

**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:**

Centre des conférences du gouvernement  
Salle Annexe  
2, rue Rideau,  
Ottawa (Ontario)

le mercredi 23 juin 2004

**Held at:**

Government Conference Centre  
Annex Room  
2 Rideau Street  
Ottawa, Ontario

Wednesday, June 23, 2004

## APPEARANCES / COMPARUTIONS

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Ms Barbara A. McIsaac, Q.C. Mr. Colin Baxter Mr. Simon Fothergill	Attorney General of Canada
Ms Lori Sterling Mr. Darrell Kloeze Ms Leslie McIntosh	Ministry of the Attorney General/ Ontario Provincial Police
Mr. Faisal Joseph	Canadian Islamic Congress
Ms Marie Henein Mr. Hussein Amery	National Council on Canada-Arab Relations
Mr. Steven Shrybman	Canadian Labour Congress/Council of Canadians and the Polaris Institute
Mr. Emelio Binavince	Minority Advocacy and Rights Council
Mr. Joe Arvay	The British Columbia Civil Liberties Association
Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture

**APPEARANCES / COMPARUTIONS**

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Mr. David Matas	International Campaign Against Torture
Ms Barbara Olshansky	Centre for Constitutional Rights
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Mr. Mel Green	Canadian Arab Federation
Ms Amina Sherazee	Muslim Canadian Congress

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Wednesday, June 23, 2004

3 at 10:00 a.m. / L'audience débute le mercredi

4 23 juin 2004 à 10 h 00

5 THE COMMISSIONER: You may

6 sit down.

7 PREVIOUSLY SWORN: WILLIAM JOHN HOOPER

8 THE COMMISSIONER: Mr. Cavalluzzo.

9 MR. CAVALLUZZO: Mr. Commissioner,  
10 there is one matter that I would like to clarify  
11 prior to the cross-examination of Mr. Hooper, and  
12 that is, yesterday I was approached by certain  
13 members of the press asking that the Commission  
14 release what is called the SIRC Report, the report  
15 of the Security Intelligence Review Committee,  
16 respecting the conduct of SIRC relating to  
17 Mr. Arar.

18 I was told by the members of the  
19 press that government counsel had stated that the  
20 report had been produced to the Commission and  
21 that, like any other report or document submitted  
22 to the Commission, the Commission could release it  
23 subject to the government's claims of national  
24 security confidentiality.

25 The press, I think rightfully,

1           wondered why the Commission was sitting on this  
2           report and not releasing it.

3                         The reason is that the SIRC Report  
4           has been totally redacted. There is not one line  
5           in this report which can be released to the  
6           public.

7                         To advise the press of the  
8           process, the redactions have been done by the  
9           Government of Canada, not by SIRC. The process  
10          that we have is that as a public inquiry, we  
11          demand that the government produce relevant  
12          documents. The government will produce those  
13          documents subject to any claims or requests for  
14          national security confidentiality and the process  
15          will be that at the appropriate time you, as the  
16          Commissioner, under your terms of reference, will  
17          make conclusions requesting the requests of the  
18          government in regard to national security  
19          confidentiality.

20                        But the important point that I  
21          want to clarify is that these, once again, are the  
22          redactions made by the government. There is  
23          nothing, not one line, one word, that this  
24          Commission can release to the public without  
25          violating the law.

1 THE COMMISSIONER: As you point  
2 out, Mr. Cavalluzzo, in due course within the  
3 process I will then rule on whether or not the  
4 claims for national security confidentiality in  
5 that report, as in all other documents in which  
6 the claims are made, are, in my view, valid  
7 claims, and to the extent that I disagree with the  
8 claims for national security confidentiality then  
9 we would proceed on that basis.

10 MR. CAVALLUZZO: That's correct.

11 THE COMMISSIONER: Yes.

12 MR. CAVALLUZZO: A couple of other  
13 points I think are very, very important in light  
14 of a newspaper report this morning, and that is  
15 this Commission is not bound by anything that any  
16 internal government organization does, finds or  
17 concludes. We are not bound by the report of the  
18 SIRC, this document which we have unredacted,  
19 which we have reviewed. We are not bound by their  
20 conclusions.

21 I can assure the public, and I can  
22 assure Mr. Arar, that we will fully investigate.  
23 We will question strenuously every witness that  
24 has to testify in camera as far as Mr. Arar's  
25 situation is concerned. That will be done under



1 the rules as we have set out in our Rules of  
2 Practice as mandated by the terms of reference.

3 The only other matter I want to  
4 raise, and I strongly, strongly state, that any  
5 comments, any comments that were made in the press  
6 yesterday about the SIRC Report, that in respect  
7 of those comments absolutely no conclusions should  
8 be drawn regarding those comments. It is for this  
9 Commission to fully investigate the role of SIRC,  
10 the role of the RCMP, and the role of other  
11 government officials as far as they treated  
12 Mr. Arar, and we will do that to the fullness of  
13 our mandate.

14 Thank you.

15 THE COMMISSIONER: Thank you,  
16 Mr. Cavalluzzo.

17 Mr. Waldman.

18 MR. WALDMAN: Just two matters,  
19 Mr. Commissioner.

20 First, I just want to tell you  
21 what I am going to be referring to so that we  
22 won't be fumbling around.

23 Mr. Cavalluzzo, I was handed up  
24 yesterday at the end of the day the redacted  
25 version of the targeting policies. I don't know

1 if they should be introduced as well.

2 MR. CAVALLUZZO: Yes, they should.

3 MR. WALDMAN: I am going to be  
4 referring to two of them. I don't know if you  
5 have them. They are loose papers.

6 THE COMMISSIONER: I don't think I  
7 do. Here, a set is coming up.

8 MR. WALDMAN: I will show  
9 Mr. Cavalluzzo which one.

10 --- Pause

11 THE COMMISSIONER: We will  
12 enter them.

13 MR. WALDMAN: In addition to that,  
14 I am going to be --

15 THE COMMISSIONER: I'm sorry. Do  
16 I have copies of those?

17 MR. DAVID: Mr. Commissioner,  
18 copies are being made at this very moment, so  
19 within minutes you will have them.

20 THE COMMISSIONER: Okay.

21 MR. WALDMAN: I am not going to  
22 refer to them until later on.

23 THE COMMISSIONER: Okay. That's  
24 good.

25 MR. WALDMAN: I am also going to

1 be referring to Exhibit 4 and Exhibit 10.  
2 Exhibit 4 is the Canadian Security Intelligence  
3 Service Policies.

4 THE COMMISSIONER: I have it.

5 MR. WALDMAN: Exhibit 10 is the  
6 Studies Prepared by CSIS. Then Volumes II and III  
7 of our material.

8 THE COMMISSIONER: Okay. Thank  
9 you, Mr. Waldman.

10 MR. WALDMAN: There is a  
11 second matter.

12 Mr. Joseph is here and he is  
13 counsel for one of the intervenors. He has  
14 various particular concerns about one aspect of  
15 the examination, cross-examination, racial  
16 profiling. As you are aware, in the ruling you  
17 asked that I be open to having assistance from  
18 other counsel, so he was in my hotel room last  
19 night until -- I don't want to say how late -- and  
20 there were other people there as well.

21 --- Laughter / Rires

22 MR. WALDMAN: I would ask if he be  
23 given permission to --

24 THE COMMISSIONER: Absolutely,  
25 yes. Please feel free.

1 MR. JOSEPH: With that  
2 introduction --

3 THE COMMISSIONER: That's right.  
4 --- Laughter / Rires

5 MR. JOSEPH: -- thank you for  
6 the courtesy.

7 MR. WALDMAN: I understand that  
8 he has spoken to Mr. Cavalluzzo about the  
9 possibility of making a further motion about  
10 participation. I just wanted to put you on notice  
11 that the fact that he has assisted me today  
12 doesn't fully satisfy his concerns, but I will  
13 leave that to him.

14 THE COMMISSIONER: Okay.

15 MR. JOSEPH: At a later date.

16 THE COMMISSIONER: Thank you.

17 MR. WALDMAN: With those, may I  
18 start my cross-examination?

19 THE COMMISSIONER: Please do.

20 EXAMINATION (Continued)

21 MR. WALDMAN: Mr. Hooper, we heard  
22 from Mr. Mr. Elcock, and I think to a smaller  
23 limited extent to you, about the extensive  
24 training that CSIS officers go in. I think you  
25 said 14 months -- I can't remember, one of the --

1 at a certain point the testimonies merge so if I  
2 put some things that Mr. Elcock said into your  
3 mouth, please forgive me.

4 Fourteen months of training?

5 MR. HOOPER: Weeks.

6 MR. WALDMAN: Fourteen weeks?

7 MR. HOOPER: The induction  
8 training is 14 to 16 weeks, followed -- it is a  
9 five-year probationary period.

10 MR. WALDMAN: Five year probation.

11 MR. HOOPER: There are actually  
12 two training sessions that they undertake.

13 MR. WALDMAN: So it is fair to say  
14 that it is a very extensive training program and  
15 during the five years probation a lot of officers  
16 don't make it through.

17 I just want to get to the point  
18 that intelligence officers go through an extensive  
19 training before they become full intelligence  
20 officers?

21 MR. HOOPER: That's correct.

22 MR. WALDMAN: It is a difficult  
23 task to learn.

24 Is that fair? It is not easy to  
25 become an intelligence officer?

1                   MR. HOOPER: I think we provide  
2                   good training. It is probably harder to get in  
3                   than it is to actually succeed, because I think we  
4                   have some very rigorous selection standards,  
5                   training standards in place.

6                   We have a vested interest in  
7                   seeing our people succeed because it costs so much  
8                   to train them and we make sure that we give them  
9                   the training and exposures that they need to  
10                  succeed. But it is a long and arduous process  
11                  with a number of benchmarks that every  
12                  intelligence officer has to succeed in passing  
13                  before he or she is considered to be a full  
14                  working level intelligence officer.

15                  MR. WALDMAN: It's not something  
16                  that you could pick up in a matter of a few weeks  
17                  to be a good --

18                  MR. HOOPER: No.

19                  MR. WALDMAN: -- to be able to  
20                  gather intelligence properly.

21                  Is that fair?

22                  MR. HOOPER: No.

23                  MR. WALDMAN: Officers who do this  
24                  type of investigations need to have, I think  
25                  Mr. Elcock said, understanding of the cultures and

1 the milieu they are working so as to be able to  
2 properly question people in an appropriate  
3 fashion.

4 Is that fair to say?

5 MR. HOOPER: Yes.

6 MR. WALDMAN: Is it fair to say  
7 that given the nature of the skills of an  
8 intelligence officer that they have a special  
9 skill-set that is distinct from that of a normal  
10 police officer?

11 MR. HOOPER: I think fundamentally  
12 in terms of the generic analytical and  
13 investigative skills that you need to have as a  
14 police officer or an intelligence officer there is  
15 a great deal of similarity. I mean, we are  
16 governed by different laws and policies. I mean,  
17 investigative work tends to be investigative work  
18 and analytical work tends to be analytical work  
19 and there are some nuances to security  
20 intelligence collection or analysis, but they are  
21 not vastly different from the --

22 MR. WALDMAN: Are you saying to me  
23 that I could take a police officer from any police  
24 force and he could become an competent CSIS  
25 officer tomorrow? Is that what you just --

1 MR. HOOPER: Not tomorrow.

2 MR. WALDMAN: How long would  
3 it take?

4 MR. HOOPER: I would go back to my  
5 own experience. I was detachment police officer  
6 for seven years before I came into the RCMP  
7 Security Service and even with that extensive  
8 investigative background I think it took me a  
9 period -- and the RCMP recognizes at this time, we  
10 had a six-month mentorship program back in those  
11 days, so it would take some time before I think a  
12 law enforcement officer could be considered to be  
13 an effective intelligence officer.

14 MR. WALDMAN: Well, yesterday we  
15 spoke about INSETs and we know that INSETs are  
16 doing intelligence work. It is the RCMP, but we  
17 also know from our own experience here we have the  
18 Ottawa police, we also know that the OPP is  
19 involved because Mr. Arar's brother was questioned  
20 by an OPP officer who came with a RCMP officer,  
21 and they were asking trying to collect  
22 intelligence.

23 Doesn't it cause you a lot of  
24 concern that untrained police, Ottawa police and  
25 OPP officers, are gathering intelligence in the



1 context of INSETs?

2 MR. HOOPER: I don't know that  
3 these people are untrained. Quite frankly, I  
4 don't know who these people are or what training  
5 they might have received. That is difficult for  
6 me to comment on, Mr. Waldman.

7 MR. WALDMAN: Would you feel  
8 comfortable if an Ottawa police officer were taken  
9 and without any specific intelligence training  
10 were sent out to gather intelligence?

11 MR. HOOPER: I guess it would  
12 depend on the circumstances. It wouldn't cause me  
13 any great concern.

14 MR. WALDMAN: It wouldn't cause  
15 you any concern. But you just told us that it  
16 took you six months of mentoring after you became  
17 a police officer to be an effective intelligence  
18 officer. I was asking you if a police officer went  
19 out and started gathering intelligence without any  
20 training and you are telling me it wouldn't cause  
21 you any concern?

22 MR. HOOPER: That officer might  
23 not be as effective as he might be if it were  
24 exposed to specific training, but I don't know  
25 that that was the case in the specific instance

1           that you are referring to.

2                           MR. WALDMAN: We don't obviously  
3 know because we don't have access. We know some  
4 things based on what we have been told by people  
5 in the community about experiences of individuals  
6 who met with people from these INSET forces who  
7 told them they had just got seconded from Customs  
8 and other places a brief period before without any  
9 training.

10                           If that were true, would that  
11 cause you concern?

12                           MR. HOOPER: It wouldn't cause me  
13 undue concern. I mean, as experienced police  
14 officers that doesn't preclude your having worked  
15 within different communities and it certainly  
16 doesn't preclude you from having acquired basic  
17 investigative skills and techniques.

18                           The question comes down to me,  
19 it is a degree of effectiveness more than  
20 anything else.

21                           MR. WALDMAN: If the people  
22 themselves acknowledge that they didn't have any  
23 expertise or understanding of the communities,  
24 would that cause you concern?

25                           MR. HOOPER: It would be ideal if

1           they had experience with the community.

2                           MR. WALDMAN:   But would it cause  
3           you concern if they didn't?

4                           MR. HOOPER:   I think I have  
5           answered that.  It wouldn't cause me undue  
6           concern.  Again, it comes down to a matter of  
7           effectiveness rather than --

8                           MR. WALDMAN:   How reliable would  
9           the conclusions be, let's say an OPP officer who  
10          had no intelligence -- and Mr. Commissioner you  
11          are going to have to forgive me a bit because we  
12          will be able to, if it becomes relevant, adduce  
13          evidence to establish that these --

14                          THE COMMISSIONER:  No.  I'm not --  
15          take your time.

16                          MR. WALDMAN:   Okay.

17                          If an OPP officer or an Ottawa  
18          police officer who had no training went in and  
19          tried to interview a person from the Muslim  
20          community and attempted to gather intelligence  
21          about his beliefs in order to determine whether he  
22          was a possible threat, how reliable do you think  
23          that evidence would be?

24                          MR. HOOPER:   Again, this is an  
25          area of some difficulty for me because I don't

1 know what the purpose of the interview was. I  
2 don't know that INSET officers typically go out  
3 and conduct interviews with the intention of  
4 determining whether the interviewee is a threat to  
5 the security of Canada.

6 I think it is more likely that  
7 they interview people to determine what they may  
8 know about a threat to the security of Canada.

9 But again, without knowing the  
10 specific circumstances, what I am prepared to say  
11 is that I think having some knowledge of the  
12 threat dynamic and the threat milieu makes you  
13 more effective.

14 MR. WALDMAN: And makes the  
15 information more reliable.

16 MR. HOOPER: I would say, yes.

17 MR. WALDMAN: Don't you think this  
18 is work that would more effectively be done by  
19 CSIS as opposed to the RCMP and the Ottawa police?

20 MR. HOOPER: To be perfectly  
21 frank, I don't have any difficulty with the work  
22 that INSET has been doing in the national security  
23 domain, and I have worked very closely with one of  
24 the INSETs. I think there is a great degree of  
25 consultation that goes on between INSETs and our

1 service. We do have a seconded officer there who  
2 is there for a reason, because he or she does have  
3 some knowledge of the threat milieu.

4 Personally, I don't see a great  
5 problem with this.

6 MR. WALDMAN: I can tell you that  
7 the community has a lot of concern about INSET  
8 officers who don't have any knowledge and  
9 understanding of the Muslim community going out  
10 and questioning people about matters related to  
11 themselves and to their communities and their  
12 religious beliefs.

13 Can you understand that concern?

14 MR. HOOPER: Certainly.

15 MR. WALDMAN: I want to move on,  
16 but I just want to clarify one last thing.

17 What is the purpose of INSET? I  
18 don't think we ever fully understood that.

19 MR. HOOPER: The purpose of INSET,  
20 first of all, it is designed principally to assist  
21 the RCMP in fulfilling its mandate within the  
22 national security domain, particularly as regards  
23 national security offences.

24 I think INSETs also took careful  
25 cognizance of the fact that for them to be as

1 effective as they can be in fulfilling that  
2 mandate, they needed to engage a wide array of  
3 partnerships.

4 In the case of the large  
5 metropolitan areas where they do exist, that means  
6 bringing in officers from regional police  
7 departments, municipal PDs, whatever provincial  
8 police authorities exist, customs officials,  
9 immigration officials and the like.

10 What it does is it integrates an  
11 array of skillsets to assist law enforcement in  
12 fulfilling its mandate as regards national  
13 security.

14 MR. WALDMAN: Mr. Commissioner and  
15 Mr. Cavalluzzo, I am not going to go any further  
16 with this witness on that. I fear if I started to  
17 ask any more questions, it is just going to result  
18 in objections.

19 I want to put the Commission on  
20 notice that Mr. Arar is very concerned about the  
21 INSETs, about the structure, the training of the  
22 officers who are involved in the INSETs and  
23 intelligence matters. I would hope that this will  
24 be a matter that the Commission and Mr. Cavalluzzo  
25 will pursue in camera and hopefully in public

1 afterwards.

2 THE COMMISSIONER: After the  
3 ruling, yes.

4 Certainly I think that is an  
5 area --

6 Mr. Cavalluzzo?

7 MR. CAVALLUZZO: I can assure  
8 Mr. Waldman that we will be doing that in camera.  
9 As well, we will be dealing with that situation of  
10 INSETs extensively with Mr. Loepky next week in  
11 public. So you will have the opportunity to ask  
12 the Deputy Commissioner of the RCMP questions on  
13 the INSETs.

14 As Mr. Hooper said yesterday, the  
15 RCMP is primarily responsible for those INSETs,  
16 and he will be here testifying.

17 MR. WALDMAN: All right. I am  
18 going to move on to another area.

19 Mr. Arar's case highlights the  
20 dangers of sharing information in the context of  
21 foreign arrangements. We know that Prime Minister  
22 Martin went to Mexico to meet with President Bush  
23 and, despite signing an agreement to regulate  
24 information-sharing to some extent, Mr. Bush made  
25 it clear that he still reserved the right to

1           deport Canadians to third countries, again.

2                           What steps has CSIS taken, after  
3           the Arar case, to ensure the safety of Canadians  
4           when we share information with the United States?

5                           MR. HOOPER: I would revert to --  
6           not that I am relying on the testimony of  
7           Mr. Elcock, but there wouldn't be a wide  
8           divergence in his views and my views on this  
9           subject.

10                           How we manage the exchange of  
11           information with U.S. authorities is in accordance  
12           with the same guidelines that we manage exchanges  
13           of information with anybody else. These exchanges  
14           are done in the national security interests of  
15           Canada and with due regard to the possible  
16           consequences of that particular piece of  
17           information-sharing. Whether that has to do with  
18           potential for identification of CSIS assets, human  
19           sources, or Government of Canada security assets,  
20           these things are all weighed when the disclosure  
21           is contemplated, whether it is with the U.S. or  
22           with any other country.

23                           I think, in direct response to  
24           your question, Mr. Waldman, prior to whatever  
25           Mr. Bush and Mr. Martin discussed in Mexico, we



1 had a rigorous set of guidelines regarding the  
2 exchange of information with foreign governments  
3 and security intelligence agencies thereof.

4 We haven't done anything apart  
5 from perhaps extending more careful consideration.  
6 In terms of new policies or guidelines, we haven't  
7 drafted any.

8 MR. WALDMAN: Just to clarify,  
9 there are no new guidelines after Mr. Arar's  
10 arrest.

11 MR. HOOPER: No, sir.

12 MR. WALDMAN: Did I understand you  
13 to say about your being more careful?

14 I don't want to put words in your  
15 mouth, but I thought that is what you said right  
16 at the end. There are no new guidelines, but you  
17 are giving more careful consideration. That is  
18 what you said.

19 MR. HOOPER: I think the whole  
20 issue -- post 9/11 the issue of rendition has  
21 perhaps caused us to carefully contemplate how we  
22 share intelligence with a wide array of countries.

23 MR. WALDMAN: So the issue of  
24 rendition is a factor that you take into account  
25 when you share information.

1 MR. HOOPER: Yes.

2 MR. WALDMAN: Did you take it into  
3 account in Mr. Arar's case?

4 MR. HOOPER: That makes a  
5 presumption, sir.

6 MR. WALDMAN: That's fine.

7 Mr. Commissioner, I know we talked  
8 about the SIRC reports. I am not going to bring  
9 up the Sivakumar case. I am just going to very  
10 briefly talk about the Goven case, because that  
11 was the one that dealt with membership. I am just  
12 going to ask about the issue of whether Mr. Hooper  
13 is aware of the recommendations that were made by  
14 the SIRC in Goven and whether steps were taken to  
15 implement them.

16 He did testify that he was  
17 extensively connected with SIRC over a long period  
18 of time.

19 THE COMMISSIONER: What page is  
20 that at?

21 MR. WALDMAN: I forgot that I was  
22 going to refer briefly to it. That is in Volume  
23 1. The Goven case starts at page 186.

24 THE COMMISSIONER: And the  
25 recommendations were right at the end, if I

1 recall.

2 MR. WALDMAN: Yes.

3 I just want to know if you are  
4 familiar with the Goven case.

5 MR. HOOPER: Yes, I am.

6 MS McISAAC: Excuse me. Could you  
7 wait just a moment until we get the book, please.

8 MR. BAXTER: What is the page?

9 MR. WALDMAN: It starts at page  
10 186.

11 I think at 211 he talks about  
12 membership, and 212.

13 THE COMMISSIONER: Could I ask  
14 you, Mr. Waldman: You are referring to Volume I  
15 of the materials for cross-examination?

16 MR. WALDMAN: Yes, Volume I. The  
17 Goven report starts at 186, but he talks about  
18 membership at 211 and 212. He talks about his  
19 assessment of Mr. Goven and then about the  
20 interview process.

21 Mr. Rae was critical of CSIS'  
22 understanding of membership and said that it was  
23 too broad.

24 Are you aware of Mr. Rae's  
25 position?

1 MR. HOOPER: I certainly am, yes.

2 MR. WALDMAN: Did CSIS change its  
3 policies with respect to this issue of membership  
4 as a result of the SIRC report?

5 MR. HOOPER: We really don't have  
6 policy that addresses membership in a terrorist  
7 organization. There is no service policy that  
8 says for a person to be identified as a member of  
9 a terrorist organization these elements must be  
10 present.

11 MR. WALDMAN: Did SIRC make any  
12 changes with respect to how it assessed membership  
13 as a result of Mr. Rae's recommendations?

14 MR. HOOPER: Did CSIS make any  
15 changes?

16 MR. WALDMAN: Sorry, CSIS.

17 MR. HOOPER: Not to my knowledge,  
18 no.

19 MR. WALDMAN: Mr. Rae made these  
20 recommendations, and we understood that CSIS  
21 respects SIRC. Why didn't CSIS take action based  
22 upon Mr. Rae's recommendations?

23 MR. HOOPER: I can't answer that  
24 question, Mr. Waldman.

25 MR. WALDMAN: Is that --

1                   MR. HOOPER: That's not a national  
2 security objection.

3                   MR. WALDMAN: You don't know.

4                   MR. HOOPER: We didn't have policy  
5 in the first instance.

6                   I might add, in the case of some  
7 terrorist organizations, membership is very  
8 difficult to establish under any circumstances. I  
9 think in virtually every organization -- and this  
10 is particularly true in the terrorism domain --  
11 membership can be at times a very amorphous  
12 concept; at other times it is very clearly  
13 identifiable.

14                   I don't know that one could draft  
15 policy around what constitutes membership that  
16 would cover a wide array of organizations that the  
17 service investigates, whether they are hostile  
18 intelligence services or a terrorist organization.

19                   MR. WALDMAN: Mr. Rae quoted what  
20 you said and said that the service witness said  
21 that membership is:

22                   "... `more and more an  
23 amorphous concept' in which  
24 various criteria would be  
25 applied in distinguishing

1                   between passive sympathy and  
2                   the level of active support  
3                   that would lead to a  
4                   conclusion of `membership'."

5                   So it would seem that there are  
6                   criteria that are used.

7                   He then went on to say:

8                   "The difficulty with this  
9                   line of approach is that it  
10                  casts a very wide net, and  
11                  that a great many people who  
12                  are politically active  
13                  Kurdish nationalists, who are  
14                  peaceful, law abiding and  
15                  non-violent, will be labelled  
16                  as `terrorists'. In my view,  
17                  this is exactly what has  
18                  happened in the case of  
19                  Mr. Goven. He has been  
20                  unfairly labelled. He is not  
21                  a member of a terrorist  
22                  organization."

23                  This was a SIRC report in which  
24                  CSIS had found that Mr. Goven was a member and  
25                  SIRC disagreed. Is that correct?

1 MR. HOOPER: That is correct,  
2 although I think the conclusion that Mr. Goven was  
3 not a member of a terrorist organization comes  
4 back to Mr. Rae's opinion that the PKK was not a  
5 terrorist organization; hence Mr. Goven couldn't  
6 be a member of a terrorist organization.

7 So there is a nuance there.

8 MR. WALDMAN: He went on to say on  
9 the same page 212:

10 "Nor is a simple assertion by  
11 a human source that someone  
12 else is a member of the PKK a  
13 'fact'. It is an expression  
14 of opinion from within a  
15 beleaguered community where  
16 rumour and gossip inevitably  
17 feed on each other. Someone  
18 could well have a personal  
19 grudge, and knowing how  
20 damaging such an opinion  
21 could be when given to CSIS  
22 (usually for money). It is  
23 difficult to see how much  
24 stock can be placed on that  
25 kind of 'information'."

1                   MR. HOOPER: I would agree with  
2                   that, and the service comports itself accordingly.  
3                   We do not take one piece of information and from  
4                   that conclude membership.

5                   I think Mr. Elcock's testimony  
6                   spoke to our analysis of bits of intelligence that  
7                   come together to present a picture and which may  
8                   lead to conclusions being drawn.

9                   I can't tell you that the service  
10                  would never conclude on the basis of one human  
11                  source report or one piece of open information or  
12                  one intercept that a person is or is not a member  
13                  of a terrorist organization.

14                  So my views on that whole issue  
15                  are in direct accord with Mr. Rae's.

16                  MR. WALDMAN: On page 216 of the  
17                  report Mr. Rae says:

18                                 "If a person is determined to  
19                                 be a member of a terrorist  
20                                 organization but poses no  
21                                 threat, then this indicates  
22                                 that the provisions are being  
23                                 misinterpreted. If the  
24                                 person poses no threat, the  
25                                 person is not a member



1                   because member should be read  
2                   to cover only those who do  
3                   pose a threat, in the sense  
4                   that a person actively and  
5                   knowingly participates --  
6                   directly or as a conspirator  
7                   or aider and abettor..."

8                   And that would I think include  
9                   fundraising and other activities.

10                  Would you agree with that?

11                  MR. HOOPER: I think Mr. Rae and I  
12                  might have a disagreement on that one. To  
13                  conclude that somebody may be a member of a  
14                  terrorist organization and not present a threat is  
15                  a bit of a stretch for me to accept.

16                  MR. WALDMAN: I don't think that  
17                  is what he said. I think what he really said  
18                  there is that if a person is not a threat he is  
19                  not a member:

20                         "... because member should be  
21                         read to cover only those who  
22                         do pose a threat, in the  
23                         sense that [the person]  
24                         actively and knowingly  
25                         participates -- directly or

1 as a conspirator or aider and  
2 abettor..."  
3 in a terrorist organization."

4 Do you agree with that?

5 "... member should be read to  
6 cover only those who do pose  
7 a threat, in the sense that  
8 the person actively and  
9 knowingly participates --  
10 directly or as a conspirator  
11 or aider and abettor..."

12 So it covers conspirators, which  
13 would be sleeper cells, I suppose; and aiders and  
14 abettors, which would cover people who raise  
15 money.

16 So it is pretty broad still.  
17 Would you agree with that definition?

18 MR. HOOPER: No, I don't. That is  
19 to me, to draw an analogy -- and I don't mean to  
20 be flippant here, but it is like saying you are  
21 only a member of the Hell's Angels if you drink  
22 beer at the clubhouse. You are either a member of  
23 a terrorist organization or you are not --  
24 membership being a very difficult status to  
25 ascertain.

1                   I have a great deal of difficulty  
2 drawing a line between members who are active or  
3 who are inactive, and members of an organization  
4 should only be adjudged members if they pose a  
5 threat. I don't see any necessary linkage between  
6 one or the other.

7                   I do accept that Mr. Rae has an  
8 argument that he has clearly articulated, but it  
9 doesn't resonate with my experience as an  
10 intelligence officer.

11                   MR. WALDMAN: Mr. Rae said there  
12 are criteria that you have. That was back in the  
13 first section that I quoted, that you have  
14 criteria.

15                   He said on page 211 to 212:

16                   "... `more and more an  
17 amorphous concept' in which  
18 various criteria would be  
19 applied in distinguishing  
20 between passive sympathy and  
21 the level of active  
22 support ..."

23                   Could you tell us what those  
24 criteria are? What are the criteria that you use  
25 to distinguish between passive sympathy -- given

1           that this is a very fine line, how would you make  
2           the distinction?

3                               Obviously this is the highly  
4           relevant issue of targeting we are going to come  
5           to.

6                               MS McISAAC: Mr. Chairman, could  
7           I please remind everyone that the question that  
8           Mr. Rae was addressing was the meaning of  
9           membership in the Immigration Act and the question  
10          of what constituted membership for the purposes of  
11          whether or not a person could obtain either  
12          Canadian citizenship or landed immigrant status.  
13          What he is talking about is the criteria relating  
14          to that interpretation of that particular statute,  
15          which is not something that is of issue before the  
16          Tribunal today.

17                              THE COMMISSIONER: I am satisfied  
18          that it is a relevant line of questioning. I  
19          think if you want to pursue it when it is your  
20          opportunity to ask the witness, then you may do  
21          so.

22                              Please proceed, Mr. Waldman.

23                              MR. WALDMAN: Could you tell us  
24          what the criteria you have between passive  
25          sympathy and membership?

1 MR. HOOPER: I would add to  
2 Ms McIsaac's interjection that that evidence was  
3 adduced with specific reference to the PKK, which  
4 was the organization at issue in the Goven case.

5 In that instance, passive sympathy  
6 would include things like participating in  
7 demonstrations organized by a front group that had  
8 PKK linkages. So a person may or may not know  
9 that he would be participating in a protest or  
10 demonstration in association with the PKK.

11 In terms of active support, the  
12 PKK, particularly in Toronto, had some  
13 organizations that were widely known in the  
14 community, notwithstanding the fact that they  
15 didn't have a banner out front of the building  
16 saying that this is a PKK organization. It was  
17 widely understood in the community that they were  
18 PKK facilities.

19 An active supporter might be  
20 somebody who would attend meetings at those  
21 facilities, who would interact with other known  
22 PKK members, who would knowingly give money to PKK  
23 initiatives.

24 And then there is another level  
25 which would be say a PKK operative, which would be

1           somebody who was prepared to undertake an act of  
2           serious violence on behalf of the PKK, who was  
3           known to do that either in Canada or elsewhere.

4                        So there is sympathy, there is  
5           affiliation, there is activism and then there is  
6           actual operatives in that instance.

7                        MR. WALDMAN:  There was one  
8           security certificate issued against a PKK member.  
9           Am I correct?

10                      MR. HOOPER:  I don't think it was  
11           a security certificate.  It was what was the old  
12           section under the previous Immigration Act.  I  
13           don't recall --

14                      MR. WALDMAN:  Seventy-one -- a  
15           40.1 certificate?

16                      MR. HOOPER:  No, I don't believe  
17           we have ever had 40.1 certificates against PKK  
18           officers.  PKK officers have been deemed  
19           inadmissible classes and removed from Canada, but  
20           not under 40.1 certificates, to the best of my  
21           knowledge.

22                      MR. WALDMAN:  That's fine.  It is  
23           not really relevant.

24                      Let me see if I understand you.  
25           You have given us different levels.

1                   There is passive sympathy, and  
2                   that would be someone who attended demonstrations  
3                   but who you couldn't conclude was knowingly  
4                   supporting. Then sympathizers are people who  
5                   might go to cafes or the other places that you  
6                   believe were PKK fronts.

7                   Then where do you draw the line  
8                   between sympathizers and activists?

9                   MR. HOOPER: I guess it comes down  
10                  to what particular role an individual would play  
11                  in that instance. If a person had a range of  
12                  contacts among known PKK members, other known PKK  
13                  members; if the preponderance of contacts that  
14                  that individual had were known to be other PKK  
15                  members; if the individual regularly attended  
16                  meetings with other known PKK activists; and if  
17                  that person assumed a leadership role or dominant  
18                  role within that particular target community.

19                  I think that distinguishes  
20                  somebody who might be a sympathizer versus an  
21                  activist or an affiliate.

22                  These are all very nebulous terms.  
23                  I appreciate that. And they are specific to the  
24                  PKK. It would be very difficult to draw  
25                  inferences or make conclusions about what

1 information we adduced as constituting membership  
2 or activism on behalf of the PKK and overlay that  
3 template on another terrorist organization.

4 This is why you won't see these  
5 terms codified in our policy, because I don't  
6 think it is possible to write policy that would  
7 cover the array of targets that we look at.

8 MR. WALDMAN: For al-Qaeda it  
9 would be a totally different --

10 MR. HOOPER: I am laughing at that  
11 question, not because it is a funny question but  
12 because I think al-Qaeda more than any other  
13 organization is anomalous in the extreme. When we  
14 first started looking at al-Qaeda as an  
15 organization, one of the first things we  
16 learned -- and if you go back to the first attack  
17 on the World Trade Center in 1993, I think the  
18 perpetrators of that act were of seven different  
19 nationalities. So you couldn't even cut al-Qaeda  
20 in terms of national grounds.

21 They had a number of  
22 characteristics in common, but the usual  
23 indicators of membership that you might use in say  
24 terrorist organization X just did not fit in the  
25 case of al-Qaeda.



1                   We adopted a conscious decision  
2                   early on in our investigation of al-Qaeda that as  
3                   it related to its presence in Canada, we would not  
4                   say that this guy is a member of the Algerian FIS  
5                   or the Algerian GIA or the Libyan Islamic Fighting  
6                   Group, or any of the constituents that were  
7                   captured under the general rubric of Islamic  
8                   terrorism, because when these people arrived in  
9                   Canada they didn't follow the rules of membership.

10                   As we saw in the first World Trade  
11                   Center attack, seven guys of seven different  
12                   nationalities. They weren't operating as members  
13                   of the Egyptian Al-Gama'a al-Islamiyya or Al-Jihad  
14                   or Vanguard of Conquest. They were a bunch of  
15                   guys who got to know each other by virtue of  
16                   common training, common experiences in Jihad in  
17                   Bosnia, Chechnya and Afghanistan who ended up in  
18                   the same place at the same time and followed the  
19                   same religious doctrine.

20                   But in terms of al-Qaeda,  
21                   membership, as it relates to its presence in  
22                   Canada, is very, very difficult to establish.

23                   If you are in Algeria or if you  
24                   are in Libya or if you are in Morocco or some  
25                   other place where there are high concentrations

1 and more well-defined organizational structures,  
2 you might be able to better define membership.  
3 But in Canada, in the North American context, in  
4 most instances it is very difficult to establish.

5 MR. WALDMAN: Then how do you  
6 establish it?

7 I am thinking as a lawyer now.  
8 Forgive me, maybe I shouldn't. Maybe I should  
9 think as an intelligence officer, but I haven't  
10 got the 14 weeks training. So I am going to have  
11 to rely on my legal training.

12 The problem we have here is you  
13 call people members but you are not able to give  
14 us any sense of what it means to be a member or  
15 how you decide whether someone is a member or not.  
16 So I guess you need to help us a bit so that we  
17 can understand how it is that you reached the  
18 conclusion that someone is a member of al-Qaeda.

19 MR. HOOPER: I might start by  
20 bringing a little bit more precision to what I  
21 have just said.

22 I think I said in my testimony  
23 yesterday that al-Qaeda is an umbrella  
24 organization with a number of constituents  
25 underneath it. We have talked about some of them:

1 Al-Gama'a al-Islamiyya, al-Jihad. I could  
2 enumerate several, but the point being that  
3 al-Qaeda is best viewed as an umbrella that has a  
4 number of composite groups underneath it.

5 When somebody is talked about in  
6 our lexicon as being a member of al-Qaeda, what we  
7 mean is that there are indicators that he trained  
8 in Bosnia, or I'm sorry trained in Afghanistan,  
9 and may have fought in Jihad, whether that was  
10 Bosnia, Chechnya or Afghanistan or elsewhere.

11 MR. WALDMAN: Go slower. So  
12 indicator number 1 is --

13 MR. HOOPER: Don't call them  
14 indicator number 1.

15 MR. WALDMAN: No, I am not  
16 prioritizing it. You are just speaking fast and I  
17 am trying to write this down.

18 So the first indicator is training  
19 in Bosnia --

20 MR. HOOPER: Training in  
21 Afghanistan.

22 MR. WALDMAN: Training in  
23 Afghanistan.

24 MR. HOOPER: For example, if they  
25 trained in Afghanistan in camps that were known to

1 be run by al-Qaeda, if a guy has undertaken  
2 training there, that might be an indicator.

3 MR. WALDMAN: Okay.

4 MR. HOOPER: If he presents a  
5 travel pattern that we establish that takes him to  
6 places that are known to be venues of al-Qaeda  
7 activism, that might be another indicator.

8 In a Canadian context, range of  
9 contacts, the quality of the contacts he has.

10 MR. WALDMAN: What do you mean by  
11 "quality"?

12 MR. HOOPER: Again, incidental  
13 contact, regular contact, frequent contact, and  
14 preponderance of the kinds of contacts that he  
15 has.

16 MR. WALDMAN: You said Chechnya,  
17 Bosnia; fighting there in Chechnya and Bosnia?

18 MR. HOOPER: Bosnia, Chechnya and  
19 Afghanistan.

20 MR. WALDMAN: One is training in  
21 Afghanistan and the other would be fighting in  
22 Bosnia or in Chechnya?

23 MR. HOOPER: Yes.

24 None of these indicators in and of  
25 themselves really allow a judgment as to

1 membership, but again that is why I am calling  
2 them indicators.

3 MR. WALDMAN: I understand. I  
4 appreciate this, and I really appreciate your  
5 testimony. It is helping me a lot to understand  
6 this.

7 MR. HOOPER: You may have, if I  
8 can add to that --

9 MR. WALDMAN: If there are other  
10 indicators, that would be helpful.

11 MR. HOOPER: Information from our  
12 usual array of sources, whether they are domestic.  
13 We may receive information from, say, Immigration  
14 Canada.

15 If a person arrives in Canada and  
16 makes admissions at port of entry and says I was a  
17 member of the Armed Islamic Group when I resided  
18 in Algeria, that might be something that we would  
19 take into consideration.

20 Or if he arrives in Canada as a  
21 refugee and says I am seeking refugee because I am  
22 a member of the Egyptian al-Jihad, that would be  
23 something to consider.

24 We may have information from  
25 international sources from foreign intelligence

1 services that provide additional clues as to  
2 whether or not a person may be affiliated with  
3 al-Qaeda generally speaking or one of the  
4 constituent groups that are captured under the  
5 al-Qaeda umbrella.

6 Then, we would prefer to make our  
7 own observations before accepting this as given,  
8 because again going back to Mr. Elcock's  
9 testimony, intelligence officers next to defence  
10 lawyers are probably the most sceptical human  
11 beings on the face of the earth. We like to  
12 observe a person's comportment in Canada, even  
13 with all of those indicators, before we make an  
14 independent judgment as to whether or not a person  
15 might be an al-Qaeda sympathizer, an al-Qaeda  
16 operative, an al-Qaeda activist, an al-Qaeda  
17 facilitator.

18 There is a whole bunch of stuff  
19 that goes into what you would like to call  
20 "membership".

21 MR. WALDMAN: I assume that with  
22 al-Qaeda there are other factors that are relevant  
23 too: religion. Is that -- do you know of any  
24 al-Qaeda operatives who are not Muslim?

25 MR. HOOPER: I don't personally

1 know any.

2 MR. WALDMAN: So that would be a  
3 factor?

4 MR. HOOPER: Is somebody a Sunni  
5 Muslim? I appreciate that most of the members of  
6 al-Qaeda -- and I have just stated I don't know  
7 any members of al-Qaeda or its constituents that  
8 aren't Muslim -- but I can't say that in my  
9 experience I have ever asked the question, "Are  
10 you a Sunni Muslim?" in trying to establish  
11 whether somebody is -- I take that as a given.

12 MR. WALDMAN: Would it surprise  
13 you if some of the investigators are going into  
14 the community and are asking those questions and  
15 also asking questions about how often people pray  
16 and how many times a day they pray?

17 MR. HOOPER: Would it surprise me?

18 MR. WALDMAN: Yes.

19 MR. HOOPER: I have been a law  
20 enforcement officer and a security intelligence  
21 officer for 30 years, there is very little that  
22 surprises me any more.

23 MR. WALDMAN: Do you think it is  
24 relevant how often a person prays as to whether he  
25 is an al-Qaeda operative?

1                   MR. HOOPER: My own belief and the  
2 belief of the officers that work for me is that  
3 pious Muslims pray frequently. That says nothing  
4 about whether or not they are a member of a  
5 terrorist organization.

6                   MR. WALDMAN: Do you personally  
7 believe it is appropriate for officers to go out  
8 and ask questions of individuals about how often  
9 they pray in order to ascertain whether or not  
10 they pose a threat to the security of Canada?

11                  MR. HOOPER: Do I think it is  
12 appropriate? If I were giving guidance to my  
13 people in terms of how they comport themselves  
14 when conducting interviews, that is not a question  
15 that I would recommend be asked.

16                  MR. WALDMAN: Don't you think  
17 it is almost counterproductive to ask such a  
18 question in terms of trying to open up a dialogue  
19 with a person?

20                  MR. HOOPER: From my own  
21 experience in dealing with members of the  
22 community, I think it would be viewed as  
23 offensive.

24                  MR. WALDMAN: Thank you.  
25                                So you have given us a whole



1 series of indicators. So, in your view, being a  
2 pious Muslim, is that an indicator?

3 MR. HOOPER: No.

4 MR. WALDMAN: Thank you.

5 In your view, you gave us some  
6 yesterday -- as well I think you were talking in  
7 general -- educated, mobile, computer literate.

8 Are those factors you look at  
9 as well?

10 MR. HOOPER: No. In enumerating  
11 those features my point was, in earlier testimony,  
12 to speak to the difficulty in countering the  
13 threat. You are dealing with smart guys. You are  
14 dealing with --

15 MR. WALDMAN: Just so that we are  
16 not accused of being sexist, are they all men, as  
17 far as you know? Because you are referring only  
18 to men, I just wanted to be clear on that point?

19 MR. HOOPER: I know that Hamas and  
20 Palestinian Islamic Jihad, for example, have used  
21 female suicide bombers. Whether that makes them  
22 members of Hamas or PIJ I really wouldn't say, but  
23 predominantly they are male.

24 MR. WALDMAN: Thank you. Go  
25 ahead. I'm sorry to interrupt you?

1 MR. HOOPER: That is fine.

2 MR. WALDMAN: So you were talking  
3 about educated, literate and computer literate?

4 MR. HOOPER: Yes. Speaking to the  
5 difficulty of penetrating the target more than  
6 to -- well, I wasn't speaking of membership in  
7 that context.

8 MR. WALDMAN: So the fact that  
9 someone was an engineer isn't, in your view, a  
10 relevant factor to determination of their being a  
11 member of al-Qaeda?

12 MR. HOOPER: No.

13 MR. WALDMAN: Or a  
14 telecommunications engineer?

15 MR. HOOPER: No. Although if a  
16 member of al-Qaeda or somebody that I suspected  
17 was a member of al-Qaeda, or a constituent group  
18 of al-Qaeda, and he had those particular skills,  
19 it would worry me more than a person who was a  
20 school teacher, for example, not that there is  
21 anything wrong with school teachers.

22 --- Laughter / Rires

23 MR. WALDMAN: Okay. Are some of  
24 the indicators more important than others? Is  
25 Afghanistan -- is that a precondition of going to

1           Afghanistan?

2                           MR. HOOPER:  It is not a  
3           precondition.  As a matter of fact, since  
4           interventions in Afghanistan there have been  
5           indications that al-Qaeda is moving training bases  
6           to other locales so it is not a necessary  
7           ingredient.

8                           But if somebody had travelled to  
9           Afghanistan and had attended one of the camps that  
10          was known to train al-Qaeda operatives, that would  
11          be a very solid indicator.

12                          For example, if somebody went to  
13          Calden Camp or the Darunta Camp in Afghanistan, we  
14          know those to be al-Qaeda camps.  If they attended  
15          them for three months that would raise some flags  
16          for us.  So it is a strong indicator.

17                          MR. WALDMAN:  Would that be  
18          enough -- I'm sort of moving around here, but  
19          would that be enough to get the person into some  
20          form of targeting?

21                          MR. HOOPER:  Again, you would have  
22          to make judgments as to the reliability.  But if  
23          it were established that somebody had attended one  
24          of those al-Qaeda training camps, that for me  
25          would constitute reasonable grounds to suspect and

1 start a low-level investigation.

2 MR. WALDMAN: The travel pattern,  
3 are there certain countries that are more relevant  
4 than others?

5 Is the United States an indicator?  
6 Is Europe an indicator? Are there certain parts  
7 of the world that are more important than others  
8 in terms of travel plans?

9 MR. HOOPER: There are. There are  
10 known infiltration routes into Afghanistan that we  
11 have established through observations of al-Qaeda  
12 activists. So yes, some are more important than  
13 others. If a person has indications of regular  
14 travel to and from Pakistan, Georgia, some of the  
15 central Asian republics, the Emirates, places like  
16 that, if the patterns are regular and established,  
17 that is an indicator. It might not be a  
18 particularly strong indicator, but it is a  
19 suggestion that we might want to look a little  
20 bit closer.

21 MR. WALDMAN: Are there some  
22 countries that are like more important than  
23 others?

24 Is Europe less significant than  
25 Asia?

1                   MR. HOOPER: I guess you would  
2                   have to consider that in terms of time and place.  
3                   Europe is not as important as  
4                   Central Asia, for example, but there was a time  
5                   when the conflict was raging in The Balkans where  
6                   one of the infiltration routes used by activists  
7                   going in to fight Jihad in Bosnia would enter  
8                   through split via Milan. So if you saw those  
9                   indicators appearing at a certain time in history  
10                  you might pay attention to that.

11                 MR. WALDMAN: But Pakistan would  
12                 be --

13                 MR. HOOPER: Pakistan definitely,  
14                 because you can get into Afghanistan with relative  
15                 ease from Pakistan.

16                 MR. WALDMAN: You said the quality  
17                 of the contacts. So how often you meet with  
18                 someone who you believe or know to be an al-Qaeda  
19                 operative and how long the meetings take place,  
20                 what happens during the meetings, that kind of  
21                 thing?

22                 MR. HOOPER: That is an indicator.  
23                 I would also add to that preponderance of  
24                 contacts. Again, you know, if somebody gives a  
25                 sufficient number of indicators that causes us to

1           achieve a threshold of reasonable grounds to  
2           suspect, we will make our own observations and use  
3           various techniques, and if we conclude that not  
4           only does an individual associate with other  
5           people we believe to be members of al-Qaeda  
6           broadly writ, but he associates with these people  
7           almost to the exclusion of anyone else, that is a  
8           good indicator.

9                           Does a person use security  
10           consciousness? Is a person security conscious  
11           when he is going to meet these people. Is he  
12           furtive? Does he engage in counter-surveillance?  
13           These are all things you have to consider.

14                           And every case is different. You  
15           can't have a calculus that runs along "X" and "Y"  
16           axis and say that if he meets this point on the  
17           line of regression he is a member. There is some  
18           art and there is some judgment to all of this.

19                           MR. WALDMAN: Would the fact that  
20           someone suddenly left the country be a relevant --  
21           cause you concern?

22                           MR. HOOPER: If somebody suddenly  
23           left the country?

24                           MR. WALDMAN: Left Canada with his  
25           family. Would that be something that might be an

1 indicator to you?

2 MR. HOOPER: If somebody suddenly  
3 left Canada at seven o'clock on the morning of  
4 September 11, 2001 and we believed that he was a  
5 member of al-Qaeda, that might be of some  
6 significance to us. But entering or leaving the  
7 country in and of itself doesn't permit --

8 MR. WALDMAN: Packing up and  
9 leaving permanently in other words?

10 MR. HOOPER: No. A lot of people  
11 pack up and leave the country.

12 MR. WALDMAN: Okay. I'm going to  
13 move on to another area.

14 Mr. Elcock was asked about the DoS  
15 report. I promise you I am not going to go  
16 through all the questions about whether Syria  
17 engages in torture that I did with Mr. Elcock, but  
18 do you find the DoS reports on human rights  
19 generally to be credible?

20 MR. HOOPER: I consider the source  
21 to be generally credible.

22 MR. WALDMAN: Yes. Okay.

23 I'm going to ask you to go to  
24 Exhibit 10, which is your -- these are studies  
25 prepared --

1 --- Pause

2 MR. WALDMAN: I want you to go to  
3 Tab 1, the Syria country profile.

4 I'm going to read to you what they  
5 say at the bottom of the page about the judicial  
6 system?

7 MR. HOOPER: I'm sorry. Which  
8 page?

9 MR. WALDMAN: Page 8. There are a  
10 bunch of unnumbered pages and then -- actually,  
11 the first numbered page is page 8.

12 MR. HOOPER: Right.

13 MR. WALDMAN: It says "Government"  
14 and then at the bottom it says "Judicial system".

15 This document says:

16 "In addition to the military  
17 courts reserved for armed  
18 forces personnel, the  
19 Syrian..."

20 So it says:

21 "...the military courts  
22 reserved for armed force  
23 personnel, the Syrian  
24 judicial system includes  
25 courts of general



1 jurisdiction and  
2 administrative courts."

3 And it goes on to describe the  
4 courts without any criticism at all.

5 I would like you to go to the  
6 Department of State report which is found in  
7 Volume II, page 55.

8 --- Pause

9 MR. WALDMAN: I just heard a crash  
10 and wanted to make sure my friends are all right.

11 Do you have that on page 55 of  
12 Volume II?

13 MR. HOOPER: Yes.

14 MR. WALDMAN: It says "Denial of  
15 public trial".

16 "The Constitution provides  
17 for an independent judiciary,  
18 but the two exceptional  
19 courts dealing with cases of  
20 alleged national security  
21 violations are not  
22 independent of executive  
23 branch control. The regular  
24 court system generally  
25 displays considerable

1 independence [in civil  
2 cases], although political  
3 connections and bribery at  
4 times influence verdicts."

5 Then going down two more  
6 paragraphs:

7 "Military courts have the  
8 authority to try civilians as  
9 well as military personnel."

10 So would you not agree with me  
11 that the description in the CSIS document is  
12 completely inconsistent with the Department of  
13 State report in terms of its description of the  
14 judicial system?

15 MR. HOOPER: To what extent, sir?  
16 Are you referring --

17 MR. WALDMAN: Two extents. First  
18 of all, this report stays that the military courts  
19 are only reserved for armed forces personnel,  
20 where the DoS report says that they can try  
21 civilians. This report says they are independent,  
22 where the DoS report says that the exceptional  
23 courts are not independent.

24 So doesn't it concern you that a  
25 report that you prepared, that CSIS prepared, that

1 is sent out to police and security officers and  
2 displays the judiciary in Syria as independent  
3 when that is completely inconsistent with DoS and  
4 all the other reports?

5 MR. HOOPER: Does it concern me?

6 MR. WALDMAN: Yes?

7 MR. HOOPER: That our report is  
8 inconsistent with the Department of State report  
9 from the U.S.?

10 MR. WALDMAN: Not only with the  
11 Secretary of State. I could take you to six other  
12 reports as well.

13 MR. HOOPER: Yes. I know that  
14 when we produce these documents they are facted.  
15 I can't speak to what facting was used to make  
16 that statement in this particular document.

17 I don't know that it is wrong  
18 against the sources that we used, but I do accept  
19 that there is an inconsistency between what we say  
20 and what this Department of State report says.

21 MR. WALDMAN: I didn't want to  
22 submerge you with documents, but believe me, any  
23 credible human rights source that you were to  
24 consult with would say that the military courts in  
25 Syria do try civilian cases and indeed that was

1           what was supposed to happen. Mr. Arar was going  
2           to be tried in a special national security court.  
3           That is what we were told at one point. Any  
4           independent authority on human rights in Syria  
5           will say that the courts, these courts anyway, are  
6           not independent.

7                           I put to you that it is of serious  
8           concern to me, and I think it must be of serious  
9           concern to a lot of people, that CSIS is preparing  
10          reports that don't prepare a very objective view  
11          of what is really happening in Syria.

12                          I wonder, why would CSIS do that?  
13          Is CSIS trying to portray Syria in a more positive  
14          light for some reason?

15                          MR. HOOPER: I think if you  
16          look at the bulk of that report, I don't think it  
17          tries to portray Syria in any particular light at  
18          all. It is a statement of fact as we understood  
19          them to be.

20                          MR. WALDMAN: Well, if we go to  
21          the human rights section, which is on page 12, I  
22          mean -- I find it --

23                          MR. HOOPER: Is that ours or the  
24          Department of State's?

25                          MR. WALDMAN: Your page 12.

1                   What I find striking about this is  
2 the understatements. It says:

3                   "The Syrian government has  
4                   often been reproached for  
5                   human rights violations.

6                   However, there has been some  
7                   improvement..."

8                   And then it talks about political prisoners, and  
9                   that's it.

10                   If you look at the DoS report, it  
11                   spends pages talking about the following. I will  
12                   just read you from page 50:

13                   "The human rights situation  
14                   remained poor..."

15                   -- the last paragraph on page 50 --

16                   "...and the government  
17                   continues to restrict or deny  
18                   fundamental rights, although  
19                   there were improvements in a  
20                   few areas ... The government  
21                   uses its vast powers so  
22                   effectively there is no  
23                   organized ... opposition."

24                   And then if you go on to the next  
25                   page, 51, under "Torture":

1 "Despite the existence of  
2 constitutional provisions and  
3 several penal code penalties  
4 for abusers, there was  
5 credible evidence that  
6 security forces continued to  
7 use torture, although to a  
8 lesser extent than in  
9 previous years. Former  
10 prisoners and detainees  
11 report that the torture  
12 methods include administering  
13 electric shocks; pulling out  
14 fingernails; forcing objects  
15 into the rectum; beating,  
16 sometimes while the victim is  
17 suspended from the ceiling;  
18 hyperextending the spine; and  
19 using a chair that bends  
20 backwards to asphyxiate the  
21 victim or fracture the  
22 victim's spine."

23 That's the tire that Mr. Arar refers to in his  
24 testimony, by the way.

25 In September, Amnesty

1 International published a report claiming  
2 authorities at Tadmur Prison regularly torture  
3 prisoners or force prisoners to torture one  
4 another.

5 So do you think your paragraph on  
6 page 12 is fairly reflective of the human rights  
7 situation, in light of this document, sir?

8 MR. HOOPER: Well, I certainly  
9 give the Department of State credit for being a  
10 much more complete and inclusive document.

11 The one we drafted, I think, might  
12 have taken into consideration the audience, which  
13 was law enforcement officials. Whether there is  
14 an imperative on the service to go into that kind  
15 of detail to inform an official audience -- our  
16 reports are not designed to inform policy  
17 decisions, as I think this report is, so I don't  
18 think it should be surprising that there will be a  
19 variance in how we characterize information and  
20 the extent to which we describe certain  
21 information.

22 MR. WALDMAN: But don't you think  
23 it's relevant that the security forces engage in  
24 torture, when Mr. Elcock told us that was a highly  
25 relevant factor in the evaluating of intelligence

1 information. Don't you think it should be put  
2 into the report that Syria engages in torture --  
3 in the interrogation of its people? Don't you  
4 think that, at least?

5 I mean, I can accept that it  
6 doesn't need to be as detailed. This is just one  
7 factor. But don't you think that the fact that  
8 Syria engages in torture is a relevant factor that  
9 should have been included?

10 MR. HOOPER: Relevant to whom,  
11 sir?

12 MR. WALDMAN: To the police  
13 officers --

14 MR. HOOPER: Members of the  
15 Edmonton city police?

16 MR. WALDMAN: If they are going  
17 to -- yeah, members of the Edmonton city police,  
18 who might be working in INSETs and going out and  
19 trying and assess intelligence information that  
20 they get, don't you think it's relevant? I mean,  
21 we are now --

22 MR. HOOPER: Do we not speak of  
23 torture in --

24 MR. WALDMAN: No.

25 MR. HOOPER: We don't.



1 MR. WALDMAN: There is not one  
2 mention of torture in the entire report.

3 MR. HOOPER: We do talk about  
4 human rights.

5 MR. WALDMAN: Violations, but you  
6 don't mention torture? That's what concerns me.

7 MR. HOOPER: We talk about 800  
8 political prisoners --

9 MR. WALDMAN: Right.

10 MR. HOOPER: -- prisoners of  
11 conscience.

12 MR. WALDMAN: I have read the  
13 document several times and the word "torture" does  
14 not appear once. I want to know why.

15 MR. HOOPER: I guess it would come  
16 down -- again, I can't speak for why I didn't  
17 draft the document and I don't have access to the  
18 materials that went into facting this document.  
19 But I would say, based on what I know of how we  
20 produce and why we produce these documents, it was  
21 in consideration of the audience more than  
22 anything else.

23 MR. WALDMAN: Okay. I think I  
24 have made my point. I hope maybe you might review  
25 this and your other documents to make sure that

1           they are more reflective of a balanced approach on  
2           human rights reporting in the future, sir.

3                       Okay, I'm going to move on to  
4           another area. I want to talk about TARC. This is  
5           where Mr. Joseph is -- might be passing me notes,  
6           Mr. Commissioner.

7                       THE COMMISSIONER: Okay.

8                       MR. DAVID: Mr. Commissioner, at  
9           is this point I think it would be useful if we  
10          produced the extracts for which the witness has  
11          copies. It would be -- I suggest, if you want  
12          to --

13                      THE COMMISSIONER: Do you have  
14          copies for the Registrar, too?

15                      MR. DAVID: Yes. I have a copy  
16          for yourself and for the Registrar.

17                      THE COMMISSIONER: Thank you,  
18          Mr. David.

19                      MR. DAVID: So I would suggest  
20          that we file them as Exhibit No. 4A. That way it  
21          could be tied to Exhibit 4, which is the actual  
22          policy document.

23          --- Technical difficulties /

24                      Difficultés techniques

25                      THE COMMISSIONER: Right. Or

1           should we just put it in as a new tab in the  
2           policy?

3                           MR. DAVID: We could do that. It  
4           would be Tab 16, in that case.

5                           THE COMMISSIONER: Why doesn't  
6           everybody agree, if they know the documents we are  
7           talking about, they will become Tab 16. The less  
8           loose paper we have --

9                           MR. DAVID: Actually, if we want  
10          to be consistent with the approach we adopted in  
11          the policy binder, it would be Tabs 16 and 17 --

12                          THE COMMISSIONER: Okay, that's  
13          fine.

14                          MR. DAVID: -- each being a  
15          separate tab.

16                          THE COMMISSIONER: Has everybody  
17          got that?

18                          MR. DAVID: Right.

19                          THE COMMISSIONER: Okay.

20                          MS McISAAC: Just policies 100 --  
21          sorry, policies 100 and --

22                          MR. DAVID: Policy 100 -- or  
23          OPS-100, I should say, will be Tab 16, and OPS --  
24          it's entitled, "Targeting Section 12, CSIS Act".

25                          THE COMMISSIONER: It would be Tab

1 17.

2 MR. DAVID: OPS-104, "Targeting  
3 Section 12, Request for Approval" will be Tab 17.

4 THE COMMISSIONER: Yes.

5 Exhibit P-4A: Addendum to  
6 Exhibit P-4 consisting of  
7 Tabs 16 & 17

8 MR. WALDMAN: Okay. I'm going to  
9 try to get through this, and then maybe we will be  
10 pretty close to the end.

11 How often does TARC meet?

12 MR. HOOPER: It meets as required,  
13 but I would say in the course of any given month  
14 two or three times.

15 MR. WALDMAN: How long are the  
16 meetings?

17 MR. HOOPER: Depends on what's on  
18 the agenda. We could meet in consideration of one  
19 targeting request or half-a-dozen. It would, I  
20 guess, come back to the complexity of the request.  
21 But at minimum or -- usually it's at least an  
22 hour. It could go up to an hour-and-a-half, two  
23 hours, in some cases.

24 MR. WALDMAN: How long, on  
25 average, would the committee take to look at one

1           targeting request?

2                           MR. HOOPER:   Difficult to say.  If  
3           it were an organizational targeting request, it  
4           could take some considerable time because there  
5           could be a number of associated targets with the  
6           organizational request.  But if you are talking  
7           about a request for an investigation of one  
8           person, probably about a half-an-hour.

9                           MR. WALDMAN:  Is there some kind  
10          of -- I know I'm never going to see this  
11          checklist, but is there some kind much form that  
12          is filled out or checklist that maybe  
13          Mr. Cavalluzzo might be given access to?

14                          MR. HOOPER:  A form or  
15          checklist...?

16                          MR. WALDMAN:  Some kind of  
17          standard form that's filled out when you do a --  
18          for targeting request that goes before the  
19          committee with a checklist or -- I don't know if  
20          it is so bureaucratic or not.

21                          MR. HOOPER:  It is not quite  
22          that -- it is pretty bureaucratic, but not quite  
23          that bad yet.  There is policy on the ingredients  
24          that have to come forward with every request for  
25          targeting authority --

1 MR. WALDMAN: Yes, that's it.

2 MR. HOOPER: -- and there is a  
3 number of points that have to be addressed --  
4 --- Technical difficulties /  
5 Difficultés techniques

6 MR. WALDMAN: We will get to that  
7 in a second.

8 MR. HOOPER: Yes. Anyway, that --  
9 there is policy that makes sure that the requests  
10 for targeting authority are complete when they  
11 come to committee.

12 MR. WALDMAN: So what percentage  
13 of targeting requests are accepted? Is it a high  
14 percentage or low?

15 MR. HOOPER: It's a very high  
16 percentage. It's a rare instance that we don't  
17 approve, and I would like to elaborate on that.

18 By the time -- I counted this, I  
19 guess, a few months ago. By the time a request  
20 for targeting authority gets to committee, you  
21 might see 17 signatures at the bottom of that  
22 request. And in the case of, if I may use the  
23 term RTA, which we will refer to, Request for  
24 Targeting Authority, by the time an RTA hits  
25 committee, it would have started with an

1 investigator in a region, gone to the supervisor,  
2 gone to the section chief, to the deputy director  
3 of the region, to the director general of the  
4 region, into headquarters, where it would start  
5 with an analyst, and through the same rank  
6 structure within headquarters, signed off by a  
7 program director general.

8 So, it goes through a lot of hoops  
9 before it ever gets to committee.

10 MR. WALDMAN: So by the time it  
11 has gotten there, it's almost certain it's going  
12 to be approved?

13 MR. HOOPER: Well, any -- it is  
14 almost -- we very rarely reject.

15 MR. WALDMAN: Okay.

16 MR. HOOPER: I can tell you that I  
17 review -- it is my responsibility to review --  
18 every RTA after it has gone through the process  
19 and before it gets to committee.

20 MR. WALDMAN: Right.

21 MR. HOOPER: And if there is a  
22 problem with the targeting authority, it will die  
23 with me.

24 MR. WALDMAN: Okay. So in other  
25 words, you are the last screen. If you are not

1 happy, you send it back?

2 MR. HOOPER: That's right.

3 MR. WALDMAN: Most of the time, if  
4 you are happy, it will be approved by the  
5 committee. Is that a fair statement?

6 MR. HOOPER: That's correct.

7 MR. WALDMAN: How often do you  
8 send things back?

9 MR. HOOPER: Not very often.

10 MR. WALDMAN: Okay.

11 MR. HOOPER: Ten per cent.

12 MR. WALDMAN: Ten per cent. Okay,  
13 well, that's a helpful figure.

14 Yesterday, we talked a little bit,  
15 but I just want to clarify what level 3 is. That  
16 is the most intrusive form. Does that include  
17 surveillance, warrants, which would allow CSIS  
18 operators to go into houses and seize and take out  
19 documents?

20 MR. HOOPER: That's correct.

21 MR. WALDMAN: And also intercept  
22 communications? Cell phones?

23 MR. HOOPER: Yes. You need the  
24 highest level of authority, which is level 3, to  
25 use those most intrusive means.



1 MR. WALDMAN: Right. But the most  
2 intrusive means of surveillance, and even  
3 clandestine entry to --

4 MR. HOOPER: That's correct.

5 MR. WALDMAN: Okay. Now, I just  
6 wanted to go briefly at the OPS-100, which is now  
7 called Tab 16. This deals with targeting  
8 approval.

9 I think I understood something  
10 from your testimony yesterday. I just want to  
11 clarify if this is it.

12 If you go to 1.(20):

13 "The following activity do  
14 not require targeting  
15 approval under this policy:  
16 incidental to collection of  
17 information and intelligence  
18 spin-off, which is  
19 disclosable under 19.(2)(a)."

20 (As read)

21 So does that mean if someone has  
22 got -- being targeted and has got -- you have got  
23 surveillance on that person, and someone like Mr.  
24 Arar were to come into casual contact, you could  
25 collect the information that Mr. Arar was seen by

1           that person, it could go into your database as a  
2           casual intelligence spin-off. Is that fair? Am I  
3           understanding it correctly?

4                       MR. HOOPER: It could, but it  
5           would also -- it's disclosable under two sections,  
6           effectively, section 12 and 12 via 19.(2)(a),  
7           which is our -- I guess it's one of the exception  
8           that allows for the disclosure of service  
9           information.

10                      MR. WALDMAN: So in other words --  
11           so there is two -- I think there is a two-part  
12           answer here. I just want too make sure I  
13           understood both parts. Number one, if Mr. Arar,  
14           or someone like him, were seen with someone you  
15           had under surveilliance, you could record the  
16           information and put it into your database that Mr.  
17           Arar was seen with that person, and I suppose it  
18           would -- because you told us yesterday it could  
19           only go into a target. So it would go into -- if  
20           Mr. X and Mr. Arar were together, and Mr. X was  
21           being targeted, right, and Mr. Arar was seen with  
22           him, you could enter into Mr. X's database that  
23           Mr. X was seen with Mr. Arar and they were having  
24           coffee and having a conversation. Is that  
25           correct?

1 MR. HOOPER: It might actually  
2 take less than 16 weeks to train you.

3 --- Laughter / Rires

4 MR. WALDMAN: I'm amazed that you  
5 can understand that. That is strictly correct.

6 MR. WALDMAN: Thank you.

7 So in the second part of what I  
8 understood you to say that, given that this wasn't  
9 information obtained from a target, there is  
10 nothing to preclude you from disclosing that  
11 information to the RCMP or some other source. Is  
12 that correct?

13 MR. HOOPER: That's correct. We  
14 do have authority to disclose that. And we may  
15 disclose it.

16 MR. WALDMAN: Thank you. Would it  
17 be -- okay, well, there you go. Yes, there you  
18 go.

19 Well, I have another question on  
20 the same document, just the next page, 3.(1):

21 "Investigation by the Service  
22 under section 12 of the CSIS  
23 Act, in cooperation with the  
24 Canadian or federal,  
25 provincial or territorial

1 government, a Canadian law  
2 enforcement authority or  
3 foreign police will only be  
4 undertaken with when  
5 approved." (As read)

6 Does that mean that there are  
7 circumstances when CSIS will operate with foreign  
8 security organizations in Canada?

9 MR. HOOPER: That's correct.

10 MR. WALDMAN: Now, I just want to  
11 ask some questions about 5.(2), groups and  
12 organizations. This one -- I don't think I passed  
13 your course yet. I am very confused about this  
14 part, so I'm going to have to go back to school.

15 It says:

16 "A targeting level may be  
17 approved to investigate the  
18 activities of a group or  
19 persons of an  
20 organization..."

21 -- and then it says their criteria:

22 "The objectives and  
23 activities of the group  
24 constitute a threat. All  
25 participants in the group

1 understand and sympathize  
2 with threat-related  
3 objectives." (As read)

4 Now, if I read that correctly,  
5 then, it's possible that you could get a targeting  
6 authority against an organization like al-Qaeda.  
7 Is that correct?

8 MR. HOOPER: That's correct.

9 MR. WALDMAN: So if you had a  
10 targeting authority against al-Qaeda, that would  
11 cover the group, and then that would allow you to  
12 put individuals who came into contact with others,  
13 who you suspected to be al-Qaeda members, under  
14 that specific targeting authority. Is that  
15 correct?

16 MR. HOOPER: That is not why it's  
17 used. I am not -- let me make sure that I  
18 understand your question correctly.

19 We have an organizational  
20 targeting authority against al-Qaeda. Under that  
21 general targeting authority we have the names of  
22 individuals who are known to be members, broadly  
23 writ, of al-Qaeda or its constituent parts.

24 Now, your question comes back to:  
25 If one of the individuals cited in that targeting

1 authority contacts, incidentally, somebody else,  
2 we capture that information and plug it into the  
3 al-Qaeda -- that person gets captured under the  
4 al-Qaeda investigation?

5 Is that your question?

6 MR. WALDMAN: Perhaps we could  
7 break it into parts.

8 You have a group of people that  
9 under the al-Qaeda targeting authority. Right?  
10 Let's say Mr. X starts having contacts with a few  
11 of those people so that you become concerned.  
12 Could he then become part of the group at a  
13 certain point without a separate authority?  
14 Because you have a group authority. That is what  
15 I am trying to understand.

16 If you have a group authority for  
17 al-Qaeda and you find someone else who you then  
18 suspect might be a member, do you have to go back  
19 and get a whole new targeting authority or does he  
20 just slip in under the al-Qaeda authority?

21 MR. HOOPER: I don't think you see  
22 this written in our policy, but certainly the  
23 practice is we personify our targets. So if we  
24 have sufficient information that would allow us to  
25 roll somebody in under the general al-Qaeda

1           targeting authority, we also have sufficient  
2           information for a discrete request for  
3           investigation against that individual. That is  
4           the practice. We personify our targeting. We  
5           don't investigate people under a general  
6           organizational rubric.

7                           MR. WALDMAN: Then why would you  
8           have a group authority?

9                           MR. HOOPER: Sometimes it is used  
10          to capture preliminary reporting. If the  
11          bona fides of an individual is unknown, or if  
12          there is an activity being undertaken on behalf of  
13          the umbrella organization that we can't associate  
14          with a particular known individual, if you have  
15          what we call a "FNU/LNU", first name unknown/last  
16          name unknown, it allows for the reporting of  
17          threat information associated with the activities  
18          of the organization. But it is not used  
19          extensively.

20                          MR. WALDMAN: Mr. Commissioner, I  
21          am in your hands. I am more than glad to  
22          continue, I am finding this very interesting, but  
23          I have another half hour.

24                          Do you want to take a break for  
25          10 minutes and then go or do you want me to

1 finish? I am totally in your hands. Whatever is  
2 better for you.

3 THE COMMISSIONER: I'm fine. I  
4 will check with the witness.

5 How are you?

6 MR. HOOPER: I'm fine.

7 THE COMMISSIONER: Okay.

8 MR. WALDMAN: I'm going to move on  
9 to asking you some questions about racial  
10 profiling now. I do believe that Mr. Joseph is  
11 better equipped to deal with them so he has helped  
12 me with that. As I indicated to Mr. Commissioner,  
13 he is going to be speaking to Mr. Cavalluzzo about  
14 having an opportunity to have more participation  
15 later.

16 But for the purposes of today, I  
17 will do my best to represent his interests  
18 pursuant to your standing ruling.

19 So we are going to go to  
20 Volume III, pages 174 to 175.

21 --- Pause

22 MR. WALDMAN: At the bottom of 174  
23 there is a highlighted section.

24 I'm going to wait because I think  
25 my friends -- I will give you a second. It's



1           okay.

2           --- Pause

3                           MR. WALDMAN: I am going to read  
4           you what Mr. Elcock, the former Director of CSIS,  
5           said:

6    "We ... do profiling, but we  
7    don't do racial profiling.  
8    There have been references to  
9    this profiling ... on a  
10    number of occasions, and  
11    occasionally some ... have  
12    leaked out."

13    So he was talking here in an  
14           immigration context and he said: What we do is  
15           provide immigration authorities profiles of  
16           individuals who would be of concern to us so that  
17           when reviewing the immigration stream they can  
18           look at that stream and select another."

19    Then he goes on to say the  
20           profiles are not racial. They are profiles based  
21           on nationality or memberships in certain  
22           organizations. They are broad profiles.

23    Does CSIS have profiles?

24    MR. HOOPER: We develop profiles  
25           to assist immigration officers in immigration

1 posts abroad to focus their inquiries if they are,  
2 say, interviewing a subject for landed status in  
3 Canada. They are tailored to the specific  
4 environment.

5 MR. WALDMAN: Are the profiles  
6 based on nationality?

7 MR. HOOPER: Based on nationality?

8 MR. WALDMAN: Citizenship?

9 MR. HOOPER: To take a  
10 hypothetical example, if you have an immigration  
11 officer working in New Delhi and 99 per cent of  
12 the immigration work that officer does relates to  
13 Indian nationals, certainly our profile would be  
14 based on nationality. We wouldn't, for example,  
15 pass an Indian national profile necessarily to the  
16 immigration officer working out of Sao Paulo,  
17 Brazil.

18 MR. WALDMAN: Is a person's name a  
19 factor? Because we have heard lots of people,  
20 especially with Muslim names, being told that they  
21 were told by officials that the fact that their  
22 name is "Mohammed" or "Ali" was a factor.

23 MR. HOOPER: No.

24 MR. WALDMAN: Is that a factor in  
25 your profile?

1 MR. HOOPER: No.

2 MR. WALDMAN: Is their religion a  
3 factor?

4 MR. HOOPER: I want to be careful  
5 answering this question.

6 To take another hypothetical  
7 example, if an individual is working out of an  
8 office in Beirut and we have concerns about the  
9 possible infiltration of his elements into  
10 Canada -- and Hizbollah is known to be a  
11 predominantly Shiite Muslim organization -- we  
12 would contextualize religion with that overlay but  
13 in and of itself it wouldn't be an issue.

14 MR. WALDMAN: The fact that a  
15 person is more or less religiously observant, is  
16 that a factor?

17 MR. HOOPER: No. No. An  
18 immigration officer would have no way of knowing  
19 that in any event in most instances.

20 MR. WALDMAN: I'm just consulting  
21 with Mr. Joseph for a section.

22 THE COMMISSIONER: Sure. Take  
23 your time and do that as much as you wish.

24 --- Pause

25 MR. WALDMAN: I just want to ask

1           you a question: Do you know the meaning of  
2           "Jihad"? You have used it a few times. I just  
3           want to make sure because there is a profound  
4           concern in the Muslim community that this word is  
5           being completely misunderstood and creates a great  
6           amount of distress to Muslims across Canada. So I  
7           just want to know if you know the meaning of the  
8           word "Jihad".

9                           MR. HOOPER: I know the various  
10           meanings that have been applied to the concept or  
11           the construct of Jihad, the Koranic construct of  
12           Jihad.

13                           When I use that term, I use it in  
14           the fashion that has been used by al-Qaeda  
15           operatives themselves. Al-Qaeda has called the  
16           conflict in Afghanistan a Jihad, the conflict in  
17           Bosnia a Jihad, Chechnya a Jihad, they refer to  
18           the conflict in Iraq as Jihad.

19                           So it's in that -- I know there  
20           are Koranic interpretations of the concept that  
21           bring it down to a lower level. It is an  
22           obligation on behalf of all pious Muslims to  
23           engage in the struggle. It doesn't mean going out  
24           and killing people, it just means it is --

25                           MR. WALDMAN: Isn't it really more

1 of a spiritual struggle as opposed --

2 MR. HOOPER: Yes, in that way.

3 MR. WALDMAN: In the way that it  
4 is understood by most Muslims.

5 Is that fair?

6 MR. HOOPER: I would say  
7 that's fair.

8 --- Pause

9 MR. WALDMAN: I want to move on to  
10 your summary. I am moving back. We are almost  
11 done.

12 This is in your Exhibit 10, Tab 2.

13 THE COMMISSIONER: Which is  
14 Exhibit 10, sir?

15 MR. WALDMAN: I'm sorry. That is  
16 the one with the studies that I took you to  
17 before, the DoS report.

18 --- Pause

19 THE COMMISSIONER: You said Tab 2?

20 MR. WALDMAN: Yes. It is called  
21 "The Canadian Arab Community".

22 You have the document in front  
23 of you?

24 MR. HOOPER: Yes, sir.

25 MR. WALDMAN: Does everyone?

1           Okay.

2                               This was a document prepared by  
3           CSIS and it says:

4                               "Unclassified for Police and  
5                               Security Official Use Only".

6                               Could I have gotten this off  
7           the Website?  It is unclassified, but it says "For  
8           Police..."

9                               MR. HOOPER:  Normally we don't  
10          load the ones that are classified for official use  
11          only onto the Website.

12                              MR. WALDMAN:  Right.  So I  
13          couldn't get it.

14                              MR. HOOPER:  I can't say for  
15          certain.  I don't think you can.

16                              MR. WALDMAN:  But I might have  
17          been able to get it through an access request  
18          because it is unclassified.  That's fair?

19                              MR. HOOPER:  If you had a police  
20          officer who was a friend, he would probably give  
21          it to you.

22                              MR. WALDMAN:  Oh, okay.  I  
23          wouldn't be violating the Official Secrets Act  
24          if I --

25                              MR. HOOPER:  No.  If you put in an

1 access request for this, you would get this  
2 document unredacted. So you can refer to anything  
3 you would like.

4 MR. WALDMAN: But it is basically  
5 prepared by CSIS for police and security official  
6 use only.

7 Is that correct?

8 MR. HOOPER: That is correct.

9 MR. WALDMAN: When we talk about  
10 police and security officials, you said before the  
11 Edmonton police, the local police forces.

12 Who would be the security  
13 officials, immigration? Is that --

14 MR. HOOPER: Immigration officers,  
15 Customs officers.

16 MR. WALDMAN: Has this been sent  
17 to local police agencies across Canada?

18 MR. HOOPER: Yes.

19 MR. WALDMAN: What use was made of  
20 this report, do you know?

21 MR. HOOPER: I don't know.

22 MR. WALDMAN: Has it been updated?

23 MR. HOOPER: I'm not sure, sir. I  
24 can't answer that question. I suspect not.

25 MR. WALDMAN: Do you have any idea

1 who prepared it?

2 MR. HOOPER: It was done by our  
3 Analysis and Production Branch. I don't know the  
4 individual analyst that prepared it.

5 MR. WALDMAN: So it would have  
6 been a CSIS intelligence officer who has gone  
7 through --

8 MR. HOOPER: No, not necessarily.  
9 In our Analysis and Production Branch we do have  
10 officers, a lot of officers, who are what we call  
11 subject-matter experts who may have Ph.D.s in  
12 particular realms of study that don't go through  
13 the intelligence officer training program but who  
14 are hired because they have expertise in a  
15 particular domain.

16 MR. WALDMAN: Okay. But is  
17 someone who would have expertise in the Canadian  
18 Arab community.

19 So tell me, the document says:

20 "A high degree of frustration  
21 exists within the Arab  
22 community in Canada.  
23 Feelings of unfair treatment  
24 through apparent racial  
25 profiling in the wake of



1                   September 11, combined with  
2                   anger resulting from the  
3                   belief that the United States  
4                   unequivocally supports Israel  
5                   at the expense of  
6                   Palestinians and will soon  
7                   wage war against Iraq, have  
8                   provoked much discontent  
9                   within the community..."

10                   Then there is a visit and the  
11                   controversy at Concordia that is mentioned.

12                   Who summarized the feelings of the  
13                   entire Arab community? This is a pretty  
14                   striking --

15                   MR. HOOPER: That is based largely  
16                   on open information and based on our own  
17                   experiences in dealing with people within the  
18                   Muslim community in Canada.

19                   But I don't think, in fairness --  
20                   I don't know where your question is going and it  
21                   doesn't really matter, but you don't have to be  
22                   terribly widely read. If you picked up a  
23                   newspaper, if you read letters to the editor, if  
24                   you talked to a cab driver in Ottawa after 9/11,  
25                   you would hear these sorts of things.

1                   So I think there is a wide body of  
2 open information that speaks to this frustration  
3 and there is an element of our own experience that  
4 rolls into that as well.

5                   MR. WALDMAN: So you agree with me  
6 that the Arab community in particular, the Muslim  
7 community in general, is very frustrated  
8 post-9/11.

9                   Is that correct?

10                  MR. HOOPER: Yes.

11                  MR. WALDMAN: Would you also agree  
12 with me, as this report says, that the Arab  
13 communities and Muslim communities are nonviolent?

14                  MR. HOOPER: Yes.

15                  MR. WALDMAN: Would you agree with  
16 me that if a community feels that it has been  
17 unjustly or racially profiled or unjustly  
18 targeted, that in the end that heightens the  
19 national security risk because members of those  
20 communities would be less likely to trust the  
21 intelligence authorities and share information?

22                  MR. HOOPER: Yes.

23                  MR. WALDMAN: What is CSIS trying  
24 to do to deal with the very serious concerns in  
25 the Arab and Muslim communities today?

1                   MR. HOOPER: Well, I guess I would  
2 approach that from a couple of fronts.

3                   First of all, we have policy that  
4 deals with the conduct of operations and how to  
5 conduct interviews within minority communities.

6                   There are very clear policy  
7 admonitions:

8                   that we have to identify ourselves  
9 to interviewees;

10                  we have to explain that their  
11 participation and discussions with us is strictly  
12 voluntary;

13                  we are admonished to take into  
14 account the fact that people in a lot of the  
15 minority countries derive from places where  
16 officials of the security intelligence apparatus  
17 might not be as friendly as we are;

18                  we are admonished to take into  
19 consideration religious beliefs and human rights  
20 and privacy concerns.~~

21                  So there is a body of policy that  
22 addresses all of these considerations. Quite  
23 apart from that body of policy, we have had some  
24 preliminary dialogue with representatives of the  
25 Canadian Muslim community and the Canadian Islamic

1 Congress. I think about two or three months ago  
2 we invited the National President of the Canadian  
3 Islamic Congress to our building in Ottawa. We  
4 have a lecture theatre there, and he provided  
5 lectures to officers who are in some way directly  
6 or tangentially involved or who had a general  
7 interest in Islam and the Canadian Muslim  
8 community.

9 Locally, I think there is probably  
10 a little bit more interaction by senior officers  
11 of the service than what we see out of the  
12 national headquarters, because it is in our  
13 regional offices that the actual collection  
14 activities have taken place.

15 Have we done enough of that? I  
16 would suggest we probably haven't.

17 MR. WALDMAN: I have one more area  
18 of questioning.

19 Last night on CBC, Stephen Harper  
20 was on the segment called Canada Votes, and he was  
21 questioned about Mr. Arar.

22 Did you see that?

23 MR. HOOPER: No, I didn't.

24 MR. WALDMAN: It took me a while.  
25 I had to watch The National five times to get it

1 down. I kid you not.

2 MS McISAAC: Excuse me. Is it  
3 fair to ask the witness about something that  
4 Mr. Harper said that the witness didn't see?

5 THE COMMISSIONER: Let's hear the  
6 question.

7 MR. WALDMAN: I think it is highly  
8 relevant. I am asking not what Mr. Harper said,  
9 but I want to know if he agrees with what  
10 Mr. Harper said.

11 Mr. Harper said:

12 I think the first thing in  
13 Mr. Arar's case we would like  
14 to know a lot more about what  
15 happened. There were mixed  
16 messages, not just in the  
17 House of Commons but to us  
18 privately.

19 Then he made a parenthesis:

20 I am probably not at liberty  
21 to say much.

22 So he said:

23 There are mixed messages to  
24 us privately by authorities  
25 in this country that had

1 suggested that the  
2 deportation of Mr. Arar was  
3 appropriate. Then we found  
4 out later that may not have  
5 been the case. I would like  
6 to find out a lot more about  
7 what actually occurred. My  
8 suspicion is, quite frankly,  
9 that this was not a random  
10 act just by the United  
11 States. I do think they  
12 received some encouragement  
13 from authorities in this  
14 country, and I would like to  
15 know why.

16 So my first question to you is:  
17 Do you agree with what was said to Mr. Harper that  
18 the deportation of Mr. Arar to Syria was  
19 appropriate?

20 MR. HOOPER: I think that  
21 question, and probably the subsequent questions  
22 you want to ask me, come back to the reason why we  
23 are sitting here today having this discussion.

24 Whether I agree with anything  
25 Mr. Harper might say in the context of a federal

1 election campaign I think is largely irrelevant  
2 and fraught with danger for myself and my service,  
3 and I really don't want to answer that question,  
4 sir.

5 MR. WALDMAN: Forget about  
6 Mr. Harper. I will ask you the question: Do you  
7 agree, do you think that the deportation of  
8 Mr. Arar was appropriate?

9 MR. HOOPER: My personal feeling?

10 MR. WALDMAN: Yes.

11 MR. HOOPER: Again, I don't know  
12 that my personal opinions here are relevant. I  
13 have tried to --

14 MR. WALDMAN: You are the Deputy  
15 Director of CSIS. I think they are highly  
16 relevant.

17 MR. HOOPER: No, I would actually  
18 disagree with you on that point, Mr. Waldman.

19 MR. WALDMAN: With all due  
20 respect, I think it us up --

21 MR. HOOPER: Again, I think there  
22 may be a presumption behind that question and I  
23 think that is why this Commission is sitting.

24 MR. WALDMAN: Mr. Commissioner, I  
25 want to have the question answered.

1 THE COMMISSIONER: It strikes me  
2 that -- it is not raised, but I can hear from  
3 counsel. But it strikes me that answering that  
4 question would lead to a whole bunch of other  
5 questions. For example, on what basis he would  
6 form his belief.

7 I think those are questions that  
8 initially should be asked by Commission counsel  
9 when the proceedings are in camera.

10 What I am concerned about,  
11 assuming he has a belief -- and I am not sure if  
12 he does because he hasn't answered it. But if he  
13 did, just expressing the opinion itself would,  
14 with all due respect to you, Mr. Hooper, without  
15 more wouldn't be of a great deal of assistance to  
16 me.

17 I would immediately want to know,  
18 if I am going to listen to that belief, all of the  
19 factors which led him to reach that conclusion.

20 What I am saying is, I am not  
21 saying that the question itself is inappropriate  
22 and is not an area that should not be canvassed.  
23 But I don't want to do it superficially. What I  
24 can tell you is that we will be exploring those  
25 issues thoroughly, as Mr. Cavalluzzo said this



1 morning, in the in camera hearings in determining  
2 not just what Mr. Hooper's view is but what the  
3 views of Canadian officials were about what did  
4 happen in the United States.

5 I am disinclined to just take his  
6 opinion, if he has one, without knowing the basis  
7 for which he formed that opinion.

8 MR. WALDMAN: All right. I will  
9 ask another question.

10 Do you believe it is ever  
11 appropriate to send a person to be tortured, under  
12 any circumstances? Forget about Mr. Arar -- any  
13 person.

14 MR. HOOPER: You are asking me for  
15 my personal view?

16 MR. WALDMAN: Yes.

17 MR. HOOPER: No, I don't think it  
18 is appropriate to send anybody for torture  
19 anywhere if you know that person is going to be  
20 tortured.

21 MR. WALDMAN: Thank you.

22 Do you know who it was that gave  
23 this briefing to Mr. Harper and said that his  
24 deportation was appropriate?

25 MR. HOOPER: No, sir, I don't.

1 MR. WALDMAN: Did CSIS officers  
2 give that briefing to Mr. Harper?

3 MR. HOOPER: We have not provided  
4 Mr. Harper with a briefing on anything, sir.

5 MR. WALDMAN: Mr. Commissioner, in  
6 light of what Mr. Harper said -- and I believe  
7 this is extremely serious -- that Mr. Harper was  
8 told by Canadian officials that the deportation of  
9 Mr. Arar was appropriate and that he formed the  
10 opinion that the Americans had encouragement, I  
11 would ask you to ask Mr. Cavalluzzo to call  
12 Mr. Harper as a witness to this inquiry so that he  
13 can tell us who told him this, under what  
14 circumstances and why he formed the belief.

15 MR. CAVALLUZZO: Mr. Commissioner,  
16 I saw The National as well last night, and we are  
17 going to take that under serious consideration. I  
18 saw the same thing as Mr. Waldman did.

19 MR. WALDMAN: Thank you.

20 THE COMMISSIONER: Thank you.

21 MR. WALDMAN: I have finished my  
22 questioning.

23 THE COMMISSIONER: So that the  
24 process is clear, Mr. Waldman -- I am sure you  
25 understand it, but let me make it clear.

1                   When we say that we will pursue  
2 matters, we will get back to you with respect to  
3 that so that it will become part of the public  
4 hearing, the fact that matters have been pursued.  
5 Or if indeed there was a decision not to pursue a  
6 particular matter, you would be informed of that  
7 as well.

8                   I am not suggesting there will be  
9 in this case.

10                  MR. WALDMAN: Thank you.

11                  THE COMMISSIONER: Ms McIsaac, do  
12 you know how long you will be?

13                  MS McISAAC: I have two questions,  
14 sir, so I shouldn't think I would be very long.

15                  THE COMMISSIONER: If everybody is  
16 content, we will deal with those before the break  
17 so that we can then excuse the witness.

18                  Go ahead, please.

19                  EXAMINATION

20                  MS McISAAC: Mr. Hooper, just to  
21 clarify some background, we spent a lot of time  
22 this morning talking about something called the  
23 PKK.

24                  Could you explain what the PKK is.

25                  MR. HOOPER: The PKK is the

1           Kurdistan Workers Party. At the material time  
2           when the PKK was at issue, pursuant to  
3           Mr. Waldman's questioning, it was under the  
4           leadership or effectively under the leadership of  
5           Abdullah Ocalan, which is a Kurdish organization  
6           that was seeking a Kurdish homeland in  
7           northeastern Iraq. It was basically a  
8           nationalistic organization with nationalistic  
9           objectives.

10                           MS McISAAC: My second question  
11           relates to members of al-Qaeda who may not be of  
12           the Muslim faith or of Muslim background at the  
13           very least.

14                           Would John Walker Lindt, whose  
15           name I think will be familiar to everyone as  
16           having been an American captured in Afghanistan,  
17           would he be considered a member of al-Qaeda?

18                           MR. HOOPER: I have seen  
19           references to Mr. Lindt as being a member of  
20           al-Qaeda. My own personal assessment is that he  
21           is probably a member of Taliban who had fought on  
22           behalf of Taliban. Whether he was a member of  
23           al-Qaeda or not, that would be difficult for me to  
24           say because I don't know all of his circumstances.

25                           MS McISAAC: Similarly, do you

1 have any comment on -- I believe his name was  
2 Robinson, the chap who was more popularly known as  
3 the "shoe bomber"?

4 MR. HOOPER: Richard Reid.

5 MS McISAAC: I'm sorry, Richard  
6 Reid. My apologies to all the "Robinsons".

7 I understand that he may have been  
8 a convert to the Muslim faith, but was he  
9 originally a member of the Muslim faith? Do you  
10 know?

11 MR. HOOPER: No. I would revert  
12 to your first question, too.

13 When you talked about non-Muslim  
14 members of al-Qaeda, in point of fact we referred  
15 to most of the individuals who are not originally  
16 of the Islamic faith who converted to Islam as  
17 Islamic converts rather than non-Muslim members of  
18 al-Qaeda.

19 MS McISAAC: All right.

20 MR. HOOPER: I don't know of any  
21 al-Qaeda members who are not of the Islamic faith.

22 MS McISAAC: Those are my  
23 questions, sir; thank you.

24 THE COMMISSIONER: Re-examination,  
25 Mr. David?

1 MR. DAVID: No questions,  
2 Mr. Commissioner.

3 THE COMMISSIONER: Thank you very  
4 much, Mr. Hooper, for coming and giving your  
5 evidence and the time that you spent in preparing  
6 for it.

7 We will take the morning break for  
8 15 minutes.

9 --- Upon recessing at 11:41 a.m. /  
10 Suspension à 11 h 41

11 --- Upon resuming at 11:59 a.m. /  
12 Reprise à 11 h 59

13 THE COMMISSIONER: Mr. Cavalluzzo.

14 MR. CAVALLUZZO: Mr. Commissioner,  
15 our next witness is from the Department of Foreign  
16 Affairs. It is Mr. Konrad Sigurdson.

17 THE COMMISSIONER: Mr. Sigurdson,  
18 do you wish to take the oath or affirm?

19 MR. SIGURDSON: The oath, please.

20 SWORN: KONRAD SIGURDSON

21 MR. CAVALLUZZO: Mr. Commissioner,  
22 we have a book of documents for Mr. Sigurdson.

23 It should be, I believe, Exhibit  
24 No. 11, if it is the next exhibit.

25 THE COMMISSIONER: Thank you.

1 EXHIBIT NO. P-11: Book of  
2 Documents - Konrad Sigurdson  
3 EXAMINATION

4 MR. CAVALLUZZO: Mr. Sigurdson, I  
5 would like to begin with your employment history  
6 with the Government of Canada. Your employment  
7 history has been set out behind Tab 1, and I am  
8 going to ask you a few questions.

9 Prior to joining the Government of  
10 Canada, you went to university. Is that correct?

11 MR. SIGURDSON: The University of  
12 Manitoba.

13 MR. CAVALLUZZO: Where you  
14 received a Bachelor of Arts degree?

15 MR. SIGURDSON: I did.

16 MR. CAVALLUZZO: You joined the  
17 Government of Canada when?

18 MR. SIGURDSON: In 1967.

19 MR. CAVALLUZZO: You held a number  
20 of positions in the foreign service from that time  
21 until you became the High Commissioner in 2001.

22 Is that correct?

23 MR. SIGURDSON: Yes, I was the  
24 High Commissioner in Pakistan and concurrently  
25 Ambassador to Afghanistan.

1 MR. CAVALLUZZO: That was for the  
2 period September 1, 2001, to August 31, 2003?

3 MR. SIGURDSON: That is correct.

4 MR. CAVALLUZZO: Rather than  
5 taking you through all of these positions -- you  
6 have held a number of positions in the Department  
7 of Foreign Affairs -- I would like to come to your  
8 present position. What is that?

9 MR. SIGURDSON: I am the Director  
10 General, Consular Affairs Bureau of the Department  
11 of Foreign Affairs.

12 MR. CAVALLUZZO: As I said before,  
13 you became that in September of 2003?

14 MR. SIGURDSON: September 2003.

15 MR. CAVALLUZZO: Prior to your  
16 appointment to that position, who was the Director  
17 General of Consular Affairs?

18 MR. SIGURDSON: Mr. Garr Pardy.

19 MR. CAVALLUZZO: I would like to  
20 ask a few initial questions concerning the  
21 structures and organization of the Department of  
22 Foreign Affairs.

23 I wonder if I could ask you to  
24 turn to Tab 2 of the book of documents.

25 We have there an organizational



1 chart. We see at that point in time the title is  
2 Department of Foreign Affairs and International  
3 Trade, and I understand that there is somewhat of  
4 a complication that since December of 2003 there  
5 has been an organizational change which will  
6 become legally crystallized when legislation is  
7 passed.

8 Is that correct?

9 MR. SIGURDSON: That is correct.

10 MR. CAVALLUZZO: I understand that  
11 the Department of Foreign Affairs now stands on  
12 its own?

13 MR. SIGURDSON: That is right.

14 MR. CAVALLUZZO: However, at that  
15 point in time, the material time up to December of  
16 2003, it was called the Department of Foreign  
17 Affairs and International Trade?

18 MR. SIGURDSON: Correct.

19 MR. CAVALLUZZO: We are really  
20 only going to focus on that middle minister there,  
21 the Minister of Foreign Affairs.

22 I understand that at the present  
23 time that it is Mr. William Graham?

24 MR. SIGURDSON: That is correct.

25 MR. CAVALLUZZO: And during the

1 material time, if we look at the material time as  
2 being September of 2002 until December of 2003,  
3 the minister was Mr. Bill Graham?

4 MR. SIGURDSON: It was.

5 MR. CAVALLUZZO: Let us move down  
6 the hierarchy to the Deputy Minister of Foreign  
7 Affairs. At the present time it is Mr. Peter  
8 Harder. Is that correct?

9 MR. SIGURDSON: That is correct.

10 MR. CAVALLUZZO: And I understand  
11 that before that time it was Mr. or Ms...?

12 MR. SIGURDSON: Mr. Lavertu.

13 MR. CAVALLUZZO: Can you help us?  
14 How do you spell that?

15 MR. SIGURDSON: L-a-v-e-r-t-u.

16 MR. CAVALLUZZO: When did  
17 Mr. Harper -- I have Mr. Harper on my mind. I  
18 have been watching too much television.

19 When did Mr. Harder become the DM  
20 in foreign affairs, if you can help us there?

21 MR. SIGURDSON: I believe it was  
22 June of 2003.

23 MR. CAVALLUZZO: June of 2003.

24 And prior to that time, you have  
25 answered that question.

1                   How long was the previous Deputy  
2 Minister there? Had he been there at least since  
3 September 2002?

4                   MR. SIGURDSON: Yes.

5                   MR. CAVALLUZZO: The areas of the  
6 organizational chart that I will ask you questions  
7 about will be, first of all, Africa and the Middle  
8 East, then moving over to the Americas, and then  
9 on the right-hand box, Corporate Services,  
10 et cetera. And the other box I will ask you about  
11 will be Global and Security Policy.

12                   Let's move first of all to the  
13 geographic divisions, and we can find the first  
14 one behind Tab 3.

15                   Maybe you could help us. Is this  
16 called the Africa and Middle East division or  
17 branch?

18                   MR. SIGURDSON: Branch.

19                   MR. CAVALLUZZO: So the Africa and  
20 Middle East Branch. And we have something called  
21 the Middle East and North Africa Bureau and then  
22 the Middle East.

23                   What I would like to ask you here  
24 is if I wanted to ask questions about consular  
25 officials in Damascus and in Tunis, where would

1           they fall under in terms of this organizational  
2           chart?

3                           MR. SIGURDSON:  They would both be  
4           under the bureau Middle East and North Africa.

5                           MR. CAVALLUZZO:  Right.

6                           MR. SIGURDSON:  The Middle East  
7           division covers Damascus, and the Maghreb and  
8           Arabian Peninsula covers Tunisia.

9                           MR. CAVALLUZZO:  If I am a  
10          consular official in Tunis or in Damascus and I  
11          have any questions whatever, would I report to  
12          this person, P. McRae in the Middle East?

13                          MR. SIGURDSON:  Tunis?  No, you  
14          wouldn't.  You would go to the Maghreb and Arabian  
15          Peninsula division.

16                          MR. CAVALLUZZO:  So Mr. or Ms  
17          Sylvain?

18                          MR. SIGURDSON:  Ms Sylvain.

19                          MR. CAVALLUZZO:  And obviously  
20          then in respect of Damascus, I would report to  
21          Mr. McRae?

22                          MR. SIGURDSON:  You would.

23                          MR. CAVALLUZZO:  Let us move on to  
24          the next organizational chart, which I guess is  
25          the one called the Americas Branch.  It is on the

1 left-hand side of the page. It is the North  
2 American Bureau.

3 The question I have here is: If I  
4 am a consular official in New York City -- do you  
5 have that? It is Tab 4.

6 MR. SIGURDSON: Yes.

7 MR. CAVALLUZZO: The question is:  
8 If I am a consular official in New York City, to  
9 whom would I report?

10 MR. SIGURDSON: You would report  
11 to North American Bureau.

12 MR. CAVALLUZZO: Right.

13 MR. SIGURDSON: To the U.S.  
14 General Relations.

15 MR. CAVALLUZZO: The U.S. General  
16 Relations, and that would be Mr. or Ms McDonald?

17 MR. SIGURDSON: That is right.

18 MR. CAVALLUZZO: So that we are  
19 clear, for example, asking a question about  
20 Ms McDonald, where would she be located?

21 MR. SIGURDSON: All of these are  
22 the geographic branches.

23 MR. CAVALLUZZO: Right.

24 MR. SIGURDSON: So when you ask  
25 the question "do the consular officials report

1 to", they don't actually report to them. Within  
2 the mission they report vertically, up the ladder:  
3 the consular official to the program manager,  
4 management and consular, and then to the consul  
5 general, and functionally they report to me.

6 MR. CAVALLUZZO: I will come back  
7 to that.

8 I just want to understand. Where  
9 would Ms McDonald be located? Would she be  
10 located at headquarters?

11 MR. SIGURDSON: At headquarters.

12 MR. CAVALLUZZO: All of these  
13 geographic desks, if we can call them that, are  
14 all located at headquarters in Ottawa?

15 MR. SIGURDSON: That is correct.

16 MR. CAVALLUZZO: You have  
17 corrected me in terms of reporting to, and I would  
18 like to deal with that, if we could go then to the  
19 next organizational chart behind Tab 5.

20 This is obviously your branch. It  
21 is called the Corporate Services, Passport, and  
22 Consular Affairs Branch.

23 We see the third box from the left  
24 is Consular Affairs Bureau, JPD, Director General,  
25 K. Sigurdson.

1                   For information, could you tell us  
2                   what those initials stand for, JPD?

3                   MR. SIGURDSON: Yes. Every "D",  
4                   every acronym or symbol that ends with "D" is the  
5                   head of a bureau; a Director General, I suppose  
6                   you could call it that.

7                   The first initial usually denotes  
8                   the branch. When this system was devised, "J"  
9                   stood for the legal branch, and the Consular  
10                  Affairs Bureau used to be in the legal branch.  
11                  Now it is not but they retained the symbol.

12                  MR. CAVALLUZZO: Just to confuse  
13                  us.

14                  MR. SIGURDSON: Yes, I think so.

15                  MR. CAVALLUZZO: The "J" stands  
16                  for the legal branch in which consular affairs  
17                  used to be in?

18                  MR. SIGURDSON: Right.

19                  MR. CAVALLUZZO: What about the  
20                  middle initial "P". What does that stand for?

21                  MR. SIGURDSON: Program.

22                  MR. CAVALLUZZO: And then we see a  
23                  number of services within your responsibility or  
24                  jurisdiction?

25                  MR. SIGURDSON: Yes.

1                   MR. CAVALLUZZO: Before we go to  
2 each of these services, could you tell us what  
3 your duties and responsibilities are as the  
4 Director General of Consular Affairs?

5                   MR. SIGURDSON: First of all, to  
6 manage the various services, each of these boxes  
7 is a division.

8                   Let me start first with the bottom  
9 one, Client Services. This is the front end of  
10 the consular process. They produce the travel  
11 reports, travel advice, travel warnings. They  
12 produce all the brochures that we are going to go  
13 through that allow people to prepare for travel  
14 abroad.

15                  Then we have Program Services.  
16 That is like the secretariat to the bureau. They  
17 do the personnel and finance, and they have the  
18 input. They do the performance report. We will  
19 talk about that later.

20                  They also have responsibility for  
21 the honorary consuls.

22                  The third, Case Management, is  
23 made up of 12 case management officers. They  
24 liaise directly with the consular officers in the  
25 field, and they are responsible for the actual



1 case of a person detained or a prisoner or missing  
2 or murdered or dead.

3 MR. CAVALLUZZO: If we can call it  
4 the Arar case or the Arar file, is this where we  
5 would find it, in Case Management?

6 MR. SIGURDSON: Yes. The case  
7 management officers have responsibility for  
8 certain parts of the world. That is how they  
9 divide their responsibilities.

10 Emergency Services is a very  
11 interesting part of the bureau. They have in this  
12 division responsibility for all planning for  
13 emergencies, contingency planning, business  
14 resumption planning. They are working right now  
15 on plans for the Olympic Games in Athens, should  
16 something go wrong.

17 On the other side, they have  
18 responsibility for the operational centre. This  
19 is a 24/7, around the clock all week, centre that  
20 is responsible for accepting calls from missions  
21 abroad during the quiet hours of the missions.

22 If somebody in distress or in need  
23 of a passport or advice or information were to go  
24 to an embassy at seven in the evening and find it  
25 locked, they would phone the embassy. They would

1 get the number and phone the embassy and their  
2 call would automatically be transferred here.

3 MR. CAVALLUZZO: I want to get as  
4 specific as I can in respect of Mr. Arar's case.

5 As we know, Mr. Arar first sought  
6 consular services in New York City. Okay?

7 MR. SIGURDSON: Yes.

8 MR. CAVALLUZZO: Would there be  
9 one person in Case Management that would be  
10 responsible for calls from the New York consulate  
11 or any other American consulates?

12 MR. SIGURDSON: There are two  
13 people actually. One person deals with consular  
14 cases generally and one person deals with consular  
15 cases that are in the arrest and detention  
16 category.

17 MR. CAVALLUZZO: So we could focus  
18 upon one person who would have been responsible at  
19 least during the period of time that Mr. Arar was  
20 in New York City between say September 26th of  
21 2002 and the first week of October?

22 MR. SIGURDSON: Yes.

23 MR. CAVALLUZZO: Do you know who  
24 that person is?

25 MR. SIGURDSON: Yes.

1 MR. CAVALLUZZO: What is the name  
2 please?

3 MR. SIGURDSON: Nancy Collins.

4 MR. CAVALLUZZO: Thank you.

5 We understand that -- and  
6 obviously I am not going to ask you questions  
7 about it -- Mr. Arar was taken to Jordan and then  
8 to Syria. When he was in prison in the Palestine  
9 branch in Damascus, he sought consular assistance  
10 there.

11 Would there be one person who the  
12 Case Management services that would have handled  
13 Mr. Arar's file from that aspect?

14 MR. SIGURDSON: Yes, indeed there  
15 was.

16 MR. CAVALLUZZO: Do you know who  
17 that person is?

18 MR. SIGURDSON: In fact there were  
19 two people. The person who dealt with the case  
20 throughout most of 2002 into 2003 was Myra  
21 Pastyr-Lupul.

22 MR. CAVALLUZZO: Can you spell  
23 that for us, please?

24 MR. SIGURDSON: Myra, M-y-r-a;  
25 Pastyr-Lupul, P-a-s-t-y-r - L-u-p-u-l.

1                   Before her was another officer. I  
2           forget her name. Rhonda Richards.

3                   MR. CAVALLUZZO: Rhonda Richards?

4                   MR. SIGURDSON: Rhonda Richards I  
5           think was the officer responsible. She is now in  
6           Dubai.

7                   MR. CAVALLUZZO: I would like to  
8           ask you a number of questions concerning -- you  
9           have raised this before and if you can perhaps  
10          expand upon it; and that is the relationship  
11          between the consular official, whether it be New  
12          York City, Damascus or Tunis, and headquarters.

13                   You told us that the reporting  
14          relationship is to your bureau rather than the  
15          geographic desk in which the consulate finds  
16          itself?

17                   MR. SIGURDSON: Correct.

18                   MR. CAVALLUZZO: Okay. So could  
19          you expand upon that? What is the reporting  
20          relationship?

21                   MR. SIGURDSON: Well, the consul  
22          officer in the field has a guideline or a guide in  
23          the manual of consular instruction. They have  
24          experience. They have training. They know what  
25          to do in almost all cases.

1                   But with the advent of  
2           informatics, with a good electronic communications  
3           system, it's rarely that an officer at a mission  
4           would continue on with a case without consulting  
5           Ottawa. Every day they e-mail back and forth  
6           through this dedicated communications system.

7                   MR. CAVALLUZZO: Right.  
8           Certainly, if it is a situation of a detainee in a  
9           prison, wherever that prison is located, there  
10          would be, presumably, a lot of communications  
11          between you called it the field office, or  
12          whatever, and headquarters?

13                  MR. SIGURDSON: Yes.

14                  MR. CAVALLUZZO: Okay. Now, what  
15          role, if any -- if you could help us here -- what  
16          role, if any, would the geographic desks play in a  
17          situation such as Mr. Arar, who is being detained  
18          in a foreign country, where your consular  
19          officials are attempting to see him?

20                  MR. SIGURDSON: Let me just be a  
21          bit more general than the case of Mr. Arar.

22                  Generally speaking, there are a  
23          number of ways that a consul officer would go  
24          about dealing with a case of suspected arrest and  
25          detention, or, as in Mr. Arar's case, after we

1           were notified by the family we knew he was  
2           arrested and detained.

3                           MR. CAVALLUZZO:   Okay.

4                           MR. SIGURDSON:   The person in the  
5           field or the consulate or the embassy would make  
6           inquiries to try to find out where this person  
7           was.   And that's not always easy.

8                           Now, the Vienna Convention  
9           requires that the receiving state notify us, but  
10          they don't always do it without delay.

11                          MR. CAVALLUZZO:   Okay.   And we are  
12          going to come to the end --

13                          MR. SIGURDSON:   We will come to  
14          that, but the first item of duty is to find out  
15          where the person is, and then worry about the  
16          access and what not later.   This requires phoning  
17          around and what not.       Usually, they work on a  
18          very informal basis to begin with.   They have  
19          contacts at all levels that they can rely on to  
20          provide them with information before they actually  
21          start going to the top and running into the "No  
22          comment" kind of response.

23                          After a series -- or after any  
24          kind of intervention, informal or formal, there is  
25          a report to Ottawa.   At a certain point, when you

1           have exhausted all your informal interventions,  
2           you have exhausted all your opportunities or all  
3           your ways of finding out through your local  
4           relationships, then you raise the stake a bit and  
5           Ottawa, that's usually me or the director of the  
6           Division of Case Management, would talk to a  
7           counterpart or colleague in the geographic and  
8           explain, "We have this situation. We have these  
9           challenges. We have these obstacles that make it  
10          more than just an ordinary consular case".

11                       MR. CAVALLUZZO: Okay. So that  
12          the relevant geographic division, whether it be  
13          the Americas or --

14                       MR. SIGURDSON: Right.

15                       MR. CAVALLUZZO: -- the Middle  
16          East or whatever, would work together with  
17          consular affairs and try and resolve the problem?

18                       MR. SIGURDSON: At first instance,  
19          with the geographic, yes. And if the case  
20          progressed beyond exchanging advice and  
21          information, we would include more people. We  
22          would include the legal branch. We may include  
23          intelligence. We may include communications.

24                       MR. CAVALLUZZO: Okay.

25                       MR. SIGURDSON: We would,

1 effectively, as we ramp up the stakes, we would  
2 include more people and the ADM of, in this case  
3 Africa and the Middle East, would become,  
4 effectively, my boss.

5 MR. CAVALLUZZO: Right.

6 MR. SIGURDSON: We would provide  
7 support to the initiative.

8 MR. CAVALLUZZO: So that as  
9 this -- we can call it, as you say, as the stakes  
10 rose in Mr. Arar's case eventually, presumably,  
11 Mr. Pardy would be reporting to the ADM Africa and  
12 the Middle East?

13 MR. SIGURDSON: That's right.

14 MR. CAVALLUZZO: Okay. Now,  
15 before we moved on, you said that, in this case,  
16 Mr. Arar's family contacted DFAIT.

17 Are you aware as to whether, first  
18 of all, the United States or the New York  
19 officials notified the consul in New York that  
20 they were detaining Mr. Arar?

21 MR. SIGURDSON: Well, first of  
22 all, I have to say, Mr. Cavalluzzo, I am here as a  
23 potential witness.

24 MR. CAVALLUZZO: Right.

25 MR. SIGURDSON: I wasn't here



1 during the time of the case of Mr. Arar.

2 MR. CAVALLUZZO: But do you have  
3 any knowledge of that?

4 MR. SIGURDSON: I have made a  
5 point of not becoming too familiar with it, so I  
6 don't confuse my role here.

7 MR. CAVALLUZZO: Okay. But do you  
8 not have knowledge of it, as to whether he was --  
9 the United States contacted, Mr. --

10 MR. SIGURDSON: I know that a  
11 family member of Mr. Arar was the first to let us  
12 know he hadn't arrived when he was supposed to  
13 arrive.

14 MR. CAVALLUZZO: Okay. So let's  
15 take that generally. Let's not call it Mr. Arar,  
16 but Mr. Jones. Assuming that Mr. Jones' family  
17 phones the consular bureau and says, "Mr. Jones  
18 was supposed to land in New York and he hasn't.  
19 We don't know where he is. Can you help us?", what  
20 would happen in that situation?

21 MR. SIGURDSON: The consul would  
22 phone the airport, would have what I have referred  
23 to earlier as his or her local lines of  
24 communication, would find out from the airport  
25 authorities, the enforcement authorities or the

1 U.S. INS, which is the immigration people, or from  
2 the airline company what -- if they would release  
3 information from the manifest -- where is so and  
4 so?

5 And they are bound -- if they  
6 phone three or four sources, they are bound to  
7 find out.

8 MR. CAVALLUZZO: Okay. We are  
9 going to get very specific with that in a few  
10 minutes when we come to the expectations of  
11 consular officials.

12 So why don't we move on to the  
13 final organizational chart, Mr. Sigurdson, at Tab  
14 6, and that has something called "global and  
15 security policy" and there is a bureau or a  
16 division called International Crime and Terrorism.

17 Just, generally speaking, can you  
18 tell us what that particular office does?

19 MR. SIGURDSON: To my  
20 understanding, this unit, this bureau, is  
21 responsible for policy as it relates to both  
22 terrorism and international crime.

23 Now, we, in the consular bureau,  
24 have nothing to do with this bureau, so my  
25 understanding is limited.

1 MR. CAVALLUZZO: Okay. Now, are  
2 you aware as to whether this particular office or  
3 bureau would have played any role whatsoever in  
4 Mr. Arar's file?

5 MR. SIGURDSON: I would think not.

6 MR. CAVALLUZZO: Okay. Then, let  
7 us move on now.

8 Just to advise counsel, in Mr.  
9 Sigurdson's anticipated evidence statement there  
10 is reference to a number of statutes, as well as  
11 international conventions. Upon reflection, Mr.  
12 Sigurdson is not a lawyer and I felt it may be  
13 unfair to call upon him to deal with that.

14 I try to deal with that  
15 extensively in a legal overview up front. I would  
16 be referring to the Universal Declaration of Human  
17 Rights, the International Convention Against  
18 Torture, and so on, but I do want to deal with is  
19 one convention with Mr. Sigurdson. He has already  
20 referred to it as the Vienna Convention.

21 That can be found, Mr.  
22 Commissioner, counsel and witness behind Tab 13.

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

25 MR. SIGURDSON: Yes, I do.

1 MR. CAVALLUZZO: The Vienna  
2 Convention is really the Bible, is it not, so to  
3 speak for, consular officials in the world today?  
4 Or am I taking liberties on that?

5 MR. SIGURDSON: Yeah, I think you  
6 are stretching it just a bit. The VCCR is a  
7 multilateral convention that really creates the  
8 rules for extending consular services by a state  
9 to its nationals in a foreign territory.

10 It talks about setting up the  
11 post. It talks about all the administrative  
12 things. It doesn't say very much about actual  
13 consular activities and practices.

14 MR. CAVALLUZZO: Okay. Well let  
15 me just point you to the relevant portions of the  
16 convention, and I may have a question or two so  
17 that the Commissioner is aware of the relevant  
18 portions. I am going to refer initially to  
19 Article 5, which can be found at page 5 of 59. It  
20 just describes consular functions.

21 The points I would refer to -- I  
22 may not ask any questions about it -- it just  
23 says, "Consular functions consist" -- and we are  
24 going to look at paragraph 1 --

25 "(a) protecting in the

1 receiving State the interests  
2 of the sending State...".

3 Now, let us assume that we have a  
4 problem in New York City and I am a Canadian with  
5 a problem in New York City. The receiving state  
6 would be which?

7 MR. SIGURDSON: U.S.A.

8 MR. CAVALLUZZO: And the sending  
9 state, of course, then, would be Canada.

10 "...the sending State and of  
11 its nationals, both  
12 individuals and bodies  
13 corporate, within the limits  
14 permitted by international  
15 law."

16 The next relevant paragraph would  
17 be (e):

18 "helping and assisting  
19 nationals, both individuals  
20 and bodies corporate, of the  
21 sending State".

22 And then the other reference I would make to this  
23 convention, Article 5, subparagraph (i):

24 "subject to the practices and  
25 procedures obtaining in the

1 receiving State, representing  
2 or arranging appropriate  
3 representation for nationals  
4 of the sending State before  
5 the tribunals and other  
6 authorities of the receiving  
7 State, for the purpose of  
8 obtaining, in accordance with  
9 the laws and regulations of  
10 the receiving State,  
11 provisional pleasures for the  
12 preservation of the rights  
13 and interests of these  
14 nationals, where, because of  
15 absence or any other reason,  
16 such nationals are unable at  
17 the proper time to assume the  
18 defence of their rights and  
19 interests."

20 And if you understood that, you  
21 are a better person than I, but we will read it  
22 carefully when we have the time.

23 Now, the important provision is  
24 Article 36, and I would like to draw your  
25 attention to that.

1 THE COMMISSIONER: So they are at  
2 page which?

3 MR. CAVALLUZZO: This is page 26  
4 of 59.

5 THE COMMISSIONER: Oh, thank you,  
6 yes.

7 MR. CAVALLUZZO: Article 36 --

8 THE COMMISSIONER: Yes.

9 MR. CAVALLUZZO: -- and which is  
10 entitled, "Communication and Contact with  
11 Nationals of the Sending State". So the sending  
12 state here would be Canada.

13 "With a view to facilitating  
14 the exercise of consular  
15 functions relating to  
16 nationals of the sending  
17 State: (a) consular officers  
18 shall be free to communicate  
19 with nationals..."

20 -- and I am going to put in the words,  
21 "of Canada" --

22 "...and to have access to  
23 them. Nationals of Canada  
24 shall have the same freedom  
25 with respect to communication

1 with and access to consular  
2 officials of Canada."

3 And then it goes on:

4 "(b) if he or she so  
5 requests, the competent  
6 authorities of the United  
7 States or Syria shall,  
8 without delay, inform the  
9 consular post of Canada if,  
10 within its consular district,  
11 a national of Canada is  
12 arrested or committed to  
13 prison or to custody pending  
14 trial or is detained in any  
15 other manner."

16 And then, finally, in (c):

17 "consular officials shall  
18 have the right to visits a  
19 national of the sending State  
20 or Canada who is in prison,  
21 custody or detention, to  
22 converse and correspond with  
23 him and to arrange for his  
24 legal representation. They  
25 shall also have the right to



1 visit any national of Canada  
2 who is in prison, custody or  
3 detention in their district  
4 in pursuance of a judgment.

5 And then, finally, in paragraph 2:

6 "The rights referred to in  
7 paragraph 1 of this Article  
8 shall be exercised in  
9 conformity with the laws and  
10 regulations of the receiving  
11 State, subject to the  
12 proviso, however, that the  
13 said laws and regulations  
14 must enable full effect to be  
15 given to the purposes for  
16 which the rights accorded  
17 under this Article are  
18 intended."

19 Now, I would like to, rather than  
20 ask you questions about the law, take you to  
21 manuals, operational manuals, for employees of  
22 DFAIT, manuals or brochures that are given to  
23 Canadians travelling abroad, so that we can see  
24 how these manuals and brochures incorporate those  
25 principles which are found in Article 35.

1                   The first can be found behind Tab  
2           14. Do you have that, Mr. Sigurdson?

3                   MR. SIGURDSON: I do.

4                   MR. CAVALLUZZO: And we have a  
5           brochure which appears to be entitled "A Guide for  
6           Canadians Imprisoned Abroad". What is this  
7           brochure?

8                   MR. SIGURDSON: This is a brochure  
9           that is meant primarily for people who are  
10          detained, who are imprisoned. This pamphlet is  
11          held mostly by our missions. We make it a  
12          practice to try to get access as quickly as  
13          possible when someone is arrested, detained, and  
14          then subsequently tried, convicted and sentenced.

15                  MR. CAVALLUZZO: Okay.

16                  MR. SIGURDSON: Having it at the  
17          mission is important because it is for the  
18          prisoner, for the prisoner to understand what our  
19          services are and what he or she might expect.

20                  We also keep a supply on hand in  
21          the Case Management Division because families  
22          phone Ottawa and they are very concerned and  
23          anxious about their loved ones and we provide this  
24          pamphlet to them.

25                  MR. CAVALLUZZO: Okay, well let's

1 see what services you do provide.

2 If we go to the very first page,  
3 under "Introduction" in the right-hand column  
4 about half way down you see that it states in  
5 quotes:

6 " `Consular' refers to the  
7 services a government can  
8 provide to its citizens who  
9 encounter difficulty abroad.  
10 These services are clearly  
11 established in international  
12 law and, more specifically,  
13 under the terms of the Vienna  
14 Convention ...to which Canada  
15 and many other nations are  
16 signatories."

17 Are you aware as to whether the  
18 United States is a signatory to the Vienna  
19 Convention?

20 MR. SIGURDSON: Yes, it is.

21 MR. CAVALLUZZO: I'm sorry?

22 MR. SIGURDSON: Yes, the  
23 U.S.A. is.

24 MR. CAVALLUZZO: Do you know  
25 whether Syria is a party?

1 MR. SIGURDSON: No, I don't know.

2 MR. CAVALLUZZO: You don't know  
3 that. We will find that out. Okay, that's fine.

4 It goes on and it says:

5 "Canadian consular officials  
6 have extensive experience in  
7 dealing with the types of  
8 problems you may encounter,  
9 and understand how difficult  
10 the situation can be for  
11 everyone. They are there to  
12 help. Stay in touch with  
13 them, keep them informed  
14 about your situation, and  
15 call on them for the  
16 assistance you need."

17 In terms of the kinds of  
18 assistance and information that a Canadian may  
19 find him or herself in, in this situation, if you  
20 go to the next page you will see in the third  
21 paragraph down under "Detainee/Prisoner":

22 "If you are detained or  
23 arrested in a foreign country  
24 and you choose to talk to  
25 Canadian consular officials,

1 any information you give them  
2 will remain completely  
3 confidential and is protected  
4 under Canada's Privacy Act."

5 It goes on in the next column  
6 to say:

7 "If you are detained or  
8 arrested abroad and you wish  
9 to have Canadian consular  
10 officials notified, you  
11 should clearly make that  
12 request to the arresting  
13 authorities."

14 Just stopping there. Under the  
15 Vienna Convention, before my right crystallizes  
16 under Article 5 to have a Canadian consular  
17 official see me, do I have to request it?

18 MR. SIGURDSON: Yes. When you  
19 read the Article 36(1), (2) and (3), it talked  
20 about communication, the right to communicate, the  
21 right to have access.

22 MR. CAVALLUZZO: Right.

23 MR. SIGURDSON: The second  
24 paragraph talks about notification.

25 The arresting or detaining state

1           must notify the detainee of his or her right to be  
2           in touch with the consulate and, if the person  
3           agrees, the receiving state must notify the  
4           consulate "We have one of your nationals here."  
5           Then, when they arrange access, the third thing  
6           that happens after notification and communication  
7           is access to our services.

8                           MR. CAVALLUZZO: In terms of the  
9           obligation of the receiving state, you said that  
10          there was an obligation in this case on the United  
11          States and Syria to notify me as a Canadian of my  
12          rights under the Vienna Convention.

13                           What kind of timing are we looking  
14          at? Should the receiving state notify me  
15          immediately after they arrest me and detain me in  
16          jail that you have the right to see your Canadian  
17          official?

18                           MR. SIGURDSON: Well, the  
19          convention says "without delay". "Without delay"  
20          means in some case one or two days or three or  
21          four; in other cases it means two, three or four  
22          weeks. In a situation like the states and this  
23          country, and other countries that are federal in  
24          nature, often the state or the province has  
25          jurisdiction over the arrest and has to notify the

1 federal government and the federal government  
2 notifies the embassy or consulate.

3 MR. CAVALLUZZO: Okay. So that  
4 how long it takes will depend on the particular  
5 circumstance of each state?

6 MR. SIGURDSON: Absolutely.

7 MR. CAVALLUZZO: In terms of what  
8 you can do, if you go to the right-hand column  
9 under the title "The Role of the Government of  
10 Canada", in the last sentence of that first  
11 paragraph it says:

12 "...the Government of Canada  
13 cannot interfere in the  
14 judicial affairs of another  
15 country.

16 That being said, the  
17 Government of Canada will  
18 make every effort to ensure  
19 that you receive equitable  
20 treatment under the local  
21 criminal justice system. It  
22 will ensure that you are not  
23 penalized for being a  
24 foreigner, and that you are  
25 neither discriminated against

1 nor denied justice because  
2 you are Canadian. It cannot,  
3 however, seek preferential  
4 treatment for you, or try to  
5 exempt you from the due  
6 process of local law."

7 So that in effect what we are  
8 saying here is you are at the mercy of the  
9 particular legal system in which you find  
10 yourself?

11 MR. SIGURDSON: You are.

12 MR. CAVALLUZZO: You go on in the  
13 next page to say you will assist the Canadian who  
14 is detained in hiring a foreign lawyer?

15 Is that right?

16 MR. CAVALLUZZO: We provide a  
17 list of lawyers who we know of and who could do  
18 the job.

19 MR. CAVALLUZZO: Okay. It also  
20 says that you will facilitate communications  
21 between the detainee and the lawyer?

22 MR. SIGURDSON: Or his rep, yes.

23 MR. CAVALLUZZO: Or his designate.  
24 Okay.

25 MR. SIGURDSON: Yes.



1 MR. CAVALLUZZO: Then we get to  
2 the services which are provided which I think is  
3 important to look at in the next paragraph.

4 It says:

5 "The range of services  
6 provided by Canadian consular  
7 officials varies from case to  
8 case and country to country.  
9 Services appropriate to your  
10 case and situation will be  
11 discussed with you and/or  
12 those you designate. At your  
13 request, officials can:  
14 - notify your family or  
15 friends..."

16 MR. SIGURDSON: That is true, yes.

17 MR. CAVALLUZZO: Secondly:

18 "- help you communicate with  
19 your representative, family  
20 or friends;"

21 MR. SIGURDSON: Yes.

22 MR. CAVALLUZZO: Thirdly, and this  
23 is the one I want to ask you about:

24 "- request immediate and  
25 regular access to you;"

1                   Now, that would be a very  
2           important right to me if I am a Canadian in some  
3           foreign jail.

4                   Are there any international  
5           standards as to what this means "immediate and  
6           regular access" to me while I am sitting in jail?

7                   MR. SIGURDSON: I don't know if  
8           there are international standards. We have our  
9           own service standards.

10                  MR. CAVALLUZZO: Right.

11                  MR. SIGURDSON: In the case of  
12           someone arrested and detained, we try to -- our  
13           service standards say we should try to have access  
14           within 24 hours.

15                  MR. CAVALLUZZO: Okay.  
16           Twenty-four hours of you being notified that a  
17           Canadian is sitting in a jail --

18                  MR. SIGURDSON: Yes.

19                  MR. CAVALLUZZO: -- in your  
20           jurisdiction?

21                  MR. SIGURDSON: Yes.

22                  MR. CAVALLUZZO: There are  
23           performance standards which we will come to?

24                  MR. SIGURDSON: Yes.

25                  MR. CAVALLUZZO: It goes on.

1 Another service would be to:

2 "- seek to ensure equitable  
3 treatment under local  
4 laws..."

5 Which we have already referred to.

6 Then it goes on to say:

7 "- obtain information about  
8 the status of your case and  
9 encourage authorities to  
10 process the case without  
11 undue delay;"

12 So presumably that would require  
13 me as a consular official to deal with the  
14 receiving state and say, "What is the status of  
15 this person's case" --

16 MR. SIGURDSON: Yes.

17 MR. CAVALLUZZO: -- "and could you  
18 try to resolve it as quickly as you can?"

19 Is that fair?

20 MR. SIGURDSON: Yes.

21 MR. CAVALLUZZO: And then:

22 "- provide you, your  
23 representative ... with  
24 information on the local  
25 judicial and prison systems,

1                   approximate times for court  
2                   action, typical sentences in  
3                   relation to alleged offence  
4                   and bail provisions;"

5                   And then the only other one I'm  
6                   going to ask you about is:

7                   "- make every effort to  
8                   ensure that you receive  
9                   adequate nutrition, and  
10                  medical and dental care;"

11                  What can you do in a situation  
12                  where I, as a consular officer in a foreign  
13                  country, feel that a Canadian is not getting fair  
14                  treatment, is not getting adequate nutrition,  
15                  medical and dental care? What do you do in that  
16                  situation? What can you do?

17                  MR. SIGURDSON: What we do  
18                  normally is to make representation to the local  
19                  authorities. At first, as I have said before, we  
20                  try the informal intervention. Sometimes -- very  
21                  often that works actually, because as soon as we  
22                  show an interest they show an interest in  
23                  improving the conditions. We resolve most health  
24                  matters in that way: nutrition, toothache,  
25                  earache, eye infection.

1                   If that doesn't work, then we  
2 would take the intervention higher, make it more  
3 formal, send a letter or a diplomat note, which is  
4 our form of a letter, to the Ministry of Foreign  
5 Affairs.

6                   MR. CAVALLUZZO: So that if I am a  
7 consular official and feel that I'm not making  
8 headway or there could be serious trouble here  
9 that I may not be able to handle, you say I up the  
10 ante, it could be a diplomatic note, it could be  
11 intervention by a higher official than I, and this  
12 presumably would be in communication with the head  
13 office?

14                  MR. SIGURDSON: Always.

15                  MR. CAVALLUZZO: Okay.  
16 Another question that I would have: I am a  
17 consular official in a country that doesn't  
18 have as good a human rights record as Canada and I  
19 may indeed suspect that prisoners or detainees  
20 within a prison may not be treated as well as they  
21 should be, is there anything I can do in that  
22 regard?

23                  A. First of all, let me say that  
24 there are limits to what we can do in all cases,  
25 but our first priority above all is to ensure the

1 well-being of our client, the Canadian in  
2 distress. That comes before all. That trumps  
3 everything else.

4 So what we do in a case where a  
5 person needs assistance, is that we try for more  
6 access; we monitor the well-being of the person.  
7 If we suspect that there has been maltreatment or  
8 mistreatment of the individual, we take note of  
9 it. We very prudently might speak to the local  
10 authorities of the prison, of the detention  
11 centre, again informal intervention, to say that  
12 we would expect the treatment to be at least equal  
13 to the very best offered to the locals, to the  
14 nationals of that country.

15 MR. CAVALLUZZO: What if that is  
16 not very good?

17 MR. SIGURDSON: Well, often it  
18 isn't. We try the local remedy. We try the  
19 informal intervention.

20 If that doesn't work and we still  
21 get access and we notice that there is -- it's  
22 more than a toothache, it is probably more, we  
23 have -- I think you alluded to this earlier -- the  
24 various instruments that set the standards for  
25 human rights. We have those listed in our manual

1 and all consular officers have access to that.

2 They know that if in their mind  
3 there is a mistreatment of their client they  
4 should contact me or the bureau and we will work  
5 with legal branch and our human rights people to  
6 work out different interventions.

7 Now, having said that, there is a  
8 down side to being very active and even aggressive  
9 in pursuit of our first priority, and that is the  
10 well-being of the individual. That is the  
11 receiving state, the detaining state, may object  
12 to the insinuation that they are treating the  
13 individual poorly and that could have  
14 repercussions for that person who is being  
15 detained or persons who fall. So when the  
16 information gets to Ottawa and we go to the legal  
17 branch, then we set in motion the geographic  
18 chairs of working group.

19 MR. CAVALLUZZO: One final  
20 question in regard to this, and that is: If I am  
21 a consular official in a country once again  
22 without the kind of human rights record that  
23 Canada has, and indeed may be suspected through  
24 the Department of State of engaging in torture,  
25 would I have a right, as a Canadian official, of

1 saying to these prison officials or detention  
2 officials or intelligence officials, whoever they  
3 might be, "I want to see this Canadian alone and  
4 speak to him or her."

5 Do I have that right as a consular  
6 official?

7 MR. SIGURDSON: To demand  
8 access, yes.

9 MR. CAVALLUZZO: Do I have the  
10 right to demand access without the presence of the  
11 foreign prison officials?

12 MR. SIGURDSON: You certainly have  
13 the right to demand it.

14 MR. CAVALLUZZO: And under  
15 international law must the foreign country succumb  
16 to my demand?

17 MR. SIGURDSON: No, not in the  
18 second case.

19 MR. CAVALLUZZO: They don't have  
20 the obligation?

21 MR. SIGURDSON: They don't have to  
22 allow you to see the prisoner in private.

23 MR. CAVALLUZZO: Okay. Is that  
24 something that might be expected of a consular  
25 official? In other words, a consular official in



1 a country which may be suspected of torture, the  
2 consular official should ask the prison officials  
3 to see the Canadian alone?

4 MR. SIGURDSON: Yes.

5 MR. CAVALLUZZO: Taking you  
6 through your exhibit book, the next is behind Tab  
7 15. It is a PowerPoint presentation that the  
8 department gave to us.

9 Mr. Commissioner and counsel, it  
10 just gives the statistics that you may be  
11 interested in, and in particular on the first two  
12 pages, as to the number of points of service and  
13 the number of files that the ministry deals with,  
14 the number of staff.

15 Indeed, on the second page I think  
16 it is important, if you just took into account  
17 that the dedicated, full-time Canada staff, the 74  
18 at headquarters, these are once again consular  
19 officials?

20 MR. SIGURDSON: Yes.

21 MR. CAVALLUZZO: You have 74  
22 people at headquarters. You have 70 in missions.  
23 And missions we can define either as a consulate  
24 or embassy. Is that correct?

25 MR. SIGURDSON: Yes.

1 MR. CAVALLUZZO: Then locally  
2 engaged staff, 283. That means what it says; that  
3 in Damascus, for example, you may hire Syrian  
4 natives to work in the embassy. Is that correct?

5 MR. SIGURDSON: Yes. I should say  
6 too that when it says 70 full-time staff at  
7 missions, that is correct, as far as I know. But  
8 it is important to keep in mind that there are  
9 many, many people who work part-time in the consul  
10 and they are not included here. I think the  
11 latest count was 400 staff abroad.

12 In that time of disaster when  
13 there is a fire or earthquake or something, then  
14 the whole mission may be mobilized.

15 MR. CAVALLUZZO: The Canadian  
16 government is responsible for hiring that many  
17 part-time employees?

18 MR. SIGURDSON: No. They  
19 have responsibilities for other things.

20 MR. CAVALLUZZO: It is just a  
21 joke. I am a labour lawyer at other times.

22 --- Laughter / Rires

23 MR. CAVALLUZZO: Let us go then to  
24 the next tab --

25 MR. SIGURDSON: Can I do that too?

1 MR. CAVALLUZZO: I'm sorry?

2 MR. SIGURDSON: Can I joke like  
3 that, too?

4 MR. CAVALLUZZO: Absolutely.

5 The next brochure is entitled "Bon  
6 Voyage, But". This is the next tab, at Tab 16.

7 MR. SIGURDSON: Before we move to  
8 that I really want to make a point. We touched on  
9 earlier about complexity of cases; that we operate  
10 on a case-by-case basis and country-by-country.

11 If you look at the stats on the  
12 second page, I think --

13 MR. CAVALLUZZO: Is it the second  
14 one? Let me get to it.

15 MR. SIGURDSON: We will see in the  
16 performance report we have something like 1.3  
17 million service requests every year. They are not  
18 cases but requests. They are phone calls and what  
19 not.

20 We have, according to this,  
21 184,000 cases; that is, we actually started a  
22 file. And 91 per cent of these are registration  
23 of Canadians, passport services and citizenship,  
24 and they are essentially in-house. So they are  
25 not as complex as the others.

1                   That leaves the 9 per cent or  
2                   16,000 cases.

3                   If all cases are different, we  
4                   have 16,000 different cases, with different  
5                   people, or different groups of people, in 270  
6                   points of services in 180 countries.

7                   I am not a mathematician but I  
8                   know you multiply something by something and you  
9                   get a very, very complicated scenario.

10                  MR. CAVALLUZZO: Okay.

11                  MR. SIGURDSON: I want to mention  
12                  that.

13                  MR. CAVALLUZZO: That is fair. We  
14                  appreciate that.

15                  Coming to the brochure "Bon  
16                  Voyage", could you tell us what this is,  
17                  Mr. Sigurdson?

18                  MR. SIGURDSON: This is our most  
19                  important publication. We send this out with all  
20                  new passports. It is a publication that touches  
21                  on almost everything a traveller should know  
22                  before a traveller travels about security, about  
23                  health, about visas, about the culture of  
24                  different countries, and warns them that every  
25                  country has its own set of laws and you are

1 subject to those laws.

2 It talks about dual nationality,  
3 which is another challenge, and it gives a name,  
4 address and phone number of all our missions  
5 abroad.

6 MR. CAVALLUZZO: The only  
7 reference I would make here -- and once again, I  
8 encourage everyone to read it -- is at page 28 of  
9 the brochure. Under "Crime and Punishment" it  
10 states:

11 "More than 3,000 Canadians  
12 are currently imprisoned  
13 outside Canada for various  
14 offences. The laws and  
15 customs of countries around  
16 the world can be very  
17 different ..."

18 And so on and so forth. So that  
19 is the kind of file we are looking at with your  
20 division. At any one point in time you could have  
21 3,000 Canadians imprisoned abroad.

22 MR. SIGURDSON: Right. The  
23 figures as of June 14th of this year were 2,150  
24 cases, not 3,000; 2,150, of which 1,515 were in  
25 the U.S.A.

1                   So you have 2,150 and you add on a  
2                   certain number who don't choose to request that  
3                   their consulate be informed -- let's say 500 so.  
4                   You are pushing 3,000, but it is below that now.

5                   MR. CAVALLUZZO: But a significant  
6                   number of the report of the 2,150, over 1,500 or  
7                   three-quarters are in the United States?

8                   MR. SIGURDSON: Yes.

9                   MR. CAVALLUZZO: The next brochure  
10                  deals with the very important issue of dual  
11                  citizenship, because that is a relevant phenomenon  
12                  in this particular public inquiry.

13                  Rather than taking you through the  
14                  brochure, I would ask you two questions.

15                  One, can you tell us what dual  
16                  citizenship is? Second, can you tell us what  
17                  problems that raises in respect of your functions  
18                  in consular affairs?

19                  MR. SIGURDSON: Dual nationality  
20                  means a person has more than one nationality. If  
21                  they are living here as their place of residence,  
22                  we call this their country of first nationality.

23                  They may be a national of another  
24                  country because they were born there. That  
25                  country does not recognize dual nationality. They

1           may be dual nationals because of marriage. They  
2           may be dual nationals because their parents were  
3           born in another country, even grandparents.  
4           Nonetheless, they hold dual nationalities.

5                           Fourteen per cent of all Canadians  
6           are dual nationals.

7                           MR. CAVALLUZZO: I understand if  
8           you are born in Syria, you are a dual national?

9                           MR. SIGURDSON: If you are born in  
10          Syria, you are always Syrian. You move here and  
11          become Canadian.

12                          MR. CAVALLUZZO: What problems  
13          does that create in respect of you protecting and  
14          assisting Canadian citizens of dual nationality  
15          who are detained abroad?

16                          MR. SIGURDSON: If a person is a  
17          dual national, the country of second nationality,  
18          if the person is being detained there, could  
19          refuse access to that individual, could refuse us  
20          having access to that individual on the grounds  
21          that that person is not Canadian; that person is  
22          whatever, a national of his origin.

23                          MR. CAVALLUZZO: I am not getting  
24          specific as to what in fact happened, but in  
25          respect of Mr. Arar who has what is called dual

1 citizenship or dual nationalities -- Canada is his  
2 first country, or whatever you refer to it as --  
3 what you are saying is that Syria could take the  
4 position, if he was in a Syrian jail, that  
5 Mr. Arar is Syrian?

6 MR. SIGURDSON: That is right.

7 MR. CAVALLUZZO: He is not  
8 Canadian. And, Mr. Arar, you have no rights under  
9 Article 35 of the Vienna Convention and Canadian  
10 consular officials, you have no rights under  
11 Article 35 because he is a Syrian?

12 MR. SIGURDSON: Now, the fact is  
13 they could, but nevertheless we treat dual  
14 nationals, even in their country of second  
15 nationality, as Canadian nationals. They have the  
16 same right to the protection and assistance that  
17 we give to any other Canadian.

18 We encourage people to travel on  
19 their Canadian passport. It is not always  
20 possible because some countries you cannot enter  
21 except under the passport of that country.

22 MR. CAVALLUZZO: Mr. Commissioner,  
23 I am moving to 1 o'clock.

24 I think Mr. Waldman is not going  
25 to have many questions in cross-examination. I



1 think I can complete Mr. Sigurdson in probably  
2 half an hour. If you want to --

3 THE COMMISSIONER: We might as  
4 well break -- are you suggesting we carry on or  
5 that we break now and then come back?

6 MR. CAVALLUZZO: I am prepared to  
7 carry on if everyone else is prepared to.

8 Mr. Sigurdson is obviously the  
9 most important person and you are the second most  
10 important person.

11 --- Laughter / Rires

12 THE COMMISSIONER: How do you like  
13 that, Mr. Sigurdson?

14 I am fine to carry on.

15 MR. CAVALLUZZO: Are you fine,  
16 Mr. Sigurdson?

17 MR. SIGURDSON: Yes.

18 MR. CAVALLUZZO: The next tab is  
19 Tab 18, and really it is just the -- I guess we  
20 call it the annual performance report of the  
21 department.

22 The only reference there which I  
23 think is important, Mr. Commissioner and counsel,  
24 is on the second page, page 24 of 157.

25 You will see in the very first

1           bullet point under Effective Assistance the  
2           numbers that Mr. Sigurdson was talking about.

3                           In 2002-2003 there were estimated  
4           1.3 million requests for consular assistance.

5                           The next tab, Tab 19, is really  
6           from the Website of the department and just gives  
7           you an idea of the differences between embassies,  
8           consulates general and consulates. I leave that  
9           for your own reading.

10                           Then I would like to move to Tab  
11           22.

12                           We have behind Tab 22, as well as  
13           21 -- and we will come back to 21 -- something  
14           entitled, Mr. Sigurdson, "Manual of Consular  
15           Instructions".

16                           Can you tell us what this is?

17                           MR. SIGURDSON: This is what I  
18           referred to earlier. This is for all people  
19           working in consular affairs. Actually there are  
20           two volumes that provide guidelines on what to do  
21           in specific cases.

22                           It is really, really important  
23           that I emphasize again that these are guidelines.  
24           With 180 times 16,000 kind of varied cases you can  
25           only work with guidelines, and you have to rely on

1 the discretion and good judgment of the officer  
2 and you have to rely on good communication between  
3 headquarters and the field.

4 MR. CAVALLUZZO: If I was a  
5 consular official in the field, would I have  
6 access to this manual?

7 MR. SIGURDSON: Yes.

8 MR. CAVALLUZZO: In fact, should  
9 have access to it?

10 MR. SIGURDSON: Yes.

11 MR. CAVALLUZZO: We are going to  
12 start with the second chapter entitled "Protection  
13 and Assistance" and make a few references which I  
14 think are important for the Commissioner and other  
15 counsel.

16 I would like to initially refer to  
17 page 6 of 75 under the title "Protection".

18 The first is 2.3.1, which is  
19 entitled "Principles", and it goes on. I guess  
20 this generally describes the prime functions.

21 It says:

22 "A prime function of Canadian  
23 missions is to protect the  
24 lives, rights, interests, and  
25 property of Canadian citizens

1                   ... when these are endangered  
2                   or ignored in the territory  
3                   of a foreign state. The  
4                   basis of protection is a  
5                   compromise between two  
6                   conflicting principles ..."

7                   And the two conflicting  
8                   principles, on the one hand is territorial  
9                   sovereignty of the receiving state and of course  
10                  the personal sovereignty of Canada over its own  
11                  citizens.

12                  Isn't that correct?

13                  MR. SIGURDSON: That is right.

14                  MR. CAVALLUZZO: Then it goes on  
15                  to describe in some detail as to the kinds of  
16                  problems you would deal with I guess on a typical  
17                  day.

18                  Section 2.3.2, "Attitude of  
19                  members of the mission", says:

20                  "All members of a mission  
21                  must treat requests for  
22                  protection (and assistance),  
23                  even if ostensibly  
24                  unreasonable, with courtesy  
25                  and tact and good judgment."

1 Then it goes on about halfway down

2 and says:

3 "Consular officers should be  
4 prepared prudently to offer  
5 information and advice, but  
6 only within their competence  
7 and authority and without  
8 offering gratuitous advice.  
9 They should avoid commitments  
10 that missions, or the  
11 Department, are unauthorized,  
12 unable or may not wish to  
13 fulfil, as set forth in this  
14 Chapter."

15 And then it goes on:

16 "They should ensure that the  
17 mission has adequate  
18 information on local  
19 legislation, regulations and  
20 practices that might affect  
21 the interests of Canadians."

22 That local practices -- I haven't  
23 asked you this before, and if you could be of  
24 assistance that is great; if you can't, we will  
25 have to leave it to others.

1                   And that is whether, first of all,  
2                   consular officials in New York City in September  
3                   of 2002 should have been aware of a practice that  
4                   allegedly the Americans conducted called rendition  
5                   or extraordinary rendition.

6                   Is that the kind of thing that  
7                   this is referring to?

8                   MR. SIGURDSON: No. This would  
9                   refer to -- as I mentioned earlier, there are a  
10                  number of different levels that people go to, that  
11                  consul officers go to in trying to find a  
12                  resolution to the problem.

13                  One is all use of local remedies,  
14                  and that is what that refers to. We provide  
15                  information on where to go, who to see, what to  
16                  say, with regard to a particular problem. And we  
17                  have informal intervention and then formal.

18                  I would say that a consular  
19                  officer, in addition to having these guidelines,  
20                  has to act on his or her experience and training  
21                  and what has happened in the past.

22                  MR. CAVALLUZZO: Right.

23                  MR. SIGURDSON: It may not involve  
24                  knowing something as specific and, quite frankly,  
25                  new to the vocabulary, as rendition.

1                   MR. CAVALLUZZO:  As rendition.  So  
2                   it's something we can look at the appropriate  
3                   time.

4                   What about if the human rights  
5                   record of the country?  Surely, if I am a consular  
6                   official in a country with a poor human rights  
7                   record, which is suspend of torture, I should be  
8                   aware of that if I am operating in that country,  
9                   isn't that fair?

10                  MR. SIGURDSON:  Aware of...?

11                  MR. CAVALLUZZO:  I am sorry?

12                  MR. SIGURDSON:  Aware of what?

13                  MR. CAVALLUZZO:  Aware that this  
14                  country has a very --

15                  MR. SIGURDSON:  Oh, a poor record.

16                  MR. CAVALLUZZO:  -- poor human  
17                  rights record, this country has had a very poor  
18                  records of treating detainee and, indeed, this  
19                  country is suspected of torture.  If I am  
20                  operating in that country, I should know that?

21                  MR. SIGURDSON:  Yes.  Well, you  
22                  should know that for a number of reasons, but the  
23                  most important reason you should know that is  
24                  because, as I have said before, the number one  
25                  objective is the well-being of the individual, of

1       our client, and that means that you should know  
2       all that is in the environment that could help and  
3       hurt that person.

4                       We have access to political  
5       reporting. We have -- we read newspapers and we  
6       see the Internet. We know what the State  
7       Department has published. I think it's incumbent  
8       upon our people in the field to know that. It is  
9       background always, when operating in countries  
10      where there are allegations, that there is ill  
11      treatment or maltreatment and where it's reported  
12      as fact, it doesn't matter to us. The principal  
13      objective has to be the well-being.

14                      If we suspect, then the consul  
15      officer is on the lookout for any sign of  
16      maltreatment. And you know very well, or at least  
17      I know, according to what I have read, that you  
18      may not be able to recognize when somebody has  
19      been treated really badly for the purpose of  
20      listing the information, and what not. But if one  
21      suspects, and you have to arrive with being  
22      suspicious, then we start the process of informing  
23      Ottawa, making sure that the legal branch is  
24      reviewing the case against the various  
25      instruments.



1 MR. CAVALLUZZO: Okay. Now, I  
2 guess that leads us to the next point. And just  
3 before I go on to the next point, you mention the  
4 annual survey or review by the Department of  
5 State. Is it fair to say that consular officials  
6 in foreign states should be aware of the  
7 Department of State's annual survey in respect of  
8 particular countries?

9 MR. SIGURDSON: You mean officials  
10 of other countries?

11 MR. CAVALLUZZO: No. What I'm  
12 referring to -- perhaps, Marc, if you could give  
13 me -- I'm referring to Volume II of Mr. Hooper's  
14 "Materials for Cross-Examination".

15 At page 1 of -- or, excuse me,  
16 page 50 of the book -- I'm showing the witness the  
17 Department of State survey for Syria.

18 I am not going to ask you -- I  
19 haven't asked you this before, to be fair to you,  
20 but I just want you -- you mentioned the  
21 Department of State. Is this the kind of review  
22 or survey that you were talking about that --

23 MR. SIGURDSON: The country  
24 report, yes.

25 MR. CAVALLUZZO: Right. So if we

1 are looking at the one from Syria, is it fair to  
2 say that the consular officials who are employed  
3 in Damascus, in that embassy, should be aware of  
4 this annual report?

5 MR. SIGURDSON: Generally.

6 MR. CAVALLUZZO: Generally?

7 MR. SIGURDSON: Yes.

8 MR. CAVALLUZZO: What do you mean  
9 by "generally"?

10 MR. SIGURDSON: They may not have  
11 read the whole thing, but they know it exists,  
12 they know what the conclusions are.

13 MR. CAVALLUZZO: Right. But if  
14 they have a problem, they could obviously refer to  
15 it. They know it exists?

16 MR. SIGURDSON: They probably  
17 could. Yes, they could refer to it. That would  
18 not determine their course of action. Being aware  
19 of this report, being aware of the various human  
20 rights instruments it is really important not to  
21 take action on the basis of their knowledge of it  
22 because they are not lawyers, they are not  
23 experts.

24 MR. CAVALLUZZO: Right.

25 MR. SIGURDSON: But it does point

1           them to the need to consult with headquarters and  
2           start that process of consultation.

3                           MR. CAVALLUZZO:  Okay.  Now, if  
4           you go to the next page, under article -- or  
5           paragraph 2.4.1, "Principles of international  
6           law".

7                           I am not going to ask you about  
8           this.  We have referred to many of these in our  
9           legal overview and I have referred you to the  
10          Vienna Convention.  But in that paragraph it  
11          states, four lines up from the bottom:

12   "Violation of the standards  
13   established in these  
14   instruments..."

15          -- and it's referring to these international  
16          instruments --

17   "...may constitute grounds  
18   for the exercise of  
19   diplomatic or consular  
20   protection by Canada on  
21   behalf of its citizens."

22                           Now, could you tell us, what does  
23          that mean, in practice?

24                           MR. SIGURDSON:  That is exactly  
25          what I just said, that when there is any kind of

1           suspicion of or evidence of some kind of  
2           maltreatment, then it is important to understand  
3           that there are instruments, there are bodies of  
4           international law, which apply certain standards  
5           to human rights. And if there is a belief or a  
6           suspicion on the part of consul officer, they  
7           should, if you read the following line, refer it  
8           to Ottawa.

9                           MR. CAVALLUZZO: Right. And you  
10           mentioned diplomatic notes. I understand that's  
11           very broadly defined and it could go right up to  
12           the minister, if need be, if the circumstances --

13                           MR. SIGURDSON: But that wouldn't  
14           be started at the mission.

15                           MR. CAVALLUZZO: Oh, correct.

16                           MR. SIGURDSON: Right.

17                           CAVALLUZZO: It could, yes.

18                           MR. CAVALLUZZO: Okay. The only  
19           other parts of this chapter which should be  
20           referred to, paragraph 2.4.4 deals with arrest,  
21           detentions and charges. We have dealt with all of  
22           those principles, but you should read it -- and  
23           I'm sounding like a teacher here. You shouldn't  
24           read it, but I recommend it, if you are  
25           interested, because it does have many points we

1 have reviewed.

2 But on the next page, 11 of 75,  
3 "Access to Canadians arrested", and it refers to  
4 Article 36, which we have already gone to and  
5 reviewed, but it goes on in the fourth line, and  
6 says:

7 "Consular officers should  
8 immediately report to the  
9 Diplomatic Mission or  
10 Headquarters if they are  
11 refused access, or if  
12 Canadian detainees are  
13 refused communication with  
14 them. Consular officers  
15 should impress upon the  
16 police the necessity for  
17 interviews with Canadians  
18 under arrest or in detention;  
19 such interviews should  
20 preferably be in private,..."

21 -- so we have already commented on that --

22 "...consistent with normal  
23 security precautions."

24 And then it goes on.

25 In terms of access, in the next

1 paragraph 6:

2 "The VCCR is silent on  
3 consular access when a dual  
4 national is detained...."

5 -- and we have already dealt with that. But that  
6 paragraph is important, in terms of this inquiry,  
7 and we will come back to that.

8 The only other reference in this  
9 part is paragraph 2.4.9, on the next page. It's  
10 entitled, "Assistance to Canadians in Jail". That  
11 generally speaks to the kinds of duties and  
12 obligations that we have already referred to.

13 The only other reference in this  
14 chapter or tab can be found at page 53, and it's  
15 under "Prisoner Services". This is really the  
16 "wills", what the department and missions abroad  
17 will do. And the references I would make would  
18 be to the second paragraph:

19 "WILL visit or maintain  
20 contact with the prisoner,  
21 although the frequency will  
22 depends upon the location of  
23 the prison, the conditions  
24 within the prison, the number  
25 of Canadians incarcerated, as

1 well as the size of the  
2 consular staff and competing  
3 priorities at the Canadian  
4 mission. In countries where  
5 the prison conditions are  
6 good..."

7 When I read that I tried to figure  
8 out which country that is, but in any event --

9 "In countries where the  
10 prison conditions are good  
11 and communications with the  
12 outside world is relatively  
13 easy, visits may be made only  
14 on request."

15 The next, I think, important  
16 "will" is the following:

17 "WILL attempt to obtain  
18 case-related information to  
19 the extent that this cannot  
20 be obtained directly by the  
21 prisoner and provided the  
22 prisoner so requests."

23 And finally:

24 "WILL provide available  
25 information on such matters

1 as the local judicial and  
2 prison systems, approximate  
3 time requirements for court  
4 action, typical sentences in  
5 relation to the alleged  
6 offence, bail provisions..."  
7 et cetera, et cetera.

8 Really, these are -- once again,  
9 we understand, we know how employees operate --  
10 these are general guidelines, these are  
11 expectations --

12 MR. SIGURDSON: Yes.

13 MR. CAVALLUZZO: -- and we will,  
14 obviously, take that into account.

15 The only other portion that I  
16 would refer to Commissioner and counsel is on the  
17 next page. This is "Liaisons with Local  
18 Authorities". You will see the obligations there  
19 in that paragraph.

20 In particular, I would refer to:

21 "WILL, where appropriate,  
22 seek immediate regular access  
23 to the Canadian prisoner from  
24 the time of arrest until  
25 release;"



1 The third one:

2 "WILL verify that conditions  
3 of detention are at least  
4 comparable to the best  
5 standards applicable to  
6 nationals of the country of  
7 incarceration;"

8 And then:

9 "WILL obtain information  
10 about the status of the  
11 prisoner's case and encourage  
12 local authorities to process  
13 the case without unreasonable  
14 delay."

15 Just a couple of final matters,  
16 Mr. Sigurdson. If we could go back to Tab 20, you  
17 referred us before to the standards, the quality  
18 standards or the time standards.

19 Maybe before I ask you a question  
20 or two about this, what is this document entitled  
21 "Standards"?

22 MR. SIGURDSON: They are the  
23 performance standards, measured in time, that it  
24 takes to deliver the service requested.

25 MR. CAVALLUZZO: Okay. And if we

1 go to the third page in -- unfortunately, the  
2 pagination doesn't make sense. It is page 1 of 4  
3 but it is the third page in. I guess, under  
4 "Protection and assistance", which is the chapter  
5 that we just read, about five columns down, in the  
6 first box, it says, "Contact with arrested or  
7 detained persons" and it says "within 24 hours"?

8 MR. SIGURDSON: I mentioned that.

9 MR. CAVALLUZZO: You mentioned  
10 that. So that means from the time that the  
11 foreign authority contacts you in the consular  
12 office, you should see the detainee within 24  
13 hours of that contact?

14 MR. SIGURDSON: No, 24 hours after  
15 we have been notified.

16 MR. CAVALLUZZO: Yes.

17 MR. SIGURDSON: I mean, sometimes  
18 we don't wait for the notice to come from the  
19 receiving state.

20 MR. CAVALLUZZO: Okay. And the  
21 final -- or I guess I will quickly take you  
22 through the next tab, Tab 21, also comes from the  
23 "Manual of Consular Instructions". It's Chapter  
24 1, which deals with legal matters.

25 The only reference there -- and I

1 won't ask you any questions about this -- that I  
2 would make to the Commissioner and counsel would  
3 be paragraph 1.0.2, "Advise offenders to consult a  
4 legal adviser", and that guideline will be  
5 important, I think, in this inquiry.

6 Now, the final questions, Mr.  
7 Sigurdson, relate to Tabs 23 and 24. Tab 23 is  
8 are two travel reports in respect of Jordan, one  
9 is dated August 29, 2002 and one dated November  
10 15, 2002.

11 Could you tell us what these  
12 travel reports are and what is their purpose?

13 MR. SIGURDSON: The travel reports  
14 -- I spoke very briefly about them -- they are  
15 produced by the division called Program -- or  
16 Client Services, pardon me, and they are a  
17 collection of information for travellers that talk  
18 about the health conditions, the security  
19 conditions, the culture of a country, the history  
20 a bit, and via visas, entry, what not.

21 By and large, they are quite  
22 general, to try to fit everybody, in all  
23 circumstances. In these, you can see we have  
24 included comments about detentions in the area.  
25 This is to make people alert to their own safety

1 and the need to be cautious.

2 MR. CAVALLUZZO: Yes, you do.

3 For example, in respect of Jordan,  
4 on the first page you point out that there are  
5 heightened tensions as a result of the Iraq  
6 situation which puts Canadians at greater risk,  
7 and so on and so forth. There are similar  
8 admonitions at Tab 24, which is the travel report,  
9 in respect of Syria.

10 MR. SIGURDSON: Syria.

11 MR. CAVALLUZZO: The one dated  
12 July 2002 and the other dated November 2002.

13 I leave this for counsel to read,  
14 but the question that I would have in respect of  
15 these reports is that it says absolutely nothing  
16 about the human rights record of the countries in  
17 question, unlike the Department of State review  
18 that you have in front of you.

19 First of all the question would  
20 be: Does DFAIT or does the Department of Foreign  
21 Affairs now produce a similar report as the  
22 Department of State does?

23 MR. SIGURDSON: The department  
24 produces, you know, political reports throughout  
25 the year that comment on human rights. They don't

1 have country reports exactly like that.

2 The reason we don't in the travel  
3 report is because it is not absolutely sure or  
4 certain that the information about human rights  
5 would be helpful in the same way that the other  
6 information is.

7 MR. CAVALLUZZO: But these other  
8 reports that they talk about, about human rights,  
9 are they produced in other divisions of the  
10 Department of Foreign Affairs.

11 MR. SIGURDSON: Yes, we have a  
12 Human Rights Division and the geographics are  
13 always reporting on commissions in their country  
14 of responsibility.

15 MR. CAVALLUZZO: So that there  
16 would be one for Syria and Jordan?

17 Do you know?

18 MR. SIGURDSON: There are many  
19 reports that touch on human rights.

20 MR. CAVALLUZZO: We will follow  
21 that up, but since you are the head of the  
22 Consular Division and you don't produce it, we  
23 won't ask you any further questions.

24 Thank you very much?

25 MR. SIGURDSON: Thank you.

1 THE COMMISSIONER: Mr. Waldman.

2 MR. WALDMAN: I think we could  
3 push ahead. I just have a very few questions.

4 THE COMMISSIONER: Sure, if you  
5 are prepared.

6 Are you still fine, Mr. Sigurdson?

7 MR. SIGURDSON: Yes.

8 MR. WALDMAN: I am going to be  
9 just a few more minutes.

10 EXAMINATION

11 MR. WALDMAN: With respect to  
12 travel reports, was a new travel report issued  
13 with respect to Syria after Mr. Arar's detention?

14 MR. SIGURDSON: Yes.

15 MR. WALDMAN: What about with  
16 respect to the United States? Was a new report  
17 issued after Mr. Arar's detention with respect to  
18 the United States?

19 MR. SIGURDSON: There have been  
20 updates yes.

21 MR. WALDMAN: Has there been any  
22 consideration to issuing warnings with respect to  
23 young Muslims about travelling to the United  
24 States in light of what happened to Mr. Arar?

25 MR. SIGURDSON: I don't think

1           there is any inclusion and there is no thought of  
2           doing that.

3                           MR. WALDMAN:   In Mr. Arar's  
4           case -- I'm not asking you to talk about the  
5           specifics, I am just going to give up the facts  
6           and I want to know if it complies with the  
7           standards.   Okay?

8                           He was detained on the 26th, his  
9           family notified the consular officials on the  
10          27th of September.   He didn't get consular access  
11          until seven days later, October 3rd, and he asked  
12          for consular access at the airport.

13                          In your view, did the Americans  
14          comply with their obligations under the Vienna  
15          Convention by denying Mr. Arar consular access for  
16          seven days?

17                          MR. SIGURDSON:   Well, I think,  
18          Mr. Waldman, I must say, as I have said earlier, I  
19          am here as a contextual witness.   I don't know all  
20          the details of Mr. Arar's case.

21                          Let's say it is a case.

22                          MR. WALDMAN:   A case, yes.

23                          MR. SIGURDSON:   A case anywhere.

24          Let's go to Seattle.

25                          MR. WALDMAN:   Okay.   Let's say the

1 person was denied consular access, asked for it at  
2 airport, was detained by INS and held for seven  
3 days without being given consular access. Would  
4 that be in accordance with the Vienna Convention,  
5 in your view?

6 MR. SIGURDSON: That certainly  
7 wouldn't be very, very fast, but that would be  
8 reasonable, yes, I think so.

9 Now, that doesn't mean we don't  
10 have access. As I have said earlier, in the case  
11 of somebody arrested or detained we don't wait.  
12 Within 24 hours we want access.

13 In many cases we receive  
14 notification from the family that so and so has  
15 been detained and whatnot, moved to a certain  
16 detention centre. We make inquiries. We try.

17 Once again, our number one  
18 priority is get in there, do it.

19 MR. WALDMAN: Okay. I just have a  
20 few more questions.

21 The standard says that you should  
22 get access within 24 hours. How long after the  
23 24 hours would the matter be sent to a higher  
24 level for, you know, letters or diplomatic notes  
25 or things like that?



1                   MR. SIGURDSON: Well, when we see  
2 the person we would want to find out the  
3 circumstances of the detention, the expectations  
4 of the detainee, arrange for legal representation,  
5 and then go away and absorb that information,  
6 report to Ottawa, get a discussion going on the  
7 basis of, again what I mentioned earlier,  
8 experience, training, what has happened before,  
9 the history of consular in that area.

10                   MR. WALDMAN: But I think you  
11 misunderstood the question I was really focusing  
12 on: If you are told that someone was detained,  
13 and you confirmed that and wanted consular access  
14 and it wasn't given to you, how long would you  
15 wait before you took it up to the next level?

16                   MR. SIGURDSON: Until I could get  
17 to a phone.

18                   MR. WALDMAN: So if after 24 hours  
19 you wanted get to see someone and you couldn't,  
20 you would immediately go up the next level?

21                   MR. SIGURDSON: Absolutely. I  
22 would let Ottawa know, but I would -- as I said to  
23 Mr. Cavalluzzo, I would at that point start  
24 informal intervention at a lower level. We have  
25 levels of communication at all missions at all

1 levels and it never ceases to amaze me what you  
2 can accomplish by talking to the prison authority,  
3 a guard, as opposed to the Secretary of State.

4 MR. WALDMAN: One last question.  
5 When you were asked about rendition you said it  
6 was a new concept and I just want to know, after  
7 Mr. Arar's case have new instructions been sent to  
8 consular officials in the United States alerting  
9 them to this problem of rendition?

10 MR. SIGURDSON: I'm not aware of  
11 that. Now, it may have happened, but I'm not  
12 aware of it. It is not in my mandate.

13 MR. WALDMAN: Okay. Perhaps  
14 Mr. --

15 MR. SIGURDSON: I do know that  
16 Mr. Graham, as Minister of Foreign Affairs, and  
17 Mr. Powell as Secretary of State, exchanged  
18 letters that were announced in Monterey by the  
19 President and the Prime Minister, an understanding  
20 that a person wouldn't be deported to the country  
21 of second nationality without notice and  
22 concentration.

23 MR. WALDMAN: Thank you. Those  
24 are all my questions.

25 THE COMMISSIONER: Mr. Baxter?

1 MR. BAXTER: No re-exam,  
2 Mr. Commissioner.

3 THE COMMISSIONER: Re-examination,  
4 Mr. Cavalluzzo?

5 MR. CAVALLUZZO: No, thank you.

6 THE COMMISSIONER: Thank you very  
7 much, Mr. Sigurdson, for coming and giving your  
8 evidence.

9 Thank you for the time I know you  
10 spent if preparing to come here. We appreciate  
11 it.

12 MR. SIGURDSON: Thank you.

13 THE COMMISSIONER: That then  
14 completes what is scheduled for today.

15 MR. P. CAVALLUZZO: That is  
16 correct, Mr. Commissioner.

17 Our next witness will be Mr. Garry  
18 Loepky, who is the Deputy Commissioner of the  
19 RCMP. He is scheduled to testify on Wednesday,  
20 June 30th.

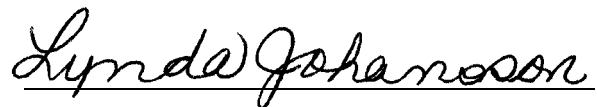
21 THE COMMISSIONER: Should we  
22 adjourn until 10 o'clock that morning? Does that  
23 make sense?

24 MR. CAVALLUZZO: Yes.

25 THE COMMISSIONER: Okay. We will

1           then rise and resume on the 30th at 10:00 a.m.  
2           --- Whereupon the hearing adjourned at 1:24 p.m.,  
3           to resume on Wednesday, June 30, 2004 at  
4           10:00 a.m. / L'audience est ajournée à 13 h 24  
5           pour reprendre le mercredi 30 juin 2004  
6           à 10 h 00

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Lynda Johansson,  
C.S.R., R.P.R.