canada.

5 I haven't read the transcript, but
6 as I recall the exchange, my sense -- and people,
7 please correct me if my memory is not correct --
8 but my sense of the exchange was as follows: that
9 the question that was objected to posited that
10 Mr. Arar would or could testify to certain events,
11 and that question, if that is what was objected
12 to, in my view would be an impermissible question
13 unless there was a commitment to call Mr. Arar.

14 As I recall, I suggested to
15 Mr. Waldman at some point that the question might
16 be posited another way and reference could be made
17 perhaps to statements that Mr. Arar had made in
18 public.

19 Mr. Waldman then followed a line
20 of questioning, which he didn't take me up
21 specifically on the suggestion, but put a question
22 that said to the witness: "Isn't it possible
23 that", in effect making a suggestion with respect
24 to another scenario. There was no objection to
25 that.

1 My sense of the law on it, I think
2 which is -- at least as I intended, consistent
3 with what happened the other day -- is that it's
4 certainly open to a cross-examiner to put
5 suggestions of scenarios to a witness by using a
6 phrase "Isn't it possible that" or "I suggest to
7 you that", or something of that sort, so long as,
8 as the Supreme Court says, so long as the scenario
9 is not fanciful and is one that the lawyer, as a
10 professional, has some basis to put forward.

11 If the question is asked if that
12 fashion, there need not be a commitment then to
13 call evidence to establish the scenario that is
14 being suggested through that line of questioning.

15 What would be impermissible -- and
16 Little doesn't specifically deal with this, but
17 it's always struck me has been the state of the
18 law -- would be to say, "I'm suggesting to you,
19 witness," or "What do you have to say about the
20 fact that Mr. Arar or anybody else would testify
21 to this scenario or that scenario".

22 As I understood the objection that
23 came from the government that we dealt with, it
24 was that type of suggestion that was objected to.

25 So that is a long way of saying

1 I'm not sure that there is really an issue between
2 the parties arising from what happened the other
3 day.

4 Ms Edwardh, would I take it that
5 you would be content with being able to ask
6 questions that would say "I suggest to you the
7 following scenario"? I don't want to start
8 telling you how to form your questions, but
9 leaving what Mr. Arar might testify to out of the
10 picture.

11 MS EDWARDH: That specific
12 formulation I am quite content, you know, that
13 Mr. Arar would testify.

14 I think perhaps we went offside a
15 little earlier than that, and it started when I
16 asked Ms Girvan did she have any recollection -- I
17 was asking her something about Damascus, and then
18 Ms McIsaac stood up and said, "Well, that gets
19 into the problem of whether Mr. Arar" -- but, of
20 course, the witness acceded to the suggestion, so
21 we didn't crystallize the issue.

22 If what is prohibited is the
23 phraseology, Mr. Arar would testify. I think you
24 could say "Well, I put to you, witness, that
25 Mr. Arar has a different recollection", and then

1 they are entitled to comment.

2 THE COMMISSIONER: I would
3 probably have a little difficulty with that, other
4 than if you could tie it to something that he has
5 said.

6 It strikes me that that is the
7 same as suggesting, you know, making a commitment
8 that that is what he would testify to.

9 I must say I think it's open to
10 you to put suggestions of scenarios to the
11 witness: "I suggest to you what happened was
12 this"; "I suggest to you what happened was that."
13 You are not making a commitment to call evidence.

14 MS EDWARDH: I am content,
15 Mr. Commissioner, to live within those boundaries
16 until we get to a point where I can't ask a
17 question and I think it's imperative that I must.
18 And if we have to cross that line, then we can
19 deal with the argument at that point.

20 But I think it's important that we
21 be able to put theories of the defence or
22 suggestions to the witness knowing that we've got
23 a good-faith basis for putting the suggestions but
24 not be in a position necessarily to say the
25 witness will be testifying.

1 THE COMMISSIONER: In fairness --
2 well, let's see if we come to it, but also in
3 suggesting that the witness would say that. For
4 example, in the Little case, the questions that
5 were put by defence counsel had to do with a drug
6 scenario that the officers could testify. The
7 argument was, well, the officers would have to be
8 called to testify about it.

9 But I didn't understand the
10 questions to be in the form that: "Now, witness,
11 I'm saying that Officer X and Officer Y give this
12 description of what happened." So they didn't tie
13 it to the description itself. They simply put the
14 scenario forward that if the officers had been
15 called, they would have testified about.

16 Again, I think we are splitting
17 hairs on something that, as a practical matter,
18 when you look at the issues that we are dealing
19 with in this inquiry, it's not a trial.

20 MS EDWARDH: If I could just make
21 one other comment, if one actually goes back to
22 the original formulation of this rule --

23 THE COMMISSIONER: In Brown and
24 Dunn?

25 MS EDWARDH: Not to Brown and Dunn

1 because I actually believe it has a different
2 genesis, that Brown v Dunn is really a case
3 concerned with whether you can call evidence and
4 what your ethical duties are. I don't believe
5 they fall from the same lines of authority.

6 THE COMMISSIONER: All right.

7 MS EDWARDH: Going back to the
8 decision of Privy Council in Fox and General
9 Medical Council, of course that is a case that the
10 Supreme Court of Canada relies upon.

11 Again, I suppose you are correct,
12 Mr. Commissioner, because what is at issue in Fox
13 is kind of interesting because, if you go to page
14 1023, just after the quote gets incorporated into
15 the Supreme Court of Canada decision in Little --

16 THE COMMISSIONER: Yes, I have it.

17 MS EDWARDH: About two-thirds of
18 the way down there is a comment beginning "The
19 whole episode apparently."

20 "Their Lordships do not know
21 the content of the letter
22 comes down to one question:
23 Question: Did you seduce her
24 in the surgery very soon
25 after that?"

1 issue again.

2 THE COMMISSIONER: Let me know.

3 I haven't heard from the
4 government on this.

5 MS McISAAC: I agree, essentially,
6 with your interpretation, sir.

7 The thing that concerned me about
8 Little, of course, is what the Supreme Court is
9 talking about in cases like that is innocence at
10 stake. We are talking about a criminal trial, and
11 in most cases it was the counsel for the accused
12 who was limited in his or her cross-examination.

13 I think that the situation we are
14 in here is distinguishable.

15 But I have no difficulty with the
16 idea of suggestions being put to a witness of
17 alternate scenarios, or indeed, as you have said,
18 if there is a public statement which has been
19 made, putting that to the witness for their
20 comment.

21 THE COMMISSIONER: Right. And
22 then the only evidence is the witness' response.
23 If the witness says I disagree with the
24 suggestion, then there's no evidentiary value
25 other than the rejection by the witness.

1 MS McISAAC: Absolutely.

2 THE COMMISSIONER: I think that's
3 useful and we can proceed on that basis and see if
4 any problems develop.

5 With respect to the order of
6 witnesses, let me just give a couple of thoughts,
7 and then I will hear from each of you.

8 It strikes me that the government
9 counsel here in this inquiry, as in any inquiry,
10 has a difficult role. I think that the government
11 counsel -- and they have acknowledged this -- see
12 it as part of their role to assist the inquiry to
13 ensure that we get to the bottom of what has
14 happened. So that they are present when witnesses
15 are interviewed and produce documents and so on.

16 In that role, one would have
17 thought that they should cross-examine after the
18 Commission counsel so that they could assist with
19 bringing out, if you will, the full story, to use
20 lawyers' talk, as part of the
21 examination-in-chief.

22 The Government counsel in this
23 inquiry, and I think it's true in other inquiries
24 in which I have been involved, also act for the
25 institutions, and indeed some individuals who

1 could be subject to criticism in the report, and
2 particularly in this case, the mandate directs me
3 to look into the actions of Canadian officials.
4 Government counsel are acting for institutions and
5 officials who would fall within that part of my
6 mandate.

7 In that sense, wearing that hat,
8 Government counsel could be said to be responding
9 to evidence that comes forward.

10 So that in the one hand,
11 Government counsel's role, it seems to me, is more
12 akin to leading the evidence in chief.

13 On the other hand, this isn't a
14 trial, I recognize. But on the other hand it's
15 more akin to responding to evidence that's called.
16 That would speak to cross-examining later rather
17 than sooner. So that there is that dilemma.

18 In addition, Government counsel in
19 this inquiry has taken the axe for all Government
20 witnesses who aren't otherwise represented.

21 I must say, I see that as a narrow
22 role. Witnesses don't generally need counsel,
23 absent some sort of allegation of impropriety, and
24 in drafting the rules, we certainly didn't
25 envision, by saying counsel for witnesses would

1 come last, that Government simply by saying "We
2 act for all Government officials" would thereby
3 move to the back end of the examination parade.

4 That said, there's two ways of
5 handling it, it strikes me: One is, for
6 Government counsel to fulfil its role of ensuring
7 that all of the evidence that needs to be called
8 is called before Ms Edwardh cross-examines.

9 Somehow that should -- we should
10 have some assurance that should happen, and I'm
11 not suggesting there was anything improper or
12 intentional in what happened last Thursday, but we
13 should avoid that situation happening again. That
14 simply should not happen.

15 So there should be no question
16 that Ms Edwardh cross-examines and then new
17 information comes out that should have come out in
18 front of the cross-examination. So that there's
19 that issue.

20 It strikes me that if new
21 information comes out, after the cross-examination
22 by Ms Edwardh, she should have an opportunity to
23 respond to it.

24 So that I'm open to hear from you
25 as to how we address sort of that dilemma of the

1 dual role, if you will, of Government counsel.
2 There seems to me -- there's two ways of
3 approaching it, and I'm not sure as a practical
4 matter at the end of the day it will make any
5 difference in terms of how I receive the evidence.

6 Go ahead.

7 MR. BAXTER: If I might,
8 Mr. Commissioner. One of the problems with a
9 witness like Mr. Pardy is that Mr. Cavalluzzo, in
10 trying to get through as many documents as he
11 had -- some 300 I think in two days -- and he's
12 done a great job of covering the terrain, has by
13 definition not been able to go deeply into many of
14 the documents.

15 And therefore I find myself, in
16 essence, at a crossroads: Do I go deeply into
17 those documents now, in every one of them, or
18 perhaps wait to see whether Ms Edwardh is planning
19 to do so; therefore, not needing that?

20 I certainly would like to avoid a
21 repeat of what happened on Thursday last as well.
22 I agreed immediately that cross-examination should
23 take place, and it didn't proceed at that time.

24 I can think of one area, for
25 example, that would -- that could risk such a

1 repeat, and I would offer, for example, to do that
2 first tomorrow with Mr. Pardy before Ms Edwardh
3 started.

4 The rest of it I think is true
5 re-exam and may be able to be eliminated.

6 But there are a number of
7 practical considerations also that I think should
8 enter into it and I don't think you want to get
9 into a full argument of the motion, if there needs
10 to be an argument.

11 I just call to your attention
12 there have been a number of new documents
13 forwarded to counsel that haven't been put to this
14 witness yet. How can I re-exam on those without
15 knowing what my friend will do with them?

16 THE COMMISSIONER: So there's new
17 documents that have been entered as evidence now?

18 MR. BAXTER: No, that have been
19 provided to us and we've been given notice --

20 THE COMMISSIONER: By Ms Edwardh.

21 MR. BAXTER: A number of them, and
22 I really don't know where they're going.

23 THE COMMISSIONER: Right. Ms
24 Edwardh?

25 MS EDWARDH: Mr. Commissioner,

1 it's my view that you are very correct to say that
2 the government's role in acting for the witness is
3 a much more minor and narrower role, and it was
4 never intended by your rules to permit them, by
5 consolidating their positions and represent all
6 the witnesses at the inquiry, to then assert that
7 the rule which governs representing an individual
8 witness and allowing you to go last put them in
9 that position.

10 I'm troubled because this inquiry,
11 unlike many others, relies upon -- no, disclosure
12 Mr. Arar has been an issue, I think it's fair to
13 say. And usually in an inquiry those kinds of
14 disclosure issues wouldn't be operative. And then
15 the problems that I sometimes face from time to
16 time with redacted documents, or trying to
17 understand what the history is, I wouldn't
18 traditionally be faced with.

19 So given the history of the
20 inquiry -- and I know we have the documents from
21 DFAIT, but there's a broader context that
22 everything has gone on in, and I am unfamiliar
23 with it -- I think the emphasis should be on
24 government acting to make sure the record is full.
25 What that inevitably really requires is that the

1 government then go after Mr. Cavalluzzo and then I
2 get an opportunity to cross-examine.

3 I realize as well that because we
4 are in this awkward fit that there may be matters
5 which I raise -- there aren't going to be very
6 many of them -- that are new and unanticipated
7 that may require some questions and clarification
8 or response by government counsel.

9 It makes the proceedings a little
10 more cumbersome, but if you look at overall what
11 has happened so far it makes eminent sense to
12 create a slightly different order to give the
13 government this role to play and to have a proper
14 cross-examination, but to recognize there may be
15 exigencies when my friends are required to ask for
16 permission or to automatically have the right to
17 move to clarify.

18 THE COMMISSIONER: It seems to me
19 whatever model I adopt, I raise the prospect of
20 one or the other of you cross-examining twice. I
21 don't say that in a critical way, and it may not
22 be necessary.

23 But if you were to go first, I
24 would surely say to you that you will have the
25 opportunity to cross-examine on new matters that

1 are newly raised, which -- how would I put
2 this? -- are of some significance, that have some
3 bearing upon it.

4 So that if there was any
5 unfairness to Mr. Arar arising from the way the
6 government's cross-examination took, you could
7 then deal with those specific matters as, in
8 effect, a type of re-examination. That would be
9 one model.

10 MS EDWARDH: The other model --

11 THE COMMISSIONER: The other model
12 is to give them the opportunity, and I'm not
13 encouraging, obviously, that we have two sets of
14 cross-examination. But there may be circumstances
15 that arise, and that's fine by me.

16 MS EDWARDH: I concede that would
17 be a remedy, either model you choose. I don't
18 think it is as good as the remedy of having the
19 government go first so they can make sure the
20 record in this inquiry is the fullsome one they
21 want and then I can cross-examine on that record.

22 I think it's more coherent, given
23 the interests at stake, to have the government
24 counsel go first.

25 THE COMMISSIONER: Thank you. I

1 think what I'm going to do is direct actually that
2 you go first, Ms Edwardh, but I am going to make
3 two conditions to that.

4 The first is I am going to ask
5 that the government advise Commission counsel of
6 any information which they are satisfied, having
7 heard the examination-in-chief, additional
8 information that they think should be brought out
9 that would make the record complete.

10 And in that respect -- and I'm
11 sure government will take this as it is
12 intended -- I would ask government to advise
13 Commission counsel of document or viva voce
14 evidence that would paint the full picture,
15 whether that evidence is helpful to, as the
16 government sees it, its position or not.

17 So the Government, I'm asking
18 then, assist Commission counsel, and it may be
19 that with the benefit of that information
20 Commission counsel will have some further
21 examination.

22 Ms Edwardh will then cross-examine
23 next, followed by the government.

24 And the second condition I attach
25 is that if there are matters that come up during

1 the government's cross-examination that in my view
2 warrant further cross-examination to avoid
3 unfairness to Mr. Arar, then I would permit
4 further cross-examination.

5 And in the end, lest anybody be
6 concerned about this, Commission counsel has the
7 right to re-examine. And I would encourage both
8 sets of counsel if at the end of the day they wish
9 Commission counsel to ask any questions by way of
10 re-examination, to feel free to approach
11 Mr. Cavalluzzo, and I am sure you will find him in
12 his usual, cooperative, non-grumpy mood.

13 --- Laughter / Rires

14 THE COMMISSIONER: So we will
15 handle it that way with respect to Mr. Pardy. If
16 any sort of serious problems arise with the
17 procedure, you can always speak to me about future
18 witnesses. But let's hope that we are on a course
19 that makes sense for everyone.

20 Let me then turn to the motion
21 that we are going to hear at 8:30 tomorrow and ask
22 certain questions of counsel.

23 I guess, Mr. Waldman, you are the
24 one that is involved from your side?

25 MR. WALDMAN: That's correct.

1 THE COMMISSIONER: Do I understand
2 correctly that what you seek to do is to enter
3 questions and answers that were given in the House
4 that are found in Hansard into evidence at this
5 inquiry?

6 MR. WALDMAN: I have prepared a
7 submission and I've given it to Mr. Cavalluzzo.

8 The relief we seek is twofold --
9 there's two parts to it.

10 We acknowledge the privilege, but
11 we submit that it doesn't preclude us from
12 entering Hansard or minutes of committee meetings.
13 That's the first point.

14 The second point is we also
15 believe that it should allow us to ask clarifying
16 questions that do not seek to impeach or challenge
17 the evidence that was given in Hansard or in the
18 minutes before the committee.

19 THE COMMISSIONER: I don't
20 obviously want to hear argument now.

21 MR. WALDMAN: Those are the two
22 points and they are separate, obviously.

23 THE COMMISSIONER: The first is to
24 simply enter it, which I understood had been the
25 proposal the other day as part of the context or

1 the background, just to do nothing more than to
2 say, "This question was asked, this answer was
3 given. Full stop."

4 MR. WALDMAN: And my understanding
5 was the solicitor for Parliament objected even to
6 that.

7 THE COMMISSIONER: Objected to
8 that and the basis of the objection -- we'll hear
9 from them tomorrow -- was because, even if there
10 weren't questions asked about it implicitly, there
11 could be a challenge to the credibility or an
12 effort to impeach.

13 But then you are asking then to go
14 one step further and to be entitled to ask the
15 witness, who either asked the question or gave the
16 answer in the House, to clarify the question and
17 answer.

18 MR. WALDMAN: Only to the extent
19 that the answer has some ambiguity in it that
20 requires clarification.

21 THE COMMISSIONER: Absent
22 ambiguity, then you would ask no questions.

23 MR. WALDMAN: Right.

24 THE COMMISSIONER: Don't let me
25 put words in your mouth. I don't want to narrow

1 it too much or unfairly to you.

2 But is what you are saying is
3 there would then be no questions which either
4 directly or indirectly would seek to challenge,
5 impeach, or criticize the witness for what he or
6 she may have said in the House?

7 MR. WALDMAN: Right, and indeed my
8 understanding of the privilege is that we can't
9 even suggest that it was misleading in any way.

10 THE COMMISSIONER: No. That would
11 fall within the criticism.

12 MR. WALDMAN: Exactly.

13 THE COMMISSIONER: Absent
14 questions needed to clarify an ambiguity, would I
15 be correct that the proposal is that there would
16 be no questions asked about what was said in the
17 House; it would simply be a matter of entering
18 into the record of this inquiry the question and
19 answer that were said in the House?

20 MR. WALDMAN: Right. And that's
21 the position I've taken in my submissions.

22 THE COMMISSIONER: I think then if
23 you could communicate the discussion we just
24 had -- it may be clear in your written material, I
25 haven't seen it -- so that the lawyer who is

1 appearing for the Clerk tomorrow morning is aware
2 of the proposal that you are making and the limits
3 that you and I have just discussed, on what would
4 be entered into evidence.

5 MR. WALDMAN: I undertook to send
6 her my submission, which I will by e-mail today.
7 But I already had a rather extensive discussion
8 with her yesterday and I think she is quite aware
9 of the position.

10 THE COMMISSIONER: I appreciate
11 that.

12 MR. WALDMAN: But I will send it
13 to her.

14 I haven't received her submission,
15 so I'm not at all --

16 THE COMMISSIONER: That's the last
17 thing I should mention. There are copies of two
18 books of authorities. I don't know if there's a
19 written submission with it, I didn't notice.

20 There is a copy for government
21 counsel -- it's quite lengthy -- and there is a
22 copy for you, Mr. Waldman, and there is one for
23 Commission counsel. You can pick them up in the
24 office out here on the way out tonight.

25 MR. WALDMAN: Thank you.

1 And I apologize for my
2 submissions. They were done in a rush so they are
3 not as finished as they might have been.

4 THE COMMISSIONER: No need to
5 apologize.

6 MR. WALDMAN: I wanted to give you
7 something because I really understand the time
8 constraints tomorrow.

9 THE COMMISSIONER: Who will be
10 making submissions tomorrow on this issue?

11 MR. WALDMAN: Myself.

12 THE COMMISSIONER: You will be,
13 counsel for the Clerk will be. The Government?

14 MS McISAAC: We may, but I suspect
15 we will simply adopt what the Clerk has to say.

16 THE COMMISSIONER: What if you
17 disagree with them, Ms. McIsaac?

18 MS McISAAC: Well, I may have
19 to --

20 --- Laughter / Rires

21 THE COMMISSIONER: And Commission
22 counsel?

23 MR. CAVALLUZZO: We will be
24 expressing certain observations.

25 THE COMMISSIONER: You are the

1 moving party, Mr. Waldman.

2 MR. WALDMAN: My view of it is
3 that it is the counsel for the --

4 THE COMMISSIONER: I was about to
5 allocate times for argument. You probably would
6 have been better off to hang in there as the
7 moving party.

8 --- Laughter / Rires

9 MR. WALDMAN: I'm the moving
10 party.

11 THE COMMISSIONER: What is the
12 sensible order? Is it the Clerk, probably --

13 MR. WALDMAN: I think the Clerk
14 should --

15 THE COMMISSIONER: They are
16 setting out. Well, they understand the facts.
17 You could communicate this to the counsel for the
18 Clerk, if you will, that they can argue first. I
19 will give them half an hour to make their
20 submissions. You can have 20 minutes to respond.
21 And between Ms McIsaac and Mr. Cavalluzzo will be
22 the remaining ten minutes.

23 So we will complete the argument
24 of the motion in an hour, and I will probably
25 reserve judgment.

1 What is the schedule for when this
2 issue will first come up?

3 MR. WALDMAN: On Monday. Minister
4 Graham is testifying on Monday, and there are
5 Hansard questions. And he appeared before a
6 Commons committee and he made statements.

7 THE COMMISSIONER: So your
8 proposal for Monday is to put in answers from the
9 House and statements made before a parliamentary
10 committee.

11 MR. WALDMAN: Right. In fact,
12 they are already filed. I should point out that
13 if you rule, we may have to purge some documents
14 that are already in the record. They are filed in
15 the motion record.

16 That's not an exhibit, I guess.

17 And I was looking through the
18 material and in here there are actually some
19 minutes of some meetings already. So if you rule
20 in favour of the government, we may have to remove
21 some documents from the exhibits.

22 THE COMMISSIONER: Okay. Well,
23 that's that.

24 We will rise now until 8:30
25 tomorrow morning.

1 MS EDWARDH: I'm sorry,
2 Mr. Commissioner, could we have permission to
3 arrive at 9:30? That would be satisfactory?

4 THE COMMISSIONER: Yes, that's
5 fine.

6 MS EDWARDH: Thank you.

7 MR. CAVALLUZZO: Just before we
8 rise, if counsel on the motion, on the
9 parliamentary public motion, would meet at 8:15,
10 perhaps we could have an attempt to discuss this
11 and maybe avoid the motion.

12 So at 8:15, if we could meet in
13 this room here?

14 THE COMMISSIONER: Excellent idea.

15 THE REGISTRAR: Please stand.

16 --- Whereupon the hearing adjourned at 5:37 p.m.,
17 to resume on Thursday, May 26, 2005, at
18 8:30 a.m. / L'audience est ajournée à 17 h 37,
19 pour reprendre le jeudi 26 mai 2005 à 8 h 30

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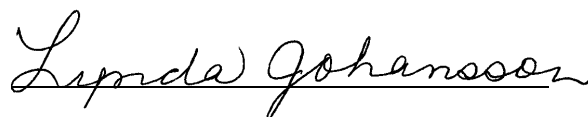
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Lynda Johansson,

C.S.R., R.P.R.

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