

**Commission d'enquête sur les  
actions des responsables  
canadiens relativement à Maher  
Arar**

**Commission of Inquiry into the  
Actions of Canadian Officials in  
Relation to Maher Arar**

**Audience publique**

**Public Hearing**

**Commissaire**

**L'Honorable juge /  
The Honourable Justice  
Dennis R. O'Connor**

**Commissioner**

**Tenue à:**

**Salon Algonquin  
Ancien hôtel de ville  
111, Promenade Sussex  
Ottawa (Ontario)**

**le mercredi 31 août 2005**

**Held at:**

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

**Wednesday, August 31, 2005**

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**TABLE OF CONTENTS / TABLE DES MATIÈRES**

	<b>Page</b>
<b>PREVIOUSLY SWORN: Léo Martel</b>	<b>11266</b>
<b>Examination by Mr. Cavalluzzo (Cont.)</b>	<b>11266</b>
<b>Examination by Ms Edwardh</b>	<b>11293</b>
<b>Examination by Mr. Cavalluzzo</b>	<b>11347</b>
<b>Examination by Ms Edwardh</b>	<b>11354</b>
<b>Examination by Ms Jackman</b>	<b>11590</b>
<b>Examination by M<sup>e</sup> Baxter</b>	<b>11602</b>
<b>Examination by M<sup>e</sup> Décary</b>	<b>11607</b>
<b>Examination by Mr. Cavalluzzo</b>	<b>11625</b>
<b>Motion</b>	<b>11638</b>

**LIST OF EXHIBITS / PIÈCES JUSTICATIVES**

<b>No.</b>	<b>Description</b>	<b>Page</b>
P-243	Document relating to what a Canadian official said that Mr. Martel told him about Mr. Arar in a conversation on February 8, 2004	11264
P-244	Document relating to what a Canadian official said that Mr. Martel told him about Mr. Arar in a conversation on February 8, 2004	11265
P-245	C-4 from Mr. Léo Martel to Head Office concerning Mr. Nureddin	11265
P-246	Document entitled "Conclusions and Recommendations of the Committee Against Torture, Canada"	11493
P-247	Article written by Jeff Sallot	11578
P-248	Superior Court lawsuit	11582
P-249	Federal Court lawsuit	11582
P-250	Syrian lawsuit	11583
P-251	Consular framework document	11628
P-252	Report entitled "Consular Services Framework, Part 2, Consular Issues and Case Category Guidelines", dated January 2005	11636
P-253	Draft memorandum from Mr. Solomon re Abdullah Almalki, dated October 30, 2002	11636

1 Ottawa, Ontario / Ottawa (Ontario)

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

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

4 31 août 2005 à 9 h 15

5 THE REGISTRAR: Please be seated.

6 THE COMMISSIONER: Good morning,

7 Mr. Martel.

8 MR. MARTEL: Good morning,

9 Commissioner.

10 MR. CAVALLUZZO: Good morning,

11 Commissioner. I'm going to proceed on the

12 following basis.

13 I referred to three documents

14 yesterday, and I will be asking the witness

15 questions about those three documents.

16 I was also going to ask him a

17 question concerning the Statement of Claim that

18 was referred to. I understand the Government is

19 attempting to retrieve another document in respect

20 of that. I will stand down those questions

21 relating to the claim until such time as that

22 document is retrieved. So that I will complete my

23 questions on these three documents and then defer

24 questioning on the claim till later.

25 THE COMMISSIONER: Okay.

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

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

6 THE COMMISSIONER: P-243.

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

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

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

25 The second document --

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

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

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

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

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

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

22 THE COMMISSIONER: That's 245.

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



1 PREVIOUSLY SWORN: LÉO MARTEL

2 EXAMINATION

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

10 Is that correct?

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

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

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

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

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

22 MR. CAVALLUZZO: Paragraph 2  
23 reads:

24 Concerning irregularities and  
25 stories, Martel said that

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

1 political agendas, according  
2 to Martel.

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

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

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

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

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

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

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

24 Let me take you through each  
25 sentence.

1                   It says:

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

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

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

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

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

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

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

25                  It goes on to say, in the third

1 sentence:

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

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

10 MR. MARTEL: No.

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

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

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

22 MR. CAVALLUZZO: So what?

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

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

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

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

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

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

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

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

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

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

3 --- Pause

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

6 MR. CAVALLUZZO: And where is it?

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

9 Nureddin --

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

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

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

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

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

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

25 If you go five lines up from the

1 bottom:

2 Beaten occasionally

3 Stopped interrogating after

4 two weeks

5 Next one is Mr. John McNee at page

6 5 of 14. After [page 2] reference, at page 5 of

7 14 at the bottom.

8 Under [page 2]:

9 Mental cruelty

10 Then it says:

11 Beaten occasionally - angry,

12 Slapped around in first two

13 weeks

14 - interrogation in first two

15 weeks, then nothing till

16 Sampson questions.

17 I could go on with the three

18 others, Mr. Martel, and I'm putting it to you that

19 in Exhibit 243, where the Canadian official said

20 that you said Arar was very clear that the Syrians

21 appeared to be satisfied with his answers and did

22 not do any more physical punishment or

23 interrogations after this, I'm putting it to you,

24 Mr. Martel, that you told this Canadian official

25 that about Mr. Arar and not Mr. Nureddin?



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

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

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

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

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

14 My understanding ---

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

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

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

23 It said that:

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

1                                   tortured for longer periods  
2                                   and more brutally.

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

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

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

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

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

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

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

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

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

3 MR. CAVALLUZZO: You don't know?

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

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

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

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

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

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

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

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

23 MR. MARTEL: But it's public.

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

1 MR. CAVALLUZZO: Right.

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

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

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

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

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

16 It says,

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

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

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

1 owns texts.

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

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

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

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

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

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

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

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

1 Mr. Arar.

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

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

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

11 MR. MARTEL: That's right.

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

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

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

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

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

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

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

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

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

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

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

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

25                  MR. MARTEL:   No. That applies to

1 Mr. Arar and the civil suit.

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

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

15 Do you recall telling this  
16 Canadian official --

17 MR. MARTEL: No. No. No.

18 This official is completely wrong.

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

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

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



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

3 This is Exhibit 244.

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

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

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

12 MS. JACKMAN: Yes, you can.

13 MR. CAVALLUZZO: Thank you.

14 Let me read it again.

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

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

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

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

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

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

21                   MR. CAVALLUZZO: Positive?

22                   MR. MARTEL: Yes.

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

1 starting with "The Syrians".

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

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

25 MR. MARTEL: This is the treatment

1           that Nureddin described to me and that was sent.

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

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

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

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

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

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

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

20                            He was doused in water.

21                            That's not one of my words.

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

24                            MR. MARTEL:  In his report.

25                            My colleague used this word

1           somewhere.

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

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

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

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

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

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

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

1 mention whatever of cold water?

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

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

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

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

19 You would agree with that?

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

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

1 water and the soles of his feet being beaten.

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

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

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

11 You would agree with that?

12 MR. MARTEL: That's right.

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

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

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

22 --- Pause

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

25 MR. MARTEL: Yes, I have it.

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

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

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

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



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

5                           Isn't that correct?

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

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

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

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

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

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

25                          But certainly not from me in any

1 case.

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

6 MR. MARTEL: Exactly.

7 MR. CAVALLUZZO: He got it wrong.

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

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

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

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

19 THE COMMISSIONER: Right, I  
20 understand.

21 Thank you.

22 Ms Edwardh?

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

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

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

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

25                  It is so patently obvious to me as

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

8           EXAMINATION

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

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

13                           MR. MARTEL: I am aware.

14                           Yes, I am aware of that.

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

19                           MR. MARTEL: Thank you.

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

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

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

10                   Is that fair?

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

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

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

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

25                   MS EDWARDH: I'm asking you,

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

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

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

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

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

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

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

1 provisions of consular service? Yes?

2 Do you agree with that  
3 proposition?

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

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

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

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

14 The Evaluation Division --"

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

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

25 Do you see that?

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

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

5 MR. MARTEL: Six.

6 Yes, I see.

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

9 MR. MARTEL: Okay.

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

12 MR. MARTEL: Fine. I see.

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

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

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



1 MR. MARTEL: Yes, of course.

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

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

11 MR. MARTEL: Yes.

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

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

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

25 MS EDWARDH: And Mr. Cavalluzzo

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

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

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

13 I don't have any details.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25                            THE COMMISSIONER: With great

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

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

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

18                              MR. DÉCARY: Very well.

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

21                              Please proceed, Ms Edwardh.

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

25                              Let me phrase it this way: It is

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

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

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

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

21 --- Pause

22 THE COMMISSIONER: All right;  
23 thank you.

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

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

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

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

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

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



1           circumstances. In other words ---

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

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

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

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

25                      MS EDWARDH: And you, I think,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 East?

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

4 MS EDWARDH: Sorry, anywhere?  
5 Anywhere?

6 MR. MARTEL: In 1984.

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

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

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

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

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

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

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

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

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

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

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

19                   MS EDWARDH:  Fine.

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

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

25                   MR. MARTEL:  Not prisons, but again

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

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

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

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

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

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

1 centres or housing units?

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

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

7 MR. MARTEL: That's right.

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

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

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

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

20 MR. MARTEL: Yes.

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

25 MR. MARTEL: Well, we could assume

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

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

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

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

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



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

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

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

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

15 That is the first duty?

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

1 to help the individual stay in the country.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 MR. MARTEL: Not necessarily.

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

1 from any other inmate?

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

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

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

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

23 Do you agree with him?

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

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

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

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

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

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

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

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

6 I think you have answered the  
7 question.

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

13 You would want to know that as  
14 well?

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 would protest.

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

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

9 MR. MARTEL: Yes, of course.

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

13 MR. MARTEL: Yes, of course.

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

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

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

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

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

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

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

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

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

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

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

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

1 would probably consult the Legal Section.

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

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

10 MR. MARTEL: Yes.

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

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

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

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

1 Do you recall that evidence, sir?

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

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

12 My vocabulary is limited to that.

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

17 MR. MARTEL: That's right.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

10 MR. MARTEL: No, unfortunately.

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

14 MR. MARTEL: No.

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

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

25 MS EDWARDH: Yes. And we also

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

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

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

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

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

25 MR. MARTEL: Always and a few

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

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

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

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

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

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

25 MS EDWARDH: I would like to turn

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

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

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

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

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

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

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

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

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

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

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

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

1 to the Government of Canada?

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

5 MS EDWARDH: We understand that.

6 MR. MARTEL: Yes, I understand.

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

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

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

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

24 Allegations of torture and  
25 intimidation of detainees by

1                    police and security services  
2                    persist.

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

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

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

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

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

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

5 We underline that.

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



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

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

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

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

22 That is incorrect, isn't it?

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

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

5 MS EDWARDH: Correct, correct.

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

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

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

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

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

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

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

8 MS EDWARDH: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 MS EDWARDH: Thank you.

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

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

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

23 Do you see that?

24 MR. MARTEL: Yes, I see it.

25 MS EDWARDH: I draw from that the

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

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

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

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

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

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

4                       MS EDWARDH: But you've also --

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

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

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

15                      MS EDWARDH: Thank you.

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

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

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

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

23                      THE REGISTRAR: Please stand.

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

25                      Suspension à 10 h 54

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

2 Reprise à 11 h 19

3 THE REGISTRAR: Please be seated.

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

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

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

14 Does that make sense?

15 MR. CAVALLUZZO: That's fine.

16 EXAMINATION

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

19 THE COMMISSIONER: 243?

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



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

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

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

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

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

15                  Isn't that correct?

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

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

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

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

4 There's no doubt.

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

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

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

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

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

25 The Syrians had told me that they

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

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

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

11                      I remember ---

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

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

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

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

1 no doubt about that.

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

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

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

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

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

25 There is no doubt about that.

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

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

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

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

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

21                  MR. CAVALLUZZO: Possibly?

22                  MR. MARTEL: Yes.

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

25                  MR. MARTEL: No, I did not destroy

1           it.   Certainly not.

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

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

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

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

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

20                          MR. MARTEL:   Fine.

21                          MR. CAVALLUZZO:   Thank you.

22                          I have no further questions.

23                          THE COMMISSIONER:   Thank you.

24                          Ms Edwardh?

25          EXAMINATION

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MS EDWARDH: He saw it?

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

22 MS EDWARDH: He saw it?

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

25 MS EDWARDH: And he would, of

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

5 MR. MARTEL: That's right.

6 MS EDWARDH: And he would confirm  
7 that?

8 MR. MARTEL: He should in any case.

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

13 MR. MARTEL: No.

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

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

24 There's no doubt.

25 MS EDWARDH: And indeed, though,

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

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

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

9 MS EDWARDH: Of course.

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

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

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

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

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

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

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

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

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

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

17 MS EDWARDH: And he should be  
18 grateful.

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

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

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

25 He has -- he was a client, a

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

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

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

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

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

18 MR. MARTEL: No.

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

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

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

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

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

10 Martel said he was  
11 annoyed --"

12 Do you see that, paragraph 6?

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

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

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

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

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

12 But I was disappointed.

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

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

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

20 MR. MARTEL: That's right.

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

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



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

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

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

9                       Who is Anwar Arar?

10                      MR. MARTEL:  Tab 263?

11                      MS EDWARDH:  Volume 2, tab 163.

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

15                      MR. MARTEL:  Yes, I see.

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

18                      MR. MARTEL:  Correct.

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

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

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

25                      "Mr. Arar (redacted) calling

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

9 Do you see that?

10 MR. MARTEL: Yes, I see.

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

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

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

17 MR. MARTEL: Mm-hmm.

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

20 MR. MARTEL: I mean "Yes."  
21 Yes. That's right.

22 MS EDWARDH:

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

1 any information."

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

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

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

10 MR. MARTEL: No.

11 MS EDWARDH: It's November 12th.

12 MR. MARTEL: November 12th?

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

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

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

24 Do you see that?

25 MR. MARTEL: Yes, I see.

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

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

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

11 MR. MARTEL: No, no.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 That information was never given  
24 to him?

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

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

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

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

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

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

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

25 Now, what seems to interest the -



1           --

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

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

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

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

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

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

5                   That was why.

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

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

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

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

22                   You agree with that?

23                   MR. MARTEL: Certainly.

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

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

3                   MR. MARTEL: That's right.

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

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

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

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

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

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

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

24                  So yes, I got it.

25                  MS EDWARDH: Can you, for the

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

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

8 MS EDWARDH: Wants to visit who?

9 MR. MARTEL: Mr. Arar.

10 MS EDWARDH: In Syria?

11 MR. MARTEL: Yes.

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

13 Do you want me to translate?

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

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

21 So only employees and MPs --

22 "have been given access to

23 Mr. Arar."

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

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

8 MR. MARTEL: That's right.

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

13 MR. MARTEL: Yes, certainly.

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

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

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

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

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

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

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

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

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

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

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

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

1 proceed.

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

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

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

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

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

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

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

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

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

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

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

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

25                                           And it was -- that was the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9                   MR. MARTEL: Yes, I see.

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

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

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

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

25                  MS EDWARDH: But you never asked?

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

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

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

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

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

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

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

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

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

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

16                      MR. MARTEL: That's right.

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

21                      Can I ask you to look at tab 507.

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

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

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

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

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

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

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

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

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

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

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

25 MR. MARTEL: In any case, it was

1 Pillarella who signed it.

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

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

6 THE COMMISSIONER: It's Book 132?

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

9 THE COMMISSIONER: Yes.

10 MS EDWARDH: This looks more  
11 familiar.

12 Thank you, Mr. Cavalluzzo.

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

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

17 MS EDWARDH: You think it is  
18 Pillarella.

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

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

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

1 his meeting with General Khalil.

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

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

8 Do you see that?

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

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

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

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



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

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

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

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

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

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

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

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

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

17 Is that correct?

18 MR. MARTEL: That's right.

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

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

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

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

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

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

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

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

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

12 MR. MARTEL: That's right.

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

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

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

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

25 Is that correct?

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

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

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

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

13 MR. DÉCARY: This incident --

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

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

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

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

25 MR. BAXTER: The Government of

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

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

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

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

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

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

19 What I would say is --

20 --- Laughter / Rires

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

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

1 we can address it then.

2 Is that fair enough?

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

6 THE COMMISSIONER: I don't know.

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

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

12 MS EDWARDH: I see. And he or she  
13 would give the --

14 I'm sorry, Mr. Commissioner, I'm  
15 having problems.

16 THE COMMISSIONER: Do you want to  
17 take this one?

18 MS EDWARDH: I'm having a lot of  
19 static. You are, too?

20 THE COMMISSIONER: There is  
21 another one here.

22 MS EDWARDH: I will try this one.

23 THE COMMISSIONER: Mr. Baxter,  
24 your colleague behind you may want this one.

25 THE COMMISSIONER: You are fine?

1 --- Pause

2 MS EDWARDH: We have established,  
3 sir, that there is no memorandum or correspondence  
4 in respect of this advice, nor is there any  
5 discussion with headquarters about that advice.

6 Is that fair?

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

8 MS EDWARDH: And I take it the  
9 lawyer in question, who is on permanent retainer  
10 to the Canadian Embassy, is in fact a lawyer who  
11 provides general services to the Embassy?

12 MR. MARTEL: Yes. He provides us  
13 with various services based on an agreement we  
14 have, and I contact him regularly regarding  
15 specific points of Syrian law, because you have to  
16 know the laws and under which circumstances, what  
17 applies and what doesn't apply, what you can or  
18 can't do. He's someone I see probably . . . or to  
19 whom I speak every week.

20 MS EDWARDH: Am I correct, sir,  
21 that that lawyer also provides commercial  
22 services, in the sense that if the Embassy needs  
23 to look at a contract, or conduct its own affairs  
24 and businesses, this lawyer would advise the  
25 Embassy?



1                   MR. MARTEL: With respect to  
2                   contracts, this lawyer will, for example, review  
3                   our own contracts, i.e., the Embassy's contracts.  
4                   Before signing a contract, I . . . the Ambassador  
5                   and I, naturally, want to make sure that we are in  
6                   compliance with local law and that there will be  
7                   no surprises later on. So, before entering into  
8                   an agreement or signing a new contract, I always  
9                   show it to my lawyer first so that he can read it  
10                  and assure me that everything is okay.

11                 MS EDWARDH: That is my point;  
12                 that the lawyer who you consulted is a lawyer who  
13                 did not practise in the field of criminal security  
14                 or human rights law?

15                 MR. MARTEL: Yes, you're quite  
16                 right, but all the same he's an expert in Syrian  
17                 law.

18                 MS EDWARDH: I suppose he is an  
19                 expert in the same way any Canadian lawyer is  
20                 supposed to know all Canadian law. You will agree  
21                 with me, sir, that if he was going to give you  
22                 advice about a criminal trial, you would rather go  
23                 to someone who is a criminal lawyer?

24                 MR. MARTEL: Well, first of all I  
25                 would consult my lawyer who is on retainer, and I

1 would get his opinion, but he might say, "Listen,  
2 I'm not an expert in these matters, but I can  
3 recommend someone else".

4 MS EDWARDH: And when you asked  
5 for advice about whether there was any step that  
6 Maher Arar could take prior to August, before  
7 August 14th, did the lawyer who gives general  
8 advice to the Embassy refer you to anyone else to  
9 determine whether such steps existed?

10 MR. MARTEL: When I asked my  
11 lawyer for advice, he told me the situation was  
12 very straightforward. I had a citizen who was of  
13 Syrian nationality and there was nothing I could  
14 do.

15 If he was a prisoner, they could  
16 keep him as long as they wanted, and there was  
17 nothing more I could do. Period. That's the way  
18 it was.

19 MS EDWARDH: In addition to the  
20 information you received from your discussion with  
21 the Ambassador about August 14th, that Mr. Arar  
22 could have a trial within one week, you were also  
23 aware from earlier discussions that you had with  
24 Syrian authorities before your visits with  
25 Mr. Arar that at least at one time they said that

1           they felt he was a member of the Muslim  
2           Brotherhood.

3                               That had been told to you before?

4           MR. MARTEL:   I had been told that?

5           MS EDWARDH:   Yes.

6           MR. MARTEL:   It's possible, but  
7           who would have told me?   Souheil, perhaps, but he  
8           wasn't someone who . . . it was my interpreter, I  
9           think.   I don't know who told me; I don't  
10          remember.

11                           MS EDWARDH:   All right.   But you  
12          did get that information; that that was one of the  
13          issues that was of concern to the Syrians?

14                          MR. MARTEL:   Yes, and I believe  
15          they said so at some point.   Whether they told the  
16          Ambassador or me, I don't remember, but it was  
17          brought to my attention that they . . . they  
18          claimed, at least, that he was a member of the  
19          Muslim Brotherhood.

20                          MS EDWARDH:   That in some cases it  
21          is a capital offence in Syria?

22                          MR. MARTEL:   I don't believe so.  
23          To the best of my knowledge, with clients I've had  
24          since then, it's a 12-year prison sentence.

25                          MS EDWARDH:   It is my

1           understanding that in some circumstances it can be  
2           treated as a capital offence, but I take it you  
3           don't know that.

4                           MR. MARTEL:  No, I wasn't aware of  
5           that.

6                           MS EDWARDH:  In any event, my  
7           question to you is when you learned that there was  
8           an issue in the minds of Mr. Arar's gaolers that  
9           he may be a member or active in the Muslim  
10          Brotherhood, do you recall having any discussions  
11          with Canada as to the gathering of evidence that  
12          might show that that claim was wrong?

13                           Did you ask for help?

14                           MR. MARTEL:  No.  Obviously, I  
15          think it was reported, obviously, but if we did  
16          not yet have access, and the lawyers did not have  
17          access, to the prosecution file, it's what the  
18          authorities were saying, but there was nothing yet  
19          in writing anywhere.

20                           There was no substantive evidence  
21          indicating that Maher Arar was a member of the  
22          Muslim Brotherhood.  Actually, we, for our part,  
23          and myself personally, really the Ambassador, did  
24          not share this opinion.

25                           We didn't know what the Syrians

1           were trying to get at with this accusation, but  
2           the accusation had not yet been made in writing.

3                       MS EDWARDH:  No.  I understand  
4           that.  It was not at this time.  There were no  
5           written accusations of any kind.

6                       I am just simply asking the  
7           question:  When you learned that the Syrians said  
8           this, was any request sent back between October  
9           and August to Mr. Arar's family to say, "Can you  
10          help us gather evidence about Mr. Arar's  
11          connection, if any, to the Syrian Muslim  
12          Brotherhood"?

13                      MR. MARTEL:  No, no, that wasn't  
14          done.

15                      MS EDWARDH:  Did you ever go and  
16          ask the Syrian authorities if Mr. Arar could sign  
17          a power of attorney allowing his wife to get  
18          access to information, private banking records,  
19          et cetera?  Did you ever ask?

20                      MR. MARTEL:  No, I don't think so,  
21          neither beforehand nor after access was denied,  
22          when I could no longer ask him anything . . . no,  
23          we never asked.

24                      MS EDWARDH:  And after August  
25          14th, when you knew he was going to stand his

1 trial, there was no effort to have him sign a  
2 power of attorney?

3 MR. MARTEL: I never saw him again  
4 after that.

5 MS EDWARDH: Fair enough. You  
6 didn't make a telephone request to the Syrian  
7 authorities so that some effort could be made at  
8 least to ask them if they would allow him to sign  
9 a power of attorney?

10 MR. MARTEL: No, no such requests  
11 were made by phone . . . phone calls were always:  
12 can I see my client? And the answer was always  
13 the same, and at the end I was told no, he was no  
14 longer under their jurisdiction.

15 MS EDWARDH: I would like you to  
16 go to tab 512, if I could, in this same volume.

17 You had a visit -- obviously we  
18 will deal with August 14th in other respects. But  
19 you had a visit August 14th, and there is a  
20 discussion of the pending accusations against  
21 Mr. Arar and you are told a number of things, or I  
22 assume you are told this as well -- you know this  
23 from the conversation, I'm sorry -- that he is to  
24 be given a choice of lawyer?

25 MR. MARTEL: Actually, this should

1 be taken with a grain of salt. That's what General  
2 Hassan Khalil said at the time. So, there was no  
3 formal communication between . . . on the part of  
4 the Syrian government with the Embassy.

5 MS EDWARDH: No. But it is the  
6 first indication the General has given you of the  
7 nature of the proceedings?

8 MR. MARTEL: It's the General's  
9 opinion.

10 MS EDWARDH: It was your  
11 understanding that Mr. Arar could have counsel,  
12 that he would be allowed to meet with counsel --  
13 I'm just trying to summarize this. If you want to  
14 go through the tabs, we can. But that his trial  
15 would be a quick trial?

16 MR. MARTEL: That's what the  
17 General led us to believe. The comments reported  
18 were those of the General.

19 MS EDWARDH: I want to just know  
20 whether at any time, up to and including the end  
21 of your August 14th visit, you told Mr. Arar that  
22 one of the concerns of the Syrians was that he was  
23 a member of the Muslim Brotherhood?

24 MR. MARTEL: Well, I wasn't at  
25 liberty to say whatever I wanted to Maher. Our

1           conversations were always monitored and limited,  
2           and the Syrians had forbidden me to discuss the  
3           case. They had warned me ahead of time that they  
4           didn't want me to discuss the case.

5                        So I wasn't at liberty to talk  
6           about whatever I wanted with him.

7                        MS EDWARDH: So at no time in all  
8           of the consular visits that you had did you ever  
9           inform him at least of your understanding of the  
10          substance of the allegations against him?

11                       MR. MARTEL: No, I never talked  
12          about that, for a number of reasons.

13                       First of all, because they  
14          prevented me from discussing the case, and  
15          secondly, because I didn't believe this  
16          information either.

17                       MS EDWARDH: I'm sorry, you didn't  
18          believe that information?

19                       MR. MARTEL: No, I didn't believe  
20          what they were telling me . . . that he was a  
21          member of the Muslim Brotherhood. He left Syria  
22          when he was young . . . how could he be a Muslim  
23          Brother?

24                       MS EDWARDH: So is it your  
25          evidence here that the reason that you did not



1           inform him of that allegation was that you assumed  
2           that the Syrians were -- I don't know, for want of  
3           a better word -- not being candid with you?

4                       MR. MARTEL:  No, they weren't.  As  
5           you say, one, they weren't telling me the truth,  
6           and two, I was forbidden from discussing the case,  
7           so I could only discuss certain topics with Maher,  
8           but I couldn't get into the case itself.

9                       I couldn't say to him, "Look, the  
10          Syrians are accusing you of being a member of the  
11          Muslim Brotherhood".  It made no sense: he had  
12          left the country when he was about 16 or 17, so,  
13          as far as I was concerned, they were simply making  
14          all this up.

15                      It was at this point, I believe,  
16          that I started to realize that they were  
17          floundering.  They didn't really know where they  
18          were going.

19                      MS EDWARDH:  I take it that if you  
20          look -- I'm just going to put a general  
21          proposition to you.

22                      If you look at the consular notes  
23          overall, Mr. Martel, you confined your  
24          conversations with Mr. Arar to matters trivial,  
25          family, and just whatever observations you could

1 make; right?

2 MR. MARTEL: That's right, in  
3 accordance with the instructions I had been given.

4 MS EDWARDH: And material issues  
5 that are at the root of your mandate to provide  
6 consular services were not the subject of  
7 questions by you, nor were there any discussions  
8 about what you understood to be allegations he  
9 faced?

10 MR. MARTEL: Exactly, because I  
11 wasn't at liberty, and the meetings were monitored  
12 and I could only say what I was allowed to say,  
13 and the same held true for Maher. He could speak  
14 to me, but he had to stick to what he was allowed  
15 to tell me.

16 MS EDWARDH: Yes. But you are  
17 following instructions, I take it, from Ottawa,  
18 and you are told, as I understand your evidence,  
19 Mr. Martel, "Don't say anything to Mr. Arar about  
20 the allegations made in the U.S., don't say  
21 anything about what we have learned about what the  
22 Syrians think. Just don't talk about what it is  
23 alleged that Maher Arar did"?

24 MR. MARTEL: No, I never received  
25 such instructions from Ottawa. The Syrians had

1 forbidden me to talk about the case.

2 Ottawa had never forbidden me to  
3 talk about anything, except that, from the very  
4 beginning, the Consular Affairs Bureau told me  
5 that I must understand the situation and that I  
6 should stick to the most transparent questions,  
7 but that if I wanted to find out more, I should  
8 perhaps ask such-and-such a question. That was  
9 it.

10 But Canada never told me that I  
11 should not try to get information, or that I  
12 shouldn't do this or that. The instructions came  
13 from the Syrian authorities. I could only ask  
14 certain questions.

15 The same thing applied to the MPs  
16 when they went. They were told that they could  
17 ask certain questions, but they couldn't go any  
18 further than that.

19 MS EDWARDH: So if one looks at  
20 what you were told by the Syrians you couldn't  
21 talk about, generally we could draw the following  
22 conclusions.

23 The Syrians didn't want you to  
24 learn or talk about the case. That was off the  
25 table; correct?

1                   MR. MARTEL: Yes, and from their  
2 point of view . . .

3                   MS EDWARDH: Let me do the list.

4                   MR. MARTEL: Go ahead.

5                   MS EDWARDH: They didn't want you  
6 to talk about the case, and they didn't want you  
7 to talk about how they were treating Mr. Arar. Is  
8 that correct?

9                   MR. MARTEL: Well, let's say, it  
10 wasn't that they didn't want me to talk about how  
11 he was being treated. They presented the  
12 situation in a positive light, and my reports were  
13 written accordingly, based on the positive manner  
14 in which they presented the situation.

15                   That doesn't mean they didn't want  
16 . . . naturally, they didn't want any bad press or  
17 anything like that.

18                   If I understand the question  
19 correctly, they didn't want me to talk about the  
20 manner in which he was treated, and I talked about  
21 the manner in which he was treated. They said to  
22 me, "Yes, you can ask him questions about the  
23 prison conditions and about his family".

24                   MS EDWARDH: Right. But they  
25 didn't permit you to ask certain questions about

1 his detention, or you would have asked that whole  
2 list of questions I put to you at the beginning of  
3 this?

4 MR. MARTEL: Definitely. Right  
5 from the very first visit, I started asking  
6 questions along those lines, such as: "Where did  
7 you come from? How long ago? Where did you stay?  
8 What did you do?" etc., and then they stopped me,  
9 and they stopped him as well.

10 MS EDWARDH: Mr. Martel, let me  
11 stop you because we are going to come back to  
12 that, and I don't want to go too far offside. I  
13 just want to finish this area with the lawyers,  
14 and we will come back to what they would and would  
15 not allow you.

16 Let me just turn you to tab 514  
17 for a moment.

18 Am I correct, sir, that, after the  
19 14th of August, there was some effort on the part  
20 of yourself and others, first of all, to deal with  
21 an issue of a visa for a Canadian legal observer?

22 MR. MARTEL: Yes. I believe . . .  
23 it seems to me it was James Lockyear.

24 MS EDWARDH: Yes. And also to  
25 finally put a lawyer in place for a trial?

1                   MR. MARTEL: Yes, that's right,  
2                   and I had discussed the subject of lawyers with  
3                   Maher.

4                   MS EDWARDH: And might I just make  
5                   it really simple with respect to Mr. Lockyear.  
6                   You asked the Syrian Foreign Ministry for  
7                   permission for him to come?

8                   MR. MARTEL: Yes. I believe a  
9                   diplomatic note was sent. Yes.

10                  MS EDWARDH: No one ever answered  
11                  and no one ever issued a visa?

12                  MR. MARTEL: Would you have  
13                  expected otherwise? The answer is always the  
14                  same.

15                  Mr. Lockyear asked me personally  
16                  if I thought the Syrians would grant him a visa,  
17                  and I told him that, to be perfectly honest, I  
18                  would be very surprised if they did, but that we  
19                  had to try anyway.

20                  MS EDWARDH: Right. So efforts  
21                  were made to at least ask, and the Syrians did not  
22                  grace the request with an answer?

23                  MR. MARTEL: And I don't know if  
24                  the visa request was submitted either, because it  
25                  is not submitted in Syria, it is submitted from

1 here.

2 MS EDWARDH: Well, I think we have  
3 reason to believe a request was submitted but no  
4 answer came, and that would go to the Foreign  
5 Ministry, would it not, the visa request?

6 MR. MARTEL: To the Syrian  
7 Embassy.

8 MS EDWARDH: That would be  
9 Ambassador Arnous who would receive that request?

10 MR. MARTEL: Ambassador Arnous.

11 MS EDWARDH: We also have  
12 information that there is an effort by Mr. Arar's  
13 wife to settle on a lawyer, and she has some names  
14 of lawyers. Do you see that in this memo?

15 MR. MARTEL: Which tab are you in?  
16 Are you still in 514?

17 MS EDWARDH: The same tab, tab  
18 514.

19 MR. MARTEL: Yes, yes. Already at  
20 that time, and, as you just said, we had to act  
21 quickly to find defence counsel, and I don't know  
22 if you want to look at this section, but Maher had  
23 already spoken to me about his defence.

24 MS EDWARDH: Well, I wanted -- and  
25 he had told you that he wanted his wife to be in a

1 position to identify defence counsel who would act  
2 on his behalf?

3 MR. MARTEL: Yes. Not initially,  
4 but later on, yes.

5 MS EDWARDH: But by this date,  
6 August the 15th -- indeed he says it to you in the  
7 meeting on August 14th. He told you his wife  
8 would take charge of retaining a lawyer?

9 MR. MARTEL: That's right. He  
10 wanted his wife to take care of it.

11 MS EDWARDH: And what "take care  
12 of it" meant was that she was to select the lawyer  
13 who would act for Mr. Arar?

14 MR. MARTEL: Yes. This was normal  
15 consular procedure.

16 MS EDWARDH: So on  
17 August 15th, 2003, you are told the names of the  
18 lawyers that she has selected, and they are listed  
19 at the bottom of this note: Mr. Haithem Emaleh  
20 and Mr. Anwar El Bouni.

21 Do you see those names?

22 MR. MARTEL: Yes, I see them, but  
23 she had not yet made her choice.

24 MS EDWARDH: Well, you know you  
25 have some role because you re going to contact



1           them on behalf of the family.

2                           MR. MARTEL: Right.

3                           MS EDWARDH: She has identified  
4 those two lawyers as persons they want you to  
5 contact on her behalf.

6                           MR. MARTEL: That's right.

7                           MS EDWARDH: Right. I am curious,  
8 if you turn to tab 519 -- we are now four days  
9 later -- why you are canvassing other lawyers. We  
10 start by saying:

11                                   "The two persons whose names  
12                                   you have provided are saying  
13                                   they are aware of the case  
14                                   and are willing to take on  
15                                   the work."

16                                   So those are the two names that  
17 Mr. Arar's wife gave you four or five days  
18 earlier; correct?

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

20                                   MS EDWARDH: And then there is --  
21 and I think it's even at Mr. Pardy's suggestion.  
22 You go to other lawyers?

23                                   MR. MARTEL: Yes, of course.

24                                   MS EDWARDH: And -- well, I don't  
25 know, of course. If you can help us with

1 paragraph (b), there is the name of a lawyer  
2 associated, I gather, with a group of lawyers,  
3 Cabinet d'avocats?

4 MR. MARTEL: Yes.

5 MS EDWARDH: Is that a group of  
6 lawyers?

7 MR. MARTEL: Yes, it's a firm.

8 MS EDWARDH: And a particular  
9 person is one there that is a prominent lawyer,  
10 and you have discussed the case with him; correct?

11 MR. MARTEL: That's correct.

12 MS EDWARDH: He doesn't usually  
13 work on criminal cases but may look at it; right?

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

15 MS EDWARDH: And after he gets  
16 some information, he will let you know whether he  
17 is interested?

18 MR. MARTEL: Yes. Exactly.

19 MS EDWARDH: I'm troubled,  
20 Mr. Martel, I'm troubled. You have instructions  
21 to retain the lawyers, or to contact the lawyers  
22 that Mr. Arar's wife has identified. What on  
23 earth are you doing contacting other lawyers?

24 MR. MARTEL: Well, at the time, we  
25 were in the process of looking around. In the

1 end, if we could find some other lawyers who we  
2 believed, for the mission -- who were on our list  
3 and who were very influential lawyers, there would  
4 be nothing wrong with getting in touch with them  
5 simply to find out whether or not they would be  
6 prepared to take on this case. Because both of  
7 them had said yes, initially. In the end, it was  
8 up to his wife, Monia, to decide who she wanted to  
9 go with. But if we opened up our scope of action  
10 to include the possibility of other lawyers, if it  
11 didn't work out with A or B, then we could always  
12 try C or D or E or F, just to see. But the final  
13 decision was up to her, not us.

14 MS EDWARDH: Okay. Because  
15 certainly (a) and (b) are people she has already  
16 chosen, and they have already said they are  
17 interested in taking the case.

18 MR. MARTEL: I believe she was  
19 considering them, but she hadn't yet made her  
20 choice.

21 MS EDWARDH: Well, she said in the  
22 memo that was sent to you, and this is what I find  
23 odd, if you go back to tab 514, it says she:

24 "... has canvassed various  
25 contacts and suggests

1 following two names as  
2 possible lawyers for Maher.  
3 Her preference is the first,  
4 Mr. Emaleh."

5 MR. MARTEL: Right.

6 MS EDWARDH: So she has clearly  
7 put into your bailiwick --

8 MR. MARTEL: Her preference. It's  
9 her preference.

10 MS EDWARDH: Yes. So I take it  
11 you disapproved of her choice.

12 MR. MARTEL: No, not at all.  
13 We . . .

14 MR. BAXTER: Mr. Commissioner, I  
15 would intervene at this point and ask in fairness  
16 that the witness be taken to page 2 of the  
17 document, tab 519. The witness was asked four  
18 specific tasks by Mr. Pardy, and I think that is  
19 very material.

20 MS EDWARDH: Okay. Let me try a  
21 different question.

22 Take a look at those four specific  
23 tasks. I said to you it was at Mr. Pardy's  
24 suggestion, but I'm going to suggest to you that  
25 you and Mr. Pardy disagreed with her choice.

1 MR. MARTEL: No.

2 MS EDWARDH: Mr. Emaleh was a  
3 human rights lawyer in Syria, and it was your  
4 view, it was Mr. Pardy's view, it was the  
5 Embassy's view, that it would be better to go to  
6 someone else?

7 MR. MARTEL: That's not exactly  
8 how it was. Mr. -- what's his name again?

9 MS EDWARDH: How is it wrong?

10 MR. MARTEL: Mr. Emaleh was a good  
11 lawyer who, obviously, stood up for human rights.  
12 The only problem was that he had just been  
13 released from prison, and I was clearly afraid  
14 that by choosing this lawyer . . . in the end, the  
15 decision was up to her, but if she ended up  
16 choosing this lawyer, my thoughts, knowing how the  
17 authorities work, were: If he has just gotten out  
18 of prison, what's to stop them arresting him  
19 tomorrow and putting him back in prison? And the  
20 day Maher ends up in court, there will be no one  
21 there to defend him. That's what I was worried  
22 about.

23 But, in the end, the choice was up  
24 to Monia, not us. However, this didn't prevent us  
25 from looking into who was available, who would be

1 ready, because in this country, as you know, not  
2 everyone would be willing to take on this case.  
3 People are afraid and will not agree to defend a  
4 case like this. We might find three, four or five  
5 people, no more. Even the law firm, whose name we  
6 see here, even the head of this law firm is not a  
7 specialist, and he would have passed on the case  
8 to one of his clients.

9 He did a bit of research for us in  
10 order to try and find the file, to find out where  
11 it was. So it wasn't all a waste of time.

12 In any event, when all is said and  
13 done, it's the client who decides, not us.

14 MS EDWARDH: Of course. And I'm  
15 just noting that while Mr. Emaleh may have been  
16 released from prison, he was released as part of a  
17 Presidential pardon. Did you know that?

18 MR. MARTEL: No, I don't know all  
19 the details.

20 MS EDWARDH: Nonetheless, that was  
21 Mrs. Arar's choice.

22 MR. MARTEL: Of course.

23 MS EDWARDH: And I take it though  
24 you will agree with me that the Department  
25 generally tries to recommend against people who

1 have active records as human rights advocates?

2 MR. MARTEL: I was not aware of  
3 that.

4 MS EDWARDH: In this case, they  
5 did?

6 MR. MARTEL: Perhaps, but I was  
7 unaware of it.

8 My only concern was that he had  
9 just been released . . . this was my only concern.  
10 There were no other reasons.

11 In the end, Monia contacted him  
12 directly and we, naturally, were active --

13 MS EDWARDH: But, sir --

14 MR. MARTEL: -- but she was the  
15 one who made the final decision.

16 MS EDWARDH: Right. Certainly if  
17 you take a look at tab 536, by September the 2nd,  
18 you are still recommending to Monia she consider  
19 other members of the bar?

20 MR. MARTEL: Well, I believed it  
21 was in everyone's interest, as well as in the  
22 client's interest, to provide as much information  
23 as possible about what was available, and, in the  
24 end, the client must decide. We do not have the  
25 right, nor is it part of our mandate, to tell a

1 client that they should hire a certain lawyer,  
2 because after that we are responsible.

3 MS EDWARDH: Of course you don't.  
4 I understand that. I understand that, Mr. Martel.

5 And can you tell me whether Mr.  
6 El-Hakim has anyone in his firm anyone who has  
7 expertise as a criminal lawyer?

8 MR. MARTEL: He told us that he,  
9 personally, could not take on this case, but that  
10 there was someone --

11 MS EDWARDH: But my question --

12 MR. MARTEL: -- in his office who  
13 was competent.

14 MS EDWARDH: Did you ever inquire  
15 whether that person was himself or herself a  
16 criminal lawyer to defend charges of the kind you  
17 expected against Mr. Arar?

18 MR. MARTEL: No, but it's the most  
19 prestigious law firm in the country.

20 MS EDWARDH: It seems to me you  
21 got some legal advice that you paid for about the  
22 charges from his firm?

23 MR. MARTEL: No, we never had to  
24 pay.

25 MS EDWARDH: Okay. But you got



1 legal advice and you expected that you might have  
2 to pay?

3 MR. MARTEL: Maybe, but I was  
4 prepared to pay myself.

5 MS EDWARDH: Right. Of course.  
6 I'm just establishing that that firm gave the  
7 Embassy or you legal advice. You thought you  
8 might have to pay, but I take it they wrote off  
9 the bill?

10 MR. MARTEL: Out of kindness  
11 towards us . . . they knew us, and perhaps there  
12 would be something to pay, then again, maybe not,  
13 I don't know, but they never asked us for money.

14 MS EDWARDH: But with respect to  
15 Haithem Emaleh, it was made very clear to  
16 Mrs. Arar that the Embassy could not pay any part  
17 of the fees he would charge?

18 MR. MARTEL: I believe that  
19 decision was made by the Consular Affairs Bureau.

20 MS EDWARDH: Yes. Do you know why  
21 the firm that is so highly regarded in Damascus,  
22 that you asked Mrs. Arar to consider, and who  
23 would have paid if they had been retained, why  
24 would they be paid, and why would Mr. Emaleh not  
25 be paid and why would Mrs. Arar be told that she

1 was on her own with respect to legal fees?

2 MR. MARTEL: Well, yes, if I  
3 understand your question correctly, in any event,  
4 neither the Embassy nor the Department would have  
5 paid the El-Hakim law office's legal fees. I had  
6 asked him to do some research in order to try and  
7 locate the file, and these were little things.  
8 But as for the defence itself, I was not  
9 authorized to retain his services, and I would not  
10 have been authorized to pay him either. I said  
11 that there was perhaps \$200 or \$300 to be spent on  
12 research to find the files, and this was what  
13 worried me. Since this was a very prestigious law  
14 firm --

15 MS EDWARDH: And then you would  
16 have been authorized?

17 MR. MARTEL: Pardon me? No, I  
18 would not have been authorized to pay for the  
19 defence, but for the research, yes.

20 MS EDWARDH: I see. I take it no  
21 aspect of Mr. Emaleh's account and the research he  
22 did and the efforts he made to find Mr. Arar were  
23 paid for by the Embassy?

24 MR. MARTEL: The Consular Affairs  
25 Bureau said that the legal fees could not be paid

1 by the Embassy. The same applies to everyone in  
2 all cases.

3 MS EDWARDH: To the best of your  
4 knowledge?

5 MR. MARTEL: To the best of my  
6 knowledge.

7 MS EDWARDH: And you were aware  
8 that that position was taken in circumstances  
9 where Mrs. Arar, facing a deadline of a trial  
10 within a very short period of time, didn't have  
11 the money to fund that defence?

12 MR. MARTEL: Well, based on the  
13 correspondence I read, I think Monia was  
14 disappointed, but the decision came from the  
15 Consular Affairs Bureau, and not from us.  
16 Embassies are not given this power to delegate  
17 financial authority. The decision must be taken,  
18 and, in certain exceptional cases, we have indeed  
19 paid for consular expenses that we normally  
20 wouldn't pay for, but the authorization came from  
21 the Bureau.

22 MS EDWARDH: From the time that  
23 these discussions go on to the time that Mr. Arar  
24 walks out, it is clear, is it not, that to the  
25 best of everyone's knowledge no one ever saw

1 Mr. Arar's file before the court?

2 MR. MARTEL: That's my  
3 understanding. I was in contact, and my employees  
4 were in contact --

5 MS EDWARDH: No lawyer ever --  
6 sorry?

7 MR. MARTEL: No one.

8 MS EDWARDH: No lawyer ever got  
9 access to it; no lawyer ever saw Mr. Arar?

10 MR. MARTEL: As far as I know.

11 MS EDWARDH: And you eventually  
12 are of the view, are you not -- and I can go  
13 through the tabs, but I want to get through this  
14 as quickly as I can.

15 You are eventually of the view  
16 that if he is tried in the security courts, it is  
17 extremely unlikely that Canada will ever be  
18 allowed to even participate, or go to, or attend  
19 the trial to see what is alleged to have gone on?

20 MR. MARTEL: That's the lawyer's  
21 opinion, but, later on, we had another case in the  
22 same court, and the ambassador was allowed to be  
23 present.

24 MS EDWARDH: All right. But there  
25 was nothing you had by way of legal advice that

1           said you had any right to participate? It was,  
2           you know, if the Syrians wake up one morning, they  
3           may let you in, or they may not?

4                       MR. MARTEL: That was the opinion  
5           of the lawyer hired by Monia.

6                       MS EDWARDH: Right. Now, I want  
7           to just go to one other issue.

8                       We have a lawyer now; right? We  
9           have a lawyer with no access to information. We  
10          have a lawyer who has no access to the client;  
11          right?

12                      MR. MARTEL: That's right.

13                      MS EDWARDH: And now I want to  
14          know what you did to try and change that  
15          situation.

16                      First of all, what did you do with  
17          the information that the Government of Canada or  
18          the Department of Foreign Affairs was sitting on  
19          about Mr. Arar?

20                      MR. MARTEL: I was unaware, first  
21          of all, that there was information in Ottawa. If  
22          the Consular Affairs Bureau had information for us  
23          about the client that could be useful for his  
24          defence, I think that the decision would already  
25          have been made in Ottawa to send it to us. If the

1 people there have files that will help a client  
2 who is outside the country, and if they already  
3 know that the client will be standing trial, they  
4 must send us any documents that they believe will  
5 be helpful.

6 Since we are outside the country,  
7 we don't know what they have.

8 MS EDWARDH: So if they had a copy  
9 of his interrogation that you were told he could  
10 refute -- do you remember that? You were told he  
11 could refute it?

12 MR. MARTEL: Right.

13 MS EDWARDH: If they had a copy of  
14 the interrogation, it should have been in your  
15 hands to put in the hands of his defence lawyer;  
16 correct?

17 MR. MARTEL: Yes. If it was not  
18 already in the file to which the lawyer should  
19 have access.

20 MS EDWARDH: We don't know what is  
21 in the file because no one ever saw the file.

22 MR. MARTEL: We don't even know if  
23 a file exists.

24 MS EDWARDH: That's true. But  
25 nonetheless, in order to prepare to defend, given

1           what you were told by the Syrian authorities,  
2           assuming it is not all completely a tissue of  
3           lies, if Mr. Arar had made a statement and there  
4           were transcripts of his interviews, and General  
5           Khalil had said he could refute them and that  
6           lawyer didn't have them, they should have been  
7           given to that lawyer through you; correct?

8                         MR. MARTEL: Obviously, I think  
9           the lawyer should have all the incriminating  
10          documents. He should have all the documents he  
11          needs to defend his client. If this document  
12          exists somewhere, and he is not given it, he  
13          should be, of course.

14                        MS EDWARDH: Yes. Indeed, that is  
15          what Mr. Pardy said. He said that this kind of  
16          information, if it lay within the Department of  
17          Foreign Affairs, should be provided to defence  
18          counsel in order that they can help deal with the  
19          allegations made by the Syrian government. Right.

20                        And I take it, Mr. Martel, that  
21          despite the Canadian government having this  
22          information, you were never aware of any effort  
23          made by anyone through the Embassy or through any  
24          other source to put that kind of information in  
25          the hands of a defence lawyer in Syria?

1                   MR. MARTEL: Well, as you know,  
2                   there was a scheduling issue. At the time these  
3                   events took place, it was already very important  
4                   to do everything possible, within the space of  
5                   only a few days, in order to enable Monia to  
6                   defend Maher.

7                   As you said, there were perhaps  
8                   documents in Canada that the defence lawyer would  
9                   need. We didn't know what was in the file, and  
10                  whether there were copies of these documents in  
11                  the file. I had been told that he could refute  
12                  the accusations and all that, but no one had told  
13                  us --

14                 MS EDWARDH: You were told he  
15                 could refute his statements.

16                 MR. MARTEL: His statement.

17                 MS EDWARDH: Yes.

18                 MR. MARTEL: Statement.

19                 No one in Ottawa said to us, "Here  
20                 you go, I have something". Anyway, I didn't know  
21                 anything about the exhibit.

22                 MS EDWARDH: Does it surprise you  
23                 that ISI had it sitting in the file?

24                 MR. MARTEL: I didn't know what  
25                 was in this document, nor where it was.



1 MS EDWARDH: If I ask you to  
2 assume -- if I ask you to assume that the  
3 Ambassador had a document, that ISI and ISD had a  
4 document --

5 THE COMMISSIONER: I think there  
6 is an objection behind you, Ms. Edwardh.

7 MR. DÉCARY: Aren't we going a bit  
8 far here? Why ask this witness about something  
9 that he doesn't have -- he has it or he doesn't  
10 have. He is not here to give opinions, I believe,  
11 and therefore the objection would be on the basis  
12 that this witness is not here to give opinions.  
13 He had it or he had not.

14 THE COMMISSIONER: But I think he  
15 can say that. I think the question is fairly  
16 giving him the opportunity to say that.

17 Go ahead, Ms. Edwardh, please.  
18 Thank you.

19 MS EDWARDH: Sir, I want to just  
20 establish. We know you did not have physical  
21 possession of a document that purported to be a  
22 summary of Mr. Arar's interrogation. You have  
23 already answered that question. Your Ambassador  
24 did; the Department did.

25 I take it you were unaware the

1 Department had that information. Is that your  
2 evidence?

3 MR. MARTEL: Yes, that's my  
4 evidence.

5 MS EDWARDH: And I take it you  
6 were unaware that your consular notes were given  
7 to other members outside of consular affairs? You  
8 didn't know they were going to CSIS and the  
9 Mounties and things like that?

10 MR. MARTEL: Did they really go to  
11 them?

12 MS EDWARDH: Yes.

13 MR. MARTEL: Well, that's news to  
14 me.

15 MS EDWARDH: Given your  
16 understanding of your duties, and the duties of  
17 the Department to the client, as you have insisted  
18 on calling Mr. Arar -- he is your client -- do you  
19 have any views, sir, of whether or not those  
20 documents should have been put into your hands to  
21 pass on to defence counsel?

22 MR. MARTEL: Well, once these  
23 events started happening very quickly, we didn't  
24 have much room to manoeuvre. The main concern was  
25 that the Syrians would beat us quickly, that they

1 would bring my client to court and we would find  
2 ourselves faced with a fait accompli within two,  
3 three or four days, which happens frequently.

4 So we had to be realistic and look  
5 at the situation at hand. What if the lawyer  
6 tells us that he still hasn't found the file, that  
7 he still does not have access to the file, and  
8 that he can't do anything for us?

9 So the day the lawyer finds the  
10 file, the day we are able to get some concrete  
11 information . . . when exactly this trial will  
12 take place . . . only then will the lawyer be able  
13 to review the case. You're the expert in this  
14 matter, not me. If evidence is missing in this  
15 case, then the lawyer should definitely contact  
16 us, and we can go to Ottawa and say, "Look, the  
17 lawyer is missing a document; he needs it. You  
18 must send it immediately via a secure means so we  
19 can have it right away." But we never got that  
20 far. One, we never got a file, the lawyer never  
21 had access to it. If there was indeed a file, we  
22 didn't know what was in it. So things had become  
23 a bit . . . we had reached a standstill. We could  
24 see that something was moving, but there were no  
25 specifics.

1 MS EDWARDH: My question is really  
2 simple: Leaving aside that you didn't have  
3 anything precise at that time, you had a window  
4 from August 14th to the end of September; correct?

5 You were always being told the  
6 trial was coming up. Six weeks. Six weeks.

7 MR. MARTEL: That's right.

8 MS EDWARDH: From those of us who  
9 practise at the bar, six weeks ain't bad to  
10 prepare a case.

11 My only question to you is simply  
12 this: If the Government of Canada held a summary  
13 of the interrogation that you were told Mr. Arar  
14 could refute in court, and you are moving really  
15 fast to face a trial that you can't pin down  
16 anywhere, isn't it your view that you were  
17 duty-bound to provide that to the defence lawyer  
18 in order that he could start to prepare?

19 MR. MARTEL: If the document  
20 wasn't in the file -- because the lawyer has to  
21 review the entire case -- if there was already a  
22 copy in Canada, we could assume that the Syrians  
23 had a copy as well.

24 So, if his statement was in the  
25 file, yes; if his statement wasn't in the file,

1 Canadian authorities could definitely have sent  
2 all the documents in their possession to the  
3 defence lawyer for the client's defence, so that  
4 everything was working in his favour. I think  
5 that would be quite normal.

6 MS EDWARDH: That's normal. That  
7 is how it is supposed to be done.

8 MR. MARTEL: Yes, I think so.

9 MS EDWARDH: It is not supposed to  
10 be a matter that is not ever disclosed.

11 You see, the problem I have,  
12 Mr. Martel, is you couldn't tell Mr. Arar a lot of  
13 things you learned from General Khalil and others.  
14 You weren't allowed to tell him.

15 MR. MARTEL: That's right.

16 MS EDWARDH: So one can only  
17 imagine, only imagine the conversation he would  
18 have had with a lawyer, if he ever got to see one.  
19 In the ordinary course, the lawyer would say, "Can  
20 you tell me what the allegations are against you?"  
21 And Mr. Arar would say, "No one has told me. The  
22 Canadian Embassy hasn't told me. My consular  
23 service representative hasn't told me. Do you  
24 have any information from your file?" "No."

25 So the only lifeline Mr. Arar had

1 was you, Mr. Martel.

2 All I'm simply suggesting to you  
3 is that in not having that information given to  
4 you to arm Mr. Emaleh, no later than August 20th  
5 or 22nd, that you ran the risk that Mr. Emaleh  
6 would find himself in a court unable to refute the  
7 very statement that the General told you he would  
8 have an opportunity to. That's all. It was a big  
9 risk.

10 MR. MARTEL: Of course there was a  
11 risk. That's why, of course, we formally insisted  
12 that the chargé d'affaires or myself be present.  
13 When there is a Canadian presence in this type of  
14 trial, the authorities can't just make up all  
15 kinds of stories. So, up to now, that's what took  
16 place. In situations like this where we were  
17 present, everything went well.

18 MS EDWARDH: In fact, in any of  
19 the proceedings relating to Mr. Arar and his  
20 appearance before the judge and whatever  
21 determinations were made in this case, you weren't  
22 there?

23 MR. MARTEL: We didn't have time  
24 to be there; it was over before then.

25 MS EDWARDH: Well, I'm not sure

1           that is an answer you want to leave on the record.

2                        You never knew that he would be  
3           appearing before a judge the morning he appeared?

4                        MR. MARTEL: No, no. Definitely  
5           not. I found out afterwards --

6                        MS EDWARDH: Yes.

7                        MR. MARTEL: -- when he was  
8           released.

9                        MS EDWARDH: You weren't given  
10          notice --

11                       MR. MARTEL: No.

12                       MS EDWARDH: -- that he was going  
13          to have a trial and be acquitted?

14                       MR. MARTEL: I hadn't had any  
15          contact since the last visit, up to the moment  
16          when the General summoned the Embassy to attend a  
17          meeting.

18                       MS EDWARDH: And Mr. Arar's lawyer  
19          was given no notice.

20                       MR. MARTEL: Neither.

21                       MS EDWARDH: So in reflecting back  
22          on this, is it fair to say that this whole issue  
23          of charges, lawyers, from your perspective, really  
24          was just a sham?

25                       MR. MARTEL: That's my opinion.

1 MS EDWARDH: That Mr. Arar was  
2 arbitrarily detained from Day 1, and when the  
3 Syrians had no further use for him, for whatever  
4 reasons, they let him go?

5 MR. MARTEL: In my opinion, the  
6 Syrians released Mr. Arar when they deemed it in  
7 their interest to do so. Period.

8 MS EDWARDH: That's the way they  
9 usually act, is it not?

10 MR. MARTEL: Period. That's how  
11 they do things.

12 We can elaborate on this if you  
13 like, because there were nevertheless  
14 circumstances in the region that forced them to do  
15 so. There were many factors. They didn't just  
16 get up one morning and say, "Okay, you're free to  
17 go". There were a great number of factors --

18 MS EDWARDH: I'm going to stop you  
19 because, Mr. Martel, I agree 100 per cent. The  
20 Syrians acted in their self-interest.

21 MR. MARTEL: Exactly. That's all.

22 MS EDWARDH: And what I just want  
23 to establish is we have heard a lot of people  
24 speculate on how Syrians define their  
25 self-interest. But you will agree with me that



1 nobody from the Government of Canada or the  
2 Department was sitting in the offices of the  
3 Syrians when they decided on their self-interests,  
4 for whatever reasons they had?

5 MR. MARTEL: We don't know either  
6 when they made their decision.

7 MS EDWARDH: Absolutely.

8 THE COMMISSIONER: Is that a  
9 convenient time, Ms. Edwardh?

10 MS EDWARDH: Certainly.

11 THE COMMISSIONER: As far as the  
12 length of the lunch hour, how are we doing?

13 We can have a shorter lunch hour,  
14 if that is going to assist in accomplishing our  
15 schedule this afternoon.

16 MS EDWARDH: I think it should be  
17 shorter rather than longer.

18 THE COMMISSIONER: That's okay.  
19 We will resume at a quarter to two.

20 We will rise until then.

21 THE REGISTRAR: Please stand.

22 --- Upon recessing at 1:04 p.m. /

23 Suspension à 13 h 04

24 --- Upon resuming at 1:47 p.m. /

25 Reprise à 13 h 47

1 THE REGISTRAR: Please be seated.

2 THE COMMISSIONER: I'm afraid I  
3 will have to ask for some time estimates simply  
4 because of the staff, and I have to deal with the  
5 sound people, the court reporter and translators,  
6 and so on.

7 I guess I could start with you,  
8 Ms. Edwardh. Do you have any idea as to how long  
9 your cross-examination will be from here?

10 MS EDWARDH: I find it difficult  
11 to estimate, particularly because the witness  
12 is -- we are speaking in different languages to  
13 one another --

14 THE COMMISSIONER: Right.

15 MS EDWARDH: -- and there has been  
16 a translation. I have been very bad, I have been  
17 told over the luncheon recess, and interpreted  
18 what he said in French and asked a question in  
19 English and left the poor person translating  
20 trying to deal with both of us.

21 I think I will be another two to  
22 two and a half hours.

23 THE COMMISSIONER: Okay. So that  
24 would take us until he break, probably until  
25 5 o'clock.

1                   Ms. Jackman said she would be 15  
2 minutes, I think. She is not here.

3                   Mr. Baxter?

4                   MR. BAXTER: At this point,  
5 depending upon what Ms. Edwardh touches upon, 10  
6 to 15 minutes at the top.

7                   THE COMMISSIONER: That would be  
8 5:30.

9                   Mr. Décary, at this point, do you  
10 know how long you would be?

11                  MR. DÉCARY: Ten to fifteen  
12 minutes also.

13                  THE COMMISSIONER: I take it,  
14 Mr. Cavalluzzo, there would be --

15                  MR. CAVALLUZZO: Nothing to this  
16 point.

17                  THE COMMISSIONER: So that would  
18 probably be, I don't want to encourage this,  
19 between 5:30 and 6:00.

20                  Then we have Ms. Jackman's motion.  
21 Do other people know -- Mr. Atkey, yes?

22                  MR. ATKEY: Five minutes.

23                  THE COMMISSIONER: I am told the  
24 interveners will be five minutes. Is that right,  
25 Mr. Cavalluzzo?

1 Do we know how long Ms. Jackman  
2 might be?

3 Are you speaking on that motion,  
4 Ms. Edwardh?

5 MS EDWARDH: I would not expect to  
6 be more than a minute or two.

7 THE COMMISSIONER: And Government?

8 MR. BAXTER: I believe Ms. McIsaac  
9 has a few remarks.

10 THE COMMISSIONER: I don't think  
11 we need to be long, but we are looking at  
12 something less than half an hour.

13 So I say to the people who are  
14 working here, the camera crew, sound, translators,  
15 I think we are probably at worst-case scenario  
16 looking at 6:15.

17 Is there anybody for whom that  
18 doesn't work?

19 I can't see in the sound booth or  
20 the translation booth, but I think that's okay.

21 I've got thumbs up. Thank you,  
22 all.

23 Ms. Edwardh?

24 MS EDWARDH: Thank you,  
25 Mr. Commissioner.

1 I would like to deal with a  
2 totally different topic, Mr. Martel, and that  
3 relates to the public statements made by Minister  
4 Graham on the 25th day of September, 2003.

5 It is in some form found at  
6 tab 581 of the DFAIT volumes, which is volume 7,  
7 Mr. Commissioner.

8 I don't know that I can -- I can  
9 read this to you, Mr. Martel; it is just a couple  
10 of lines where Minister Graham makes the following  
11 statements as they are quoted.

12 "A Canadian who has been held  
13 for a year in a Syrian prison  
14 can get a fair and open  
15 trial, Canadian Foreign  
16 Affairs Minister says.

17 'They have taken the  
18 position that he is guilty of  
19 offences under Syrian law, in  
20 which case the proper thing  
21 to do is to prosecute him and  
22 enable him to defend  
23 himself,' Bill Graham said  
24 about the case of Maher Arar.

25 'I have been given

1                   assurances by them that it  
2                   will be in a civil process,  
3                   not a military process, and  
4                   that this will be open.'/

5                   Do you see that?

6                   MR. MARTEL: Yes. I see it. It's  
7                   a message from Lili Thomsen? Lilian Thomsen?  
8                   Yes?

9                   "Arar can get a fair trial in  
10                  Syria: Graham"

11                  MS EDWARDH: And you were of  
12                  course aware that the Minister had made such  
13                  comments because you, I think, are involved -- if  
14                  you turn then to volume 6 at tab 574 -- in having  
15                  to -- you are copied on this.

16                  It is written by Myra  
17                  Pastyr-Lupul. And there is an observation about  
18                  what has been asked, to provide Mr. Arar's lawyer  
19                  with access to the file, to grant consular access,  
20                  and to have access to the upcoming trial.

21                  And then she makes the  
22                  observation -- I'm sorry. This is from you,  
23                  Mr. Martel. I have mischaracterized it. It is  
24                  from you to Myra.

25                  You say:

1 "We have not been requested  
2 to convey our concerns to the  
3 State Security Supreme Court  
4 that the judicial process in  
5 Mr. Arar's case be fair and  
6 transparent. Perhaps this  
7 was done through the  
8 Minister's office. As the  
9 defendant is a Syrian  
10 national it is not  
11 appropriate for mission to  
12 act on the basis of a  
13 suggested press line. Should  
14 you wish to formally convey  
15 your concerns to the Ministry  
16 of Foreign Affairs, we will  
17 require specific instructions  
18 from headquarters. It is  
19 however expected this action  
20 may be taken as interference  
21 in Syrian internal affairs."

22 Do you see that?

23 And I take it, sir, that was  
24 certainly your view, that the press lines would  
25 not suffice, and if there was a formal statement

1 on the part of the Government of Canada through  
2 the Embassy, it may well be taken as internal  
3 interference in the domestic affairs of Syria?

4 MR. MARTEL: Some speculation.

5 It's speculation, and that's why I  
6 said we have to have instructions.

7 MS EDWARDH: Well, it's not  
8 speculation to the extent that you are not  
9 prepared to do anything without formal  
10 instructions?

11 MR. MARTEL: Right. Yes.

12 MS EDWARDH: And if we turn then  
13 to tab 575, the very next tab, I see that there is  
14 a formal diplomatic note that is sent.

15 Do you see that?

16 MR. MARTEL: Yes. Note 1029.

17 MS EDWARDH: And that diplomatic  
18 note does not include a specific call for an open  
19 public trial or fair trial. It is limited to  
20 consular access, disclosure to the defence  
21 counsel, et cetera, but it doesn't make the call  
22 that the Minister made; correct?

23 MR. MARTEL: No. This note is --  
24 requests permission for the lawyer who had been  
25 retained to have access to the file.



1                   And I also believe that it  
2 includes a request for Department intervention to  
3 enable the Consul to once again have access to  
4 Maher on a regular basis.

5                   MS EDWARDH: Right. But what is  
6 missing is any restatement in the diplomatic note  
7 of a formal request for an open, public, or fair  
8 trial process?

9                   MR. MARTEL: Yes, but at my level,  
10 I could not have sent such a note, and I did not  
11 receive any instructions from Mr. Pardy to the  
12 effect that that I should send that type of note.

13                   So, at that time, at my level, our  
14 concern was definitely ensuring that the lawyer  
15 could access the file.

16                   MS EDWARDH: All right. What I  
17 wanted to ask you about, though, is the next tab,  
18 tab 576.

19                   We know no diplomatic note is  
20 sent. This document appears to, obviously, be  
21 part of the CAMANT files, and it is copied to you,  
22 sir?

23                   MR. MARTEL: Yes. It's -- yes, I  
24 received a copy.

25                   MS EDWARDH: And as a result of a

1 concern expressed by Mrs. Arar that the Minister  
2 made some reference to being pleased the trial was  
3 going forth and there would be an opportunity for  
4 Maher to defend himself, she was obviously upset  
5 by that comment.

6 Is that fair? Do you see that?

7 MR. MARTEL: I'm looking at the  
8 bottom:

9 "Monia was very concerned  
10 about the Minister's comments  
11 this week..."

12 MS EDWARDH: Yes, at the end of  
13 the first paragraph.

14 "Monia was very concerned -"  
15 And this is Myra writing to  
16 Michelle in the Minister's office.

17 "Monia was very concerned  
18 about the Minister's comments  
19 this week that 'We are  
20 pleased that the trial is  
21 going forth, as this will  
22 give an opportunity for Maher  
23 Arar to defend himself in  
24 court."

25 Myra makes the observation:

1 "In reality, his lawyer  
2 cannot get a hold of the case  
3 files to defend his client,  
4 we have not been informed of  
5 a court date, nor the  
6 charges, and all signs  
7 indicate the trial will be a  
8 closed one. This could very  
9 well mean our Embassy  
10 officials will not be allowed  
11 in the courtroom when the  
12 charges are announced, or to  
13 hear Mr. Arar's lawyer when  
14 given the opportunity to  
15 defend his client."

16 And then I'm interested in the  
17 next comment:

18 "Monia spoke with Robert Fry  
19 last night and was told that  
20 this is the 'strategy' of  
21 MINA in preparation for his  
22 meeting with the Syrian  
23 Foreign Minister. Could you  
24 please advise if this is  
25 true? We must be aware that

1 the Minister's comments have  
2 far-reaching implications,  
3 and we can hope all we want  
4 for a 'fair and transparent  
5 judicial process', but the  
6 Supreme State Security Court  
7 is known for its secretive  
8 procedures and lack of appeal  
9 once a decision is rendered  
10 by the court."

11 You certainly agree, do you not,  
12 Mr. Martel, that that is a fair characterization  
13 of the court in Syria, the Supreme State Security  
14 Court?

15 MR. MARTEL: Yes. It's common  
16 knowledge. There is always a major concern that  
17 they could come to a decision without us being  
18 notified.

19 MS EDWARDH: Or a lot of other  
20 things, based on due process --

21 MR. MARTEL: It's a special court,  
22 and so no one has access.

23 MS EDWARDH: Were you privy to  
24 this strategy, on behalf of the Minister's office,  
25 of how they hoped it would work to make it public,

1 call for a fair and transparent and public trial?

2 MR. MARTEL: No. It was -- the  
3 correspondence with the Minister's office was at a  
4 very high level, in consultation with Mr. Pardy,  
5 with the Ambassador.

6 But we were on the ground, at the  
7 operational level. I was not at the political  
8 level.

9 How we would proceed, how the  
10 Minister's office would proceed, was not my  
11 business.

12 MS EDWARDH: And I take it there  
13 is nothing about what the Minister said that makes  
14 it obvious to you what the strategy was?

15 MR. MARTEL: No, I don't know what  
16 their strategy was.

17 MS EDWARDH: All right. I would  
18 like to just turn for a moment, if I could, to tab  
19 590.

20 It may not be the right tab,  
21 Mr. Commissioner, I'm sorry.

22 I just want to clarify: Was there  
23 ever any discussion, that you became aware of,  
24 that if a call was to be placed calling for a  
25 fair, open, and public trial process, that that

1 call should be made by the Prime Minister?

2 MR. MARTEL: There was some  
3 correspondence, of which I got wind, but I don't  
4 know when. I think it was much later, afterwards.  
5 At the time the discussions about strategy were  
6 taking place, I was not in the loop, and these  
7 actions were taking place at a much higher level  
8 than mine.

9 But I know there were discussions  
10 later on. Somebody -- either from the Minister's  
11 office or the Prime Minister's office -- was  
12 supposed to call someone, and that sort of thing,  
13 but I was not involved in this.

14 MS EDWARDH: I'm sorry, it is the  
15 tab just before that, 587, paragraph number 3.

16 If we go to paragraph number 3 --  
17 and this is written around the same time,  
18 September 25th, just a few days before Mr. Arar is  
19 released -- am I correct that you would not have  
20 gotten a copy of this directly?

21 MR. MARTEL: Yes. This message was  
22 initially addressed to John McNee, Michael Chesson  
23 and Konrad Sigurdson, and I was not copied, but it  
24 was taken up again by Myra Pastyr-Lupul, who  
25 eventually put it in the system, on September 30,

1           and so at that point, after September 30, I  
2           definitely got a copy because my name appears  
3           here, at the bottom.

4                       MS EDWARDH:   So in the few days  
5           around September 25th to September 30th, it does  
6           appear that it is the view of now Chrystiane Roy,  
7           and she makes the following observations:

8                                "That they ensure Prime  
9                                Minister Chrétien urgently  
10                              tell the Syrian President  
11                              that this trial is not  
12                              acceptable, that Maher Arar  
13                              does not belong in Syria and  
14                              must be returned to Canada  
15                              immediately. She asked that  
16                              Prime Minister Chrétien  
17                              clearly state that if Syrian  
18                              authorities do not comply  
19                              with this demand that there  
20                              will be consequences for  
21                              Syria. Returning Mr. Arar  
22                              immediately would be a  
23                              win-win situation for both  
24                              Canada and Syria as it would  
25                              be grounds to allow

1 cooperation and trade  
2 relations to grow on."

3 And that was really attributed --  
4 that statement is made by Mr. Arar's wife; right?

5 In order to deal with this issue  
6 of the wisdom of the Minister calling for an open,  
7 fair, public trial when it is the position of most  
8 that none can be had, do you know whether any  
9 formal note, or directive, or communication at any  
10 level of the Canadian government took place with  
11 Syrian counterparts from the President on down?

12 MR. MARTEL: All I know is that,  
13 after the fact, there was supposed to be a call,  
14 perhaps from the Prime Minister, but I don't know  
15 whether this call was actually made. So I don't  
16 know whether or not a conversation actually took  
17 place. I read this. There was supposed to be a  
18 phone call and a discussion with the Prime  
19 Minister, but even today I'm not sure. It's  
20 possible, and perhaps even probable, that it  
21 didn't take place. I'm not sure.

22 MS EDWARDH: We have heard that  
23 there was earlier that summer an expectation,  
24 perhaps, by the Syrians that such a call would  
25 take place in July or August of this year.



1                   Was it your understanding as well  
2                   that that call was to deal with questions around  
3                   the process available to determine whether  
4                   Mr. Arar was guilty or not?

5                   MR. MARTEL: No. I was not aware  
6                   of the details. I believe that a call was  
7                   supposed to be made to discuss Mr. Arar's case,  
8                   among other things, because usually a call is not  
9                   limited to a discussion of just one case -- they  
10                  would also, perhaps, discuss problems in the  
11                  region and all that, but as far as I know . . .  
12                  To my knowledge, the call did not take place, and  
13                  I also don't know what was supposed to be  
14                  discussed.

15                  MS EDWARDH: And do you recall  
16                  being of the view that that the call was to follow  
17                  on after the delivery of the personal letter from  
18                  the Prime Minister through his special envoy? It  
19                  was after that that the Syrians were expecting a  
20                  call?

21                  MR. MARTEL: I know that Senator  
22                  De Bané came, but I don't have any details about  
23                  his visit, and I don't know either whether he  
24                  brought a letter or a message from the Prime  
25                  Minister. I didn't see him. He came and went

1 without even visiting the Embassy.

2 MS EDWARDH: But was it your  
3 understanding that the Prime Minister's call, if  
4 it took place, was to occur after that?

5 MR. MARTEL: I couldn't say.  
6 These discussions did not take place at my level,  
7 and today, after so many months . . .

8 MS EDWARDH: That's fair.

9 MR. MARTEL: . . . I couldn't tell  
10 you. I don't know.

11 MS EDWARDH: All right. I want to  
12 deal with one other quick topic, which is the  
13 pursuit of the Syrian information about Mr. Arar.

14 You have testified, sir, that you  
15 had no idea that General Khalil arrived to give a  
16 document to the Ambassador in November of 2003?  
17 You didn't know that that --

18 MR. MARTEL: No, that's correct.

19 MS EDWARDH: And let me just  
20 understand what happened.

21 At the time Mr. Arar was released,  
22 were you aware that the Syrians also provided a  
23 document that was to be sent back to Canada?

24 MR. MARTEL: Yes. Actually, I was  
25 present with the chargé d'affaires when General

1 Khalil gave a document of some sort, the content  
2 of which I did not see, to the chargé d'affaires,  
3 who was, of course, the most senior representative  
4 of the Embassy, Tracy Reynolds. He took the  
5 document, and I took my client, and then we  
6 parted. I didn't see the document.

7 MS EDWARDH: Right. Now, it is  
8 true, is it not, that the Embassy, either through  
9 you or the Ambassador -- of course the Ambassador  
10 is a new Ambassador now -- and the Government of  
11 Canada were hoping and expecting further  
12 information to be provided?

13 MR. MARTEL: Well, that's what the  
14 General told us at the meeting -- told Tracy  
15 Reynolds, who was replacing the Ambassador at the  
16 time. A document had been given to Tracy  
17 Reynolds, and the General said at that time that  
18 other documents would be provided, I believe, at a  
19 later date, I don't know when, in November or  
20 something like that. I can't remember when, but  
21 it was supposed to be much later.

22 MS EDWARDH: So if you turn to tab  
23 593, you have a document that is signed by  
24 Mr. Gould, who is Deputy Director of the Foreign  
25 Intelligence Division of Foreign Affairs, and it

1 goes to MJW via ISD, which we know to be  
2 Mr. Livermore.

3 Who is MJW?

4 MR. MARTEL: MJW would be John  
5 McNee, I believe.

6 MS EDWARDH: And the file  
7 reference is 969004 bin Laden --

8 MR. CAVALLUZZO: Let me intervene  
9 at this point in time. MJW is not John McNee;  
10 it's Jim Wright.

11 MR. MARTEL: Oh! Excuse me. Jim  
12 Wright.

13 MS EDWARDH: Thank you,  
14 Mr. Cavalluzzo.

15 MR. MARTEL: Thank you.

16 MS EDWARDH: And the final  
17 reference, as I pointed out, has got a certain  
18 number with the name Bin Laden [Arar].

19 Do you see that?

20 MR. MARTEL: Yes, I see it in the  
21 file.

22 MS EDWARDH: Do you see the file  
23 reference?

24 MR. MARTEL: Yes. Reference  
25 9690004 Bin Laden.

1 MS EDWARDH: And there is a  
2 discussion here about waiting for and looking for  
3 a further file, and what is asked:

4 "As of this date, no such  
5 file has been received.  
6 Enquiries have been made of  
7 the Embassy, CSIS, the RCMP,  
8 as well as the geographic and  
9 consular divisions of the  
10 Department, and none have  
11 received anything beyond the  
12 single sheet."

13 And my simple question: There  
14 were a number of other efforts to obtain the file,  
15 or any other files that the Syrians were going to  
16 give you?

17 MR. MARTEL: Not formally, first  
18 of all because, one, we had been told that they  
19 would come later on. In the end, they never came,  
20 and we never formally followed up on this matter.  
21 In my view, there were no other documents to come.  
22 So, for my part anyway, I didn't take the matter  
23 very seriously, and we were never given the  
24 documents.

25 MS EDWARDH: That is an

1 interesting observation, Mr. Martel. Why do you  
2 say "according to me, there was no such file or  
3 documentation that would be provided"?

4 MR. MARTEL: Well, if you look  
5 back at the way the General had spoken to me in  
6 the past, you have to doubt his credibility a bit.  
7 First of all, in the past, we saw that someone  
8 said that Maher was a member of the Muslim  
9 Brotherhood, a statement that was later dropped,  
10 and which was not followed up on. So, after that,  
11 when he told me that another document would be  
12 provided later on, as usual I was sceptical. I  
13 didn't know. He told me there would be another  
14 document -- the document didn't come and that was  
15 the end of it. I believed that we would never get  
16 it.

17 MS EDWARDH: So I take it you at  
18 no time had any expectation that further  
19 information would be forthcoming from the Syrians?

20 MR. MARTEL: No, I didn't believe  
21 there would be anything else.

22 MS EDWARDH: Let me turn to the  
23 issue of torture, or abuse, or whatever label we  
24 want to give it.

25 As I understood your evidence



1           sir.

2                               When you flew back with Mr. Arar  
3           and you watched him and watched his responses and  
4           you watched his fear when he landed in -- I think  
5           you landed in Jordan first. You are smiling, but  
6           I can see that you recall this. You had no doubt  
7           that the man who was with you was a fragile and  
8           broken human being?

9                               MR. MARTEL: Exactly, and it was  
10          precisely for this reason that my mandate was to  
11          bring him back.

12                              MS EDWARDH: You have also very  
13          candidly told us that, while you forgot -- because  
14          I'm sure you have, as you have explained, many,  
15          many duties and responsibilities -- Mr. Arar also  
16          told you at the time of the August 14th meeting  
17          something about the nature of his cell, 3 by 6 by  
18          7. You have agreed and that that was left out in  
19          any reporting?

20                              MR. MARTEL: That's correct.

21                              MS EDWARDH: You have also told us  
22          in his discussions with you -- I don't intend to  
23          go back to them in any detail -- on the plane that  
24          he made it clear, although it didn't stick in your  
25          mind, but he made it clear that in the first two



1 weeks of his interrogation he had been beaten?

2 MR. MARTEL: Yes, that's right. I  
3 said so at the first meeting after two days of  
4 travel, but Maher hadn't placed as much importance  
5 on this, let's say, event. He told me something  
6 to the effect that, yes, they had hit him from  
7 time to time, but it was nothing very serious.  
8 What was obviously much more serious were the  
9 conditions of his detention. That's what struck  
10 me more, and that's why . . .

11 But Maher himself, clearly, after  
12 so many months, perhaps on that day he told me  
13 that he didn't think . . . that things weren't all  
14 that serious during the first two weeks. So this  
15 is one element that stuck in my head after two  
16 days of travel, and you noted later on that I had  
17 omitted to include it in a report one month later.

18 MS EDWARDH: I'm going to suggest  
19 to you that it is not that Mr. Arar said it wasn't  
20 serious, but that what he was burning about, when  
21 he talked to you, was the horror of living in the  
22 grave?

23 MR. MARTEL: Yes. The worst part  
24 was his long detention under horrifying  
25 conditions. It was terrible. Yes.

1 MS EDWARDH: And in reality, in  
2 reality, what he conveyed to you was that he had  
3 been in detention so long that the beatings in the  
4 first two weeks became much less significant as  
5 the days and weeks and months went by when he was  
6 alone in a grave. That's what he really said.

7 MR. MARTEL: Possibly. Actually, I  
8 don't know what he really meant, but he placed a  
9 lot less importance on this period.

10 MS EDWARDH: And I take it that,  
11 given the description, it is obvious that the  
12 horrors of the detention, the conditions of  
13 detention, were much more recent for him. He had  
14 only been out of that hole for some 45 days before  
15 he was released.

16 MR. MARTEL: Yes. I think he got  
17 out some time in August, around about the 20th,  
18 something like that, and he was released in  
19 October. Yes.

20 MS EDWARDH: So we have a general  
21 agreement, really, that Mr. Arar told you  
22 something about the detention on August 14th and  
23 the size of the cell. We have a general  
24 understanding and agreement now that Mr. Arar also  
25 told you in the airplane as you passed the time

1 with him, even though he told you reluctantly,  
2 that he had been beaten during the first two days  
3 and was then thereafter preoccupied with what his  
4 life was like in the grave.

5 So the real dispute, the only  
6 dispute I can see between your version of  
7 recollection and Mr. Arar's is that he believes he  
8 told you he was beaten as well on October -- I'm  
9 sorry, on August 14th when he answered, or  
10 suggested to you, or has taken the position he  
11 suggested to you that he said he was beaten at the  
12 beginning, in the first two weeks; right?

13 So that is really the only point  
14 of dispute, isn't it?

15 MR. MARTEL: I understand, but  
16 that's not what he told me on August 14, because  
17 he himself told me on August 14 . . .

18 MS EDWARDH: We are going to come  
19 to that, Mr. Martel --

20 MR. MARTEL: No, that's not it.

21 MS EDWARDH: But I want to make it  
22 clear that you are not saying that anything else  
23 Mr. Arar has said about his treatment, or what he  
24 said to you, is really wrong. You are not saying  
25 that.

1 MR. MARTEL: No, I'm not saying  
2 that what he told me during the trip . . . I'm not  
3 disputing what he told me during the trip. I  
4 fully believe what he told me during the trip. He  
5 told it to me freely, without any constraints,  
6 without anyone else around. He told me everything  
7 he wanted to tell me, freely, and I believed  
8 everything he said.

9 MS EDWARDH: And he told you some  
10 things when you had the meeting on August 14th.

11 All I'm trying to establish,  
12 Mr. Martel -- because I don't want everyone to  
13 think there is such a huge conflict between what  
14 your recollection is and what his is.

15 The only real dispute I can see is  
16 he recalls saying something in the August 14th  
17 meeting, and you don't recall it. Is that fair?

18 The other stuff is really very  
19 similar.

20 MR. MARTEL: Well, what he told me  
21 on August 14, he told me . . . several times, I  
22 think he was forced to tell me things, and then  
23 when I asked him some questions -- and the  
24 questions are not in my notes -- and when I asked  
25 him if they had made things a lot harder for him .

1 . . if the Syrians had made things very hard for  
2 him, at that time he said, "At the beginning, but  
3 not that much". That's what he told me on August  
4 14. Once on the plane, however, he was able to  
5 elaborate because he was free to speak at that  
6 time.

7 MS EDWARDH: My only point,  
8 though, Mr. Martel -- I'm trying to put this in  
9 some way that those listening to you can  
10 appreciate.

11 Mr. Arar has publicly, in his  
12 chronology, and spoken -- there is a transcript.  
13 He has made certain observations.

14 All I'm pointing out to you -- and  
15 I'm looking for your agreement -- is you don't  
16 have much different to say except about this one  
17 tiny point about whether, on August the 14th, he  
18 said anything about being beaten during the  
19 beginning period. That's the only difference.

20 MR. MARTEL: Yes, there's -- no,  
21 there's more than that, because there's the matter  
22 of the cell, and where he was detained, and under  
23 what conditions.

24 On August 14, I didn't know all  
25 this. On the plane, yes, I knew about it.

1           There's a huge difference between -- between the  
2           two meetings.

3                                 In my view, there's a huge  
4           difference.

5                                 MS EDWARDH: Right, right. But  
6           Mr. Arar certainly told you about the cell on  
7           August 14th.

8                                 MR. MARTEL: Well, not entirely.  
9           He told me about the size, and he told me he slept  
10          on the ground. That's all he told me about the  
11          cell on August 14.

12                                Then, during the trip, he gave me  
13          a complete description.

14                                MS EDWARDH: And that, of course,  
15          was before he ever saw anybody except you? You  
16          were the only person he had met? He had not seen  
17          any lawyers or anyone else?

18                                MR. MARTEL: No. I went to get  
19          him, and we stayed together, and there was no one  
20          else.

21                                MS EDWARDH: I want to go back  
22          then. If I can't get you there the short way, I'm  
23          going to try another route.

24                                I want to just establish that your  
25          evidence is that when Mr. Arar disappeared, you

1           became aware of a comment --

2                         MR. DÉCARY:   May I object before.  
3           The record speaks for itself.  If there are any  
4           differences between what Mr. Martel stated and  
5           what Mr. Arar stated, it is now on the record.  
6           Why insist on going through this exercise?  To me  
7           it is very clear on the record.

8                         It is just that I don't see where  
9           this will lead us if the record up to date is  
10          clear.  All my colleague wants to show is that  
11          what the record says is correct.  Well, the record  
12          says what it says.

13                        THE COMMISSIONER:  Well, clearly  
14          we have had a number of questions about it, and I  
15          agree with you that the record says what it says.  
16          On the other hand, I think that it is  
17          cross-examination.

18                        MR. DÉCARY:  But on this matter,  
19          it seems to me -- I arrived only recently, but the  
20          answer flows.  But anyway, if it's useful at this  
21          stage . . .

22                        THE COMMISSIONER:  Well, I will  
23          leave that to Ms. Edwardh's judgment.

24                        Go ahead.

25                        MS EDWARDH:  With your permission,

1 Mr. Commissioner . . .

2 I want to review three points that  
3 you made to Mr. Cavalluzzo as the context of a  
4 series of other questions.

5 You made it clear that you had  
6 read the article where Mr. Riad Saloojee is quoted  
7 saying on October 12th, when Mr. Arar has  
8 disappeared, that he had a concern that Mr. Arar  
9 might be tortured and that he had not finished his  
10 military service in Syria -- or had not actually  
11 started it. You knew that on October 12th, or  
12 around about that time?

13 MR. MARTEL: I believe so, yes.

14 MS EDWARDH: Okay. But you did  
15 not get -- no one showed you a memorandum written  
16 by Mr. Livermore to Mr. Pillarella that it was  
17 urgent that the Embassy find Mr. Arar because  
18 there were concerns about aggressive  
19 interrogation?

20 That memo was not shown to you.  
21 That is your evidence?

22 MR. MARTEL: No, I never saw that  
23 memo.

24 MS EDWARDH: Mr. Pillarella did  
25 not share the concerns of ISD that aggressive



1           interrogation could be going on?

2                       MR. MARTEL: No, I saw that memo  
3           during this investigation. But the content of the  
4           memo was not shared with me.

5                       MS EDWARDH: Nor was the concern  
6           shared with you by Mr. Pillarella. Forget the  
7           memo for a minute.

8                       MR. MARTEL: It wasn't discussed.

9                       MS EDWARDH: When Mr. El Maati was  
10          interviewed -- and I just want to take a quick  
11          look at the consular note, because it has a  
12          Damascus number on it. You will find it in  
13          Exhibit P-192.

14                      In August of 2002, Mr. El Maati  
15          was interviewed. Interestingly enough -- you will  
16          see under Subject "CAMANT File". Do you see that?

17                      MR. MARTEL: M'hm.

18                      MS EDWARDH: And the subject  
19          CAMANT file says: 01-Damascus-728675-(El Maati).

20                      Do you see that?

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

22                      MS EDWARDH: I would have thought  
23          that with that file number it was posted to the  
24          Damascus file. Was it not, Mr. Martel?

25                      MR. MARTEL: Well, that's just how

1 the system works. In other words, I never saw  
2 that memo.

3 The way the system works is that  
4 the files are in an immense databank. However, if  
5 the Damascus mission is not in the addresses, the  
6 mission is not alerted and, as a result, the file  
7 remains in this huge databank in Ottawa, and the  
8 file is not opened. That's how the system works.

9 If you forget to address a  
10 communication to someone in this system, the  
11 person or the mission will not see it.

12 MS EDWARDH: I see. And it is  
13 clear from at least this initial list that no one  
14 who had any responsibility for Damascus, except  
15 Myra, received this note? She had not  
16 responsibilities for Damascus.

17 MR. MARTEL: She was the person  
18 named to follow up in the To: line.

19 It's addressed -- it's an e-mail  
20 that was initially addressed to her, and I believe  
21 it was copied into the system afterwards, and  
22 Damascus was not sent a copy.

23 MS EDWARDH: I take it from what  
24 you said to Mr. Cavalluzzo that you personally  
25 were never made aware, not only of this note, but

1           that Mr. El Maati made allegations about his  
2           confinement in Syria --

3                           MR. MARTEL: No.

4                           MS EDWARDH: -- until much later,  
5           after Mr. --

6                           MR. MARTEL: Up to now in the  
7           papers, basically. Or a month, two months, three  
8           months ago. Quite recently.

9                           MS EDWARDH: And I take it,  
10          though, you cannot say, cannot speak on behalf of  
11          Mr. Pillarella, as to whether or not as Ambassador  
12          he came to learn this information? He may well  
13          have.

14                          MR. MARTEL: I -- not -- not in  
15          this memo anyway, and he doesn't have access to  
16          this system either.

17                          I have access to the system, but  
18          he doesn't have access.

19                          MS EDWARDH: No. But this kind of  
20          information could readily come his way through  
21          other means, whether by way of telephone calls or  
22          other forms of communication that he might have  
23          with headquarters --

24                          MR. MARTEL: Possibly. I can't  
25          speak for him, but according to the document here,

1 he's not there.

2 MS EDWARDH: Just in respect of  
3 that one note?

4 MR. MARTEL: In this memo, yes.

5 MS EDWARDH: And if El Maati's  
6 case had become a matter of intense public  
7 scrutiny, or people expected it to become a case  
8 of intense public scrutiny, then you would expect  
9 the Ambassador to be notified and you to be  
10 notified; would you not?

11 MR. MARTEL: Well, I think that  
12 the Consular Affairs Bureau and Mr. Pardy, who, in  
13 this case, obviously had a copy of this message --  
14 if Mr. Pardy thought that this case was of  
15 particular interest to Damascus at the time, he  
16 would have noticed it, and would have said, "This  
17 is of interest to Damascus. We should send them a  
18 copy too." That would have been the appropriate  
19 follow-up at the time.

20 But this decision has to be made  
21 by someone in Ottawa, because we see here that  
22 Damascus was left out of this matter.

23 MS EDWARDH: Do you know whether  
24 this situation involving Mr. El Maati was reported  
25 at length in the 2003 report?

1 MR. MARTEL: No, I -- when I  
2 arrived in Damascus, the file -- what was called  
3 the file -- was already closed. In other words,  
4 the client had already left the country.

5 Consequently, when this happens,  
6 this is usually the end of the matter for the  
7 mission.

8 The file is closed and you're told  
9 that the client is no longer in the country and  
10 therefore the file has been closed.

11 So I knew that --

12 MS EDWARDH: I'm sorry. But was  
13 his situation and the allegations, were they the  
14 subject matter of discussion and report in the  
15 human rights report that the Embassy releases?

16 MR. MARTEL: In general, the  
17 cases -- consular cases are not included, and --  
18 except if they appear in the media.

19 But, in general, my colleagues who  
20 prepare these Embassy reports use their own  
21 contacts. The sources are not the same as those  
22 of consular clients.

23 MS EDWARDH: But my question is:  
24 Did the person I suppose gathering together the  
25 relevant information for the Government of

1 Canada -- they are not posting this on any  
2 websites. Did the person who was doing that  
3 include a discussion of Mr. El Maati's claims as  
4 they existed in respect of his interrogation in  
5 Syria?

6 MR. MARTEL: Well, I didn't see  
7 anything. It came out -- these complaints  
8 surfaced much later, right? In August, right? In  
9 August 2002? I don't know if my colleague took  
10 them into account in the next report.

11 MS EDWARDH: In 2003, when it is  
12 published.

13 Mr. Commissioner, I find it again  
14 difficult to struggle with the fact that the human  
15 rights report that we have is entirely and  
16 absolutely redacted. I know the Government of  
17 Canada has asserted National Security  
18 Confidentiality over everything and then we got  
19 the one paragraph pertaining to Mr. Arar, but  
20 certainly it would be relevant to at least know  
21 the answer about whether Mr. El Maati's case was  
22 included in that.

23 I wonder whether they would  
24 consider answering that question and, if it is,  
25 further redacting the document?

1                   MR. BAXTER: We will look at the  
2 document and so advise.

3                   THE COMMISSIONER: There will be  
4 an afternoon break before you complete your  
5 cross-examination, Ms. Edwardh.

6                   MS EDWARDH: Thank you.

7                   MR. BAXTER: It is in a secure  
8 location. We can make a phone call.

9                   THE COMMISSIONER: If you can sort  
10 it out, that would be great.

11                   MS EDWARDH: You have also said  
12 you had no idea at all about what the Department  
13 of State report said about Syria, but you were  
14 very, very clear, sir, in answer to a series of  
15 questions by Mr. Cavalluzzo, that while you may  
16 not have read the Department of State, or the  
17 Amnesty International report, you made it very  
18 clear that you were aware of the reputation of  
19 Syrian Military Intelligence.

20                   You made a very interesting  
21 comment, and I think it is correct to describe it,  
22 that Syrian Military Intelligence spread terror in  
23 the community in Syria.

24                   MR. MARTEL: That's right. It's  
25 the truth.

1 MS EDWARDH: And in addition, I  
2 guess, or because of their conduct and in  
3 spreading that terror, one of the factors you just  
4 described a little bit later on was the arbitrary  
5 detention aspect where people would just be  
6 gathered into detention and released some day if  
7 they saw fit. That was a part of it, was it not?

8 MR. MARTEL: Yes, absolutely.

9 MS EDWARDH: And the other part of  
10 that reputation that was well known to you related  
11 to the treatment specifically of persons who  
12 disagreed with the government?

13 MR. MARTEL: Yes, people known as  
14 -- as political dissidents. Above all, yes.

15 MS EDWARDH: Those political  
16 dissidents who were in detention, particularly if  
17 they were in the hands of Syrian Military  
18 Intelligence, were persons -- and you knew that  
19 the reputation was that those gaolers also  
20 tortured people? You knew that?

21 MR. MARTEL: Well, it -- we knew  
22 about this from reports published by other  
23 sources, not necessarily the Ministry of State.

24 MS EDWARDH: Right. But there is  
25 nothing about what I have said that remotely



1 surprises you, sir, given the experience and  
2 knowledge you had.

3 MR. MARTEL: It comes as no  
4 surprise. It's based on various reports in public  
5 circulation.

6 MS EDWARDH: In October of 2002,  
7 that reputation was clearly something that you  
8 knew then as well as you did later when you left  
9 Damascus?

10 MR. MARTEL: Yes, and as I already  
11 explained, it's the same thing -- these services  
12 work more or less the same way throughout the  
13 region.

14 So it was -- it was nothing new,  
15 even at this time.

16 MS EDWARDH: When you were  
17 informed by the Ambassador -- and I take it you  
18 would be informed -- that Syria, on October 21st,  
19 confirmed that Mr. Arar was in detention? You  
20 realized that?

21 MR. MARTEL: Yes.

22 MS EDWARDH: I want to just go  
23 through what you knew.

24 You knew then, or very soon after,  
25 that he was being detained by military

1 intelligence?

2 MR. MARTEL: Yes, after the  
3 initial visit, I did some research. Yes.

4 MS EDWARDH: And you knew then, or  
5 very soon after, that he was being detained in  
6 what I'm going to call a prison or detention  
7 facility belonging to military intelligence?

8 MR. MARTEL: Yes, he was detained  
9 by the military intelligence authorities. That's  
10 right.

11 MS EDWARDH: Right. And those  
12 aren't the ordinary police officers?

13 MR. MARTEL: No. They're --  
14 they're military personnel.

15 MS EDWARDH: You were aware very  
16 soon after that Mr. Arar had been removed by  
17 United States because they alleged him to be a  
18 threat to the U.S., or having some connection to  
19 terrorist activities?

20 MR. MARTEL: I didn't have any  
21 details. I knew he had been deported.

22 MS EDWARDH: And you knew it was  
23 alleged that he had, with no details, I understand  
24 that, that there was some question about whether  
25 he had a connection to terrorist activities?

1 MR. MARTEL: I don't remember. I  
2 don't think I had any specific details about that.  
3 I knew that he had entered the U.S. and that the  
4 Americans had had him deported.

5 MS EDWARDH: Mr. Martel, I'm  
6 sorry, I'm not suggesting you had specific  
7 details. I'm suggesting that you knew the U.S.  
8 had deported him, which would be pretty unusual,  
9 since he was a Canadian citizen, right, and  
10 deported to Syria. You knew that. And you knew  
11 there was a question that he was involved in  
12 activities that had a terrorist connection.

13 MR. MARTEL: Possibly.

14 MS EDWARDH: And while you may  
15 have been more familiar with the detainees who  
16 were dissidents, political dissidents, you were  
17 also aware of the reputation of the Syrian  
18 authorities in respect of persons they thought  
19 might be security threats, such as the Muslim  
20 Brotherhood?

21 We know that story; right?

22 MR. MARTEL: Yes, we know. Yes.

23 MS EDWARDH: And we know that the  
24 conduct of those authorities, vis-à-vis detainees,  
25 is marked by the same abusive and perhaps --

1 torture, actions, as it was with dissidents.  
2 There is no suggestion that those two categories  
3 of detainees are really persons that the Syrians  
4 made distinctions about.

5 MR. MARTEL: There's a  
6 distinction.

7 MS EDWARDH: What is the  
8 distinction?

9 MR. MARTEL: There's a distinction  
10 in that -- if we think of-- for example, when we  
11 think of members of the Muslim Brotherhood, they  
12 are all treated the same way.

13 If we think of people who oppose  
14 the government and who are Kurds from the north,  
15 for example, they are treated the same way by the  
16 authorities.

17 Now, if clients -- if -- we're  
18 talking about dual nationality, because we don't  
19 know what's going on with the Syrians. But dual  
20 nationality, Syrian nationality and that of  
21 another country. So, Canadian in our case.  
22 There's a range. I mean, we never really know.

23 We never really know. And it's  
24 clearly evident from the past, we never know.

25 MS EDWARDH: I may have not asked

1 my question clearly, Mr. Martel.

2 All I am saying to you, given the  
3 reputation that you were aware of, you had no  
4 sense that a political dissident would be treated  
5 differently than a person viewed as a security  
6 threat by the Syrians?

7 MR. MARTEL: I think that, if the  
8 person is a threat to national security, they will  
9 treat them the same way.

10 Yes, I agree with you.

11 MS EDWARDH: That was my point.

12 MR. MARTEL: Mm-hmm!

13 MS EDWARDH: And certainly at this  
14 time, when Mr. Arar was detained, the Syrian  
15 authorities were keen to establish that they would  
16 stand in opposition to al-Qaeda and stand beside  
17 the United States; correct?

18 MR. MARTEL: That was the public  
19 position, in any case.

20 MS EDWARDH: I suppose we have to  
21 take that one with a grain of salt, too. But that  
22 was the public position.

23 MR. MARTEL: Exactly.

24 MS EDWARDH: So when you go see  
25 Mr. Arar for this first visit, you would have been

1           alive to the fact that the man you were about to  
2           see had been disappeared for a period of time. Is  
3           that correct?

4                       MR. MARTEL: Yes, he had been  
5           reported missing, yes.

6                       MS EDWARDH: And that the fact of  
7           he being a disappeared person raised substantial  
8           questions about what may have happened to him?

9                       MR. MARTEL: Yes, of course.

10                      MS EDWARDH: The fact that he was  
11           in the hands of Syrian Military Intelligence,  
12           which you soon realized raised substantial  
13           concerns about what was going to happen to him and  
14           what had happened to him. Is that fair?

15                      MR. MARTEL: It's always a  
16           concern, of course.

17                      MS EDWARDH: Right. Now, one of  
18           the things that puzzles me is there was some press  
19           lines prepared, and they were drafted by Myra and  
20           you will see those at tab 129.

21                      Perhaps I had better take you  
22           to them.

23                      I think I want to start with  
24           Exhibit 123, volume 1.

25                      THE COMMISSIONER: Tab 1?

1 MS EDWARDH: I'm sorry. Volume 1,  
2 tab 123.

3 This is a message from the  
4 Ambassador. It is being sent to a number of  
5 people in Ottawa, and he is announcing his first  
6 visit with General Khalil, and this is sent before  
7 there is any consular visit; right?

8 MR. MARTEL: Yes, if you read the  
9 text, he says he just had a meeting.

10 MS EDWARDH: Yes.

11 MR. MARTEL: Yes, that's right.  
12 You are correct.

13 MS EDWARDH: And at the very end  
14 of this document, the Ambassador is suggesting to  
15 Ottawa that no public announcement be made of the  
16 visit before it takes place, and he says this:

17 "Obviously, in any public  
18 announcement no reference  
19 should be made to (blank)..."

20 No, I'm sorry, I have to go up a  
21 little farther. You have to go to the top of the  
22 page.

23 "While I believe that (blank)  
24 will not renege on his  
25 promise, it would be more

1                   prudent if we could announce  
2                   that a consular officer had  
3                   in fact met with Arar and  
4                   that he is well."

5                   Do you see that? So that is  
6                   certainly the Ambassador's wish before you ever  
7                   see him, or anyone has ever seen him, that the  
8                   announcement be postponed to be able to announce  
9                   that he is well.

10                  You will agree with me that that  
11                  is pretty optimistic on the part of the Ambassador  
12                  at this time? He had no idea what condition  
13                  Mr. Arar would be in.

14                  MR. MARTEL: Yes, I think he's  
15                  assuming he's -- the authorities have decided to  
16                  hold a consular visit, and the Ambassador is  
17                  already assuming that the client is well. That's  
18                  how I read it, in any case.

19                  I didn't see this document at the  
20                  time.

21                  MS EDWARDH: That is a very  
22                  important presumption because, given the  
23                  sophisticated nature of abuse and torture, to  
24                  presume someone will be well just because you get  
25                  access to them is naive in the extreme, is it not?



1                   MR. MARTEL: I can't comment on  
2 what the Ambassador was thinking at the time, and  
3 he didn't copy me, he didn't consult me and he  
4 sent his report.

5                   I think you'd have to ask him  
6 that.

7                   MS EDWARDH: Let me just go to  
8 your first consular visit from a different  
9 perspective than Mr. Cavalluzzo did.

10                  Mr. Pardy in his instructions to  
11 you, which are found, I believe, at tab -- I think  
12 we should probably have the Pillarella documents,  
13 tab 3, which is the visit.

14                  That is Exhibit 134,  
15 Mr. Commissioner, tab 3; and the instructions, tab  
16 131 in volume 2 of the DFAIT materials.

17 --- Pause

18                  MS EDWARDH: It is fair to say  
19 that before each consular visit, you would get  
20 directions?

21                  MR. MARTEL: Almost always,  
22 otherwise -- I'd follow the previous instructions,  
23 the guidelines I had to follow for each visit.

24                  But as in this case, Mr. Pardy  
25 sent me specific instructions, it was the first

1 visit, and he didn't always do so after that.  
2 Myra sometimes gave me instructions, or if there  
3 were none, I'd follow the same procedure.

4 MS EDWARDH: And the instructions  
5 acknowledge very clearly that the circumstances  
6 may intrude to the point where all you can do is  
7 simply make an observation?

8 MR. MARTEL: That's correct.

9 MS EDWARDH: Before you arrive at  
10 the visit, or thereafter before you meet Mr. Arar,  
11 do you sit down with the Syrian authorities and do  
12 they lay out the ground rules for you about what  
13 you can or cannot talk about?

14 MR. MARTEL: Yes, and even before  
15 then with my interpreter in the car, because I  
16 didn't know where he'd take me, exactly, and he  
17 told me in English that I had to limit myself to  
18 questions about his family and his wellbeing and  
19 that I wasn't to discuss the case.

20 The Syrians gave me specific  
21 instructions.

22 MS EDWARDH: So you were to limit  
23 yourself entirely to his family, to his wellbeing.  
24 And what was the third one?

25 MR. MARTEL: And the conditions of

1 his detention, his wellbeing.

2 MS EDWARDH: I want to be very  
3 careful about this, because if the Syrians had  
4 welcomed your inquiry about the conditions of  
5 detention, then we might draw some inferences.

6 But were you told by the Syrians  
7 you couldn't talk about his case but you could  
8 talk about the family, his wellbeing and the  
9 conditions of his detention?

10 MR. MARTEL: Well, his wellbeing,  
11 it means the same thing. They told me that I  
12 could see he was well, but I couldn't ask any  
13 questions, for example, about where he was being  
14 detained, and so on. That was out of the  
15 question. They had told me, I couldn't ask that.

16 MS EDWARDH: So no one ever told  
17 you that other than saying "How are you? Are you  
18 well? Do you need medical care?" or something  
19 like that, beyond those very, very general  
20 questions, you understood from the first moment  
21 that you had been told by the interpreter that all  
22 the other questions were off the table?

23 MR. MARTEL: Yes, exactly, and as  
24 early as the first visit I was prevented from  
25 asking and Arar was prevented from answering when

1 I wanted more details or tried to ask more  
2 specific questions.

3 They immediately -- they  
4 interrupted us immediately.

5 MS EDWARDH: Let me then ask you a  
6 couple of questions.

7 Do you recall, sir, whether you or  
8 the Ambassador ever, ever asked whether you could  
9 meet with Mr. Arar by himself?

10 MR. MARTEL: I never asked because  
11 they set the conditions, and I don't know if the  
12 Ambassador asked.

13 I think you have to ask him that,  
14 but as for me, the Syrians imposed conditions on  
15 me, with an interpreter, with someone who took  
16 notes, with two people present. It was always the  
17 same and that was how they had agreed to work.

18 MS EDWARDH: And you will agree  
19 with me that in the ordinary case, the Consul is  
20 expected to try to seek, indeed demand it and  
21 protest if they don't get access, which is  
22 confidential access?

23 MR. MARTEL: Yes. We can protest,  
24 of course, but the Syrian position was that we had  
25 a Canadian citizen, of course, while they claimed

1           they had a Syrian citizen.

2                           They'd tell me that the citizen  
3 was now in Syria, it was Syrian law that applied  
4 and they didn't have any obligations to the  
5 international community or under the Vienna  
6 Convention.

7                           To ask for an interview under the  
8 Vienna Convention, they are obliged to do it, but  
9 they claimed that the Vienna Convention didn't  
10 apply because of my client's nationality. So, I  
11 couldn't get a private interview, they wouldn't  
12 let me.

13                           MS EDWARDH: I appreciate that  
14 there are differing and evolving views, but I do  
15 want to just make this observation: that it  
16 appears from this record that no one ever asked  
17 for confidential access to Mr. Arar as a  
18 representative. And even though you can say the  
19 Vienna Convention didn't require it, you were  
20 there; you were delivering consular access to a  
21 man that you are telling us the Syrians said is  
22 just Syrian. They had made the exception.

23                           MR. MARTEL: Yes, they had made  
24 the exception, and according to Gar Pardy's  
25 instructions, who at the outset himself said, "I

1 realize that the conditions will be very  
2 difficult. You won't be able to ask for anything  
3 else." Gar Pardy already knew the Consular  
4 Affairs Bureau at the beginning was aware of the  
5 Syrian position, he knew under what conditions I  
6 would be seeing my client. He knew I wouldn't be  
7 able to get more than that.

8 He gave me instructions, and when  
9 I asked if I could take a photo or if my client  
10 could take a phone call, the answer was no.

11 MS EDWARDH: All right. I wonder  
12 if you could give to the witness the document  
13 "Conclusions and Recommendations of The Committee  
14 Against Torture, Canada"?

15 I have provided a copy to --

16 THE COMMISSIONER: Is this a new  
17 exhibit?

18 MS EDWARDH: Well, it is actually  
19 one that was filed, but it's so long ago,  
20 Mr. Commissioner.

21 THE COMMISSIONER: Let's mark it  
22 again. 246.

23 EXHIBIT P-246: Document  
24 entitled "Conclusions and  
25 Recommendations of the



1 attention. While Canada is praised in some  
2 respects in this document, there are also, on page  
3 2, a list of things that the committee is  
4 concerned about.

5 Do you see that?

6 MR. MARTEL: In Part C,  
7 paragraph 4.

8 MS EDWARDH: Yes, they are a list  
9 of the committee's expressed concerns. And this  
10 document is of course not only public, but it is  
11 communicated to the Government of Canada; correct?

12 MR. MARTEL: Yes, I see that.

13 MS EDWARDH: If you turn to  
14 paragraph 4(b), one of the subjects of concern  
15 raised by this memorandum is:

16 "The alleged roles of the  
17 State party's authorities in  
18 the expulsion of Canadian  
19 national Mr. Maher Arar,  
20 expelled from the United  
21 States to the Syrian Arab  
22 Republic where torture was  
23 reported to be practised."

24 Do you see that concern?

25 MR. MARTEL: Yes, I see that in



1 paragraph (b), yes.

2 MS EDWARDH: What I wanted to talk  
3 to you about, or ask you about, is whether or not  
4 the recommendation was ever something that was  
5 brought to your attention and you agree with --

6 MR. MARTEL: No, there's no --

7 MS EDWARDH: I'm sorry, could I  
8 just read the recommendation so we can ask the  
9 question?

10 5(d):

11 "The State party should  
12 insist on unrestricted  
13 consular access to their  
14 nationals who are in  
15 detention abroad, with  
16 facility for unmonitored  
17 meetings and, if required, of  
18 appropriate medical  
19 expertise."

20 Do you see that?

21 MR. MARTEL: Yes, I see it.

22 MS EDWARDH: While I'm confident,  
23 sir, you are going to say to us that it is the  
24 best -- no. One wants unrestricted access, but  
25 that in this case it was just never a question

1           that you would get a confidential meeting. It  
2           would never have happened?

3                         MR. MARTEL: No, never.

4                         MS EDWARDH: At the same time you  
5           will see the difficulty we have, Mr. Martel, is  
6           that none was ever asked for.

7                         So how do we know they would say  
8           no?

9                         MR. MARTEL: Because they would  
10          say no to everything we asked for, and also  
11          because they had set the ground rules themselves  
12          at the beginning.

13                        They said, "We're doing you a huge  
14          favour, and it's the first time we do something  
15          like this for another country. We'll let you see  
16          a detainee, and we're the ones laying down the  
17          rules, not you."

18                        Not in so many words, but if you  
19          didn't like it you can take it or leave it. That  
20          was their approach.

21                        MS EDWARDH: Is that the way you  
22          interpret it?

23                        MR. MARTEL: Well, you can  
24          interpret it any way you want, but I think it was  
25          later confirmed.

1 MS EDWARDH: I don't think -- I  
2 think we have agreed none was asked and it will be  
3 for the Commissioner to consider the failure to in  
4 the decision --

5 MR. MARTEL: We didn't -- for  
6 starters, we didn't receive instructions to ask.  
7 We did what we were asked to do. It was important  
8 for Gar Pardy in Ottawa, first of all, to have  
9 access, continuous access. Second was his  
10 release.

11 Those were the two main  
12 objectives. Those were the two main objectives we  
13 had been told about.

14 MS EDWARDH: I want to go to the  
15 first consular visit because it does seem to me,  
16 sir, that we can draw some conclusions here. I  
17 just want to get quickly to the point where I ask  
18 you a few general questions.

19 But it is very obvious to me that  
20 you have to agree that you had very limited  
21 observations of Mr. Arar?

22 MR. MARTEL: Nobody will dispute  
23 that. The framework was set up to let me see what  
24 they wanted me to see and what they wanted Maher  
25 Arar to let me see.

1 It was a controlled environment.

2 MS EDWARDH: Right. And so when  
3 you say you got to see what the Syrians wanted you  
4 to see --

5 MR. MARTEL: Exactly.

6 MS EDWARDH: Exactly?

7 MR. MARTEL: Of course.

8 MS EDWARDH: And anything they  
9 didn't want you to see, you wouldn't have seen?

10 MR. MARTEL: They tried to hide  
11 it.

12 MS EDWARDH: And they succeeded in  
13 some respects?

14 MR. MARTEL: Yes, but not all the  
15 time.

16 MS EDWARDH: What did they try to  
17 hide that you were able to ferret out?

18 MR. MARTEL: Well, for example,  
19 they tried to contradict me or contradict Maher on  
20 the time he'd spent in Jordan and the time he'd  
21 been with them, and that's why they interrupted  
22 him.

23 There were some things they didn't  
24 want me to hear.

25 MS EDWARDH: But you found out,

1 and I think that is something I want to --

2 MR. MARTEL: Well, I think you  
3 have to be sharp and try to determine where  
4 they're headed, and you have to come to your own  
5 conclusions. You can't be naive.

6 MS EDWARDH: Right. I want to  
7 talk about some things that aren't recorded there,  
8 because it's my understanding that this may jog  
9 your memory.

10 Specifically, you brought the Bon  
11 Voyage book to that first meeting. Do you recall  
12 that, Mr. Martel?

13 MR. MARTEL: No, I don't remember.

14 MS EDWARDH: Would it surprise you  
15 if I told you that you had the Bon Voyage book,  
16 because it describes your consular functions?

17 MR. MARTEL: Yes, but maybe I  
18 brought it with me, thinking that my client had to  
19 have a copy if he didn't have one.

20 Many people travel and don't  
21 always have Bon Voyage with them. Not everyone  
22 has it.

23 MS EDWARDH: And so it is the kind  
24 of thing you might well have brought?

25 MR. MARTEL: Yes.

1 MS EDWARDH: One of the objectives  
2 you had was to ensure that Mr. Arar -- I think  
3 from your perspective -- had a realistic  
4 understanding of what Canadian government consular  
5 services could do. You wanted to make sure he had  
6 no misunderstanding.

7 MR. MARTEL: Especially in his  
8 case.

9 MS EDWARDH: Yes. I would like  
10 you to have a chance to talk about what  
11 "especially in his case meant".

12 If I told you that you conveyed to  
13 him that it may well have been the case that the  
14 Government of Canada couldn't do very much because  
15 they took the position -- not they, the Syrians  
16 took the position he was a Syrian, that wouldn't  
17 surprise you?

18 That is the kind of thing  
19 generally you would say?

20 MR. MARTEL: I could reformulate  
21 the sentence a bit differently, that is, he must  
22 have known already --

23 MS EDWARDH: I don't want to  
24 choose the words. I'm sure you might use  
25 different words.

1                   The question is: Do you agree  
2                   that is the kind of thing, the effect of the words  
3                   you would have used --

4                   MR. MARTEL: I told him that our  
5                   intervention was limited in his case because the  
6                   Syrian government had told us that he was a Syrian  
7                   citizen in Syria.

8                   So he must have known. I had to  
9                   tell him that, not arrive with a list of lawyers  
10                  and say, "Here's a list of lawyers, and you can  
11                  choose the one you want. In the meantime, you'll  
12                  be released pending your trial, which will come  
13                  later."

14                  He must have known what was  
15                  coming. I couldn't tell him, "You are Canadian  
16                  and you're protected by the Vienna Convention and  
17                  we'll get you out of here today or tomorrow."

18                  MS EDWARDH: No. You told him  
19                  realistically that that wasn't the case; that he  
20                  was a Syrian national and that he had to live with  
21                  the fact that there were limits on what you could  
22                  do?

23                  MR. MARTEL: That's correct, as  
24                  per our instructions.

25                  MS EDWARDH: And you also had to

1           make it clear from your perspective -- and we will  
2           talk about the effect of this on him. From your  
3           perspective, you thought it was important to tell  
4           him that it was uncertain. You could not  
5           guarantee that you could visit him and provide  
6           consular services regularly as you might want?

7                       MR. MARTEL: Exactly. I told him  
8           that during the first visit, because I said to  
9           him: "It's the first time the authorities grant us  
10          a visit in this case. And it's your case. And  
11          they promised we could have regular visits, but I  
12          can't guarantee anything."

13                      MS EDWARDH: That's right. You  
14          can't guarantee a thing, and you might not be able  
15          to even visit again.

16                      MR. MARTEL: Possibly.

17                      MS EDWARDH: And that is the kind  
18          of thing you told him because you felt he needed  
19          to understand it.

20                      MR. MARTEL: In my opinion, he  
21          needed to know. Of course.

22                      MS EDWARDH: Also you were trying  
23          to create a scene where the Syrians would perhaps  
24          soften a little towards him. So you asked him,  
25          did you not, you said to him, "Mr. Arar, thank the



1           Syrians"?

2                           MR. MARTEL:  No.  No.  I didn't  
3           ask him to thank -- to thank the Syrians.  I  
4           thanked the Syrians in front of him, saying, "I  
5           thank -- I thank the Syrian authorities for at  
6           least giving me the permission to come and see  
7           you."

8                           MS EDWARDH:  And indeed I'm going  
9           to suggest to you, and it was made perfectly clear  
10          why to him that he should also thank the Syrians?

11                          MR. MARTEL:  Maybe he got that  
12          from the Syrians, that he had to thank them.

13                          He has roots in this -- he knows  
14          the culture.

15                          MS EDWARDH:  Well, he left as a  
16          17-year-old.

17                          MR. MARTEL:  Yes, I know.  But he  
18          knows the culture nonetheless.

19                          MS EDWARDH:  Now, he cried  
20          throughout this visit --

21                          MR. MARTEL:  No, no.

22                          MS EDWARDH:  -- or through good  
23          portions of this visit?

24                          MR. MARTEL:  No.

25                          You could say he was emotional,

1 but no, I didn't see Maher cry during that visit.

2 He was surprised, at any rate, to  
3 see me. I don't think he'd been told I was  
4 coming.

5 I don't know what he'd been told  
6 beforehand, but he was very surprised to see me.

7 MS EDWARDH: Did you notice  
8 anything about his facial hair? Did he have any  
9 facial hair?

10 MR. MARTEL: Facial hair?

11 MS EDWARDH: Yes, a beard. Was he  
12 shaved?

13 MR. MARTEL: I don't remember. I  
14 think -- I think so. I think so.

15 Yes, I think so -- I don't think  
16 he had a beard at the time.

17 MS EDWARDH: And so for an  
18 observant Muslim man, what would that mean?

19 MR. MARTEL: Well, I didn't know  
20 at the time whether he was an observant Muslim  
21 man.

22 MS EDWARDH: If he were, to have  
23 one's beard shaved would be dehumanizing, would it  
24 not?

25 MR. MARTEL: No, I don't know what

1           -- I'm not familiar enough with the religion to  
2           say that if someone has a beard or not makes a  
3           difference.

4                           I don't know which people,  
5           Muslims, practice their religion, who is religious  
6           or very religious. I don't make the distinction.

7                           MS EDWARDH: You, I take it, sir,  
8           didn't know enough, even given your work in the  
9           Middle East, to know what the beard meant to an  
10          observant Muslim and what its forcible removal  
11          might mean?

12                          MR. MARTEL: Well, if -- obviously  
13          if I had known he was a practising Muslim and the  
14          authorities had removed his beard, it's an  
15          indication that they wanted to humiliate him. Of  
16          course.

17                          I think it's reasonable to think  
18          that.

19                          MS EDWARDH: And indeed it would  
20          have been the easiest thing for you to enquire  
21          from his wife, Mrs. Arar, who dresses in a very  
22          conservative fashion, to ascertain whether her  
23          husband was a practising Muslim and whether he  
24          would be humiliated by the removal of his beard?  
25          That was easy to find out?

1                   MR. MARTEL: Yes. I didn't know  
2 he was a practising Muslim, and I wasn't given any  
3 details on the family in Canada. I didn't have  
4 much information on that.

5                   At that point in time, I didn't --  
6 I didn't notice -- I didn't notice whether his  
7 beard had been removed.

8                   MS EDWARDH: Right. My point is,  
9 I want to talk now about the duty to inquire.

10                  Mr. Martel, you had ample  
11 opportunity and sources to find out whether  
12 Mr. Arar was a practising Muslim because it was a  
13 quick e-mail to Myra or Gar Pardy, a discussion  
14 with Mrs. Arar, and you could have readily  
15 determined whether Mr. Arar was an observant  
16 Muslim man? That was easy to find out?

17                  MR. MARTEL: Yes, but that's not a  
18 question we in the field usually ask. We don't  
19 talk about religion, race, colour, and so on.

20                  We don't immediately think about  
21 it, about asking a client whether he belongs to  
22 this or that religion or whether he practices or  
23 doesn't practice his religion.

24                  MS EDWARDH: Mr. Martel, we are  
25 not interested in what religion he really

1 practices. We are interested in whether he has  
2 been subjected to humiliation by his captors or  
3 gaolers. That's the object. That's a whole  
4 different purpose behind those questions. You  
5 will agree?

6 MR. MARTEL: Yes, I understand  
7 your question, and I'm telling you that I didn't  
8 have that information at the time.

9 MS EDWARDH: In any event --  
10 right. You didn't have it and you didn't ask for  
11 it; correct? Simple.

12 MR. MARTEL: I didn't have the  
13 information. It wasn't given to me.

14 MS EDWARDH: Right. And then I  
15 want to just ask a little bit about what you did  
16 once you learned that Mr. Arar was in this  
17 building that you associated with Syrian Military  
18 Intelligence.

19 There is no doubt on the public  
20 record, the Palestine Branch isn't a secret  
21 entity, is it, Mr. Martel?

22 MR. MARTEL: The Branch's  
23 reputation is well established.

24 MS EDWARDH: And indeed you knew  
25 something about the conditions of confinement in

1 the Palestine Branch because there was someone at  
2 the Embassy who had a relative who had been there.

3 Isn't that right?

4 MR. MARTEL: I don't remember.  
5 You'd have to tell me more about it.

6 MS EDWARDH: There was an employee  
7 at the Embassy who had a family member who had  
8 been held in the Palestine Branch, and that was  
9 one of the employees who had a conversation with  
10 Mr. Arar on his release?

11 Does that jog your memory?

12 MR. MARTEL: I think that, in  
13 fact, you can't -- we have to be careful about  
14 what we say in public.

15 MS EDWARDH: Don't I?

16 MR. BAXTER: The concern is the  
17 same kind of concern as before, Mr. Commissioner,  
18 the safety of the individuals concerned. It is  
19 not a national security issue at all.

20 THE COMMISSIONER: Is there any  
21 way we can deal with this line of questioning  
22 without --

23 MS EDWARDH: I will try.

24 THE COMMISSIONER: Thank you.

25 MS EDWARDH: Let's see where I can

1 get.

2 There are a broad range of public  
3 and private sources available to you, Mr. Martel,  
4 had you wished to learn anything about the  
5 conditions of confinement at the Palestine Branch  
6 of Syrian Military Intelligence.

7 Do you agree with that as a  
8 general proposition?

9 MR. MARTEL: Generally, the  
10 conditions of confinement of detainees at this  
11 branch, especially political detainees, are well  
12 known. We don't need to argue about its  
13 reputation.

14 I agree with you.

15 MS EDWARDH: So this is a matter  
16 of some importance because, while Mr. Arar was  
17 unable to speak directly to you about the  
18 conditions of his detention and you felt you could  
19 not ask about them, other than "Are you well?",  
20 you knew that the conditions of detention involved  
21 many people being held in solitary confinement;  
22 correct?

23 MR. MARTEL: Yes, of course.  
24 Political detainees.

25 MS EDWARDH: You knew that there

1 was a substantial possibility or likelihood that  
2 men like Maher Arar could be held in tiny little  
3 cells because this is what happened to political  
4 dissidents as well?

5 MR. MARTEL: At the time, I didn't  
6 know -- enough, for example, the type of cell  
7 used, whether people were grouped together in  
8 large cells -- I didn't have -- details or witness  
9 accounts about this.

10 And various magazines or articles  
11 also talk about poor conditions of detention. It  
12 has a reputation.

13 But it isn't always stated that  
14 people are kept in small cells.

15 MS EDWARDH: All right. You had  
16 access to people who knew, or you could sit down  
17 with, or you could have brainstormed and said  
18 okay, if I can't ask my client what is it really  
19 like and he can't tell me what it is really like,  
20 there are ample sources to make inquiry of;  
21 correct?

22 MR. MARTEL: Yes, someone could  
23 have found out and obtained sufficient details and  
24 speculated on the possibilities where my client  
25 was being detained.



1                   But, one way or another, we'd  
2 never get an answer until the client was able to  
3 speak freely. It was impossible to get an answer.

4                   MS EDWARDH: Yes. For example, if  
5 you walked into a client who had been rendered  
6 comatose with a crushed skull and you knew would  
7 never talk, you would have to make inquiries  
8 through independent channels to try and understand  
9 what happened; correct?

10                  MR. MARTEL: Well, if I meet a  
11 client who is in -- who has been visibly abused,  
12 I'd immediately draw some conclusions and draft a  
13 report.

14                  MS EDWARDH: All right. Well, I  
15 don't want to go around in circles with you. I  
16 just want to establish that you knew the general  
17 reputation of military intelligence, you knew the  
18 reputation for torture, and you knew the  
19 reputation of lousy, rotten condition of  
20 confinement.

21                  And the fourth point I want you to  
22 agree with is you knew you couldn't ask a question  
23 about it, and you knew Mr. Arar couldn't say  
24 anything about it.

25                  So the only thing you could do was

1 go to inquire of other sources to determine, as  
2 best you could -- never perfectly -- as best you  
3 could what it was like for him; right?

4 MR. MARTEL: No, it was already  
5 known. That is, that there are detainees --

6 MS EDWARDH: What was --

7 MR. MARTEL: -- who are in small  
8 cells, like you said, and there are others who are  
9 in large cells.

10 So, nobody could come and tell me,  
11 "Your client will be detained in a small cell."

12 I had other clients who were  
13 detained in cells with 25 people, who were in the  
14 same - in the same place.

15 So, it's -- you can't come to a  
16 conclusion and say, "Maher Arar is being detained  
17 in a small cell. Because he can't tell me, I  
18 conclude that he is in a small cell."

19 It's possible. But I couldn't  
20 come to that conclusion because I couldn't talk to  
21 him alone.

22 And as long as I wasn't given an  
23 opportunity to speak to him alone so that he could  
24 tell me, I couldn't find out. It was impossible  
25 -- if he couldn't tell me, then I couldn't know.

1 MS EDWARDH: You could have known  
2 a great deal about the conditions of his  
3 confinement and you could have known that by  
4 asking others who had that information. You could  
5 have even written a letter to Myra or she could  
6 have written you -- and there is some corporate  
7 element to this -- "This is what Mr. El Maati says  
8 about where he was and what it looked like. This  
9 is what other people who have experienced it have  
10 described. And if you can't ask Mr. Arar  
11 specifically about it, you should assume they are  
12 as follows."

13 Isn't that a reasonable approach  
14 to take?

15 MR. MARTEL: Yes, I think that,  
16 the Bureau, Gar Pardy's office, already had  
17 information from another detainee who had been  
18 there, but we weren't told, "Be careful! El Maati  
19 went there and this is what the Syrians did to  
20 him. Keep a sharp eye out and try to find out  
21 more. You have to protest. This is what you have  
22 to do."

23 I did what he told me to do: "Go  
24 there. The important thing is to see him. Even  
25 if it's controlled, it's already -- it's better

1           than no visit at all."

2                               Now, in what kind of conditions  
3 was he being detained? With the information I  
4 had, it was impossible for me to find out.

5                               Maybe he was in a small cell, as  
6 you said. But I didn't know that yet.

7                               MS EDWARDH: The difficulty that I  
8 have, Mr. Martel, is that you do not adequately  
9 qualify your report, sir. You don't make it clear  
10 to the reader in each and every report that the  
11 person who you are describing has no voluntary  
12 choice in their decisions around what to say to  
13 you; that they are captives, that they are  
14 supervised, and they live in a fearful environment  
15 even though its particulars may not be known, and  
16 therefore nothing can be drawn from the failure to  
17 observe. Nothing. That's the problem,  
18 Mr. Martel.

19                               MR. MARTEL: I believe I completed  
20 --

21                               MS EDWARDH: You draw from nothing  
22 a positive conclusion.

23                               MR. MARTEL: No. I believe I  
24 completed my reports.

25                               There were people there who are

1 very intelligent, who know the field and who read  
2 it. And I said, "We can't speak freely. He isn't  
3 at liberty to talk. I can't find out where he is,  
4 exactly." I gave them all that information.

5 Now, if other steps were to be  
6 taken, if there was to be some form of protest, a  
7 request for a private interview, the instructions  
8 had to come from headquarters, we had to be told  
9 by headquarters what to do, because we, at the  
10 mission, couldn't take the initiative and ignore  
11 what we were given at the beginning, the mandate.

12 In other words, we had access,  
13 they wanted me to see him regularly, and that was  
14 our objective, and the second objective was to get  
15 him out of there.

16 Now, I wasn't told: "Go protest.  
17 Go do this, go do that." I wasn't given any  
18 instructions like that.

19 MS EDWARDH: No. But I'm saying  
20 when you read your reports, you draw the  
21 conclusion you thought he was well.

22 MR. MARTEL: Well, the others too  
23 could have drawn a conclusion. And I always said  
24 he looked well. I didn't know whether he was  
25 well.

1 MS EDWARDH: You are the only one  
2 who is with Mr. Arar, and all I'm saying is you  
3 send these reports back, sir, and you don't show  
4 to the readers the limits upon your actual  
5 interaction. And you don't tell them you should  
6 need their assistance to make inquiries so that a  
7 proper framework of analysis can be struck for  
8 Maher Arar.

9 MR. MARTEL: Well, if that's your  
10 take on the reports, the many people in Ottawa who  
11 read the report never came back to ask me specific  
12 questions, saying: "This isn't specific enough.  
13 Give us more information. Tell us more. And  
14 during your next visit, you have to do this, that  
15 and the other thing. And I have further  
16 instructions for the following visit."

17 So, I had to limit myself to  
18 Ottawa's instructions. If I -- if I strayed from  
19 the instructions, I didn't know what the  
20 consequences would be.

21 It was up to them to decide. Not  
22 me. I was in the field and I followed -- I did  
23 what I was asked.

24 And if they didn't like the type  
25 of reports I sent, if they thought they were

1 incomplete, they could have got back to me and  
2 asked me some questions the same day or the next.  
3 If they wanted to.

4 THE COMMISSIONER: If I can,  
5 Ms Edwardh, I have the point.

6 MS EDWARDH: Okay.

7 THE COMMISSIONER: I understand  
8 both sides of the point.

9 We have now been going over an  
10 hour and a half, and I think we will take the  
11 afternoon break.

12 Before we do, the schedule, for  
13 some that weren't here, at least the tentative  
14 schedule is that Ms Edwardh will be probably  
15 another hour and then there are some examinations.

16 Ms Jackman, you were going to be  
17 brief, if at all in this?

18 MS JACKMAN: I have about three  
19 questions.

20 THE COMMISSIONER: All right.

21 And then, Ms Jackman, your motion  
22 will follow the completion of this witness. I  
23 think it's going to be fairly late, but I would  
24 expect that we could probably deal with it all. I  
25 know there are a few people to speak on it, but we

1           could deal with it all in probably half an hour or  
2           thereabouts.

3                           In any event, let's rise now for  
4           ten minutes.

5                           THE REGISTRAR: Please stand.

6           --- Upon recessing at 3:20 p.m. /  
7                           Suspension à 15 h 20

8           --- Upon resuming at 3:35 p.m. /  
9                           Reprise à 15 h 35

10                           THE REGISTRAR: Please be seated.

11                           THE COMMISSIONER: Ms Edwardh.

12                           MS EDWARDH: Thank you, Mr.  
13           Commissioner.

14                           Mr. Martel, perhaps you can cast  
15           some light, additional light, on an area of  
16           concern to everyone.

17                           It is clear that Mr. Arar was able  
18           to convey to you that he had only been in Jordan a  
19           very brief time, a few hours, before he arrived in  
20           Syria; correct?

21                           MR. MARTEL: This is what he  
22           stated at our first meeting, yes.

23                           MS EDWARDH: Yes. When this  
24           matter is reported to the Minister -- and if you  
25           want to look at tab 129, page 7, in the background



1 evaluation in the first paragraph under the  
2 heading "For Minister's Eyes Only" misrepresents  
3 what you knew by stating:

4 "It was not clear from the  
5 conversation --"

6 Referring to the one you had.

7 "... how long Mr. Arar had  
8 been in Syria --"

9 Because you had at least been able  
10 to ascertain from Mr. Arar that he was in Syria  
11 within hours of landing in Jordan; correct?

12 That is not an accurate statement?

13 MR. MARTEL: Yes. Mr. Arar had  
14 already told me at our first meeting, even though  
15 our conversation was interrupted, that he had  
16 spent only a few hours in Jordan.

17 MS EDWARDH: Right. So this is  
18 wrong. This "For the Minister's Eyes Only" advice  
19 is incorrect; correct?

20 MR. MARTEL: Well, it says here  
21 that we learned he had been detained by the  
22 Americans for two weeks before being transferred  
23 to Jordan. It wasn't clear.

24 MS EDWARDH: Keep reading.

25 MR. MARTEL: In the conversation

1           itself, how long had Mr. Arar been detained in  
2           Syria, in light of the fact that the Syrian  
3           authorities intercepted the questions.

4                   MS EDWARDH: Yes. But they didn't  
5           adequately intercept it because in fact you got  
6           the answer to the question.

7                   MR. MARTEL: Yes. I had already  
8           communicated that, according to Mr. Arar, what he  
9           told me was that he'd spent only a few hours in  
10          Jordan.

11                   MS EDWARDH: And the suggestion  
12          that Mr. Arar languished in Jordan was one that  
13          the Canadian Ambassador to Jordan tried to  
14          correct, did he not?

15                   MR. MARTEL: I think there was  
16          correspondence to that effect. At the time, I  
17          think people were looking for him everywhere, and  
18          the Canadian Ambassador to Jordan took steps to  
19          determine whether he'd been detained in Jordan.

20                   MS EDWARDH: But the Canadian  
21          Ambassador, if you look at tab 135, communicated  
22          his concern about Canadian press comments relating  
23          to Jordan's handling of Mr. Arar's case because  
24          they directly quoted DFAIT spokesman, Mr. Doiron,  
25          and the quote is:

1 "We do not know why the  
2 Jordanians did not provide  
3 information on his presence  
4 in their country."

5 And the Ambassador notes,  
6 "contradicting my report." Do you see that,  
7 "contradicting my report"?

8 MR. MARTEL: Yes. I see that, yes.

9 MS EDWARDH: So it is quite clear  
10 that the Ambassador in Jordan felt that the  
11 suggestion that was left, that the Jordanians did  
12 not provide information, was, as he says,  
13 "absolutely incorrect".

14 Do you see that?

15 MR. MARTEL: Yes, he seems to say  
16 that, yes.

17 MS EDWARDH: Yes. So what puzzles  
18 me is what interest everyone had in not putting  
19 forward on the public record the fact that the  
20 Syrians had held Mr. Arar for most of the period  
21 following October 8th, if not the vast majority of  
22 it, less about eight hours.

23 I'm going to ask you some  
24 questions.

25 Were you or the Embassy concerned

1           that should they confront the Syrians with the  
2           issue that they had held him for the entire  
3           period, that would end consular contact?

4                       MR. MARTEL:   Possibly.   What we  
5           did at the time, after I found out that Mr. Arar  
6           had been in Jordan for only a few hours, was that  
7           we drafted the report, saying that we were very  
8           puzzled.   Why were the Syrians telling us that he  
9           had just arrived a few days earlier, whereas he  
10          was telling us that he had been in Jordan for only  
11          a few hours?

12                      We reported all this information  
13          to Gar Pardy.   To my knowledge, we didn't ask the  
14          Syrians, we didn't press them on the issue, since  
15          senior Syrian officials had already communicated  
16          information to the Ambassador.

17                      Now, if headquarters wanted the  
18          Ambassador to go back and ask more questions, he  
19          had to receive instructions to that effect.

20                      MS EDWARDH:   So that the failure,  
21          or the decision to not confront or further  
22          question, I'm going to suggest to you, was an  
23          express decision on the part of headquarters,  
24          given the information you provided them.

25                      MR. MARTEL:   Yes.   We gave them

1 the information, and they assimilated the  
2 information. We pointed out the discrepancy in  
3 times, dates and all that to them. We pointed it  
4 out clearly. And senior Syrian officials gave us  
5 or gave the Ambassador some information that was  
6 inconsistent with what I had come up with in the  
7 field. All that was communicated to headquarters.  
8 To my knowledge, the Ambassador did not receive  
9 instructions telling him to go back to the Deputy  
10 Minister or someone else who was high up and say,  
11 "Look, you haven't told us the truth."

12 MS EDWARDH: Right. Indeed, it is  
13 quite clear from the Pillarella documents, Exhibit  
14 134, tab 5, that the Foreign Minister was very  
15 anxious to press upon the Ambassador the fact that  
16 Arar wasn't in Syria. Isn't that true?

17 He had not languished in Syria  
18 since October the 9th?

19 MR. MARTEL: I think that's the  
20 message the Syrian authorities communicated to the  
21 Ambassador, that he had arrived only a few days  
22 earlier.

23 MS EDWARDH: And this was  
24 something that the Syrian Foreign Minister gave  
25 assurances to the Ambassador about; correct?

1                   That is what this document says.

2                   MR. MARTEL: I think it was the  
3 Deputy Minister.

4                   MS EDWARDH: Okay, the Deputy  
5 Foreign Minister.

6                   MR. MARTEL: Yes.

7                   MS EDWARDH: That he gave those  
8 assurances.

9                   MR. MARTEL: Yes. First of all,  
10 if memory serves, I didn't always have access to  
11 the documents, but at first, the Deputy Minister  
12 said, "No, we don't have him." Later, he  
13 retracted his statement and said, "Oh, by the way,  
14 yes, we found him." That's it.

15                   MS EDWARDH: Yes. But he hasn't  
16 been here -- he made it clear that Arar had not  
17 been here, or had not been in Syria from October  
18 the 9th on, and pressed that upon the Ambassador;  
19 correct?

20                   MR. MARTEL: Yes. It was him or  
21 the general. I don't remember which of the two  
22 gave him the information, but someone provided the  
23 information and said, "He's been here only for a  
24 few days."

25                   MS EDWARDH: If one sees that Mr.

1 Arar has no interest in making up where he is,  
2 either in Jordan or Syria, or how he has gone from  
3 one place to the other, you can agree with me that  
4 the entity that had the interest in lying were  
5 Syrian officials?

6 They had the interest in not  
7 having Canada assume that Mr. Arar had been a  
8 disappeared person under their control for that  
9 period of time?

10 MR. MARTEL: If indeed he was in  
11 the hands of the authorities, there may be many  
12 reasons to lie to us. Maybe they didn't want us  
13 to see him right away. They didn't want to admit  
14 they had him because we would have said, "Why is  
15 it that you've had him for two weeks and you tell  
16 us only now that you have him?" There are many  
17 reasons.

18 You can think of any number of  
19 reasons, but, certainly, if they'd had him all  
20 that time and didn't want to say so, they had  
21 their reasons and their interests in mind.

22 MS EDWARDH: Yes. And the most  
23 obvious reason, given what we know now, is they  
24 didn't want you to be in a room with a man who was  
25 being beaten during interrogation sessions. They

1           didn't want you there then.

2                               That is the most obvious reason,  
3           isn't it, Mr. Martel?

4                               MR. MARTEL:   I'd be speculating.  
5           I can't say that the Syrians prevented me from  
6           seeing him for two weeks because, during that  
7           period, they were beating him, they were torturing  
8           him, and so on.  I never had any evidence of this,  
9           and I still can't say to this day that that's the  
10          reason why they didn't provide access to him.  
11          We're in the same boat in that regard.

12                              MS EDWARDH:  If you were  
13          hypothesizing explanations for their conduct, can  
14          you think of any more likely reason?

15                              MR. MARTEL:  They keep people for  
16          three months, six months, a year, two years  
17          without letting us see them, and they never give  
18          any reasons.  So how can I know?  There's a  
19          detainee I haven't seen for two years.  How is my  
20          detainee?  I don't know.  Why are they preventing  
21          me from seeing him?  I don't know that either.  
22          There are no answers to these questions.  We don't  
23          know.  They have their own theories.  They do what  
24          they want.  We can maybe draw our own conclusions.  
25          We can think, we can say, "Oh, we can't see him



1           because he isn't fit to be seen, and when he is  
2           fit enough, they'll let us see him." Or: "They're  
3           not providing any access to him", as they've done  
4           with my other clients, whom I never did see in  
5           detention, never, and who were despicably treated,  
6           but whom I never got to see.

7                           MS EDWARDH: I want to go back to  
8           the first visit for a moment. That is tab 130.

9                           I'm sorry, it is 131, but the best  
10          place to find it is tab 3 in the Pillarella  
11          documents, which is the first visit.

12                           I was going to put to you, Mr.  
13          Martel, that because some of the visits were  
14          always translated or portions of the visit were  
15          translated from Arabic into English, given your  
16          language facility with Arabic, you may well have  
17          been misled by the translator.

18                           Would you agree with that as a  
19          general proposition; that if a person doesn't  
20          speak the language, they are in fact dependent  
21          upon the integrity of the translator; correct?

22                           MR. MARTEL: I cannot totally  
23          agree. Maher always looked at me when he spoke.  
24          Even though he was speaking in Arabic, he looked  
25          at me and listened to what the interpreter said.

1           If it had been inconsistent with what he was  
2           telling me, he would have given me an indication  
3           with his eyes.

4                        When I wrote down specific facts,  
5           he was the one who told them to me.  Although he  
6           didn't speak in English, we could still talk to  
7           each other.  There wasn't always interpretation.  
8           There were many conversations in Arabic between  
9           Maher and the Syrians.  But generally, even though  
10          he was told to speak in Arabic, we often had  
11          conversations in English.

12                       MS EDWARDH:  I'm just saying to  
13          you, sir -- it is a really simple proposition, Mr.  
14          Martel -- that if Mr. Arar was forced to speak  
15          Arabic and you are not fluent, you are captive to  
16          the integrity of the translator, at least to some  
17          extent?

18                       MR. MARTEL:  Yes, possibly, to a  
19          certain extent, but in my --

20                       MS EDWARDH:  But the difficulty I  
21          have with this general proposition I was going to  
22          carry forward is that the first document that we  
23          are looking at of the first consular visit leaves  
24          the impression that you in fact are much more  
25          competent in Arabic than you have portrayed.

1 I would like you to look at  
2 paragraph 7 --

3 MR. BAXTER: Perhaps I could also  
4 ask that the witness be directed to paragraph 3,  
5 to the second-last sentence.

6 THE COMMISSIONER: Okay.

7 MS EDWARDH: I think that  
8 paragraph 3 refers to a conversation in English  
9 this time. And many of the conversations were in  
10 Arabic, or part of them were. So I'm concerned  
11 about this:

12 "When asked if he wished the  
13 Embassy to provide him with  
14 anything he might need, he  
15 answered that his needs were  
16 all taken care of by his  
17 Syrian hosts --"

18 Do you see that?

19 MR. MARTEL: Yes.

20 MS EDWARDH: And then in brackets,  
21 sir, you wrote the following words. This is your  
22 report.

23 "... (his answer was dictated  
24 to him in Arabic by the  
25 Syrians) "

1 MR. MARTEL: Yes.

2 MS EDWARDH: How would you know  
3 that what he said in English was the same as what  
4 was dictated to him unless you understood the  
5 Arabic? Or was that translated? Is that the  
6 suggestion?

7 MR. MARTEL: No, it wasn't  
8 translated. The Syrians told him something in  
9 Arabic and he repeated it in English. So he was  
10 the one doing the translating. He told me what he  
11 wanted, in fact. When he was forced to tell me  
12 something, it was obvious to me that he was being  
13 told, "Say this, say that", and he'd say it in  
14 English.

15 When he was told to tell me  
16 things, of course I took them as such, but it was  
17 incomprehensible, most of the time I couldn't  
18 believe what he was telling me, or I doubted what  
19 he was telling me, because he was forced to say  
20 some things in English.

21 MS EDWARDH: So did you draw the  
22 conclusion that he was parroting what was said to  
23 him because of the interjection in Arabic and then  
24 the prompt answer by Mr. Arar? You couldn't  
25 understand it yourself.

1                   MR. MARTEL: I didn't understand  
2 what the Syrians told him, but he told me in  
3 English. But I knew that what he was telling me  
4 was on the Syrians' instructions.

5                   MS EDWARDH: And while you could  
6 determine that he was being prompted, I take it  
7 you could not necessarily determine the exact  
8 words of the prompt?

9                   MR. MARTEL: No, but he was the  
10 one who was talking. So I imagine that with the  
11 interpreter present, if he had been told in Arabic  
12 to tell me something, the interpreter would have  
13 known that he wasn't saying the same thing. So he  
14 was repeating what the Syrians wanted him to tell  
15 me.

16                   MS. EDWARDH: And the interpreter,  
17 in effect, is the guardian or the assurer that he  
18 delivers the right message, in accordance with his  
19 instructions in Arabic?

20                   MR. MARTEL: No. He was the  
21 interpreter who accompanied me and translated from  
22 Arabic to English. He didn't belong to the same  
23 group; he came from somewhere else. I don't know  
24 where he was from, but he always accompanied me.

25                   MS. EDWARDH: But if he determined

1           that Mr. Arar was not following instructions, you  
2           would have expected him to say something?

3                         MR. MARTEL: Well, he could have  
4           said -- either to start over or "that's not what  
5           they said" -- "that's not what they said" or  
6           "that's not what they want you to say", and maybe  
7           Maher would have said his sentence over again.

8                         MS. EDWARDH: All right. I just  
9           wanted to clarify the perception I had that this  
10          indicated you spoke better Arabic than in fact you  
11          do?

12                        MR. MARTEL: No. Sorry.

13                        MS. EDWARDH: I just wanted to  
14          simply clarify the impression.

15                        I want to go to the August 14th  
16          visit. I recall that Mr. Cavalluzzo took you to  
17          the Syrian Human Rights Committee report, and I  
18          don't want to go there.

19                        I want to go to a letter, Tab  
20          573.11.

21          --- Pause

22                        MS. EDWARDH: Can you find that  
23          reference, Mr. Martel?

24                        MR. MARTEL: Yes, I have the  
25          chronology.

1 MS. EDWARDH: No, I'm not asking  
2 about the chronology. I'm asking about the letter  
3 written to Mr. Arar's wife, found under the  
4 coloured Tab 11, after 573.

5 MR. MARTEL: Yes, I have it.

6 MS. EDWARDH: This letter is  
7 written on July 29th, 2003?

8 MR. MARTEL: That's right.

9 MS. EDWARDH: And in the third  
10 paragraph, it includes an express reference to  
11 torture in two different time periods. Is that  
12 correct?

13 Torture at the beginning stages,  
14 and there is a reference to the present abuse he  
15 is receiving. Do you see that?

16 MR. MARTEL: Yes.

17 MS. EDWARDH: And in particular it  
18 says:

19 At present he receives  
20 torture and abuse from time  
21 to time as a daily routine of  
22 the Syrian prison practices  
23 against political detainees.

24 Do you see that?

25 MR. MARTEL: Yes, I see it.

1 MS. EDWARDH: Did you get a copy  
2 of that letter?

3 MR. MARTEL: Yes. Yes, I remember  
4 having seen that letter, yes.

5 MS. EDWARDH: Can you agree with  
6 me, sir, that it, as a letter, is more specific in  
7 its allegations than the general SIRC report that  
8 you looked at yesterday, which is at Tab 478?

9 MR. MARTEL: Yes, it's more  
10 specific, of course.

11 MS. EDWARDH: The emphasis, and  
12 what I want to pursue with you right now, is that  
13 when this letter became public, and it did on or  
14 about this date -- actually, it was August 6th  
15 that it became public -- it was this very, very  
16 real concern that caused you and the Ambassador to  
17 press for access. And the concern in question was  
18 that there was present torture being carried out  
19 on Maher Arar -- not in the past, not five months  
20 ago, but that he was presently the victim of  
21 torture.

22 And that was a real concern to  
23 you; right?

24 MR. MARTEL: Yes, of course.

25 MS. EDWARDH: That was a real



1 concern to the Ambassador?

2 MR. MARTEL: Also, yes.

3 MS. EDWARDH: What I'm just trying  
4 to establish is when you pressed for access to Mr.  
5 Arar, in your mind was the very clear question:  
6 Is he presently being mistreated?

7 MR. MARTEL: Well, the Ambassador  
8 requested access, of course, as for all visits. I  
9 believe that at the time, we hadn't seen him for  
10 quite a while, so that was always a concern. The  
11 Ambassador took steps so that I could gain access  
12 again, and, of course, I kept those elements in  
13 mind. They were very disconcerting.

14 MS. EDWARDH: And just so we can  
15 be very clear, the element that was at the  
16 forefront of your concern when you walked into  
17 Syrian Military Intelligence was the question: Is  
18 Mr. Arar presently being tortured?

19 MR. MARTEL: That's what I was  
20 thinking, and I think that at the time, I asked  
21 Maher a question.

22 MS. EDWARDH: That is all my  
23 question is.

24 MR. MARTEL: Yes, of course.

25 MS. EDWARDH: I then want to take

1           that state of mind, sir, and go to your notes,  
2           which are found in Tab 508.

3                                Would you please provide  
4           Mr. Martel with his notes?

5                                Do you have them, sir?

6                                THE COMMISSIONER: He has the  
7           right book, yes.

8                                MS. EDWARDH: And I want to ask  
9           this question before we turn to the contents of  
10          the notes.

11                               You are sitting in a room with a  
12          number of Syrian officials and Mr. Arar; correct?

13                               MR. MARTEL: Correct.

14                               MS. EDWARDH: Mr. Arar speaks to  
15          you and you speak to him. Are you making these  
16          notes as you speak and as he speaks, or are you  
17          making these notes after the conclusion of the  
18          session?

19                               MR. MARTEL: These notes were  
20          taken while I was sitting there, except for "New  
21          York Times article" at the top. I remember having  
22          written that before the meeting because I wanted  
23          to remember it. But the rest of the notes were  
24          taken on the spot.

25                               MS. EDWARDH: You will agree with

1 me that one of the things you don't do is write  
2 down your questions, but that you write down the  
3 gist of what Mr. Arar says as best you can?

4 MR. MARTEL: Yes. Given the  
5 context, if I can take notes to refresh my memory  
6 for the report I'm to prepare, I write elements  
7 down, of course.

8 MS. EDWARDH: But because you are  
9 taking them as Mr. Arar speaks, you will agree  
10 with me that you basically cannot take it down  
11 verbatim but you take down the gist of what he  
12 says as best you can?

13 MR. MARTEL: Yes. Yes. I write  
14 part of a sentence, a word here, two words there,  
15 but of course, it wasn't always complete.

16 MS. EDWARDH: And when Mr. Arar  
17 came into that room -- and perhaps I can do it by  
18 working backwards.

19 In his chronology, in a part that  
20 I do not believe you dispute, he says that when he  
21 came into the room he had made the decision that  
22 he was going to speak about prison conditions and  
23 that he burst forth into that discussion in a way  
24 that he had never done in all the other consular  
25 visits.

1                   Do you agree with that  
2                   characterization of him bursting forth with this  
3                   information?

4                   MR. MARTEL:   Yes.   When he arrived  
5                   at the meeting, he seemed irritated, and I  
6                   couldn't immediately understand why -- maybe it  
7                   was because there hadn't been a visit for a very  
8                   long time -- and he immediately spoke in Arabic.  
9                   He spoke to the General, since he was there that  
10                  time.   Yes, that's right.

11                  MS. EDWARDH:   And when you say he  
12                  seemed irritated, I'm going to suggest that a  
13                  better word would be that he seemed agitated.

14                  MR. MARTEL:   Maybe agitated, but  
15                  certainly irritated.

16                  MS. EDWARDH:   Is it your evidence,  
17                  sir, that when Mr. Arar came in he spent the first  
18                  five minutes speaking quickly in Arabic to General  
19                  Khalil?

20                  MR. MARTEL:   Yes.   At first he  
21                  spoke in Arabic to the General, maybe not quite  
22                  five minutes, but for a good span of time, yes.

23                  MS. EDWARDH:   I'm sorry.   You said  
24                  I think yesterday four or five minutes.

25                  MR. MARTEL:   Yes, possibly.

1 MS. EDWARDH: I take it you  
2 couldn't understand that conversation?

3 MR. MARTEL: No, and no one was  
4 translating.

5 MS. EDWARDH: Was it obvious to  
6 you that he was extremely excited in his  
7 conversation with the General?

8 MR. MARTEL: He was -- he was  
9 irritated. He was talking to the General, and I  
10 couldn't understand the meaning of the  
11 conversation, but I knew that Maher Arar was  
12 irritated about something, and he was telling the  
13 General about it.

14 MS. EDWARDH: Did you understand  
15 any part of that conversation, or did it entirely  
16 escape you?

17 MR. MARTEL: It entirely escaped  
18 me, except when he spoke to me in English, in the  
19 middle of the conversation, to tell me the size of  
20 his cell and that he was sleeping on the ground.  
21 He said everything else in Arabic only.

22 MS. EDWARDH: So the only portion  
23 of the discussion that was in English, I take it  
24 you are saying he turned to you and then blurted  
25 out the size of his cell?

1 MR. MARTEL: That's right. He  
2 continued talking to the General after that.

3 MS. EDWARDH: In Arabic?

4 MR. MARTEL: In Arabic.

5 MS. EDWARDH: So their  
6 conversation, I take it, after he had blurted out  
7 "three by six by seven", you understood he was  
8 talking about his cell?

9 MR. MARTEL: Yes, of course; and I  
10 understood that it was, "My cell ---"

11 MS. EDWARDH: How did ---

12 MR. MARTEL: No, he said, "My cell  
13 is very small, it's only three by six by seven,  
14 and I'm sleeping on the ground". He said it in  
15 English, then he continued talking to the General  
16 in Arabic, so I let him finish his conversation  
17 with the General.

18 MS. EDWARDH: Can you describe  
19 whether his voice, the tone of his voice, was  
20 louder than it usually was?

21 MR. MARTEL: He was irritated and  
22 he let it show.

23 MS. EDWARDH: Now, that comment,  
24 "three by six by seven, sleeping on the ground",  
25 is in the middle of your note on the first page.

1           It is not at the beginning, or it doesn't stand  
2           alone, Mr. Martel. So I'm going to suggest to you  
3           that Mr. Arar didn't just break away from his  
4           conversation with the General but that you had  
5           asked him some questions that led to those  
6           answers? Yes?

7                           MR. MARTEL: Go ahead.

8                           MS. EDWARDH: No. You have  
9           implied that he was talking in Arabic, turned to  
10          you, made the statement, and went back to the  
11          General.

12                           And clearly these notes do not  
13          give rise to that implication. They give rise to  
14          the implication that the reference to the cell  
15          size is part of a general discussion that begins  
16          to be recorded at the top under "Prison  
17          Conditions" and ends with "mentally destroyed".  
18          That all seems a coherent description.

19                           MR. MARTEL: Well, what I remember  
20          from that conversation with the General, which was  
21          in Arabic, is that in the middle of the  
22          conversation, he turned to me and gave me that  
23          information in English, and I think that the  
24          authorities were listening to him, and I didn't  
25          understand what had happened. I know that

1 afterwards, Maher sat down, and we continued to  
2 talk, I don't remember now, in English, I imagine,  
3 because that's what I marked here, and that's when  
4 he told me that he had been destroyed mentally,  
5 etc. That's how I remember that incident.

6 MS. EDWARDH: All right. I'm  
7 going to suggest to you, like anyone else,  
8 Mr. Martel, that this event happened quite  
9 quickly. This whole conversation from Arabic to  
10 English would not have taken more than maybe 10,  
11 12 minutes, and that your recollection is not  
12 consistent with your note, because if you start to  
13 make notes at the top of the page, you clearly got  
14 information and asked something about prison  
15 conditions.

16 MR. MARTEL: Yes, that's possible.  
17 My notes are a blank page like this, and there are  
18 three or four of them. I might very well have  
19 started writing in the middle and looked for space  
20 and gone to the top afterwards. They're  
21 handwritten notes taken in very difficult  
22 circumstances. I had it on my knees, a sheet of  
23 paper, and I had to write. So it doesn't mean  
24 that the chronology on this page is correct  
25 either, since I wrote "New York Times article"



1 outside and "the General" at the bottom  
2 afterwards. So it isn't necessarily -- it doesn't  
3 necessarily mean that.

4 MS. EDWARDH: I see. I understand  
5 it doesn't mean it, necessarily. Equally, it does  
6 not mean that this was not the chronological order  
7 of the conversation. It could have been; correct?

8 MR. MARTEL: I remember that in -  
9 especially in the three, six, seven, he  
10 interrupted himself while he was talking to the  
11 General. He turned to me suddenly. He said, "But  
12 my cell is very small, it's only three by six by  
13 seven, and I'm sleeping on the floor". And he  
14 continued to talk to the General after, in Arabic.  
15 That's how that episode happened.

16 MS. EDWARDH: And he said "I'm  
17 mentally destroyed".

18 MR. MARTEL: He said that.

19 MS. EDWARDH: Your note says:  
20 Prison conditions. I will  
21 tell you the truth. I'm  
22 asking Syria to release me or  
23 to see a judge. What Syrian  
24 law or which Syrian law have  
25 I broken?

1                   And then, in accordance with the  
2 question that you were there to ask, it says,  
3 "Present condition". Not past condition, present  
4 condition:

5                   I have not been paralysed,  
6                   not beaten, not tortured.

7                   That was the question you asked  
8 because that is what you wanted to know,  
9 Mr. Martel. You wanted to know if the Syrian  
10 Human Rights letter to Monia was correct and that  
11 Mr. Arar was currently the subject of torture.  
12 That is why you were there.

13                   MR. MARTEL: Yes. That was  
14 already known to the public; obviously. It had  
15 been published, and the Syrians certainly already  
16 had a copy. And Maher told me that he hadn't been  
17 paralysed, beaten or tortured, but I think that he  
18 was already being prompted ---

19                   MS. EDWARDH: And you ask him --  
20 I'm sorry, Mr. Martel. I didn't mean to  
21 interrupt.

22                   MR. MARTEL: No. I think he was  
23 prompted to say that. It doesn't mean that he was  
24 saying it freely. Because I told him that there  
25 was some very negative information about him being

1           circulated in the press. I didn't say in  
2           humanitarian organizations; I said, "There is a  
3           lot of very negative press", and I wanted the  
4           Syrians to understand that, and they were ready  
5           for it. It was obvious that they were ready to  
6           respond to it.

7                           MS. EDWARDH: In fact, isn't what  
8           you said to him that there has been a statement in  
9           the media that you are presently being tortured,  
10          and that is what you asked him in front of the  
11          Syrians, because you could get away with that one  
12          way of saying it, "The media has reported ---"

13                           MR. MARTEL: The media ---

14                           MS. EDWARDH: "--- has reported  
15          that you are presently being tortured". And you  
16          said, "Is that true, Mr. Arar?"

17                           MR. MARTEL: I may not have said  
18          "tortured", I may have used another word, but I  
19          said, "There is some very negative press about  
20          your condition", and then he's the one who came up  
21          with those words; I think he was prompted by the  
22          Syrians to say that to me. It didn't come from  
23          him.

24                           MS. EDWARDH: No, I don't think  
25          so. Let's just take away the word "torture".

1                   The one thing you would have said  
2                   that day was, "Mr. Arar, there are reports in the  
3                   media that you have been beaten recently, that you  
4                   are presently being beaten. Is that true?"

5                   You would have said that?

6                   MR. MARTEL: Something like that,  
7                   that there were negative reports in the press  
8                   about him. Yes.

9                   MS. EDWARDH: About your current  
10                  position. That's my point, Mr. Martel.

11                  MR. MARTEL: Yes.

12                  MS. EDWARDH: You had just heard  
13                  that on July 29th he was presently being beaten on  
14                  a routine basis.

15                  MR. MARTEL: Yes.

16                  MS. EDWARDH: And you went in and  
17                  asked him that question, "The media is reporting  
18                  that you are being beaten now".

19                  MR. MARTEL: Mm-hmm.

20                  MS. EDWARDH: And he said "Not  
21                  now". He said, "Not now".

22                  What did he say to you? Let's  
23                  read it.

24                  MR. MARTEL: He said:

25                               Present condition.

1 I'm the one who wrote "Present  
2 condition".

3 He said:

4 I have not been paralysed,  
5 not beaten, not tortured.

6 And I asked him to explain to me  
7 what he meant.

8 MS. EDWARDH: No. Keep reading.  
9 Keep reading, Mr. Martel.

10 MR. MARTEL: After that, I asked  
11 him a question. I said, "Did they make your life  
12 difficult? Did they give you a great deal of  
13 trouble? Did they cause problems for you?" and so  
14 on. So it's the question that isn't there,  
15 obviously. Then he said to me, "At the  
16 beginning. At the beginning, but very little".  
17 That was his answer to my question.

18 So, you can't connect the two,  
19 because there's a missing sentence -- the question  
20 is missing. That's the question I asked him. I  
21 couldn't say to him directly, for instance, "Did  
22 they torture you?", but I said, for example, "How  
23 did they treat you? Did they hurt you? Are they  
24 treating you well? Are they making things  
25 difficult for you?" and he answered, "At the

1 beginning, but very little". That's what he  
2 replied.

3 MS. EDWARDH: I'm going to suggest  
4 to you, Mr. Martel, that it is very clear that you  
5 too made a distinction between the present and the  
6 beginning, just as the Syrian Human Rights  
7 Committee report did, and that he told you, "Not  
8 now, but, yes, in the beginning"?

9 MR. MARTEL: Yes, but he didn't  
10 tell me to what degree. I said, "Did they make  
11 your life difficult?" And he answered, "Yes, at  
12 the beginning, but very little".

13 MS. EDWARDH: I'm not interested  
14 at what level. You knew from what he said, sir,  
15 that he was conveying to you the information that  
16 he had been abused at the beginning but not now.  
17 That's what you understood.

18 MR. MARTEL: I understood that at  
19 the beginning, yes, the Syrians had made his life  
20 difficult.

21 MS. EDWARDH: And those  
22 difficulties included that he was being beaten?

23 MR. MARTEL: That, I don't know.

24 MS. EDWARDH: And I take it that  
25 if Mr. Arar said that to you, sir, he might well

1           have but you didn't write it down and you just  
2           don't remember it today?

3                         MR. MARTEL:  No.  If he had said  
4           that he had been beaten, I would have written it  
5           down and I would have reported it.  I have nothing  
6           to gain by failing to report a fact like that.  If  
7           my client had said, "Look, I'm being beaten", what  
8           am I going to do?  Am I going to hide that fact?  
9           I have to report that fact to the Canadian  
10          authorities, who will then -- It isn't my problem  
11          after that.  If I report a fact like that, if my  
12          client is being tortured ---

13                        MS. EDWARDH:  You see, the problem  
14          with your position -- I'm sorry.

15                        MR. MARTEL:  No, not at all.  
16          Look, if I report a fact like that, I'm  
17          transferring the decision to headquarters, to Gar  
18          Pardy, to the Minister and the others, not to  
19          myself.  So, I have nothing to gain in hiding  
20          those facts.  If those are the facts, those are  
21          the facts, and I have to convey them, and someone  
22          at headquarters has to act accordingly and make a  
23          decision.

24                        MS. EDWARDH:  The difficulty,  
25          Mr. Martel, is very simple.  He did tell you the

1 cell size, and you never reported that.

2 MR. MARTEL: Yes, I also asked him  
3 about his cell.

4 MS. EDWARDH: Because you forgot.

5 MR. MARTEL: No. I asked him  
6 about his cell and I asked him -- He said, "Yes,  
7 my cell is very small and I'm sleeping on the  
8 ground". And I asked him how the others were, and  
9 he said, "As far as I know, we are all the same".

10 At that point, I didn't have all  
11 the elements he told me afterwards. I didn't know  
12 that his cell was underground. The cell was  
13 small, yes. We all agree on that. I understood  
14 that his cell was very small, but nothing  
15 indicated at that point that his cell was so small  
16 and was underground, and in the dark, with rats,  
17 cockroaches and cats and all that. If you add all  
18 that up, that's inhumane conditions, and I have to  
19 report that.

20 MS. EDWARDH: Isn't that  
21 Mr. Pardy's problem, Mr. Martel? Isn't it  
22 Mr. Pardy's problem to put together -- if you  
23 can't put it together what three by six by seven  
24 means, you can't stand here, sir, in my respectful  
25 submission, and say you knew it was small but not



1           that small.

2                           MR. MARTEL:   That's not what I'm  
3           saying.   I'm saying that the cell was very small  
4           and he confirmed to me that all the inmates were  
5           in the same situation, and according to my  
6           guidelines, I'm being told that we must not ask  
7           for special treatment, and after he confirmed that  
8           everyone was in the same situation, at that point,  
9           I didn't make the connection with inhumane  
10          treatment. I didn't have all the details and  
11          that's why it escaped me. Yesterday, I said --  
12          yesterday I said that if I had to do it over  
13          again, I would put those numbers in.

14                          MS. EDWARDH:   You knew Mr. Arar  
15          wasn't in general population because the Syrian  
16          gaolers told you that he was separate from all  
17          other inmates; right? They had told you that.

18                          MR. MARTEL:   Yes. Yes, they told  
19          me he was separated from the others.

20                          MS. EDWARDH:   How would Mr. Arar  
21          know about the conditions of confinement of other  
22          inmates?

23                          MR. MARTEL:   I don't know. He  
24          said, "As far as I know, we are all the same".  
25          That's what he said to me.

1 MS. EDWARDH: Isn't that what you  
2 thought? Isn't what you thought is, "Listen, they  
3 are all sleeping on the floor"?

4 MR. MARTEL: That's what he said.  
5 He said, "As far as I know, we are all the  
6 same". He said it to me in English.

7 MS. EDWARDH: And, of course, you  
8 will agree with me that Mr. Arar could not, in any  
9 detail, have conveyed to you that his conditions  
10 of confinement were like everyone else in that  
11 institution because you knew that he didn't have  
12 access to anyone.

13 MR. MARTEL: I didn't know that he  
14 didn't have access to anyone. It was never  
15 mentioned anywhere before that he didn't have  
16 access to anyone.

17 MS. EDWARDH: Nonsense. You were  
18 told by the Syrian authorities that Mr. Arar was  
19 lucky he was in a separate cell and not mixing  
20 with other detainees. You were told that, were  
21 you not?

22 MR. MARTEL: Yes, but that didn't  
23 mean that he was -- that he didn't have a  
24 neighbour beside him or two cells away.

25 Nor did it mean that he was

1 isolated and that there was no one where he was  
2 being detained, in a cell, and that he saw no one.

3 Nothing indicated that.

4 The Syrians -- in their minds,  
5 they tried to make me understand that he was --  
6 and I'm sure, when I place myself in their shoes,  
7 that that's what they were thinking.

8 MS. EDWARDH: All right. Now, in  
9 terms of your memory, sir, I take it you have  
10 agreed with Mr. Cavalluzzo that on October 7th,  
11 when you told the group of officials you were  
12 briefing, that you told them -- and we don't have  
13 to go back over this -- that Mr. Arar had told you  
14 in the first two weeks he had been beaten and then  
15 subsequently you wrote a number of memoranda;  
16 right?

17 In those memoranda you said  
18 Mr. Arar did not say he had been beaten.

19 MR. MARTEL: Yes. I explained  
20 that yesterday, too.

21 MS. EDWARDH: Because you forgot.

22 MR. MARTEL: I explained yesterday  
23 that Maher and I had taken the plane together and  
24 on board, for two days --

25 You have to remember, this was

1 Sunday morning. We spent the entire day. We went  
2 to the detention centre. He left with me. We  
3 took the plane that night. We left for Europe.  
4 We didn't sleep. We arrived in Ottawa on Monday  
5 night. Let's say at four or five o'clock in the  
6 morning for me. And at 10 o'clock, I had a  
7 meeting in the Department.

8 I had been travelling for two  
9 whole days, without sleeping. And it was the same  
10 for him.

11 And then I -- I was asked, without  
12 notes, because I didn't take any notes, none, on  
13 the entire trip. And then they said to me, and I  
14 didn't expect it, but they said, "Tell us what  
15 happened on the trip".

16 So I told them as best I could  
17 from memory after those two days of travel.

18 Now, as you're saying, I forgot  
19 afterwards. A month later, someone from the  
20 Political Section said to me, "Yes, but we want a  
21 report".

22 And I sent the report they asked  
23 for. And it had holes in it. I have to admit, it  
24 had holes in it.

25 But everyone who received that

1 report ---

2 MS. EDWARDH: Because you forgot.  
3 You forgot that Mr. Arar told you that he was  
4 beaten in the first two weeks. That is your  
5 evidence, isn't it, Mr. Martel?

6 MR. MARTEL: I forgot to include  
7 that fact in my final report, but I said it. I  
8 didn't hide it. I said it at the meeting. I said  
9 what he had said to me.

10 Except that a month later ---

11 MS. EDWARDH: I understand that.  
12 At the meeting you ---

13 THE COMMISSIONER: Let him finish  
14 the answer.

15 MS. EDWARDH: I'm sorry.

16 THE COMMISSIONER: And I do have  
17 the point, really. It is quite clear that he said  
18 several times that he did forget, that he left it  
19 out.

20 MS. EDWARDH: If you are content  
21 with what the Commissioner has said, your  
22 description of it, I'm going to suggest to you,  
23 sir, as well, that while you forgot this important  
24 point, as well when Mr. Arar told you that he was  
25 presently not being beaten or tortured, that he

1 was not paralysed, but that he had been earlier,  
2 that that is what that phrase means, that brief  
3 phrase that isn't completed. And, sir,  
4 unfortunately you have just forgot it again, the  
5 same kind of thing.

6 MR. MARTEL: No.

7 MS. EDWARDH: No.

8 MR. MARTEL: I'm sorry. I'm  
9 sorry, but that's not it.

10 He told me what he told me. "I  
11 was not paralysed and I wasn't beaten. I wasn't  
12 tortured".

13 And when I asked him afterwards,  
14 "Did they make your life difficult?" because he  
15 was -- he was irritated. He behaved in an  
16 irritated manner.

17 So I said, "Have they made your  
18 life difficult?" because I couldn't ask questions  
19 that were too direct. And he said, "Yes. At the  
20 beginning, but not very much. Not as much as  
21 that".

22 MS. EDWARDH: And what did you  
23 understand? If this is your recollection, what  
24 did you understand about the problems? What  
25 message was he giving you, Mr. Martel?

1 MR. MARTEL: Well, I think he was  
2 telling me that initially, at the beginning, when  
3 he told me that the interrogation was more  
4 intense, it had been more difficult for him.

5 Maybe they were depriving him of  
6 sleep. I don't know what they did to him. He  
7 couldn't give me those details. I didn't know.  
8 But ---

9 MS. EDWARDH: You don't remember  
10 what he said specifically, do you?

11 MR. MARTEL: No. He said, "At the  
12 beginning. At the beginning. At the beginning,  
13 but very little". That's what he said to me. I  
14 remember that that's what he said to me. He said  
15 it clearly. "At the beginning, but very little".  
16 That's what he said to me.

17 --- Pause

18 MS. EDWARDH: I want to ask you  
19 just a couple more questions and then I will sit  
20 down.

21 On the plane on your way back,  
22 when you stopped over from -- you flew from Syria  
23 to Jordan, and Jordan to Paris. Is that correct?

24 MR. MARTEL: Yes, that's right.

25 MS. EDWARDH: I would like you to

1 tell the Commissioner what Mr. Arar's response was  
2 when he was told to leave the plane in Jordan,  
3 because you had to disembark.

4 Is that correct?

5 MR. MARTEL: Yes. When we left  
6 Damascus, there was already an embargo on -- on  
7 the fact that he had been released.

8 So, we agreed with Ottawa that as  
9 of 2:00 a.m., our time, we could announce the  
10 news, even publicly.

11 But what we didn't realize was  
12 that at that time, Air France had changed its  
13 flights because of a lack of passengers and --

14 We were doing a reverse route,  
15 actually. We were leaving Damascus and going to  
16 Aman for a technical stopover and to take on  
17 passengers.

18 As soon as we had lifted off, the  
19 pilot welcomed us aboard and announced that we had  
20 a technical stopover in Aman. Naturally, Maher  
21 panicked at that point because he had already come  
22 from Jordan.

23 So I told him, "Don't worry. You  
24 mustn't worry, because it's a technical stopover.  
25 We don't even have to get off the plane. We both



1           have our luggage on board. And you're with me.  
2           You have nothing to worry about".

3                        So he calmed down and -- but when  
4           we got to Aman, after we landed, there was another  
5           problem. A passenger hadn't shown up, so there  
6           was one suitcase too many. So the crew asked us  
7           to disembark.

8                        Then I said, "We don't have to  
9           disembark. We don't have any luggage". Because  
10          they wanted us to identify all the luggage in the  
11          baggage hold.

12                      I said, "We don't have to because  
13          we don't have any luggage". They said that we had  
14          to go anyway.

15                      So I said to Maher -- we were  
16          sitting in the front of the plane. I said, "Okay,  
17          let's go. We'll make this very quick and exit at  
18          the front. We don't need to stop and look at the  
19          luggage. We'll get back on in the back and come  
20          back to our seats".

21                      So that's what we did. We  
22          disembarked quickly. We walked around the plane.  
23          We re-embarked and sat down in our seats. So when  
24          the officers of -- the Jordanian officers came on  
25          board and -- I told Maher, "Don't look. Don't

1 look. Look outside. Don't pay any attention to  
2 them. In any case, you're with me, you have  
3 nothing to worry about".

4 Does that answer your question?

5 MS. EDWARDH: Yes. The answer I  
6 think conveys that Mr. Arar was quite panicked and  
7 fearful when he landed in Jordan and was asked to  
8 leave the aircraft.

9 MR. MARTEL: Yes, of course. I  
10 had to reassure him.

11 MS. EDWARDH: And it was clear to  
12 you that one of the things he was terribly afraid  
13 of was that he would be taken into custody again  
14 because he had come through Jordan.

15 MR. MARTEL: Exactly.

16 But I told him, "It's not going to  
17 happen. You're with me, so don't worry".

18 MS. EDWARDH: I understand your  
19 attempt at -- I'm trying to capture for the  
20 Commissioner how frightened he was that the  
21 Jordanians had handed him over once, and that he  
22 might well be detained and taken from your  
23 presence and put wherever he might be put.

24 I mean, that was obvious that he  
25 was frightened of that?

1 MR. MARTEL: He was very  
2 uncomfortable.

3 MS. EDWARDH: And did he convey to  
4 you at all, Mr. Martel, why he was afraid, why he  
5 didn't want to talk about his detention?

6 I know you did speak over the  
7 course of the two days. He gave you some  
8 information. But when you got off the plane, it  
9 had been clear to you that he really didn't want  
10 to fully discuss it at that time.

11 Isn't that fair?

12 MR. MARTEL: No, he -- yes, that's  
13 right.

14 He didn't want -- he didn't want  
15 to talk about that episode.

16 MS. EDWARDH: The details?

17 MR. MARTEL: Yes. He gave me a  
18 few details here and there. He wanted -- when he  
19 wanted to talk to me, he did.

20 But most of the time, he would say  
21 to me -- or if I asked him a question, for  
22 instance, he would say, "I'm not ready. I'm not  
23 ready to talk".

24 So I had to respect my client's  
25 wishes. I couldn't push him.

1 I wasn't conducting an  
2 examination, so if he didn't want to give me  
3 details about his detention, I couldn't insist.

4 Other clients have given me three  
5 full pages in telling me their stories. But Maher  
6 didn't want to. He had suffered a great deal  
7 emotionally, and it showed.

8 I had to respect that.

9 MS. EDWARDH: It was clear to you  
10 he wasn't ready to have a detailed conversation?

11 MR. MARTEL: No, he didn't want  
12 to. He didn't want to, and he was sometimes very  
13 up emotionally, and sometimes down.

14 So it was hard for him.

15 MS. EDWARDH: And one of the  
16 things you queried or asked about was what  
17 happened to him in the USA. Do you remember?

18 Do you remember trying to obtain  
19 some information about what had gone on in the  
20 United States?

21 MR. MARTEL: Maybe I was still  
22 trying to gather the dates and -- of his departure  
23 and all that. And I hadn't gotten all the details  
24 on -- on his transfer, his deportation. We might  
25 have talked about it.

1                   But over the two days, we talked  
2                   about all kinds of things. There were some things  
3                   he wanted to tell me, and others, not.

4                   So, I don't remember. His  
5                   detention in the United States, I don't remember.

6                   MS. EDWARDH: Well ---

7                   MR. MARTEL: Wait. I think that  
8                   -- I think he told me that the American  
9                   authorities had been quite harsh with him and that  
10                  he hadn't -- I don't know -- that he hadn't been  
11                  given enough to eat. Something of the sort.

12                  MS. EDWARDH: And do you recall  
13                  asking him, or do you recall him saying that he  
14                  didn't want to talk about the evidence that they  
15                  had put to him?

16                  He didn't mention to you about his  
17                  lease, did he? He didn't tell you that the  
18                  American authorities had a copy of some part of a  
19                  lease agreement that could only have come from  
20                  Canada? He didn't say that to you?

21                  MR. MARTEL: I don't remember.  
22                  No. He said no.

23                  MS. EDWARDH: Okay. And would it  
24                  surprise you if I were to suggest to you that he  
25                  was deleting that kind of reference in his

1 conversation because he was afraid that once you  
2 learned that, you might turn him in too, send him  
3 back?

4 MR. MARTEL: I don't know.  
5 Possibly.

6 Possibly. He was quite open with  
7 me. He gave me some information ---

8 MS. EDWARDH: About some things.

9 MR. MARTEL: Yes, about -- mostly  
10 about the major difficulties, the big ordeal he  
11 had been put through and all that. He talked  
12 about that at length.

13 I believe there was, all in all -  
14 a climate of trust between us. And my role wasn't  
15 to bring him back to Canada and deliver him to the  
16 authorities, it was to bring him back to his  
17 family.

18 MS. EDWARDH: I understand. I  
19 know that was your role. I'm talking about  
20 whether you appreciated how fearful he was, even  
21 fearful of you?

22 MR. MARTEL: Maybe, but he seemed  
23 very, very comfortable with me. When he left the  
24 prison, we went outside together. We went to eat.  
25 I brought him to my home. And ---

1                   I don't think he was really afraid  
2 of me. I explained my role to him. He knew -- he  
3 already knew.

4                   I was the one who had always  
5 transmitted messages to and from his family, as  
6 well as Monia's [...] and photos of his children.

7                   So he -- we had established a  
8 fairly close relationship with -- each other.

9                   And when we travelled together, I  
10 was worried too, even in Paris, so I asked for  
11 assistance from our Embassy while we were in  
12 transit.

13                   MS. EDWARDH: Mr. Martel, so as  
14 not to leave anyone with the wrong impression,  
15 since you deposited Mr. Arar on Canadian soil, it  
16 is my understanding you have had a single  
17 conversation with him, and that conversation  
18 occurred when you were here to testify?

19                   MR. MARTEL: Yes. Exactly. I  
20 spoke to him in June. The last time I was here.

21                   MS. EDWARDH: Yes. You have not  
22 had any other conversations?

23                   MR. MARTEL: No. We've said hello  
24 and that's all.

25                   MS. EDWARDH: And that

1 conversation that you had took place in the  
2 cafeteria here when you wanted to talk to him  
3 about the lawsuit?

4 MR. MARTEL: No, I was -- I was  
5 with my counsel at the time, and someone said,  
6 "Maher's over there".

7 I asked if I could go and speak to  
8 him and they said I could.

9 So I -- I went to see Maher. We  
10 chitchatted at first. He said, "Oh! I didn't  
11 recognize you right away. You've changed", and  
12 all that.

13 And after that conversation, the  
14 issue of the photo came up. I said, "The  
15 Commission attached a lot of importance to that  
16 photo I took of you".

17 And I said, "You know, I'm very  
18 worried about that photo". He said, "It's  
19 nothing".

20 So he didn't -- and afterwards, I  
21 also said, "I don't know -- I don't know why ---"

22 MS. EDWARDH: You were concerned  
23 with the picture because it had never been a  
24 document that you intended to publicly put out,  
25 but yet it was publicly widely displayed; correct?



1                   MR. MARTEL:  Actually, I gave it  
2                   to the Commission when the Commission asked me for  
3                   it, but before that it hadn't -- that photo had  
4                   never been published anywhere.

5                   MR. CAVALLUZZO:  I would like to  
6                   object to that in terms of I think the witness is  
7                   confused as to the Commission asked for it and he  
8                   gave it to the Commission.

9                   MS. EDWARDH:  Well, we will let  
10                  that factual question remain with you,  
11                  Mr. Commissioner.

12                  But I just want to put it to you  
13                  that you did ask him about the lawsuit and you  
14                  made it clear to Mr. Arar in that conversation,  
15                  which was also present in front of one of our  
16                  colleagues, you made it clear to him that you  
17                  didn't call him a liar personally.

18                  Do you recall saying that to him?

19                  MR. MARTEL:  I remember ---

20                  MS. EDWARDH:  There is a  
21                  distinction that you made.  "Something may be a lie  
22                  and a person may not be a liar".

23                  Do you recall saying that to him?

24                  MR. MARTEL:  I remember a  
25                  conversation we had in June.  I -- I told him how

1 surprised I was at having been named in the  
2 lawsuit.

3 And I don't think there were any  
4 other details.

5 After that, he explained why I was  
6 named. And I understood. And I closed that  
7 chapter.

8 For me, that was all. I had  
9 understood the judicial or legal process. That's  
10 all. Nothing more.

11 MS. EDWARDH: One of the things  
12 you said, sir, you said to your lawyer that, "It's  
13 a lie". But you wanted Mr. Arar to know that you  
14 weren't saying that he was a liar.

15 I want to put it to you that that  
16 is what you said in front of him and that is what  
17 you said in front of a woman who was standing  
18 directly beside him when you had this conversation  
19 in the cafeteria?

20 MR. MARTEL: Maybe I said that  
21 according to some reports, I was being accused of  
22 saying he was lying, but I was just referring to  
23 the lawsuit.

24 In the lawsuit, I said that it was  
25 a big lie, that I never -- and he knows this -- I

1 never, never would have missed an opportunity to  
2 visit him.

3 MS. EDWARDH: You also know that  
4 you have in your own mind never, ever, said that  
5 Mr. Arar lied to you about what happened to him in  
6 Syria?

7 MR. MARTEL: No. When he lied, he  
8 lied under pressure. It wasn't deliberate.

9 Apart from that, he always told me  
10 the truth.

11 MS. EDWARDH: Thank you.

12 THE COMMISSIONER: Thank you,  
13 Ms. Edwardh.

14 MS. EDWARDH: I'm sorry,  
15 Mr. Commissioner, I have two very brief questions.

16 THE COMMISSIONER: Oh, I'm sorry.

17 MS. EDWARDH: There is probably  
18 going to be an objection to these questions so  
19 everybody wake up.

20 --- Laughter / Rires

21 THE COMMISSIONER: Don't answer  
22 the question.

23 MS. EDWARDH: When Mr. Arar was  
24 leaving, finally, one of the persons in attendance  
25 was a man that we will call George. Do you

1 remember that man?

2 MR. MARTEL: Yes, of course.

3 MS. EDWARDH: Can you describe to  
4 the Commissioner, please, George's demeanour on  
5 the very last occasion when Mr. Arar left his  
6 control?

7 MR. MARTEL: Well, when -- when we  
8 parted company in what was called the yard,  
9 because there was a yard, sort of, a big yard.  
10 The Embassy car was there.

11 After we had all had coffee  
12 together -- Maher was free, we were leaving and  
13 everyone was very happy -- officials escorted us  
14 outside and before we left, everyone shook hands.

15 As we were leaving, Maher said  
16 something to me that to this day, I still don't  
17 understand. Maybe he'll be able to explain it to  
18 me afterwards. Later. Much later. He said that  
19 as he was leaving, George cried.

20 That's all I remember about George  
21 at that moment.

22 MS. EDWARDH: Do you remember  
23 seeing George cry?

24 MR. MARTEL: No, I didn't -- I  
25 didn't see him cry, but I saw George. George was

1           there.

2                               But if Maher told me that George  
3           was crying as we left, he was crying.

4                               MS. EDWARDH: Did you, Mr. Martel,  
5           have, beyond a formal relationship with the  
6           persons you have described today, a personal  
7           relationship with any of the persons inside  
8           Military Intelligence or with the interpreter that  
9           was not just a purely professional relationship?

10                              MR. MARTEL: No, I'm -- I'm not  
11           allowed to have a relationship with them. They're  
12           not allowed to either.

13                              I can't even have lunch with them,  
14           with one of the members. I'm given a different  
15           contact for each case. It isn't always the same  
16           person.

17                              Up until the time I left, I had  
18           someone else ---

19                              MS. EDWARDH: You have answered  
20           the question.

21                              MR. MARTEL: Thank you.

22                              MS. EDWARDH: The next question is  
23           we have heard that Ambassador Franco Pillarella  
24           had a remarkable connection, better than anyone  
25           else's, to Syrian Military Intelligence, a very

1 good connection, the best that Canada could have.

2 Did Franco Pillarella have a  
3 personal relationship with anyone in Syrian  
4 Military Intelligence?

5 MR. MARTEL: Not as far as I know.  
6 Except with the person you just mentioned. I  
7 think he met that person two or four times ---

8 MS. EDWARDH: George?

9 MR. MARTEL: No; the General.

10 MS. EDWARDH: General Khalil?

11 MR. MARTEL: No. The Ambassador  
12 doesn't know George.

13 MS. EDWARDH: And can you just  
14 assist us as to ---

15 MR. DECARY: So do I.

16 MS. EDWARDH: Can you just assist  
17 us, sir, as to whether the Ambassador's  
18 relationship with General Khalil had both a  
19 professional and a personal component to it?

20 MR. MARTEL: I don't think there  
21 was a personal relationship. I don't think so.

22 You should address this question  
23 to the Ambassador. He doesn't speak to me much  
24 about his relations; I don't know whom he invites  
25 to his home. I see them when I'm there, but those

1 people don't usually accept invitations, so they  
2 don't go anywhere.

3 So it would surprise me if he had,  
4 say, a truly personal relationship, but you should  
5 ask him.

6 MS. EDWARDH: Fine. I appreciate  
7 that. He just happens not to be here. You are,  
8 Mr. Martel.

9 Last question in the same area:  
10 Do you know whether any of the General's children  
11 or grandchildren or their spouses have travelled  
12 to Canada while Franco Pillarella was the  
13 Ambassador, for medical care or for delivery of  
14 children?

15 MR. MARTEL: That's an Immigration  
16 matter; it's not my area at all.

17 MS. EDWARDH: Well, if in fact  
18 General Khalil or his grandchildren had applied  
19 for a visa to Canada, it is a question that would  
20 be addressed by the Embassy in Damascus.

21 MR. MARTEL: Yes, but not by the  
22 Ambassador.

23 MS. EDWARDH: But not by you?

24 MR. MARTEL: No, not at all. It's  
25 completely forbidden. We can't even intervene, we

1 can't even make suggestions; quite the contrary.  
2 It's my work, so maybe I can't talk about it in  
3 public, but it's the opposite.

4 MS. EDWARDH: Well, no, it's fine  
5 to say that there are rules that prohibit you from  
6 intervening. Are you suggesting that the  
7 Ambassador cannot facilitate the request of a  
8 foreign national to obtain a visa ---

9 MR. MARTEL: He's forbidden from  
10 doing that. He can't.

11 MS. EDWARDH: And to your -- well,  
12 then I will leave that.

13 I gave to your counsel yesterday  
14 an article, asking that you take a moment to look  
15 at it.

16 It is an article,  
17 Mr. Commissioner, dated October 10th, 2003. It is  
18 an English article written by Mr. Jeff Sallot.

19 I gave this to you because I  
20 wanted to ask a question. This of course is  
21 written -- and I would like it to be marked as the  
22 next exhibit, Mr. Commissioner.

23 THE COMMISSIONER: What number are  
24 we at?

25 MR. CAVALLUZZO: Two hundred and



1           forty-seven.

2                                   EXHIBIT NO. P-247: Article  
3                                   written by Jeff Sallot

4                   MS. EDWARDH: Thank you,  
5           Mr. Cavalluzzo.

6                                   It is written just a few days  
7           after your meeting with the colleagues that you  
8           briefed at the Department of Foreign Affairs.

9                                   Is that correct?

10                   MR. MARTEL: Yes; in early  
11           October, yes.

12                   MS. EDWARDH: Yes. The meeting  
13           was October 7th, as I understand it, and this is  
14           written October 10th. In the top left there is a  
15           date where this was published.

16                   MR. MARTEL: Yes, I see it.

17                   MS. EDWARDH: What is quoted in  
18           this document is that an official -- or it says:

19                                   The officials say they have  
20                                   not yet learned any details  
21                                   from Mr. Arar about his  
22                                   arrest by U.S. authorities 13  
23                                   months ago and treatment  
24                                   after his deportation to the  
25                                   Middle East.

1                   It goes on:  
2                   All they know from  
3                   preliminary conversations  
4                   with him is that he was  
5                   slapped around by Jordanians  
6                   during the 8 to 10 hours he  
7                   was in that country and held  
8                   in very bad conditions in  
9                   Syria.

10                  Were you the source for that  
11                  story, Mr. Martel?

12                  MR. MARTEL: No. I had no contact  
13                  with -- was that a reporter, whom I met today?

14                  MS. EDWARDH: No. My question is  
15                  simply whether you gave an interview that led to  
16                  this description ---

17                  MR. MARTEL: No, I'm not  
18                  authorized to give interviews to the press. So my  
19                  answer is no, I'm not the source.

20                  MS. EDWARDH: Do you recall seeing  
21                  this story?

22                  MR. MARTEL: No, I don't remember.

23                  MS. EDWARDH: And we can agree,  
24                  sir, that if what is released to the public by an  
25                  official on October the 10th, 2003, is that simply

1           that "Mr. Arar was slapped around by Jordanians  
2           and/or held in just bad conditions in Syria", that  
3           is an extremely inaccurate portrayal of all the  
4           information you had at hand.

5                       MR. MARTEL: I don't know who the  
6           source was for that, but it wasn't me. It was  
7           certainly ---

8                       MS. EDWARDH: Fair enough. I  
9           appreciate it wasn't you, sir. But whoever said  
10          these things certainly was not putting out the  
11          full picture. That's all I'm saying.

12                      Do you agree?

13                      MR. MARTEL: Yes, of course. I  
14          don't know who was the source and it doesn't  
15          reflect the whole story.

16                      MS. EDWARDH: Fair enough.

17                      Could I have just two minutes?

18                      THE COMMISSIONER: Sure. Go  
19          ahead.

20          --- Pause

21                      MS. EDWARDH: Mr. Commissioner,  
22          there are a couple of documents that I should file  
23          that I don't believe Mr. Cavalluzzo filed.

24                      We referred to some litigation or  
25          lawsuits, and I believe there are copies of the

1 Federal Court lawsuit that are sitting on a pile  
2 on Mr. Cavalluzzo's desk, and I think we should  
3 file them as an exhibit.

4 I have copies of the Provincial  
5 Court lawsuit. You have them there?

6 I would like them to be filed as  
7 an exhibit. And then I have a couple of other  
8 documents that I would like to do as well.

9 THE COMMISSIONER: Is this the  
10 Provincial one?

11 MS. EDWARDH: This is the Superior  
12 Court.

13 THE COMMISSIONER: Two hundred and  
14 forty-eight.

15 EXHIBIT NO. P-248: Superior  
16 Court lawsuit

17 MS. EDWARDH: And could I ask that  
18 the Federal Court lawsuit be filed as Exhibit 249.

19 THE COMMISSIONER: Two hundred and  
20 forty-nine will be the Federal lawsuit.

21 EXHIBIT NO. P-249: Federal  
22 Court lawsuit

23 MS. EDWARDH: There was some  
24 suggestion that there may be some other public  
25 documents. One of them, of course, is the lawsuit

1 filed in respect of Syria, and I think we can do  
2 this by way of agreement, but I think it is an  
3 important fact, Mr. Commissioner.

4 Is that the Syrian lawsuit?

5 THE COMMISSIONER: No. This is  
6 the Federal Court.

7 MS. EDWARDH: Oh, the Federal  
8 Court. This is the Federal Court.

9 With respect to the Syrian  
10 lawsuit, it was indeed filed prior to February,  
11 but I think Ms. McIsaac is in agreement with me  
12 that there is no mention of Mr. Martel in it.

13 It is a lawsuit against the  
14 Government of Syria.

15 THE COMMISSIONER: Do we need to  
16 file it then?

17 MS. EDWARDH: I don't think so.  
18 If Ms. McIsaac is content with the assertion of  
19 that fact, then I don't think we do.

20 THE COMMISSIONER: Then we don't  
21 need to, yes.

22 MS. EDWARDH: But if there is any  
23 dispute about that ---

24 THE COMMISSIONER: He is not a  
25 defendant.

1 MS. EDWARDH: He is not a  
2 defendant and none of the facts that are described  
3 in that lawsuit bear upon what the witness has  
4 said today.

5 MS. McISAAC: Why don't we file it  
6 because I have not read it.

7 THE COMMISSIONER: Two hundred and  
8 fifty will be the lawsuit against Syria.

9 EXHIBIT NO. P-250: Syrian  
10 lawsuit

11 --- Pause

12 MS. EDWARDH: Ms. McIsaac, we do  
13 not have the one handy. I thought we did.

14 Perhaps what we could do, could we  
15 tentatively mark it and we will produce it -- oh,  
16 you have got a copy? Thank you, Ms. McIsaac.

17 THE COMMISSIONER: Thank you,  
18 Ms. McIsaac. It will be 250.

19 MS. EDWARDH: And the other public  
20 document that I would like to file as a source of  
21 reference by way of exclusion, if nothing else.

22 Mr. Arar, on basis of an affidavit  
23 filed, applied for leave to intervene in the  
24 Basari litigation and an affidavit was filed in  
25 support of that litigation. There was some

1 suggestion earlier that this might be a source for  
2 the witness' recollection, and I'm going to ask  
3 that it be filed.

4 There is in it no reference at all  
5 to Mr. Martel.

6 THE COMMISSIONER: The only  
7 purpose you are filing the affidavit is not to  
8 prove the facts but just as a matter of exclusion,  
9 as you say.

10 MS. EDWARDH: Exclusion.

11 THE COMMISSIONER: If we can agree  
12 upon that, we don't need to file it.

13 Ms. McIsaac, are you familiar with  
14 that affidavit?

15 No. Then it ---

16 --- Pause

17 MS. EDWARDH: My friend is content  
18 that the references the witnesses have referred to  
19 are not in fact in the affidavit of Maher Arar  
20 filed in the Basari lawsuit.

21 THE COMMISSIONER: Okay. Then we  
22 don't need to file that. That is on the record.

23 MS. EDWARDH: I don't believe I  
24 need to file the last document.

25 Thank you, very much,

1 Mr. Commissioner. Thank you, Mr. Martel.

2 THE COMMISSIONER: Thank you, Ms.  
3 Edwardh.

4 Ms. Jackman?

5 MR. ATKEY: Commissioner, before  
6 Ms. Jackman starts, there was a housekeeping  
7 matter.

8 With respect to Tab 20 of  
9 Mr. Martel's newly redacted documents, Mr. Baxter  
10 was going to get instructions about removal of  
11 further redactions from this document, which is  
12 the 2003 Report on Human Rights, Democratic  
13 Development and Good Governance, which is almost  
14 entirely redacted except for one paragraph and yet  
15 received wide distribution throughout many, many  
16 departments of government and agencies.

17 I wonder if there are any  
18 instructions about removal of redactions. It  
19 would be helpful have this information.

20 THE COMMISSIONER: Thank you,  
21 Mr. Atkey.

22 MR. BAXTER: My understanding,  
23 sir, was that we undertook to look and determine  
24 if Mr. El Maati was mentioned in -- is this the  
25 2003?



1 THE COMMISSIONER: Yes.

2 MR. BAXTER: I'm advised that  
3 there is no mention of the El Maati case in there.  
4 That is what we have been able to determine.

5 THE COMMISSIONER: So we can make  
6 that clear.

7 Mr. Atkey raises a slightly  
8 different point. It is just the extent of the  
9 redactions. I appreciate that throughout the  
10 public hearings the government has further  
11 redacted documents. I think the point Mr. Atkey  
12 makes is this might be one that would be a good  
13 target for reconsideration. So if the government  
14 could do that, and if there is to be removal of  
15 redacted portions, then let the Commission know  
16 and we will make the re-redacted document  
17 available publicly.

18 MS. EDWARDH: Mr. Commissioner,  
19 you had also made a request of government counsel  
20 to consider providing this document to Mr. Stephen  
21 Toope. You may recall that in your ruling.

22 I have no knowledge of whether or  
23 not that invitation of the Government of Canada  
24 has been accepted and it has been provided, but I  
25 would ask through you if they would be prepared to

1 disclose whether it has and then, of course, I  
2 might want to add a piece of transcript from  
3 today's proceedings.

4 THE COMMISSIONER: Right.  
5 Do you know the answer to that,  
6 Mr. Cavalluzzo?

7 MR. CAVALLUZZO: No, I don't.

8 THE COMMISSIONER: I don't know  
9 the answer to that. That is something that we can  
10 pursue. I think Mr. Toope's report won't be  
11 prepared for a few weeks yet, so we can look into  
12 that.

13 MS. McISAAC: Well, my  
14 understanding is any documents that Mr. Toope  
15 wanted would be provided through you, sir, through  
16 the Commission.

17 THE COMMISSIONER: Yes. That's  
18 what I'm saying.

19 MS. McISAAC: Sorry.

20 THE COMMISSIONER: What I'm saying  
21 is I don't know if the government's provided it to  
22 the Commission and we passed it on to Mr. Toope.

23 MS. McISAAC: The Commission  
24 certainly has it, sir.

25 THE COMMISSIONER: There was a

1 question of whether or not we could give it to  
2 Mr. Toope ---

3 MS. McISAAC: I thought we dealt  
4 with that the other day, sir.

5 THE COMMISSIONER: Oh, did we?

6 MS. McISAAC: Yes.

7 THE COMMISSIONER: I must confess,  
8 I'm ---

9 MR. BAXTER: This document, you  
10 have it unredacted and it was the subject matter  
11 of certain in-camera testimony through witnesses.  
12 So I think what Ms. McIsaac is saying is if  
13 Mr. Toope wants it, the Commission has it.

14 MS. EDWARDH: In fairness to  
15 Mr. Toope, I don't know if he has security  
16 clearance. I think what you were asking the  
17 government to do is to consider releasing it to  
18 him for his purposes on a confidential basis.

19 THE COMMISSIONER: But what I'm  
20 hearing from the Government now -- and I must  
21 confess, if they have done this already then I  
22 should recall it. But the government has no  
23 objection to us releasing this document in  
24 unredacted form to Mr. Toope.

25 Is that what I hear?

1 MS. McISAAC: No. Sir, I thought  
2 we had a discussion about Mr. Toope's access to  
3 documents. Maybe I'm making things up.

4 MR. BAXTER: It is getting late.

5 MS. McISAAC: Perhaps we can deal  
6 with this, not wasting the public's time.

7 THE COMMISSIONER: All right.  
8 Let's leave it at that.

9 Ms. Jackman, do you have any  
10 questions of this witness?

11 MS. JACKMAN: I just have a couple  
12 of questions.

13 EXAMINATION

14 MS. JACKMAN: Mr. Martel, it would  
15 appear from Exhibits 134 and 242 that there were a  
16 progression of measures taken with respect to  
17 Mr. Arar in relation to his detention in Syria,  
18 and what I can see of the many documents that have  
19 been attached of the meetings between the  
20 Ambassador and General Khalil, or the Syrian  
21 Deputy Foreign Minister, the phone calls between  
22 our Minister of Foreign Affairs and their Minister  
23 and their Ambassador, that there were maybe four  
24 points:

25 First, all of that contact related

1           only to Maher Arar.   Second, it was made clear to  
2           the Syrians that he was not wanted for any offence  
3           in Canada.   Third, Canada wanted him to come home,  
4           back to Canada.   And, fourth, that he is a  
5           Canadian citizen.

6                           And so I'm wondering, given that  
7           Mr. Almalki is detained this whole time, what was  
8           he, chopped liver?

9                           Like, what happened with  
10          Mr. Almalki?   There is nothing here.   There is no  
11          redaction showing that they were talking about two  
12          people in Syria, just Mr. Arar.

13                          MR. MARTEL:   Well, as far as I  
14          know, Mr. Almalki was detained in August 2002,  
15          maybe, around that time.

16                          MS. JACKMAN:   May.

17                          MR. MARTEL:   In May, and at that  
18          time, when we were notified, meaning the Embassy,  
19          maybe by Foreign Affairs, I'm not quite sure who  
20          notified us initially, we sent a diplomatic note  
21          to the Syrian authorities requesting -- informing  
22          them that we believed we had a Canadian citizen  
23          who had been arrested and was being detained, and  
24          we requested information about that inmate, the  
25          usual diplomatic note, and to see him.

1                   And I read in the file later on  
2           that the family ---

3                   MS. JACKMAN: I don't want to take  
4           all day. I just want to know, in terms of when  
5           you went to the jail, for example, when Mr. Graham  
6           was talking to the officials, could they not have  
7           just said, you know, there's Mr. Almalki as well?

8                   Why didn't you ask, "Is he in the  
9           same jail?"

10                  MR. MARTEL: Well, this is what I  
11           have already talked about with other counsel here.  
12           What I mean is of course. Mr. Arar was an  
13           exceptional case because of his deportation, while  
14           the other Canadian Syrians had gone to Syria of  
15           their own accord, and when the Syrian authorities  
16           take a very firm position by telling us ---

17                  They answered that in Mr.  
18           Almalki's case: "He's a Syrian citizen, yes, we  
19           are detaining him and we are detaining him  
20           according to our own laws, and, no, you cannot see  
21           him". That's what we were told.

22                  So, when they take such a hard-  
23           line position, the Minister has to intervene, or  
24           someone from the very top, to change that.

25                  MS. JACKMAN: And there was no

1 intervention from the Minister?

2 MR. MARTEL: As far as I know, the  
3 Minister didn't intervene, and I also think that  
4 the family didn't want to make waves. He has  
5 family over there and they didn't want his name to  
6 be made public; the family didn't want his name to  
7 be made public.

8 MS. JACKMAN: We are not talking  
9 about being made public. I'm talking about  
10 pressuring the Syrians, not making anything  
11 public.

12 MR. MARTEL: There wasn't any  
13 pressure, and maybe -- I may be wrong, but I still  
14 feel today that the family didn't want us to apply  
15 any strong pressure that in the end would make it  
16 public.

17 MS. JACKMAN: Okay. I think there  
18 is probably a disagreement in terms of what the  
19 family wanted. That is already a matter of  
20 record.

21 But I just want to know, would you  
22 not agree that Mr. Almalki and others in Canada  
23 could come to the conclusion that he was less  
24 worthy than Mr. Arar, or was it just that Canada  
25 only acts when there is publicity?

1                   MR. MARTEL: No. You have to make  
2 the distinction; that is, we always take the same  
3 approach for every Canadian who is being detained,  
4 and we had tons in Syria in the years when I was  
5 serving.

6                   Each detainee, obviously, is  
7 entitled to all the services, but the Syrian  
8 State's position in those cases is very hard-line,  
9 and when we try to find out if they are being  
10 detained, we don't even get an answer or we get  
11 one six months later or we get one after they've  
12 left the country.

13                   So, there's no -- there's no  
14 serious co-operation with the Syrian authorities.  
15 They say, "Ah! He's Syrian, it's none of your  
16 business. Why are you asking? It isn't your  
17 problem; he's one of our citizens".

18                   The position is very hard-line in  
19 that part of the world. They don't want to know  
20 about dual citizenship; they agree that the person  
21 acquired another nationality later on, but they  
22 say they're keeping him because he didn't do his  
23 military service.

24                   They have all kinds of reasons.

25                   MS. JACKMAN: I don't want to get



1           into an argument with you. But there are two  
2           things: One is that Mr. El Maati and Mr. Nureddin  
3           were not Syrian citizens. Mr. El Maati and Mr.  
4           Nureddin, neither of them were citizens of Syria,  
5           were they ---

6                           MR. MARTEL: Exactly.

7                           MS. JACKMAN: You don't need to  
8           answer. I'm just pointing that out.

9                           And second, the fact that Mr. Arar  
10          was a dual citizen didn't stop you from pressuring  
11          in his case. Again, you don't want to answer. I  
12          don't want to drag this out. I just wanted to  
13          make the point.

14                          My second question is that it is  
15          apparent again from this record and your testimony  
16          today, even though you may have minimized it, that  
17          there was a serious concern about mistreatment in  
18          Syria for Mr. Arar.

19                          From the very beginning when he is  
20          detained, that first memo from October 23rd, at  
21          Tab 3 in Exhibit 134, there was a concern about  
22          him being "aggressively" questioned. Through that  
23          time, there are indicators that there is torture  
24          going on.

25                          In August of 2002, Mr. El Maati

1           says he was tortured. In December of 2002, Mr.  
2           Arar's brother talks about it. The Syrian Human  
3           Rights Committee comes up with a report. On  
4           August 14th, Mr. Arar tells you some details --  
5           and again, I'm not going to argue with you about  
6           what they were -- about his treatment.

7                           Did that not cause you concern in  
8           terms of Mr. Almalki? Was there any follow-up  
9           with the Syrians to make sure Mr. Almalki was  
10          treated properly?

11                          MR. MARTEL: Of course, but the  
12          authorities had already answered, saying, "It's  
13          none of your business, he's a Syrian citizen, he  
14          came here of his own accord. We are detaining him  
15          according to Syrian law, and you can't see him".  
16          As they say, "end of story".

17                          One day, I went to the prison to  
18          see another client of mine whom I was authorized  
19          to see. I asked about Mr. Almalki because I had  
20          learned that it was possible and probable that he  
21          was being detained in the same place, but I was  
22          never able to see him, not then either. They  
23          flatly denied me permission, giving me some story  
24          or other. So I wasn't able to see him either.

25                          MS. JACKMAN: But nothing was

1 brought up with the Minister or sent up the line  
2 to the Minister of Foreign Affairs to say, "Hey,  
3 we have another person here. We're really  
4 concerned about torture. Can you start putting  
5 pressure on Syria for him too?"

6 MR. MARTEL: Well, we always  
7 reported the facts on detainees to Gar Pardy, who  
8 was the Director General in the Consular Section.  
9 If Gar wanted the Ambassador or the Minister to  
10 intervene at the appropriate level, that was the  
11 only thing that would budge the Syrians, nothing  
12 else. Even at the Ambassador's level, it wouldn't  
13 have changed anything. We had received a formal  
14 response from Foreign Affairs, saying, "He's one  
15 of our citizens, not yours. He's in our country,  
16 we're holding him according to Syrian law and you  
17 may not see him".

18 MS. JACKMAN: With respect to Mr.  
19 Nureddin, the memo that was put in, Exhibit 245,  
20 there is an indication in that memo that Mr.  
21 Nureddin tells you, and this is in January when he  
22 is released. So Mr. Almalki is still detained, as  
23 is, I think at that time -- no, I think Mr. El  
24 Maati has been just released from Egypt. But in  
25 any event, Mr. Almalki is still detained at that

1 time.

2 At the top of page 2 in that  
3 exhibit, Mr. Nureddin believes that Canadian  
4 authorities passed information on to the Syrians  
5 because he was taken aside at Pearson Airport and  
6 then he goes on about the questions he was asked  
7 in Syria.

8 Did that cause you to do any  
9 further investigation in relation to Mr. Almalki?  
10 Did it cause you a concern?

11 MR. MARTEL: That's always  
12 worrisome, naturally, but the Syrian authorities  
13 continued to be inflexible. That report was still  
14 sent to the Political Section and to the Director  
15 General, Consular Section. When the report was  
16 read in Ottawa, if they wanted to intervene in Mr.  
17 Almalki's case, it really would have had to come  
18 from the Minister's office.

19 Of course, they were managing that  
20 file. They were also managing it in consultation  
21 with Mr. Almalki's family. We had done our field  
22 work, namely, to know where he was, to confirm it,  
23 and to try to get access, which was refused.

24 Now, if they had wanted to put  
25 pressure on the Syrians, it would have had to come

1 from headquarters and management in the Minister's  
2 office; that's certain. No one else could have  
3 changed that.

4 MS. JACKMAN: I only have two  
5 little questions.

6 You are saying that it is all the  
7 Syrian government's fault with respect to Mr.  
8 Almalki. But when Mr. Arar and Mr. Nureddin are  
9 released, you travelled to Canada with both men  
10 because they are frightened and concerned. Nobody  
11 travels with Mr. Almalki -- in fact, he is kicked  
12 out of the Embassy at one point -- or Mr. El  
13 Maati. Why the difference?

14 MR. MARTEL: I never met Mr. El  
15 Maati, so that was before my time. Then Mr.  
16 Almalki, when he was released, I was with him for  
17 about six months. He had been released while  
18 awaiting trial.

19 So, after his detention, during  
20 the six months of his release, I saw him  
21 constantly. He came to the Embassy maybe once a  
22 week. We were together very often.

23 The trial was held, the Ambassador  
24 was there on two occasions, and at the final  
25 session ---

1 MS. JACKMAN: I just want to know  
2 why you didn't travel with them back to Canada.

3 MR. MARTEL: Because I wasn't  
4 instructed to. I asked Consular Affairs if we  
5 should continue the same practice for Mr. Almalki  
6 and the others, that is, accompany them back to  
7 Canada, and Mr. Sigurdson, who had replaced Mr.  
8 Pardy at the time, said, "There has been a change  
9 in procedure in that we cannot accompany everyone,  
10 etc".

11 In any case, Mr. Almalki was not  
12 free to leave the country.

13 MS. JACKMAN: Well, eventually he  
14 was. He eventually came back to Canada ---

15 MR. MARTEL: But he wasn't free to  
16 leave the country. He wasn't free to leave the  
17 country.

18 MS. JACKMAN: Well, he is in  
19 Canada now.

20 MR. MARTEL: I'm telling you that  
21 he wasn't free to leave Syria, so I couldn't  
22 accompany him in any case.

23 MS. JACKMAN: Oh, you mean he  
24 wasn't free to come back to Canada before you left  
25 the position?

1 MR. MARTEL: No. When he was  
2 released, meaning, when he was found not guilty by  
3 the Syrian government, he was told that because he  
4 hadn't done his military service, he had to report  
5 for military service right then, so he could not  
6 leave Syria for maybe two or three years.

7 MS. JACKMAN: But he came back to  
8 Canada in July ---

9 THE COMMISSIONER: Ms. Jackman,  
10 with respect, we are getting pretty far afield.

11 MS. JACKMAN: I'm not going to --  
12 it's all right. I will leave it at that.

13 Those are all the questions that I  
14 had to ask.

15 THE COMMISSIONER: Thank you very  
16 much.

17 We might take a 10-minute break.  
18 We have been at it for a while.

19 How long do counsel expect to be?

20 MR. BAXTER: Very short.

21 THE COMMISSIONER: Do you know at  
22 this point, Mr. Décary?

23 MR. DÉCARY: Ten minutes.

24 THE COMMISSIONER: Why don't we  
25 take a 10-minute break, but then we won't break

1           again. We will just start the motion without the  
2           need for a further break.

3                           THE REGISTRAR: Please stand.

4           --- Upon recessing at 5:07 /

5                           Suspension à 17 h 07

6           --- Upon resuming at 5:20 p.m. /

7                           Reprise à 17 h 20

8                           THE REGISTRAR: Please be seated.

9           Veuillez vous asseoir.

10                           THE COMMISSIONER: Mr. Baxter?

11           EXAMINATION

12                           MR. BAXTER: Mr. Martel, I would  
13           like to talk to you a little about Mr. Arar's  
14           release date. You talked to Ms. Edwardh about the  
15           fact that October 2003, in your opinion, suited  
16           Syrian interests. Do you remember that?

17                           MR. MARTEL: Yes, of course; and I  
18           came to the conclusion that since this had never  
19           happened before, that the Syrians had always  
20           adopted a very firm position and could keep people  
21           in detention for years without even granting  
22           consular access, we can attribute the Syrians'  
23           change in attitude to other factors related to the  
24           Middle East. You have to remember that Syria's  
25           neighbours had undergone some changes.



1                   MR. BAXTER: But you were in the  
2 field, as you say. So in your opinion, what  
3 affected the timing of his release?

4                   MR. MARTEL: The timing was good  
5 because there was an enormous amount of  
6 international pressure on the Syrians, and the  
7 Syrians ---

8                   MS. EDWARDH: I'm going to rise.  
9 Excuse me, my friend.

10                   I don't think, although we have  
11 heard it from other witnesses -- if I understand  
12 my friend's question, it is: Please speculate on  
13 the reasons for release.

14                   And I think we have established --  
15 maybe I misunderstood the question?

16                   MR. BAXTER: If I can answer, this  
17 arose from a question you asked the witness. It  
18 was about the proceedings and the trial and the  
19 date of the release, and he said, yes, I believe  
20 there were a lot of factors that were involved.  
21 And you cut him off, if I may say, and I would  
22 like to hear his full answer in that regard.

23                   THE COMMISSIONER: I remember the  
24 answer. I think the line of questioning is fair.

25                   MR. BAXTER: So, please continue.

1                   MR. MARTEL: There was --  
2                   evidently, there was a lot of pressure on the  
3                   country at that precise time, and of course, as I  
4                   already told your colleague, there were some  
5                   interventions; there was all that.

6                   But in the end, what changed the  
7                   outcome, in my opinion, not only for this case,  
8                   but for others too, was the fact that Syria looked  
9                   for support elsewhere, support either from the  
10                  United Nations or -- because all of a sudden they  
11                  were very, very isolated.

12                  So, obviously, they became more  
13                  flexible. They realized that they needed new  
14                  friends. They didn't have many friends around  
15                  them. They had one before in Saddam Hussein, but  
16                  this neighbour had changed. There was also  
17                  enormous pressure in Lebanon. To the south,  
18                  Jordan was an ally of the Americans. To the  
19                  north, Turkey was a member of NATO. So the  
20                  country was feeling more and more isolated.

21                  In my opinion, we were looking for  
22                  support, and there was a change in attitude, I  
23                  think, beginning around April 2003. We felt, even  
24                  in dealing with Foreign Affairs, that they were  
25                  suddenly becoming much more receptive.

1                   MR. BAXTER: What role, in your  
2                   opinion, was played by the war in Iraq or  
3                   relations with the United States, which invaded  
4                   Iraq?

5                   MR. MARTEL: Well, at the outset,  
6                   according to the information I was able to gather,  
7                   that is, that the Syrians appear to have  
8                   cooperated with the Americans and were expecting  
9                   something in return and, in the end, that's not  
10                  what happened. The Syrian position was that, yes,  
11                  we gave the Americans a lot of help and look what  
12                  they gave us in return, and they were very  
13                  disappointed and cooperation between the two  
14                  countries deteriorated.

15                  MR. BAXTER: What period in time  
16                  was this?

17                  MR. MARTEL: I think that,  
18                  beginning in April 2003, there was already a  
19                  change in attitude.

20                  MR. BAXTER: Were there other  
21                  factors, in your opinion, that you had in mind?

22                  MR. MARTEL: Well, there were all  
23                  the factors that... Europe was also applying  
24                  pressure. Syria needed support in Europe. There  
25                  was what was called the Accountability Act, as

1 well as the Americans, and an enormous number of  
2 factors bringing this pressure to bear on the  
3 government, the State of Syria, and support had to  
4 be found somewhere.

5 MR. BAXTER: Looking for friends  
6 and they found...

7 MR. MARTEL: Friends.

8 MR. BAXTER: ...in Canada?

9 MR. MARTEL: Well, I mean, we  
10 obviously did not participate in the war in Iraq,  
11 and they saw us in a climate, from a more positive  
12 angle, for sure. That's clear.

13 MR. BAXTER: Thank you. Those are  
14 my questions.

15 THE COMMISSIONER: Mr. Décary?

16 EXAMINATION

17 MR. DÉCARY: We're just about done.  
18 I have a few questions. There are five sets. The  
19 first relates to the circumstances, some of the  
20 circumstances of your first meeting with Mr. Arar.

21 First of all, did Mr. Pardy, or  
22 anyone from the centre or headquarters tell you at  
23 any time about allegations of torture in the case  
24 of Mr. El Maati?

25 MR. MARTEL: No. I never knew the

1 El Maati case. I knew it in the sense that I was  
2 aware that it existed. I found a diplomatic note  
3 that had been sent by my assistant and I found a  
4 reply saying that he had left the country and, as  
5 far as we were concerned, the case was closed and  
6 there was nothing further with regard to that  
7 case.

8 MR. DÉCARY: And just to be  
9 certain, the question is: Did anyone, Mr. Pardy or  
10 anyone else, tell you of allegations of torture in  
11 the case of Mr. El Maati?

12 MR. MARTEL: No. No. The  
13 allegations of torture emerged very late, and at  
14 that time, unfortunately, we had not been  
15 informed.

16 MR. DÉCARY: The second question.  
17 The framework...you referred to the framework of  
18 the first meeting, which was established, and that  
19 leads me to ask you questions on the  
20 conversations, the discussions you had with the  
21 Syrians.

22 Could you, first of all, tell the  
23 Commissioner what was said at the outset, from the  
24 initial contact with the first Syrian to the  
25 meeting with Mr. Arar?

1                   MR. MARTEL: Once I had been loaded  
2                   into the government vehicle, with my companion, of  
3                   course, I needed to know how the process would  
4                   unfold or what the framework would be, what I  
5                   could see, ask, etc., and they told me then, you  
6                   have to keep to family matters and questions of  
7                   well-being; you cannot ask questions about the  
8                   case itself. There you have the framework imposed  
9                   on me by the Syrians.

10                  MR. DÉCARY: Subsequently, were  
11                  there... before the meeting with Mr. Arar, was  
12                  anything more said on this subject, or was that  
13                  all?

14                  MR. MARTEL: That was the only  
15                  thing that the Syrians said to me.

16                  MR. DÉCARY: And was your  
17                  understanding? What conclusions did you draw from  
18                  these remarks?

19                  MR. MARTEL: I concluded that I  
20                  could have access to my client, but that there  
21                  were some matters relating to the case that I  
22                  could not ask about or discuss, that I had to  
23                  confine myself to general matters, family matters,  
24                  matters of well-being and no more.

25                  MR. DÉCARY: My colleague asked you

1 about a number of subjects that you might have  
2 been able to discuss with Mr. Arar. The first was  
3 the size, the dimensions, of the cell.

4 So, did you ask a question about  
5 the size of the cell?

6 MR. MARTEL: No, I didn't ask...

7 MR. DÉCARY: I think we all  
8 understand. But I'm going to ask you now, why?

9 MR. MARTEL: Because the  
10 authorities, one, would not have permitted it. In  
11 fact, if I had asked the question, the question  
12 would certainly have been thrown out. But I had  
13 received my instructions beforehand from Mr.  
14 Pardy, to ask only the most transparent questions  
15 and which included the context in which I had to  
16 see my client.

17 So, if I went out on a limb, of my  
18 own accord, and I decided to start asking  
19 questions that would cause displeasure, I would,  
20 on the one hand, risk a reaction on the part of  
21 the Syrians and a negative reaction that could,  
22 potentially, have had repercussions for me and my  
23 client.

24 MR. DÉCARY: Now, did Mr. Pardy or  
25 anyone else from headquarters tell you to ask

1 questions about the size, the dimensions, of the  
2 cell?

3 MR. MARTEL: No. No one ever told  
4 me to ask such questions.

5 MR. DÉCARY: Now, the second  
6 suggestion was related to detention conditions:  
7 was he in solitary confinement or was he with the  
8 group?

9 Did you ask questions about that?

10 MR. MARTEL: No. My instructions  
11 were to ask the most transparent questions and  
12 that is what I did, and the Syrians would not have  
13 appreciated it if I had asked more specific  
14 questions.

15 MR. DÉCARY: Did Mr. Pardy or  
16 anyone from headquarters tell you to ask questions  
17 about detention conditions, whether he was being  
18 held in solitary confinement or with the inmate  
19 population?

20 MR. MARTEL: No, that subject never  
21 arose in any correspondence.

22 MR. DÉCARY: I was struck by one of  
23 my colleague's questions, and it had to do with  
24 exercise. Was the prisoner able to get any  
25 exercise?



1 Did you ask a question about that?

2 MR. MARTEL: I could not ask that  
3 question and I could not even ask where he was  
4 being held, and I could not have any details on  
5 the size, location or any other relevant details  
6 which, normally, under normal conditions for a  
7 citizen, can be obtained. The Syrian authorities  
8 would not have allowed me to ask these questions.

9 MR. DÉCARY: Did anyone at  
10 headquarters, Mr. Pardy or anyone else, at any  
11 time, tell you to find out about... try to find  
12 out whether Mr. Arar was able to exercise?

13 MR. MARTEL: No. I think that Mr.  
14 Pardy sent instructions at the outset. I  
15 completed my reports. He read them. I did not  
16 receive any comments. I never received a  
17 telephone call from him during the entire period  
18 and I never received any additional questions from  
19 him.

20 MR. DÉCARY: Just for the record,  
21 you understand that this is not limited to Mr.  
22 Pardy, but could be Myra Pastyr-Lupul or anyone  
23 else from headquarters. Is that not correct?

24 MR. MARTEL: Yes. It could be the  
25 consular section, it could be the geographic

1 office, it could be all kinds of people.

2 MR. DÉCARY: But there was no one  
3 else, you said?

4 MR. MARTEL: No one.

5 MR. DÉCARY: Okay. The next point,  
6 clean water, the cleanliness of the water, was  
7 that discussed by you and Mr. Arar?

8 MR. MARTEL: No, it was never a  
9 point of discussion. No.

10 MR. DÉCARY: Just for my  
11 information -- I didn't ask you -- is that a  
12 concern in Syria, is there a problem with the  
13 cleanliness of the water?

14 MR. MARTEL: The cleanliness of the  
15 water is a problem for foreigners.

16 MR. DÉCARY: I think I understand  
17 what you're saying, but could you explain?

18 MR. MARTEL: Well, I mean that we,  
19 as foreigners, feel that drinking tap water is not  
20 very safe, and, as a result, Health Canada ordered  
21 that employees have to be provided with filtered  
22 water, bottled water. The water might be okay  
23 today, and tomorrow it might not be good, but  
24 people there, in general, drink tap water and they  
25 are used to it, so they tell us. In any case, they

1 don't have any great problem.

2 MR. DÉCARY: Did Mr. Pardy or  
3 anyone else from headquarters, at any time, ask  
4 you to find out about the quality and cleanliness  
5 of the water?

6 MR. MARTEL: No, I wasn't asked to  
7 find out. No, I wasn't asked.

8 MR. DÉCARY: I am going back again  
9 to the first meeting, the atmosphere.

10 That's because I have two  
11 question, to move along quickly, Mr. Commissioner.

12 The first concerns the description  
13 of the atmosphere at the first meeting, and then  
14 the change in the atmosphere, did it change.

15 For the first, then, can you tell  
16 the Commission what the atmosphere in the room was  
17 like?

18 MR. MARTEL: I think it could be  
19 accurately said that the atmosphere of the first  
20 meeting was enormously frustrating for the  
21 security services. I mean that, perhaps this  
22 visit was imposed on them at the outset, they  
23 received an order from someone else, I don't know.  
24 That they did not seem, in any case... even if  
25 they tried not to show it, I felt that I was

1           bothering them and they were nervous. Everyone  
2           was nervous, myself included. And then they began  
3           to get used to it, to know me better, perhaps, and  
4           it was more relaxed.

5                       MR. DÉCARY: And in the end, what  
6           was the atmosphere like during the last two or  
7           three meetings? I understand that time elapsed  
8           between each meeting.

9                       MR. MARTEL: Time elapsed. The  
10          conversations were good. The visits went well  
11          while they continued and up to the day when they  
12          ended. In general, the atmosphere improved.

13                      MR. DÉCARY: Now, to return  
14          specifically to the case, between the first and  
15          second meetings, you... in your memo concerning  
16          the second meeting, you noted that Mr. Arar seemed  
17          disoriented during the first meeting. I'm  
18          speaking of the atmosphere. Was there a change  
19          between the first and second meetings?

20                      MR. MARTEL: Well, there was a  
21          change in that I did not say, at the first  
22          meeting, that he was... that he seemed  
23          disoriented, but I said, at the second meeting,  
24          that he seemed less disoriented than at the first  
25          meeting. I think that there was an element of

1 surprise the first time, but when I said to him:  
2 "I'll be back next week if the authorities  
3 permit", I think he was expecting my visit and I  
4 think that perhaps they prepared him for my visit.  
5 He was told, perhaps, or he gave some sign that he  
6 knew I was coming. So there was no element of  
7 surprise the second time.

8 MR. DÉCARY: When you observed Mr.  
9 Arar's behaviour, were there any changes between  
10 the first and second meetings?

11 MR. MARTEL: No, except that he was  
12 more relaxed and certainly more at ease.

13 MR. DÉCARY: I am changing subjects  
14 now, Mr. Commissioner, Mr. Martel.

15 My colleague asked some questions  
16 with regard to the quality level of your reports  
17 on the meetings.

18 My question is: Was there a time  
19 when anyone at all from headquarters, Mr. Pardy or  
20 anyone else, either complained about the quality  
21 of your reports or made comments of any sort, but  
22 negative... of any sort, positive, obviously, but  
23 mainly negative, regarding your reports? Did that  
24 happen on any single occasion?

25 MR. MARTEL: No, never. To my

1 knowledge, if I remember right, the consular  
2 section, for example, Mr. Pardy, never got back to  
3 me to ask for further details on my reports.

4 MR. DÉCARY: Were there, following  
5 the reports, did headquarters provide you with any  
6 questions on details? Did they get back to you  
7 and say, for example, with regard to the first  
8 paragraph, with regard to the third paragraph, as  
9 we did here, did a similar exercise take place  
10 with some paragraphs, where you were asked for  
11 details, for particulars, what did you mean by  
12 that?

13 MR. MARTEL: No, they did not... no  
14 one got back to me to ask questions about the  
15 reports.

16 MR. DÉCARY: Now I will direct you  
17 to the report of August 14, exhibit number...

18 It's the report of August 14, Mr.  
19 Commissioner. I'm at Exhibit 507. It will be  
20 very brief.

21 --- Pause / Pause

22 THE COMMISSIONER: Okay, I've got  
23 it. Thank you.

24 MR. DÉCARY: The report, first,  
25 once you have it in front of you, the report of

1 the 14, drafted Léo Martel, approved Ambassador  
2 Pillarella.

3 In particular, I would draw your  
4 attention to paragraph 3. In the last sentence,  
5 we read, and I quote:

6 "He indicated that as far as  
7 he knew he was not receiving  
8 worse treatment than that  
9 given to other prisoners."

10 My question is: following this  
11 report, did anyone ask you any questions about the  
12 treatment that had been received or could have  
13 been received, by other prisoners?

14 MR. MARTEL: No, there was no  
15 reaction.

16 MR. DÉCARY: You were on site and,  
17 there, the date is August 14, 2003, so that's  
18 about nine months after September 2002, to the  
19 best of your knowledge, in the department, Mr.  
20 Pardy, the others and yourself, obviously, did  
21 people know about conditions, the treatment of the  
22 prisoners, what it was like, in general?

23 MR. MARTEL: Well, I believe that  
24 Mr. Pardy had a great deal of consular experience,  
25 and certainly he knew countries around the world

1 and he had his own opinion.

2 Then there were the geographic  
3 offices, which must also have known an enormous  
4 amount and the people who took care of Human  
5 Rights and all that.

6 So, all the people who were copied  
7 on this report should have, or certainly did, know  
8 about the conditions in each country.

9 MR. DÉCARY: And specifically, Mr.  
10 Martel, in your opinion, did people know the size  
11 of the cells?

12 MR. MARTEL: Not necessarily. In  
13 my opinion, not necessarily.

14 MR. DÉCARY: Who in the group  
15 could have known?

16 MR. MARTEL: I don't know. The  
17 cells were never visited by anyone, not by  
18 individuals or the Red Cross.

19 It is very hard to assess, but I  
20 don't know whether anyone could have known the  
21 size of a cell.

22 MR. DÉCARY: So, when you write:  
23 "He indicated that as far as  
24 he knew -- I'm reading -- he  
25 was not receiving a worse



1 treatment than given to other  
2 prisoners."

3 What I understand from you is that  
4 no one at headquarters asked you any questions  
5 about the treatment received by other prisoners or  
6 Mr. Arar. Is that correct?

7 MR. MARTEL: No, there was no  
8 reaction.

9 MR. DÉCARY: Changing the subject,  
10 we see, it's Exhibit 61, it's a memo from Daniel  
11 Livermore, from October 10, 2002, in which he  
12 says, among other things, and I am reading because  
13 everyone will recall it, where he says:

14 "There are concerns that Arar  
15 may be aggressively  
16 questioned by Syrian security  
17 services."

18 If someone had indicated to you,  
19 had told you that there were concerns that Mr.  
20 Arar, may be, to keep to the text, aggressively  
21 questioned by Syrian security services, would you  
22 have done anything different in this case, other  
23 than what you have done so far?

24 MR. MARTEL: Well, the reputation  
25 of security services, as I have already said

1           yesterday and again today, has been established  
2           and they have had a reputation for years, we know  
3           how they operate and we know how they treat  
4           detainees, and so forth, so the fact of having  
5           this information would not have changed how I  
6           acted.

7                               We go to these places and we  
8           always have a certain apprehension, because we  
9           never know what we're going to find, that's for  
10          sure.

11                              Everyone knows that.

12                              MR. DÉCARY: But the question is,  
13          and I will repeat it: was there anything, if  
14          someone had said to you, Mr. Pardy, Mr. Pillarella  
15          or anyone else, had said to you:

16                              "There are concerns that Arar may  
17                              be aggressively questioned by  
18                              Syrian security services."

19                              On October 10, that is, prior to  
20          the first meeting, would that in any way have  
21          changed your behaviour during the meetings?

22                              MR. MARTEL: It would not have  
23          changed anything. I am obligated to see my  
24          detainee, to talk to him and try to determine, in  
25          a situation that is very highly controlled, how

1 long he has been there and how he has been treated  
2 and try to obtain as much information as possible.  
3 That is what I did.

4 MR. DÉCARY: The last question,  
5 Mr. Commissioner.

6 We reported on the allegations of  
7 Mr. Arar's brother, to the effect that Mr. Arar  
8 was tortured, or, at least, we spoke of his  
9 conditions, being held underground and so forth,  
10 in the dark.

11 My question is: did anyone from  
12 headquarters ask you to conduct a follow-up of  
13 these allegations, to pay special attention, to  
14 investigate further, to do anything whatever in  
15 particular to determine whether, in fact, the  
16 evidence confirmed the comments of Mr. Arar's  
17 brother?

18 MR. MARTEL: I received a copy of  
19 the memo, but it does not contain any instructions  
20 asking me specifically to do such-and-such a  
21 thing.

22 Sometimes, most of the time before  
23 the visits, I would alert Ottawa that I expected  
24 to have a visit soon, and do you have anything to  
25 tell me? And they sent me, perhaps, two or three

1 items and somethings they had nothing to tell me  
2 and I made my visit.

3 MR. DÉCARY: So, my question, just  
4 to close: Yes or no, did anyone from headquarters,  
5 at any time, following these allegations, ask you  
6 to make a follow-up of the facts with regard to  
7 these specific allegations?

8 MR. MARTEL: No, I was not asked  
9 to find out more or to investigate.

10 MR. DÉCARY: Those are my  
11 questions, Mr. Commissioner.

12 THE COMMISSIONER: Thank you,  
13 Mr. DÉCARY.

14 Mr. Cavalluzzo?

15 EXAMINATION

16 MR. CAVALLUZZO: Yes, just  
17 briefly, Mr. Martel.

18 You were asked questions -- for  
19 example, let us start with the first one -- as to  
20 whether Mr. Pardy or anyone at headquarters ever  
21 advised you about the El Maati allegations about  
22 torture, and your answer was, "No, he did not" or  
23 "they did not".

24 The question that I have is: Did  
25 Mr. Pillarella ever advise you of these

1           allegations?

2                           MR. MARTEL:  No, no, Mr.  
3           Pillarella did not advise me either, no.

4                           MR. CAVALLUZZO:  And the next  
5           question was relating to whether Mr. Pardy, or  
6           anybody at headquarters, asked you to ask about  
7           conditions of detention, the conditions of the  
8           water, the size of the cell, and so on.

9                           Did Mr. Pillarella ever ask you to  
10          ask those questions?

11                          MR. MARTEL:  No, no one asked me  
12          to ask those questions.

13                          MR. CAVALLUZZO:  In response to a  
14          question as to the latitude you had to ask  
15          questions, you seem to indicate that you were  
16          under strict orders from Mr. Pardy as to what you  
17          were to say; that is, these were to be transparent  
18          questions.

19                          But do you not agree with me that  
20          Mr. Pardy was relying upon your 20 years of  
21          experience and your discretion and judgment, which  
22          would be that if you had an opening, in your  
23          judgment, you should ask the question?

24                          Isn't that correct?

25                          MR. MARTEL:  Yes, and those are

1 the guidelines that Mr. Pardy gave me at the  
2 outset, and before each visit, when I told Ottawa  
3 that I might be having a visit that week, do you  
4 have any specific questions for me to ask.

5 And the questions were mainly  
6 centred on well-being and family matters, sending  
7 photos and correspondence with the family. It  
8 always focussed on that.

9 MR. CAVALLUZZO: But do you not  
10 agree with me that Mr. Pardy also indicated to you  
11 that if there was an opening and you could ask  
12 questions beyond the mundane questions about  
13 family, et cetera --

14 MR. MARTEL: Yes, of course,  
15 it's...

16 MR. CAVALLUZZO: -- that you  
17 should use your judgment and ask those questions?

18 MR. MARTEL: Yes, he said: I  
19 realize that you have to ask the most transparent  
20 questions, but if you have an opportunity, you can  
21 ask more.

22 MR. CAVALLUZZO: And that's  
23 exactly what Mr. Pardy said in tab 131, which is  
24 the tab that we took you to yesterday.

25 MR. MARTEL: Yes, that's it.

1 MR. CAVALLUZZO: There is one  
2 final document, Mr. Commissioner.

3 In Mr. Martel's testimony this  
4 morning, you may recall that he referred -- or  
5 maybe it was yesterday -- he referred to a  
6 document, a consular framework document. I had  
7 asked some questions about the document that was  
8 prepared by the Inspector General, and Mr. Martel  
9 responded by saying he did respond to another  
10 study, some consular framework study.

11 Today my friends, counsel for the  
12 Government, have given me a copy of that document,  
13 and I'm going to file that as an exhibit.

14 I only have one copy and I've only  
15 read it recently, but to give the witness an  
16 opportunity to respond to certain comments he made  
17 in respect of those documents, I think it is only  
18 fair that we do that now.

19 THE COMMISSIONER: Then that will  
20 be marked as the next exhibit, which is 251.

21 EXHIBIT NO. P-251: Consular  
22 framework document

23 MR. CAVALLUZZO: Let me give you  
24 the history of this.

25 For counsel's benefit, in July of

1           2004, DFAIT decided to do a study, a framework  
2           analysis in terms of consular duties, somewhat  
3           similar in respect of the one we looked at earlier  
4           from the Inspector General, in the sense that a  
5           lot of these consular functions have become far  
6           more complicated in effect because of 9/11.

7                         So what happened in the late  
8           summer of 2004 is that a document entitled  
9           "Framework of Operations for Consular Services  
10          Programs" was sent out to all of the embassies  
11          around the world and each of the consular  
12          officials were asked for their comments in respect  
13          of the document itself.

14                        This document went to Damascus.  
15          Mr. Martel did respond in September of 2004. He  
16          made comments in respect of certain issues that  
17          are relevant to the issues before us today. I  
18          would like to make reference to the comments that  
19          he did make.

20                        I assume that these comments that  
21          you referred to earlier were made by you. Is that  
22          correct?

23                        MR. MARTEL: The comments that are  
24          lightly blacked out are mine and were sent to the  
25          consular section.



1 MR. CAVALLUZZO: The paper itself  
2 is set out in terms of different aspects of the  
3 consular function. There is one topic entitled  
4 "Arrest and Detention". This is number seven in  
5 this document.

6 The document reads that:

7 "The Vienna Convention  
8 guarantees a foreign detainee's  
9 right to have a representative  
10 of his or her government  
11 notified of the detention and to  
12 communicate with that  
13 representative consular access.  
14 As well, detaining authorities  
15 have a duty to inform detainees  
16 of the existence of this right.  
17 Canada expects these provisions  
18 to be upheld for all Canadian  
19 detainees, including dual  
20 nationals."

21 From the Syrian experience that  
22 Mr. Martel had, he added this comment.

23 "Based on our experience, those  
24 expectations are unrealistic  
25 when dealing with dual nationals

1                   who have returned to Syria,  
2                   their country of origin, freely  
3                   or against their will. The  
4                   Syrian authorities do not  
5                   recognize the other citizenship.  
6                   This leaves us with a major  
7                   struggle to gain consular  
8                   access."

9                   Did you make those comments,  
10                  Mr. Martel?

11                   MR. MARTEL: Yes, those are my  
12                  comments.

13                   MR. CAVALLUZZO: Mr. Martel also  
14                  made comments in respect to Topic 19, which is  
15                  Security Related Arrest and Detention.

16                   It is quite a lengthy comment.  
17                  There are three paragraphs of it.

18                   I would just ask counsel to read  
19                  it and the Commissioner to read it, unless you  
20                  want to comment on the comments that you made.

21                   The only other reference that I  
22                  would refer to is when Mr. Martel dealt with Topic  
23                  20 entitled "Incidents of Abuse and/or Torture".

24                   What the document says prior to  
25                  his comment are in the first paragraph, it states:

1 "Part of the role of consular  
2 officials is to seek to ensure  
3 Canadian detainees are not  
4 subjected to abuse or torture.  
5 They are guided by the  
6 definition of torture in the UN  
7 Convention Against Torture."  
8 And the definition is set out.  
9 It goes on:  
10 "The international community has  
11 also prohibited torture or  
12 abuse of detainees through  
13 several other international  
14 instruments."  
15 And they are set out as well.  
16 And then it goes on:  
17 "Many forms of physical abuse,  
18 including systematic torture,  
19 are calculated to leave no  
20 evidence. Torture by electric  
21 shock and various forms of  
22 water treatment are two of the  
23 more common forms of torture,  
24 which normally do not leave  
25 marks. When such methods are

1                   alleged to have been used, the  
2                   personal interview of the  
3                   prisoner is imperative. In all  
4                   cases of allegations of abuse,  
5                   it is essential that the  
6                   officer exercise judgment on  
7                   the basis of all of the  
8                   evidence at hand, including  
9                   assessment of the prisoner's  
10                  credibility in determining the  
11                  probable veracity of the  
12                  allegation. Care should be  
13                  taken to avoid any implication  
14                  that Canadian officials have  
15                  prematurely concluded that the  
16                  local authorities had  
17                  maltreated the prisoner."

18                                   And finally these are the comments  
19                  of Mr. Martel in respect of that.

20                                   "While consular officials do  
21                                   exercise judgment on the basis  
22                                   of all evidence at hand, it is  
23                                   practically impossible to  
24                                   detect whether or not a  
25                                   detainee has been subjected to

1 torture. We have not dealt  
2 with cases of imprisoned  
3 Canadians who held only one  
4 citizenship, that is, born in  
5 Canada from Canadian parents.  
6 Detainees have been dual  
7 national citizens,  
8 Syrian/Canadians or  
9 Syrian/Australians. Consular  
10 access has been denied in most  
11 cases and the expectation of  
12 being granted a personal  
13 interview with the prisoner,  
14 while it is imperative, is  
15 unrealistic here."

16 And then finally he says:

17 "We have not dealt with arrest  
18 and detention cases pertaining  
19 to Canadian or Australian  
20 citizens only holding one  
21 citizenship. In those cases we  
22 expect the Vienna Convention to  
23 be respected and, at worst,  
24 unless we are dealing with  
25 security related issues, the

1 clients would be deported."

2 Mr. Martel, do you recall making  
3 those statements, in particular the statement that  
4 "while consular officers do exercise judgment on  
5 the basis of all the evidence at hand, it is  
6 practically impossible to detect whether or not a  
7 detainee has been subjected to torture"?

8 MR. MARTEL: Yes, that's in my  
9 text.

10 MR. CAVALLUZZO: In terms of the  
11 final portion of the exhibit, all of this  
12 information, and so on, was tabulated and then  
13 another document was prepared. It is entitled --  
14 and you will have this -- "Consular Services  
15 Framework, Part 2, Consular Issues and Case  
16 Category Guidelines". It is from the Consular  
17 Affairs Bureau and it is dated January 2005.

18 I understand that it is an  
19 evolving document. It is a dynamic document in  
20 the sense that it is being changed as they get  
21 more comments, and so on. But it seems to be the  
22 last expression from the Consular Affairs  
23 Department in respect of the issues that I have  
24 referred to.

25 THE COMMISSIONER: Shall we mark

1           it as the next exhibit?

2                           MR. CAVALLUZZO:   Yes, I think so.

3                           THE COMMISSIONER:   That will 252,  
4           the January 2005 report.

5                                           EXHIBIT NO. P-252:   Report  
6                                                           entitled "Consular Services  
7                                                           Framework, Part 2, Consular  
8                                                           Issues and Case Category  
9                                                           Guidelines", dated January  
10                                                           2005

11                           MR. CAVALLUZZO:   There is only one  
12           other exhibit.

13                                           This should have been filed before  
14           because we asked witnesses about this.   This is a  
15           draft memorandum, dated October 30, 2002, about  
16           Abdullah Almalki from Mr. Solomon.   And what we  
17           have here is a less redacted version of the  
18           memorandum which we have in the document.

19                                           So we should file this less  
20           redacted version as well.

21                           THE COMMISSIONER:   That will be  
22           253.

23                                           EXHIBIT NO. P-253:   Draft  
24           memorandum from Mr. Solomon re Abdullah Almalki,  
25           dated October 30, 2002

1 MR. CAVALLUZZO: The final  
2 administrative matter is that Ms McIsaac was  
3 mistaken. She did not have the claim of Arar v.  
4 Syria. So we cannot file it today.

5 I have one at the office. And on  
6 agreements of everybody, we will mark that through  
7 the Registrar and have that filed as an exhibit  
8 tomorrow.

9 THE COMMISSIONER: That's fine.  
10 Is that that?

11 MR. CAVALLUZZO: That's that.

12 THE COMMISSIONER: Let me thank  
13 you, Mr. Martel. That completes your evidence.  
14 It has been two very long days. I know you have  
15 put a lot of time and effort into preparing and  
16 coming here and giving evidence.

17 I think there has been some  
18 persistent questioning, and I think your demeanour  
19 throughout has been appropriate and I appreciate  
20 the way you dealt with the questions.

21 MR. MARTEL: Thank you,  
22 Mr. Commissioner.

23 THE COMMISSIONER: Thank you for  
24 your assistance.

25 We are going to hear a motion now.



1 So if you want to step down, you are free to go.

2 MR. MARTEL: Thank you.

3 THE COMMISSIONER: We are going to  
4 here a motion now so if you want to step down, you  
5 are free to go.

6 --- Witness steps down

7 THE COMMISSIONER: Ms Jackman, it  
8 is time for your motion.

9 MS JACKMAN: This is not my idea  
10 of a good time to start a motion.

11 --- Laughter / Rires

12 MS JACKMAN: I will be as brief as  
13 I can.

14 THE COMMISSIONER: You can be sure  
15 you will have my full attention. Don't worry  
16 about that.

17 MOTION

18 MS JACKMAN: You have received, I  
19 expect, the chronologies of Mr. Almalki and  
20 Mr. El-Maati and Mr. Nureddin. And also with  
21 respect to Mr. Almalki and Mr. El-Maati, there are  
22 brief bios of Ahmad El-Maati, his brother and Mr.  
23 Almalki. All three men are seeking to have them  
24 introduced into the record before you. I have to  
25 say there has been some discussion before, among

1 different people today, about how that gets done.

2 I don't care if it is an exhibit  
3 to the Commission or if it is an exhibit to  
4 Mr. Toope's report. I don't care what it is, as  
5 long as it is public and it is on the record here,  
6 whether it is through Mr. Toope or through the  
7 Commission directly.

8 THE COMMISSIONER: Let me just  
9 pursue that for a second. Mr. Toope has conducted  
10 interviews.

11 MS JACKMAN: Yes.

12 THE COMMISSIONER: So that  
13 presumably -- I'm sure he doesn't have the  
14 chronologies you are referring to, but --

15 MS JACKMAN: He has them now.

16 THE COMMISSIONER: Does he?

17 MS JACKMAN: Yes.

18 THE COMMISSIONER: Okay. I don't  
19 have my ruling with respect to Mr. Toope in front  
20 of me. Correct me if I am wrong in what I say, I  
21 mean it is certainly open to Mr. Toope to consider  
22 the variety of information, including information  
23 relevant to these three individuals for the  
24 purposes that I indicated in my ruling.

25 MS JACKMAN: I think it was for

1 the purpose of corroborating the torture with  
2 respect to Mr. Arar.

3 THE COMMISSIONER: That's right.  
4 I specified as to what the purpose of the fact  
5 finder's report would be.

6 MS JACKMAN: Right.

7 THE COMMISSIONER: Let me just  
8 take the request, if I can, for a moment, that it  
9 be on the basis that this be material that  
10 Mr. Toope would be entitled to consider as part of  
11 the fact finding exercise, and put that idea  
12 forward and see if anybody has any -- let me go  
13 this way -- any objections to it being used as  
14 part of the --

15 MS JACKMAN: Can I clarify one  
16 thing? As long as it is clear it is public,  
17 Mr. Toope already has a fair bit of information  
18 from us. And my understanding is that everything  
19 he has received is secret, so --

20 THE COMMISSIONER: I think, I  
21 could hear submissions on it, but I envision  
22 Mr. Toope's report will be made public.

23 MS JACKMAN: Right.

24 THE COMMISSIONER: But there may  
25 well be material that Mr. Toope receives -- we had

1 a discussion with Ms McIssac earlier -- that might  
2 not be, so that -- you are asking, then...?

3 MS JACKMAN: I want it part of the  
4 public record, the chronologies. And like I said,  
5 whether it comes in through Mr. Toope or as an  
6 addendum or an attachment to his report, I don't  
7 care, or if it's an exhibit here, but I want this  
8 matter on the public record.

9 THE COMMISSIONER: I guess the  
10 question, if you said "an exhibit here", is for  
11 what purpose?

12 MS JACKMAN: Well --

13 THE COMMISSIONER: I don't know if  
14 you are suggesting that it can be made available  
15 to Mr. Toope for his consideration. That is one  
16 purpose. If you were suggesting that all of it  
17 facts set out in the chronology for purposes of  
18 this inquiry, the exhibit be entered for proof of  
19 the truth of the facts set out in the  
20 chronology -- I see you shaking your head -- then  
21 that would be obviously another matter and there  
22 would be difficulties with that.

23 But your request, then, is that it  
24 be given to Mr. Toope and, in some form, either as  
25 an addendum to his report or in some form, that it

1 form part of the record -- public record of the  
2 inquiry.

3 MS JACKMAN: Yes. I know that I  
4 wish to refer to it -- maybe I should just clarify  
5 in terms of why we want it in. First of all, we  
6 are not seeking to expands the scope of the  
7 inquiry by any means.

8 THE COMMISSIONER: And you're  
9 not seeking -- sorry to interrupt -- and you're  
10 not seeking -- I'm being legalistic here -- it to  
11 be entered as proof of the truth of what is said  
12 in it.

13 MS JACKMAN: No.

14 I think, though, I can put it  
15 under, we can put all three packages of documents  
16 under affidavit, either hearsay affidavit saying I  
17 directly heard this from Mr. Almalki, or  
18 Mr. Almalki and Mr. El-Maati directly. I have an  
19 affidavit for Mr. El-Maati, I don't know, with  
20 respect to Mr. Almalki, if he would swear an  
21 affidavit now, in the light of the fact that he  
22 hasn't, I haven't discussed it with him. I think  
23 Mr. Nureddin would. But certainly others who have  
24 been involved in preparing it can swear an  
25 affidavit.

1                   I think what it becomes, really,  
2           is a question of weight. You can receive any  
3           credible or trustworthy evidence. You have in  
4           front of you reams of documents from the  
5           government. Some of them, the persons who  
6           authored the reports have been examined on.  
7           Others, the persons haven't been examined  
8           directly, not all of it authors of the reports  
9           have come before you.

10                   I guess I look at it this way:  
11           That exhibit 245 which was put in today,  
12           respecting Mr. Nureddin, outlines in summary what  
13           happened to Mr. Nureddin according to what  
14           Mr. Martel recollects. It is very similar in  
15           content to what Mr. Nureddin has himself set out  
16           in his own chronology. Why would the go in as a  
17           government document and then deny Mr. Nureddin the  
18           right to put in essentially the same basic  
19           structure through his own affidavit or through the  
20           affidavit of someone who helped him prepare it. I  
21           don't understand the difference.

22                   If it's relevant for this  
23           purpose -- in terms of the government documents --  
24           it's relevant, the same kind of information when  
25           it's coming from Mr. Nureddin. That's one thing.

1                   I'm not asking, and I don't think  
2                   anyone else is asking that you make conclusive  
3                   findings or even any findings with respect to some  
4                   of the issues that these men are concerned about,  
5                   in terms of the practice or the pattern. But at  
6                   least if you can see on the public record that the  
7                   issue is not black and white, that you don't just  
8                   have the government's side of the case, that you  
9                   can come to the conclusion at the end of the day  
10                  there is something there that calls for further  
11                  investigation by somebody else, I don't care.

12                  I just think you have to be aware  
13                  of it, that you may not have the full picture when  
14                  you only have the government's side of the story  
15                  in the secret hearing. So that's a primary  
16                  concern.

17                  There are three reasons why I want  
18                  it in. One is so you understand the context in  
19                  terms of pattern and the complicity and, like I  
20                  said, not to make any conclusions on these men or  
21                  any Canadian officials that passed information on  
22                  to the Syrians, I am not asking you to do that.  
23                  Or the fact that it kept happening one after the  
24                  other as a result of Canadian information, even  
25                  after Mr. Arar is released.

1                   I am not asking you make any  
2 findings on that, but I think you should have the  
3 entire context to be able to say, "I don't have  
4 enough information in front of me to deal with the  
5 issue of context."

6                   The second reason we want it in,  
7 clearly, is the reputational interest. You have  
8 government's side of the case in secret, a little  
9 bit in public, that Mr. All El-Maati and  
10 Mr. Almalki were targets of the A-OCANADA and  
11 OCANADA investigations. You have, in secret,  
12 their side of the story and you have the public  
13 left guessing as to how terrible these men are  
14 with no opportunity to answer. They have to be  
15 able, in my submission, to have on this record, at  
16 least their answer, whether or not you give it any  
17 weight. I don't think you even have to deal with  
18 it, but I do think they should be given that  
19 opportunity to have some of their explanations on  
20 it is record, given that the government has just,  
21 holus-bolus, put in their entire case against  
22 them, apparently, to the extent that we know.

23                   And the third reason, I think, is  
24 also to be able to contextualize not just the  
25 pattern in practices, but the strength of the case



1 gains Mr. Arar. These men, in their chronologies  
2 have said, "Yes, CSIS came to talk to me." or  
3 "They didn't come to talk to me." You need to  
4 know when they tell you in secret how strong their  
5 case against Mr. Arar was because of his link with  
6 Mr. El-Maati, for example, what kind of case they  
7 had gains Mr. El-Maati and what Mr. El-Maati says  
8 in terms of how much they contacted him to talk  
9 about things. How much is inference?

10 Same thing with Mr. Almalki. I  
11 don't think at the end of the day you have to make  
12 any findings on this, but I do think you should  
13 have it before you. And I think that when you  
14 consider the importance of it for these four men:  
15 Mr. Arar, Mr. Almalki, Mr. El-Maati and  
16 Mr. Nureddin, all four men are victims, victims of  
17 very severe torture, I would say, very severe  
18 mistreatment.

19 We're not playing a game of  
20 technicalities in terms of whether the government  
21 wants it in or doesn't want it in. They shouldn't  
22 have their way all the time. These are real  
23 victims who, I would submit to you, would be done  
24 a disservice if, in fact, they are not allowed to  
25 put there side of the story put forward for

1           whatever weight it may be given. It is a  
2           disservice to these four victims, as Canadian  
3           citizens, as Muslims, as human beings.

4                         It's a disservice to Muslims in  
5           Canada and elsewhere and it's a disservice to  
6           Canadians if it's not on the record. It just  
7           looks patently unfair to have the government put  
8           in everything and not allow them to put in  
9           anything.

10                        Thank you.

11                        THE COMMISSIONER: Thank you. The  
12           intervenors, I take it, support the request?

13                        THE COMMISSIONER: Mr. Neve.

14                        MR. NEVE: Alex Neve, Amnesty  
15           International.

16                        You have heard from us previously  
17           with respect to our concerns that it is very  
18           critical that, as the inquiry proceeds, this issue  
19           of pattern, as it has come to be known, be as  
20           fully examined as possible. The critical question  
21           of whether or not what happened to Maher Arar can  
22           be interpreted as having been an isolated  
23           aberration, an unfortunate mistake, or whether it  
24           was part of something wider, some sort of pattern  
25           or policy that went how high or how wide is

1 anyone's guess.

2 That is why it is critical that  
3 these documents become part of the public record.  
4 We would totally agree with Ms Jackman that we're  
5 not suggesting that by having them become part of  
6 the record they automatically be deemed as  
7 conclusive proof of what is stated therein, but  
8 that it's very critical there be available to you,  
9 to all of us who are involved in the inquiry and  
10 to the Canadian public, some sort of statement  
11 which provides their version of what has happened  
12 to them, both on its own merits but also the  
13 connections that may or may not be inferred from  
14 their case to Mr. Arar's.

15 If we don't have the opportunity  
16 to have as much information available in the  
17 course of this inquiry with respect to that issue  
18 of pattern, we are concerned that your ability to  
19 fulfil your mandate will be comprised. It is  
20 critical that that question be answered as fully  
21 as possible. It is not extraneous to your task of  
22 deciding what happened to Maher Arar. It is  
23 absolutely central to it.

24 We are also concerned that the  
25 ability of all of us to participate adequately and

1 effectively in the final steps of the policy  
2 review portion of this inquiry will also be  
3 comprised because, again, we cannot be making the  
4 fulsome concrete submissions that we want to, and  
5 we would suggest you will have greater difficulty  
6 in making the kinds of recommendations you need to  
7 with respect to policy oversight if we don't fully  
8 understand the nature and extent of the problem.

9 THE COMMISSIONER: Let me just --  
10 sorry to interrupt you -- but on that, that was  
11 one thought that had already gone through my mind  
12 when I heard about this issue and, as you  
13 know, the type of process for the policy review is  
14 very different than the evidentiary, "legalistic",  
15 if I can call it, process for the factual inquiry  
16 for reasons I have spoken of.

17 And this isn't suggesting I won't  
18 go along with what Ms Jackman is arguing, but  
19 people in the policy review, when they come to  
20 make submissions, should feel free to make much  
21 more liberal use, if you will, of non-strictly  
22 evidentiary material.

23 So the types of issues that would  
24 be raised -- I haven't actually read these  
25 chronologies, but I think I have a scenes sense of

1           what is in them -- the types of issues that would  
2           be raised and how, if those types of issues and  
3           complaints are there, what sort of concerns that  
4           would trigger for a policy review mechanism.

5                       I can say to you, here and now,  
6           you should feel free, and I hope you are going to  
7           make submissions, to refer to that type of  
8           material. I mean, as an example of the type of  
9           problems that may need to be addressed by a review  
10          mechanism.

11                      MR. NEVE: We appreciate that  
12          reassurance and we will take you up on that  
13          invitation. At the same time, we do very much  
14          underscore the importance of this information  
15          being available and available on the public  
16          record. It is obviously already out there in the  
17          broader public domain, but clearly on the public  
18          record of this inquiry in the course of the  
19          factual inquiry.

20                      THE COMMISSIONER: Thank you very  
21          much. Mr. Atkey?

22                      Oh, I'm sorry, Mr. Saloojee, go  
23          ahead.

24                      MR. SALOOJEE: Mr. Commissioner,  
25          Riad Saloojee speaking on behalf of CAIR-CAN and

1 CAF.

2 Just a couple of points regarding  
3 what my colleagues have said. Both CAIR-CAN and  
4 CAF are here both for the fact this is a public  
5 inquiry into Maher Arar's case, an individual  
6 Canadian, Arab and Muslim, but also in the  
7 collective concern that his case also encapsulates  
8 many of the concerns of the Arab and Muslim  
9 community.

10 You have already heard, I think, a  
11 great deal of contextual evidence regarding some  
12 of our collective concerns post 9/11 about  
13 Islamophobia and about racial profiling.

14 So while we fully appreciate that  
15 this is an inquiry into Maher Arar's case  
16 specifically, we also strongly feel that  
17 Mr. Arar's case is part of a broader story that is  
18 very inextricably bound together and that can't  
19 truly be understood apart from one another.

20 We do appreciate some of your  
21 concerns regarding adding the material to the  
22 public record and we certainly would not advocate  
23 that it be used for it's truth. I would submit  
24 that the inclusion of the chronologies would  
25 introduce important evidence or important

1 information that I believe is uncontested at this  
2 point. The very six or seven pieces of evidence  
3 are that all three of threes individuals are  
4 Arabic, Muslim men, they all had a relationship,  
5 casual or otherwise, all under the same  
6 investigation, they are all alleged complicity,  
7 they all alleged torture, they were all held in  
8 Syria and all allege similarities in terms of  
9 there confinement, and this information, I think,  
10 would be very helpful in your analysis of what  
11 exactly happened to Maher Arar.

12 With respect to the document that  
13 Ms Jackman alluded to earlier, Mr. Martel's  
14 description of Mr. Nureddin's confinement, I would  
15 echo what Ms Jackman said, that there really, at  
16 least in my opinion, is no practical difference  
17 between the chronologies by Mr. Almalki and  
18 Mr. El-Maati and the documents that has been  
19 accepted as part of the record. I would further  
20 submit that the document that has been submitted  
21 and has been accepted already is Mr. Martel's  
22 account, so it is actually a hearsay account of  
23 Mr. Nureddin as well as the fact Mr. Martel is a  
24 Canadian official whose actions are being  
25 scrutinized.

1                   The chronologies of the other  
2 individuals are their first-hand information, and  
3 so I think there is a great deal of similarity  
4 between the two, and certainly accepting the one  
5 document, I think, should prove as a precedent in  
6 accepting the other two chronologies, with the  
7 proviso, of course, that they would not be  
8 accepted for their truth.

9                   THE COMMISSIONER: Thank you,  
10 Mr. Saloojee.

11                   Mr. Atkey?

12                   MR. ATKEY: Mr. Chairman, I find  
13 myself differing slightly as a matter of process  
14 rather than objective or substance. I think the  
15 information may be useful to the Commission. I am  
16 concerned about the context and the process under  
17 which it is put before this factual inquiry in a  
18 way that may be misinterpreted by the public as  
19 proof of the information that is stated therein.

20                   I was, frankly, impressed with the  
21 unique way that you dealt with submissions in May  
22 and came up with the proposal of the fact finder,  
23 Stephen Toope, who has been given a mandate, a  
24 very specific mandate to speak with these  
25 gentlemen. I have discussed with my friend



1 Ms Jackman the notion that these are documents  
2 that I'm sure Professor Toope would find very  
3 useful.

4 If indeed he is satisfied, after  
5 having investigated other sources and talked  
6 to the individuals concerned, that the information  
7 is reliable, it could be attached to his report or  
8 it could be summarized as part of his report and  
9 could come to this commission in that form in the  
10 context of the factual inquiry.

11 And I don't touch upon the policy  
12 review which, as you noted, is a broader issue.

13 But I think, in terms of  
14 interpretation of the document and putting the  
15 document in the context that the Commission would  
16 find useful, I think if they were filtered through  
17 the process of Professor Toope, that might be a  
18 preferable way of proceeding, and I don't think  
19 there is strong objection to Ms Jackman in  
20 proceeding in that fashion if there is some  
21 assurance that, through Professor Toope, the  
22 information will come before this commission.

23 THE COMMISSIONER: Thank you,  
24 Mr. Atkey.

25 Does anybody else...?

1                   Ms Edwardh, do you have anything  
2                   to say on this issue?

3                   MS EDWARDH: I think that the  
4                   answer of providing the document to both the  
5                   policy review for its purposes and Professor Toope  
6                   for his purposes is one that can readily be  
7                   adopted. But I don't know that that answers the  
8                   true dilemma that you face, Mr. Commissioner.

9                   People are inviting you to file it  
10                  is part of the public record in order to  
11                  contextualize. In order to let individuals whose  
12                  reputations have been damaged provide an answer,  
13                  and when one looks at it from that perspective, it  
14                  raises a challenge that I don't think is met by  
15                  just shuffling it off to Professor Toope, who  
16                  isn't dealing with reputation, really, or to the  
17                  policy review.

18                  Everyone here knows that you are  
19                  entitled in a commission of inquiry to receive  
20                  information through forms that maybe quite  
21                  unconventional; you are the master of your own  
22                  ship. And as long as counsel filing them are  
23                  saying this is the purpose, to contextualize, to  
24                  have the answer on the record, and to give a basis  
25                  to say to you this is kind of probable cause to

1 invite someone else to look at this matter, but  
2 you don't have to make final findings. If that is  
3 the basis, then I would urge you to accept it  
4 knowing that whatever facts you draw from it are  
5 going to be only in that kind of context, that it  
6 won't be a basis for making findings that would  
7 engage Section 13 of the Inquiries Act, but that  
8 it would allow someone to say, "We believe there  
9 is an adequate basis in the information before you  
10 to make a further recommendation.", that kind of  
11 thing.

12 So I'm just uncomfortable because  
13 I can see us all arguing at the end of the day,  
14 "Well, what does it mean that it's in the policy  
15 review?" or "What does it mean that it's in  
16 Professor Toope?". I think as long as we all  
17 understand that counsel is seeking to put limited  
18 weight on it and for specific purposes, then it  
19 can go before you. I certainly have no difficulty  
20 if it goes before you as is.

21 I suppose I might say to  
22 Ms Jackman, "Maybe we should adjourn and get it  
23 all sworn and just file it.", but I see the  
24 government's issue; I think that's not fair to you  
25 to expand your terms of reference. But Ms Jackman

1 is not asking you to expand it, it's about  
2 context, it's about an answer, and it's about  
3 being able to submit at a later date that there  
4 may be someone else that should conduct some kind  
5 of investigation or inquiry.

6 So, I am content it be received in  
7 all three forums, but acknowledging that there is  
8 a limited component to it coming before you.

9 THE COMMISSIONER: So it's  
10 context, answering reputational concerns and the  
11 basis for recommendation is what I hear everybody  
12 saying. It's a question of how we do it.

13 MS EDWARDH: Yes.

14 THE COMMISSIONER: Monsieur  
15 Décary, do you wish to add anything to this issue?

16 MR. DÉCARY: I don't wish to add  
17 anything.

18 THE COMMISSIONER: Thank you.

19 Ms McIssac?

20 MS McISSAC: I have a couple of  
21 points, sir.

22 First of all, I feel compelled to  
23 respond to a couple of issues. The first one is  
24 the document relating to Mr. Nureddin. That  
25 document was introduced for one purpose and one

1           purpose only, and that purpose was to assist the  
2           witness in his explanation as to the reports that  
3           the other Canadian official made with respect to  
4           his comments regarding Mr. Arar, and it was  
5           necessary for that document to be introduced  
6           so that the witness could explain what was  
7           happening. It was not introduced for any other  
8           reason, and it is only relevant, in my submission,  
9           to this inquiry for that limited purpose.

10                       The second point, and I feel  
11           compelled to make some comments on, is the issue  
12           of reputational interest of Mr. Almalki and  
13           Mr. El-Maati. You will recall, sir, that one of  
14           the reasons the government was concerned about  
15           releasing documents that had been inadvertently  
16           earlier released was the fact we did not want to  
17           go any further than necessary on the public record  
18           naming Mr. Almalki and Mr. El-Maati.

19                       Maybe it was inevitable. Maybe  
20           once the day this inquiry was called it was  
21           inevitable that that would happen, but I do take  
22           issue with any suggestion that the government has  
23           deliberately tried to sully the names of either of  
24           those individuals. It was something that was  
25           inevitable and, quite frankly, something that we

1           tried to avoid to the extend it was possible to do  
2           so.

3                           Having made those preliminary  
4           comments, I would like to comment on the three  
5           reasons that I heard Ms Jackman suggest the  
6           document should be provided in this context as an  
7           exhibit to part one of the inquiry. The first one  
8           relates to the fact that this provides a context  
9           for a finding or -- not a finding, I suppose, she  
10          said, but that there is some kind of pattern of  
11          conduct here, but you are not to make any findings  
12          of fact with respect to the documents.

13                          I have trouble with that because I  
14          don't know what it is, if not a finding of fact,  
15          that there is some kind of pattern here. It is a  
16          finding of fact and it presupposes that one has to  
17          take at some degree of face value what is in those  
18          documents. I am not suggesting it is inaccurate,  
19          I am putting that point on the record.

20                          The second one is the reputational  
21          interests of the two individuals, and I have  
22          already addressed that.

23                          Thirdly, it was to be able to  
24          assess the case about Mr. Arar, and again, I think  
25          we are on the wrong track when we talk about

1           assessing any kind of case against Mr. Arar.  
2           First of all, you know, to the extent there may be  
3           comments in the documents that suggest that the  
4           individuals in question were not engaged in any  
5           kind of activity that should have brought them to  
6           the attention of the RCMP, again, that involves  
7           certain findings of fact. More importantly, in my  
8           submission, the point here is that this inquiry is  
9           not about whether Mr. Arar or, indeed, any other  
10          individual was engaged in criminal activity or  
11          not, so to the extent that the documents attempt  
12          to speak to that issue, in my submission, again,  
13          they are not relevant to what you are doing here.

14                               My submission would be that  
15          Mr. Atkey's position that these documents are  
16          properly introduced through Mr. Toope, who has  
17          been given a very specific mandate by you, to  
18          inquire into the conditions of Mr. Arar's  
19          detention in Syria and Jordan, is the appropriate  
20          way to proceed with these.

21                              The only concern I had is that I  
22          would think it inappropriate for any of us to  
23          prejudge what Mr. Toope might find appropriate to  
24          do with his report at the end of the day. He may  
25          wish to put these as an exhibit or an appendix.

1 He may wish to summarize them, or he may wish not  
2 to refer to them at all, and I think it would be  
3 inappropriate for any of us to presuppose what he  
4 should do.

5 So in my submission, these  
6 documents, if they are to come before the  
7 Commission in respect of Part 1 of the Inquiry,  
8 the appropriate way is for them to be provided as  
9 I gather they have to Mr. Toope, for him to use  
10 them in whatever manner he feels appropriate in  
11 fulfilling is mandate.

12 Thank you.

13 THE COMMISSIONER: Ms Jackman,  
14 anything by way of reply?

15 MS JACKMAN: I guess I find  
16 Ms McIssac's submissions to you, with respect to  
17 suggesting it come through Mr. Toope, somewhat  
18 disingenuous in the sense that, ultimately, the  
19 government doesn't want them on the public record,  
20 and if it's put over to Mr. Toope, they may or may  
21 not be part of the public record. Mr. Toope may  
22 append them as exhibits, he may summarize them, he  
23 may leave out things that are very important.  
24 It's just deferring the decision over to  
25 Mr. Toope, or delegating it to him.



1                   I think that you should deal with  
2                   it directly. He has it before him, he may very  
3                   well put it forward anyway. But the issue is  
4                   before you and I think you need to address it.

5                   The question of receiving credible  
6                   or trustworthy evidence, when I say you can  
7                   receive it, and it is probably better if we put it  
8                   under affidavit, if nobody cross-examines on it,  
9                   that's a question of weight.

10                  THE COMMISSIONER: I would be --  
11                  if I can suggest, I don't see offering it in that  
12                  form. No, I would be disinclined because if the  
13                  concern is there be cross-examination or there not  
14                  be cross-examination, you put me in a very  
15                  difficult position if you file an affidavit and  
16                  turn around and ask for no cross-examination.

17                  But --

18                  MS JACKMAN: You don't practice in  
19                  the federal area of law where the government puts  
20                  in affidavits all the time and we never get to  
21                  cross-examine.

22                  THE COMMISSIONER: No, no --

23                  MS JACKMAN: I'm used to it.

24                  THE COMMISSIONER: In this  
25                  inquiry, I would feel -- I won't comment on

1 federal practice -- I would feel there might be  
2 some merit to a request to cross-examine. In any  
3 event, I think, even for the purposes that you are  
4 proposing, taking it at its broadest, which is  
5 your request -- I'm not saying I'm against it -- I  
6 don't think if I were to adopt it, given the  
7 limits you're putting on the use to be made of it,  
8 I don't think putting it in an affidavit,  
9 un-cross-examined is going to advance the case, so  
10 I don't think we need to confront that.

11 MS JACKMAN: I want to answer a  
12 couple of points that Ms McIssac made.

13 Ms McIssac properly points out  
14 that Mr. Nureddin's memo, the memo concerning Mr.  
15 Nureddin was put in for the purpose of assisting  
16 Mr. Martel in perhaps clarifying what may have  
17 been a confusion or not. I accept that but, I  
18 guess my question then is, if the government  
19 dictates the parameters of the evidence that comes  
20 before you, if there is no memo written that  
21 Mr. Martel confused about, about Mr. El-Maati or  
22 Mr. Almalki, then nothing comes before you. It  
23 shouldn't be dictated for that purpose.

24 THE COMMISSIONER: But that  
25 evidence, having gone in for that purpose, you can

1 rest assured I wouldn't use it as proof of the  
2 truth.

3 MS JACKMAN: No, and I'm not  
4 asking you to. I'm saying that it shouldn't be --  
5 the parameters of what comes before you should not  
6 be dictated by what memos are and aren't written  
7 because then if they don't write a memo, it never  
8 becomes evidence even if someone else thinks it is  
9 relevant.

10 THE COMMISSIONER: I understand  
11 that.

12 MS JACKMAN: I guess the bottom  
13 line is, in terms of the last point about Ms  
14 McIssac's submissions to you, is Mr. Toope is  
15 interviewing these men too corroborate, as I  
16 understand it, the evidence of Mr. Arar around  
17 whether or not he was tortured.

18 Mr. Arar has explained to you --  
19 or he hasn't explained to you but you have his  
20 chronology which, by the way, was put in by the  
21 government as it was part of Mr. Martel's evidence  
22 or file, I think.

23 MS McISSAC: Yes.

24 I really must interject. The  
25 choice of what evidence is put in, by and large,

1 is the Commission's choice, not the government's.

2 MS JACKMAN: I didn't mean that  
3 the government was putting it in, it's just that  
4 it's in existence because the government chose  
5 what to write, and it shouldn't be dictated by  
6 that.

7 The only point is -- and again I  
8 think it's a fine line, and I'm not asking you to  
9 make findings in terms of pattern or in terms of  
10 the process around the suspicions arising with  
11 respect to Mr. Arar based on the other cases, but  
12 on the other hand, I do think that you can say  
13 there is at least a sufficient concern here, based  
14 on what you see, and that you should have it  
15 before you so that you know there is a sufficient  
16 concern.

17 THE COMMISSIONER: Okay.

18 Thank you, Ms Jackman.

19 I'm going to think about it -- I  
20 haven't had an opportunity, actually, to look at  
21 the documents. I have been otherwise occupied.  
22 As a minimum, I can indicate now I ascribe to the  
23 thought that it should be provided to Mr. Toope so  
24 that people can rest assured with respect to that  
25 and I will ask counsel to make it available to

1           him.

2                               Also I made my comments to  
3           Mr. Neve with respect to the recommendation power,  
4           and parties making submissions to the policy  
5           review should feel free to refer to the types of  
6           materials they think appropriate. I don't say  
7           that -- I'm not sure what weight I would attach to  
8           them but, in any event, there is much broader  
9           latitude in a forum like that to refer to  
10          information that you wish.

11                              But dealing with the balance of  
12          the request, let me think about it and I will  
13          issue a brief ruling in due course. I will try to  
14          do that in relatively near future. I have a few  
15          other commitments I have to deal with first, but  
16          that's it.

17                              Let me thank everybody for, first  
18          of all, for today for the long day and the  
19          patience, and the people who waited a long time to  
20          bring the motion and counsel again for their  
21          dedication to the process. As I said to Mr. David  
22          the other day, I will reserve my final comments  
23          until we finish our last public hearing or  
24          finish the oral arguments, at least, later on, but  
25          thank you for your dedication to the process

1 today.

2 So we will stand adjourned until  
3 Monday, September 12, is that right  
4 Mr. Cavalluzzo?

5 MR. CAVALLUZZO: Tuesday.

6 THE COMMISSIONER: No, it's  
7 Monday.

8 MS JACKMAN: Monday's the twelfth.

9 THE COMMISSIONER: Yes, Monday's  
10 the twelfth, that is the first day of oral  
11 argument. I am not sure what time we're starting,  
12 do you know?

13 MR. CAVALLUZZO: Just so that  
14 counsel are advised, we will be proceeding to  
15 submissions on Monday, September 12, but there may  
16 be a few final evidentiary points that we are  
17 going to have to deal with. There are some  
18 outstanding undertakings that I have to ensure are  
19 fulfilled. As well, counsel should be advised  
20 that Mr. Décary is talking, he has indicated to me  
21 that he would like to introduce some expert  
22 evidence and that will be some time later on,  
23 after the submissions.

24 So that will still be outstanding.  
25 But our next event is going to be Monday September

1 12.

2 THE COMMISSIONER: In terms of  
3 Mr. Décary's issue, it is a relatively discreet  
4 one in the overall context of the inquiry, and so  
5 the fact that that evidence -- I have been spoken  
6 to about this for good reason -- cannot be called  
7 until some point later, later and probably in  
8 October, should not delay the progress of the  
9 inquiry, so that people should prepare their  
10 submissions as I requested earlier, in accordance  
11 with those time frames, and that question of the  
12 expert evidence that Mr. Décary may call will be  
13 something that will have to be carved out.

14 People will be given notice when  
15 that evidence is to be called and the nature of  
16 the evidence and those who have an interest in it  
17 will be obviously be entitled to be involved and  
18 participate in it.

19 So we will resume, it will be  
20 here, public hearings, I think it is 10 o'clock,  
21 is it, on Monday September 12?

22 MR. CAVALLUZZO: Yes.

23 MR. DÉCARY: Before you leave  
24 Mr. O'Connor, as the youngest member, probably, in  
25 this room -- you might have noticed -- I would

1           like to express the gratitude and consideration I  
2           have. I have appeared before many commissions in  
3           my young life, and I was very impressed, not only  
4           by the way you disposed of matters, but also by  
5           the tone. Tone comes from the top, and I told you  
6           in private and told you the way you handled all  
7           matters is most impressive.

8                                I wish to thank you in my name and  
9           I'm sure in the name of every lawyer in this room.

10                           THE COMMISSIONER: Thank you very  
11           much, Mr. Décary. I appreciate that.

12                           THE REGISTRAR: Please stand.

13           --- Whereupon the hearing adjourned at 6:35 p.m.,  
14                           to resume on Monday, September 12, 2005  
15                           at 10:00 a.m. / L'audience est ajournée

16