

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



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

**Audience publique**

**Public Hearing**

**Commissaire**

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

**Commissioner**

**Tenue à:**

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

le jeudi 12 mai 2005

**Held at:**

Algonquin Room  
Old City Hall  
111 Sussex Drive  
Ottawa, Ontario

Thursday, May 12, 2005

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Thursday, May 12, 2005

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

4 12 mai 2005 à 10 h 00

5 PREVIOUSLY SWORN: MAUREEN GIRVAN

6 EXAMINATION (Continued)

7 MR. DAVID: Good morning,

8 Mr. Commissioner.

9 THE COMMISSIONER: Good morning,

10 Mr. David.

11 MR. DAVID: Good morning,

12 Ms Girvan.

13 When we left off yesterday I was  
14 about to begin at tab 162, if you could go to that  
15 tab. The date in question is November 1, 2002.  
16 There is an entry by yourself.

17 MS GIRVAN: That's right.

18 MR. DAVID: In the CAMANT notes.

19 And it has to do with a call from CCR, which is  
20 the Centre for Constitutional Rights, Janice  
21 Badalutz. So we do have the name now, finally.

22 She called you and she is

23 confirming that she is:

24 "... representing the family  
25 legally at this time, and has

1                   expressed a willingness and a  
2                   wish to go to Damascus, and  
3                   to ask for a meeting with Mr.  
4                   Arar. I have told Janice  
5                   that I would pass her request  
6                   on to JPD/JPO..."

7                   Which is a reference to Mr. Pardy.

8                   MS GIRVAN: Nancy Collins.

9                   MR. DAVID: Nancy Collins. Or

10                  would it be --

11                  MS GIRVAN: Myra.

12                  MR. DAVID: Pastyr-Lupul at this

13                  point.

14                               "... and that I would get

15                               back to her on Monday."

16                               And November 1st is a Friday.

17                               No additional comments to make on

18                  that?

19                               We go to 168, Ms Girvan, and that

20                  is the follow-up conversation with Janice, and

21                  here's your message. It's on Monday, 8:33:

22                               "After speaking to Myra/JPO,

23                               will go back to Janice at CCR

24                               and will tell her that we

25                               would not recommend she go to

1                   Damascus at this time. The  
2                   Syrians have been more than  
3                   usually open to our requests  
4                   for access and we should  
5                   avoid upsetting this balance  
6                   for the moment. Can I  
7                   mention that the family has a  
8                   lawyer in Syria who is asking  
9                   to visit subject?"

10                   So that is a question that you are  
11                   asking Myra.

12                   MS GIRVAN: Yes.

13                   MR. DAVID: If this is information  
14                   that can be revealed to CCR.

15                   MS GIRVAN: That's correct.

16                   MR. DAVID: And you sign this  
17                   Maureen.

18                   MS GIRVAN: Yes.

19                   MR. DAVID: Okay. The next tab is  
20                   tab 184. We have already covered the contents of  
21                   tab 184.

22                   And simply to put you back in the  
23                   contents of this, it has to do again with you  
24                   obtaining information on behalf of Mr. Pardy.  
25                   Mr. Pardy had requested background information on



1 the U.S. removal procedure and the legislative  
2 framework that allowed for Mr. Arar's removal to  
3 Syria. This was a tab where you had left two  
4 messages with Mr. Pardy, and I want to remind you  
5 of the contents of those two tabs.

6 MS GIRVAN: Okay.

7 MR. DAVID: We will see that there  
8 is a follow-up to those two messages to Mr. Pardy  
9 at tab 190, and I would ask you to go to tab 190.

10 MS GIRVAN: Just one second.

11 MR. DAVID: Sure.

12 MS GIRVAN: Yes, I have it.

13 MR. DAVID: All right. So at --

14 MS GIRVAN: 190?

15 MR. DAVID: 190. This is again --  
16 at 184 we saw that the relevant dates were  
17 November the 5th and the 6th, and now at tab 190  
18 it's November the 11th. You are sending a message  
19 to Mr. Pardy, and the message is as follows. It's  
20 at the bottom of the page.

21 "Gar, you will remember that  
22 you suggested I call Bill  
23 Sheppit..."

24 He is the head of the Canadian  
25 immigration in Washington, D.C.

1 MS GIRVAN: That's correct.

2 MR. DAVID: So:

3 "... you will remember that  
4 you suggested I call Bill  
5 Sheppit before calling ... at  
6 INS Legal Counsel."

7 Again, that is a reference to the  
8 INS headquarters in Washington, D.C.?

9 MS GIRVAN: Yes.

10 MR. DAVID: And then you go on and  
11 you say:

12 "I called him on Thursday  
13 last..."

14 That would be November the 1st.

15 MS GIRVAN: That would be  
16 Mr. Sheppit.

17 MR. DAVID: That would be  
18 Mr. Sheppit at the Canadian embassy.

19 MS GIRVAN: Mm-hmm.

20 MR. DAVID: And it goes on:

21 "... and he said that he was  
22 working on similar  
23 information ('left hand,  
24 right hand', he said)."

25 So obviously he had his own

1 initiative on this matter?

2 MS GIRVAN: Mm-hmm.

3 MR. DAVID: "He said" -- again,  
4 that was Mr. Sheppit:

5 "... he was expecting a call  
6 and would get back to me  
7 later that day. I did not  
8 hear from him on Friday..."

9 Again, that would be November the  
10 8th.

11 "... and today is a holiday  
12 at the Embassy, apparently."

13 Which is a reference to November  
14 11th, Remembrance Day.

15 MS GIRVAN: Yes. Obviously it  
16 wasn't a holiday at the consul general.

17 MR. DAVID: Obviously you were not  
18 on holidays that day.

19 You go on to mention to Mr. Pardy  
20 that you had left a message with your contact at  
21 the INS headquarters on this issue and would call  
22 him early next week just to cover the gap, and you  
23 also left a message for Bill Sheppit.

24 MS GIRVAN: Mm-hmm.

25 MR. DAVID: "... who will

1                                   certainly call me tomorrow."

2                                   You go on to specify:

3                                    "In the latest issue of the  
4                                   Federal Register - Part 5  
5                                   Depart. of Justice, INS  
6                                   entitled Registration of  
7                                   Certain Nonimmigrant Aliens  
8                                   from Designated Countries..."

9                                   The contact in question at:

10                                  "... the Office of the  
11                                  General Counsel, is given as  
12                                  the reference point for  
13                                  further information."

14                                  So now you are getting close to a  
15                                  good source, obviously --

16                                  MS GIRVAN: I'm aware that he is a  
17                                  public source too in the sense that people are  
18                                  being referred to him, yes.

19                                  MR. DAVID: Okay. And so he would  
20                                  be actually a very good reference on this issue.

21                                  MS GIRVAN: Yes.

22                                  MR. DAVID: And I understand that,  
23                                  in fact, he would have been involved in the  
24                                  drafting of certain parts of legislation, to your  
25                                  recollection?

1 MS GIRVAN: I'm not sure of that.  
2 I don't know. It might come up.

3 MR. DAVID: We might have a  
4 reference to that effect later on.

5 We go on, Ms Girvan, now, to tab  
6 197, and that's an entry for November 13th. So  
7 the matter continues. If you could go to 197 and  
8 go to the second page, you are simply indicating  
9 to Mr. Pardy at this point -- this is November  
10 13th now.

11 Do you see that at the top?

12 MS GIRVAN: Yes.

13 MR. DAVID: You are indicating to  
14 Mr. Pardy --

15 MS GIRVAN: That's a couple of  
16 days later, is it?

17 MR. DAVID: Right.

18 MS GIRVAN: Mm-hmm.

19 MR. DAVID: You are indicating to  
20 Mr. Pardy that you have set up a call with the INS  
21 expert and the call is to take place on Thursday,  
22 November 14th.

23 MS GIRVAN: Mm-hmm.

24 MR. DAVID: Okay?

25 MS GIRVAN: Yes.

1 MR. DAVID: If we go to the first  
2 page, we have a reference to Thursday, November  
3 14th. I'm not sure who this is from. I suspect  
4 it's from Gar.

5 Maybe you could read that message  
6 at the bottom.

7 It says:

8 "Maureen: I just spoke to one  
9 of my contacts and he adds  
10 the following questions that  
11 could colour the action that  
12 was taken:"

13 And then he lists three questions.  
14 Unfortunately it's not signed, so  
15 I don't know, but I suspect it's Mr. Pardy.

16 MS GIRVAN: I'm not sure. Let me  
17 just -- yes, these are excerpts from messages?

18 MR. DAVID: Yes, they are.

19 MS GIRVAN: Made by Mr. Pardy's  
20 assistant, Laura Cyr, and I assume that he has  
21 asked her to copy messages into the CAMANT file.

22 When I read this now, my thinking  
23 is that that could have been Bill Sheppit --

24 MR. DAVID: Writing --

25 MS GIRVAN: Yes. Remember, he was

1 going to check with one of his contacts and come  
2 back to me, and I think that this kind of note is  
3 very general. It's the sort of things that I  
4 should be aware of.

5 MR. DAVID: In the end, Ms Girvan,  
6 did you in fact speak yourself -- what was the  
7 procedure that was followed to follow up on what  
8 Mr. Pardy was seeking in terms of information?

9 MS GIRVAN: With the counsel?

10 MR. DAVID: Yes. Did you speak to  
11 the counsel?

12 MS GIRVAN: I did speak to the  
13 counsel, but he was -- all I remember now is that  
14 he sort of -- he referred to the law, but he was  
15 very impersonal and very limited in what he told  
16 me. So he did not discuss at all the case of  
17 Mr. Arar or any specific case in any way. He  
18 simply sort of stuck to the legislation. But I  
19 don't remember any more than that.

20 I do remember that I would have  
21 liked him to speak about the specifics, but he  
22 wouldn't.

23 MR. DAVID: Okay. And the  
24 contents of your conversation would have been  
25 reported to Mr. Pardy?

1 MS GIRVAN: I would believe so,  
2 and possibly by phone if they are not on the  
3 record; that they didn't shed particular new  
4 light, as far as I could tell.

5 MR. DAVID: All right. We are  
6 going to move on to a different topic. There's a  
7 series of communications, e-mails, correspondence.  
8 I've accounted for about 15 different items, and  
9 it has to deal with the issue of the deposit of  
10 money that had been sent to MDC on Mr. Arar's  
11 behalf by his family.

12 MS GIRVAN: Right.

13 MR. DAVID: I just wish to put  
14 these on the record and go through them quickly.  
15 If you have any comments, please do so.

16 Essentially the issue is fairly  
17 straightforward, and it simply has to do with your  
18 intervention and DFAIT's intervention in terms of  
19 MDC and seeking --

20 MS GIRVAN: Trying to recover  
21 the --

22 MR. DAVID: Trying to recover the  
23 money and, as well, the issue of the laptop  
24 computer --

25 MS GIRVAN: That's correct.



1 MR. DAVID: -- that had been in  
2 the possession of Mr. Arar whilst he was in New  
3 York City. So that issue is also dealt with in  
4 these 15 tabs, so let's go through these quickly.

5 MS GIRVAN: All right.

6 MR. DAVID: The first is at tab  
7 232, so I would ask you to change volumes and go  
8 to Volume 3.

9 MS GIRVAN: Thank you.

10 MR. DAVID: The period of time  
11 that is covered by these 15 communications goes  
12 from November the 28th of 2002, and the last  
13 communication on this subject is April 25th, 2003.  
14 So it went on for about 6 months to recuperate a  
15 fairly small amount of money that MDC was holding  
16 for Mr. Arar but obviously that Mr. Arar's family  
17 was having difficulty in getting back.

18 MS GIRVAN: Correct.

19 MR. DAVID: So let's go through  
20 these tabs.

21 The first is 232. It's dated  
22 November 28th, 2002. It's a message coming from  
23 Myra.

24 Here we see that Ms Mazigh is  
25 inquiring about the money that was sent to MDC,

1 and Myra is asking Leo Martel in this  
2 correspondence to ask Maher Arar about the money;  
3 in other words, confirming whether in fact  
4 Mr. Arar was aware of the reception of the money,  
5 of the funds, in New York City.

6 MS GIRVAN: Mm-hmm.

7 MR. DAVID: And the message to you  
8 is in the second paragraph and says the following:

9 "Also, she would like to know  
10 what happened to the ..."

11 Amount of money in question.

12 For the record, I don't think it's  
13 any great state secret, and it's \$200 U.S. that  
14 had been deposited in the MDC.

15 MS GIRVAN: No.

16 MR. DAVID: "... that was sent to  
17 Maher at the Metropolitan  
18 Detention Centre in New York  
19 by the family by courier.  
20 Did he ever receive it? If  
21 not..."

22 And here is the message that  
23 concerns you.

24 "... I would like Maureen  
25 Girvan to check with the MDC

1 to see if they ever received  
2 this envelope of cash, while  
3 Maher was in the MDC, or did  
4 they receive it after he  
5 left. She is quite concerned  
6 that this did not get lost."

7 The next tab on this issue is at  
8 265, and it's a fax on December 20th from Lisiane  
9 Lefloch, therefore from the New York City consul  
10 office, and it's simply inquiring about the money.

11 The message is:

12 "Mr. Arar's family is  
13 enquiring about the ... that  
14 had been sent for subject by  
15 courier service. Subject was  
16 moved and this money was  
17 never used by subject. Could  
18 you possibly have the fiscal  
19 unit inform us what the  
20 situation is with subject's  
21 account. Thank you once  
22 again for your assistance and  
23 Happy Holidays!"

24 MS GIRVAN: My only understanding  
25 is that she had tried by telephone first.

1 MR. DAVID: Okay. The next tab --  
2 we will enter this as an exhibit.

3 It is CAMANT note 94, and it is  
4 dated December 27 --

5 MS McISAAC: It's already an  
6 exhibit, sir. It's in the CAMANT notebook which  
7 is already an exhibit.

8 THE COMMISSIONER: Thank you,  
9 Ms McIsaac.

10 MR. DAVID: For ease, I would  
11 rather file it today. We are not referring to the  
12 CAMANT collection readily.

13 THE COMMISSIONER: There's no harm  
14 in filing it.

15 MR. DAVID: For ease of counsel  
16 referring to this document, I would like to file  
17 it at this point.

18 THE COMMISSIONER: All right.

19 MR. DAVID: So that would be P-61?

20 THE COMMISSIONER: Yes, P-61.

21 MR. DAVID: Thank you.

22 EXHIBIT NO. P-61: CAMANT  
23 Note No. 94

24 MS GIRVAN: Thank you.

25 MR. DAVID: So the message is

1 simply from you to Leo Martel --

2 MS GIRVAN: Yes.

3 MR. DAVID: -- who is in Damascus  
4 and it says:

5 "We will ask MDC on Monday  
6 and let you know if we learn  
7 anything useful. Rest  
8 assured. All the best to  
9 you. Maureen."

10 MS GIRVAN: I just think I'm  
11 referring to the computer in that sense because of  
12 the doubt I'm expressing.

13 MR. DAVID: Okay. And in fact the  
14 previous message on December 24th concerns the  
15 laptop computer. So you are quite right in  
16 indicating it probably deals with the computer.

17 The next message is at tab 275,  
18 and it's dated January the 7th. Here we have  
19 confirmation that Leo Martel in Damascus visited  
20 Mr. Arar on the 7th of January, 2003, and that  
21 Mr. Arar confirms that he never got the money at  
22 MDC.

23 There is a task that is being  
24 given to the New York consular office. It is in  
25 the second paragraph and it says as following:

1 "The matter should be  
2 investigated by CNGNY."

3 MS GIRVAN: Right.

4 MR. DAVID: The next tab is at tab  
5 279 and this is dated the 8th of January. It's a  
6 message again coming from Mr. Martel, and I refer  
7 you to the second paragraph.

8 Mr. Martel raises the issue of the  
9 computer and says the following:

10 "As for the question of  
11 Arar's computer our questions  
12 remain unanswered. Maureen  
13 may be able to obtain some  
14 information in New York."

15 The next tab is at 278, and it's a  
16 message for the 8th of January.

17 MS GIRVAN: Same date?

18 MR. DAVID: Same date, 1421, and  
19 here you are confirming that you are awaiting a  
20 response from the Metropolitan Detention Centre  
21 concerning both the money and the laptop.

22 MS GIRVAN: Mm-hmm.

23 MR. DAVID: And then you speak to  
24 a hunch that you have and that you will not be  
25 finding the computer:

1                    "... as in similar cases ...  
2                    this was taken as 'evidence'.  
3                    We were told at the time that  
4                    the U.S. has a warehouse full  
5                    of such evidence and tracking  
6                    and returning does not seem  
7                    to have the required  
8                    resources or priority."

9                    MS GIRVAN: Mm-hmm.

10                  MR. DAVID: You are speculating at  
11                  this point that as far as the computer is  
12                  concerned, the prospects are very --

13                  MS GIRVAN: Slim.

14                  MR. DAVID: -- slim. We then go  
15                  to the eighth message, and that's at 282, and it's  
16                  on the 10th of January.

17                  You are simply expressing the idea  
18                  that the MDC is requiring a letter to refund the  
19                  money.

20                  MS GIRVAN: Mm-hmm.

21                  MR. DAVID: And MDC is confirming  
22                  here that they do not have the computer and they  
23                  do not know where it might be.

24                  MS GIRVAN: And that they are  
25                  requiring a letter from the family because in fact

1           it's usually up to the family or the person  
2           themselves to try to get the money back.

3                       MR. DAVID: The next entry is on  
4           the 14th of January at tab 284. This is the ninth  
5           message, and it's three e-mails that simply  
6           concern the money.

7                       At the bottom is the first e-mail  
8           coming from Myra to you, and it says -- no, I'm  
9           sorry, the first message is from Myra to Monia  
10          Mazigh about the money.

11                      The second message is from Monia  
12          Mazigh to Myra, and the top message is from Myra  
13          to you, and she says the following:

14                                "As soon as I receive this  
15                                letter, I will forward it to  
16                                you for furtherance to the  
17                                MDC. Thank you for following  
18                                up on this matter."

19                      Simply the fact is being confirmed  
20          to you that the family will be drafting a letter.

21                      MS GIRVAN: Correct.

22                      MR. DAVID: Okay. The next  
23          message is on March 19th, so we go forward about  
24          two months, and that would be tab 348.

25                      That would be in Volume 4.



1 MS GIRVAN: It's another --

2 MR. DAVID: Of Volume 4.

3 MS GIRVAN: Did you say 348?

4 MR. DAVID: Yes, 348. And it's a  
5 message from Myra Pastyr-Lupul simply asking for a  
6 follow-up as the family has not received the money  
7 as of this date, and the message or the task being  
8 given to New York is the following -- it's at  
9 paragraph 2:

10 "Please follow up. What is  
11 the problem with MDC? (I  
12 understand that your power  
13 with them is limited!!)? It  
14 has been 2 months."

15 So we are seeing some frustration  
16 being expressed here.

17 MS GIRVAN: Mm-hmm.

18 MR. DAVID: The next message is  
19 dated March 26th, and it's at tab 359. It's a  
20 message coming from Myra. Again, it concerns the  
21 money and simply Myra is indicating that Monia  
22 Mazigh will be intervening directly with the  
23 authorities at MDC.

24 Myra suggests a second letter be  
25 sent by the family. And here we see at the second

1 paragraph Mr. Pardy suggesting that DFAIT:

2 "... issue a cheque for the  
3 equivalent of 200 USD to her  
4 in the meantime, while this  
5 issue is being sorted out.  
6 He will action this through  
7 JPP today (Humanitarian  
8 assistance)."

9 So Mr. Pardy is making this  
10 recommendation.

11 The next entry would be at the  
12 next tab, and that's 360, and it's for March 26th.  
13 We see that there's a fax coming out of your  
14 office to the authorities at MDC.

15 It's addressed on the 26th of  
16 March and in the last sentence it says:

17 "As this has been going on  
18 for almost 2 months the  
19 family is very anxious on  
20 getting a reply."

21 The next entry is at tab 361 and  
22 it's on March 27th, and here we have a response  
23 from the authorities at MDC. And the cheque is in  
24 the mail.

25 MS GIRVAN: Right.

1 MR. DAVID: That would be the 13th  
2 communication.

3 We then go to tab 393, and that is  
4 a message on April 24th. It is from you and it  
5 simply says:

6 "We will contact the facility  
7 to see what progress has been  
8 made. Over to you, again,  
9 Lisiane. Thank you.  
10 Maureen."

11 Obviously the money is still in  
12 transit or still being processed?

13 MS GIRVAN: Am I looking at which  
14 message?

15 MR. DAVID: At tab 393.

16 MS GIRVAN: And that message is  
17 from Myra.

18 MR. DAVID: I'm sorry, I was  
19 looking at the wrong tab.

20 MS GIRVAN: That's okay.

21 MR. DAVID: Tab 393. It's April  
22 24th. The task being given to you concerning the  
23 money is at the last paragraph. It's in reference  
24 to Monia Mazigh:

25 "She also mentioned that she

1                   has not yet received the  
2                   cheque from MDC."

3                   And the tasking given to New York  
4           is:

5                   "Would you please follow up  
6                   as 8 weeks have passed since  
7                   they advised that the 'cheque  
8                   was in the mail'?"

9                   The final tab on this issue is at  
10           tab 394 and that is a message for the 25th of  
11           April:

12                   "We will contact the facility  
13                   to see what progress has been  
14                   made. Over to you, again,  
15                   Lisiane. Thank you.  
16                   Maureen."

17                   To my knowledge that is the last  
18           communication that exists on the topic. Are you  
19           aware of the final outcome?

20                   MS GIRVAN: I actually am not. I  
21           hope that they did get the \$200.

22                   MR. DAVID: Sometimes dealing with  
23           bureaucracy has its challenges.

24                   MS GIRVAN: Mm-hmm.

25                   MR. DAVID: I would like to come

1 back now to the chronology -- other issues in the  
2 chronology, and that would be a reference to tab  
3 391, Ms Girvan, and the entry would be for April  
4 21.

5 Here we see the involvement of CCR  
6 once again, and a fellow by the name of Steve  
7 Watts, a lawyer, legal counsel with CCR, is  
8 seeking information on two different issues, and  
9 you are simply passing on to Gar Pardy Mr. Watts'  
10 message.

11 MS GIRVAN: Mm-hmm.

12 MR. DAVID: And what he wants to  
13 know about is information on the fact that there  
14 is apparently no consular access that is being  
15 provided to Mr. Arar for a period of nine weeks in  
16 Syria, and that's in the first message.

17 And the second question that is  
18 being raised, it has to do with contemplated civil  
19 action and the message is as follows:

20 "Second question, Gar, and  
21 this is a tentative - If the  
22 CCR were to represent Mrs.  
23 Arar in a suit for damages  
24 against the U.S. Department  
25 of Justice (or whatever party

1                   they go after) would you  
2                   foresee this causing any  
3                   problems in the Canada-Syria  
4                   dialogue and diplomatic  
5                   process regarding Mr. Arar?  
6                   Steven is reasoning that  
7                   since the diplomatic issue is  
8                   now between Canada and Syria,  
9                   any action against the U.S.  
10                  can hopefully be seen as a  
11                  separate issue. Again, this  
12                  is just a query, and to save  
13                  him playing telephone tag  
14                  with you, I offered to send  
15                  you a note.  
16                  Thank you. Maureen."

17                         So we see here reference to a  
18                         possible civil suit against the United States  
19                         Department of Justice, and this is simply being  
20                         passed on to Mr. Gar Pardy.

21                         If we go to tab 402 now, this  
22                         would be the entry for May 1st. Again the issue  
23                         is the contemplated civil action and you are  
24                         passing on a message here to Mr. Pardy, and to Leo  
25                         Martel in Damascus, and the message is:

1 "Mr. Watt called me further  
2 to a conversation we had the  
3 other day."

4 That is a reference I think to --

5 MS GIRVAN: Earlier.

6 MR. DAVID: -- the previous tab,  
7 which was 391.

8 "The CCR is working up a case  
9 against the U.S. Department  
10 of Justice on behalf of Arar.  
11 One thing they would like to  
12 do is to do an access to  
13 information request for the  
14 paperwork involved in the  
15 arrest and deportation. They  
16 will try this with Monia's  
17 signature if necessary, but  
18 he would like our estimate  
19 about how likely it would be  
20 that we could ever be allowed  
21 to have Mr. Arar sign an  
22 access request during one of  
23 our visits?"

24 So that's a reference to consular  
25 visits?

1 MS GIRVAN: Mm-hmm.

2 MR. DAVID: It goes on:

3 "This is a long shot, as  
4 Steven realizes, but we  
5 agreed that you in Damascus  
6 and Gar would be in the best  
7 position to know if it was  
8 even worth a try. I realize  
9 that the last visit was not  
10 promising in this regard, but  
11 said I would put the question  
12 to you and respond when I  
13 meet with him next Tuesday."

14 The next entry is tab 416, and  
15 that's on the 11th of May, and we will have to  
16 change volumes once again.

17 I'm assuming you have no comment  
18 on what I was referring to, Ms Girvan. If you do,  
19 would you enlighten us.

20 MS GIRVAN: Yes, I will.

21 MR. DAVID: Tab 416 is bit  
22 convoluted in terms of the information. It refers  
23 to different pieces of information and  
24 communications and where I want to bring you is --  
25 actually, we can go to the third-to-last page,



1 Ms Girvan.

2 MS GIRVAN: Page 4 of 6, at the  
3 bottom?

4 MR. DAVID: Page 4 of 6, correct.

5 MS GIRVAN: Mm-hmm.

6 MR. DAVID: That would be the  
7 first message that I want to deal with in this  
8 tab.

9 It's a message that is dated May  
10 11th, 2003. It is going to you and it is signed  
11 "Steven". So this is obviously Steven Watt.

12 MS GIRVAN: Yes.

13 MR. DAVID: And the message to you  
14 is:

15 "Maureen, attached and pasted  
16 below is a draft of a claim I  
17 am putting together for  
18 Maher. I am flagged ..."

19 It must be "I have flagged".

20 "... some areas - noted in  
21 CAPS - where I think you may  
22 be able to assist me in  
23 fleshing out the specific  
24 facts. Ideally I would like  
25 dates, times and names of

1                   persons, but this is not  
2                   strictly necessary. Could  
3                   you possibly assist me?"

4                   Again, could you give us maybe a  
5 bit of context as to what is happening here?

6                   MS GIRVAN: He may have spoken to  
7 me on the phone saying that he would send that.  
8 But it basically fits with the -- I'm not  
9 absolutely sure how to answer your question  
10 because I can't --

11                  MR. DAVID: Basically, I guess,  
12 what's important is to note that CCR is in the  
13 process of drafting the statement of claim on  
14 behalf of Mr. Arar and he is seeking input,  
15 obviously, on certain specific facts so he can  
16 properly document his statement of claim.

17                  MS GIRVAN: That is correct.

18                  MR. DAVID: Okay. So in the  
19 bottom part of the correspondence from Mr. Watt to  
20 you, we actually have the draft description of  
21 claim and we will see that there's a more detailed  
22 version at tab 435 and there's obviously missing  
23 information. In fact, there is incorrect  
24 information.

25                  As an example, I can refer you to

1 the fourth paragraph where, on the -- on the first  
2 page?

3 MS GIRVAN: On the first page,  
4 yes.

5 MR. DAVID: On the description of  
6 claim, it says, for instance:

7 "On October 1, Ms Maureen  
8 Girvan of the Canadian  
9 Consulate, New York, visited  
10 Mr. Arar at the MDC."

11 And that is clearly wrong, it was  
12 October 3rd.

13 MS GIRVAN: And earlier errors as  
14 well, yes.

15 MR. DAVID: So the document is  
16 certainly incomplete and missing information and  
17 your participation is being requested in this  
18 regard.

19 I bring you now to the second  
20 message, and we just have to go back a page and  
21 that would be page 3 of 6, and it's a message that  
22 is going from you on June the 4th to Nancy Collins  
23 as well as infocopied to Gar Pardy and to Dave  
24 Dyet and, in fact, your message is addressed to  
25 all three, Nancy, Gar, and Dave.

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And your message is:

"Steven Watt sent me this draft, asking if we could add any detail. I have only been able to read through it now, and have a concern re. privacy and perhaps political sensitivity on some information.

I realize that Mrs. Arar is working with CCR on this, but would like to know whether we have her permission on file to share information from Mr. Arar's file with CCR/Watt and if not, if we can get it.

Would it be better (politically) if the information for the claim came from her rather than from the Consulate General - or does that matter? If yes, would Mrs. Arar have to make a formal request for all the information on file? If we

**StenoTran**

1                   have no difficulty sharing  
2                   the information directly, I  
3                   would take any relevant  
4                   information from the CAMANT  
5                   file and add what details I  
6                   can to the draft. Happy to  
7                   speak to you on this.

8                   Maureen."

9                   So you are seeking guidance,  
10                  Ms Girvan.

11                  MS GIRVAN: Correct.

12                  MR. DAVID: And obviously you've  
13                  identified two areas of concern, the first being  
14                  privacy and authorization from the family to be  
15                  sharing your information -- when I say "your  
16                  information", I mean --

17                  MS GIRVAN: DFAIT's information.

18                  MR. DAVID: -- DFAIT's  
19                  information.

20                  And the second concern that you  
21                  have is obviously one of political sensitivity.  
22                  How does it appear if DFAIT is assisting in a  
23                  civil action against the U.S. government?

24                  MS GIRVAN: Yes.

25                  MR. DAVID: And in terms of the

1 sensitivity that that could bring on in  
2 furtherance of your mandate and the work that you  
3 do in terms of consular services?

4 MS GIRVAN: Yes.

5 MR. DAVID: Okay. We will see now  
6 the response that Mr. Gar Pardy is providing, and  
7 that's again at page 3 of 6. It's just above your  
8 message that we just read, and it says the  
9 following:

10 "Maureen, I would suggest  
11 that you work with the  
12 statement and fill in as much  
13 information that is available  
14 to you. Once that is done, I  
15 would want to review when I  
16 return to the office on June  
17 16 and prior to a decision as  
18 to whether or not we or Monia  
19 would provide the finished  
20 product to Mr. Watt. Would  
21 suggest that you advise  
22 Steven Watt accordingly."

23 So we see that Mr. Pardy is tuned  
24 in to this -- the issue of the sensitivity.

25 MS GIRVAN: Yes.

1 MR. DAVID: It's just suggesting  
2 that in the meantime let's go ahead --

3 MS GIRVAN: With some of the  
4 details, yes, and send it back to Ottawa.

5 MR. DAVID: And then we will see  
6 what happens. We will see how we deal with the  
7 issue of political sensitivity.

8 Unfortunately, this message to you  
9 from Gar is not dated, but clearly it's between  
10 June 4th and June 16th if we follow his reference  
11 to he was going to be away until June 16th.

12 MS GIRVAN: Does he say he will be  
13 away until -- "When I return," yes. Yes, he has  
14 written this from somewhere else. He commonly  
15 followed his messages around the world, wherever  
16 he was.

17 MR. DAVID: Okay. We go now to  
18 Tab 434 on this issue, and it's a message from  
19 Nancy Collins to you, and Nancy Collins is now  
20 involved also in making comments on the draft  
21 description of claim?

22 MS GIRVAN: Mm-hmm.

23 MR. DAVID: And the message from  
24 Ms Collins to you is as follows:

25 "The necessary changes have

1                   been made. Here is the  
2                   revised version."

3                   Unfortunately, we don't have the  
4           attachment that goes with that.

5                   Ms Collins pursues and says:

6                   "I believe that we should  
7                   provide the info to Monia  
8                   Mazigh, for transfer to the  
9                   CCR, and(sic) ask her  
10                  permission to give the info  
11                  directly to Steven Watt."

12                  I'm sorry:

13                  "...or ask her permission to  
14                  give the information directly  
15                  to Steven Watt."

16                  We then go to tab 435, Ms Girvan.

17                  MS GIRVAN: Mm-hmm.

18                  MR. DAVID: And I believe it's the  
19                  follow-up to what we had reviewed in tab 416, if  
20                  you could go to tab 435.

21                  MS GIRVAN: Mm-hmm.

22                  MR. DAVID: The font is very  
23                  unique.

24                  MS GIRVAN: And difficult to read.

25                  MR. DAVID: And difficult to read.



1 I don't think I would approve of this kind of font  
2 in my office.

3 But we see, in terms of format,  
4 certainly a reproduction of the draft claim that  
5 had been sent to you by Mr. Watt in tab 416.

6 By that, if you go to page 2 of 6,  
7 you will see, for instance, the same kind of  
8 headings for the chapters. I note, for instance,  
9 towards the bottom two-thirds of the page, there's  
10 a chapter called "Note of Conversation, Conditions  
11 of Confinement ETC."

12 So clearly the document is based  
13 on the draft that had been sent to you.

14 MS GIRVAN: Mm-hmm.

15 MR. DAVID: I would suggest that  
16 you have now provided some input -- for instance,  
17 on page 2 -- and I'm at tab 435 now. We see a  
18 reference about two-thirds of the way down:

19 "On October 3rd, Ms Maureen  
20 Girvan, Consul, of the  
21 Canadian Consulate, New York,  
22 visited Mr. Arar at MDC."

23 So the error that I pointed out is  
24 now corrected.

25 MS GIRVAN: I just would say that

1 I'm not sure that I actually ever did correct the  
2 draft. If you notice the original date and then  
3 when I comment to Ottawa that I just had time to  
4 read it and it's already been two weeks, I must  
5 have been in a very busy period. I think, to the  
6 best of my memory, I did not actually correct the  
7 document.

8 One of my reasons for thinking  
9 that is that I would have corrected also other  
10 information on that because the earlier  
11 information is also wrong, and if I had been going  
12 through it, I would have added those pieces. So  
13 my suspicion or my thought is that it got  
14 corrected in Ottawa. Not that it matters very  
15 much, but I just don't think that I actually did  
16 put the information in.

17 MR. DAVID: Okay. And we will see  
18 at page 3 of tab 435, there is reference to your  
19 interview with Mr. Arar and the --

20 MS GIRVAN: Right. This seems to  
21 be taken from CAMANT.

22 MR. DAVID: From the CAMANT notes,  
23 okay. If I could bring you to page 6, the last  
24 page of tab 435.

25 MS GIRVAN: Mm-hmm.

1 MR. DAVID: The last sentence of  
2 that page, it seems to be a direct communication  
3 between yourself and Steven Watt, and it says:

4 "Steven, I have no  
5 information that leads me to  
6 believe that Mr. Arar was  
7 tortured in Syria..."

8 And then in brackets, "MG".  
9 I would suggest the "MG" is  
10 Maureen Girvan?

11 MS GIRVAN: It may well be. I  
12 thought about this as I looked at the document,  
13 and I don't -- first of all, I would not have put  
14 "MG" in brackets, so someone else has put that  
15 there.

16 I don't actually -- I remember  
17 that I might have -- it seems likely that I could  
18 have thought that in reading the document, because  
19 the first draft talked about probability and I may  
20 have made a comment in my draft up to Ottawa  
21 saying that I have no information that leads me to  
22 believe that, but I don't really remember any more  
23 than that.

24 MR. DAVID: Okay. We will pursue  
25 this and we jump forward a couple of -- actually

1 three months, if we could go to tab 528.

2 We will have to change volumes,  
3 Ms Girvan, to Volume 6.

4 This tab refers to a phone  
5 conversation. I think it's a conference call  
6 between yourself, Gar Pardy and Steven Watt, and  
7 this call would have been on the 21st of August.

8 MS McISSAC: I'm sorry,  
9 Mr. Commissioner, I've lost the reference to the  
10 tab.

11 MR. DAVID: Tab 528.

12 THE COMMISSIONER: August 22nd?

13 MR. DAVID: The actual CAMANT note  
14 is dated the 22nd, but the reference is to the  
15 phone conversation on the day before, the 21st.  
16 So this is a phone conversation between Maureen,  
17 Gar Pardy and Steven Watt. And it concerns again  
18 this contemplated civil action in the United  
19 States, and goes as follows.

20 The first message is at the  
21 bottom, Ms Girvan, and below the dotted line  
22 portion, it says:

23 "Gar, I am not sure if I let  
24 you know, but I did call  
25 Steven Watt and relayed your

1 message to him. He was  
2 pleased to hear from you, and  
3 said that if he didn't hear  
4 from you he would try to call  
5 you himself. You may have  
6 already spoken to him. All  
7 the best."

8 We go to the message on the 21st  
9 of August -- we are not sure when that message was  
10 sent. I would suspect that it's near that -- in  
11 that time period.

12 MS GIRVAN: I would think.

13 MR. DAVID: And then the  
14 conference call communication goes as follows --  
15 the notes in reference to the call go as follows:

16 "Maureen and I spoke to Mr.  
17 Watt August 21 to review  
18 their plans for filing of  
19 case against US government in  
20 US Federal Court, Second  
21 Circuit. Case would centre  
22 on charge that United States  
23 deported Mr. Arar to Syria  
24 knowing full well that Syria  
25 was a country where torture

1 was routinely practised. In  
2 words of the case this was  
3 contrary to US obligations  
4 under the Convention Against  
5 Torture. Action will be  
6 based on American Alien Tort  
7 Claim law."

8 Then the part that really concerns  
9 more the DFAIT officials is in paragraphs 2 and 3,  
10 and 2 says:

11 "Action has not been filed  
12 and Mr. Watt was open to  
13 suggestion that delay until  
14 October..."

15 And that would be October of 2003.

16 "... was entirely possible  
17 since their action would be  
18 more credible if Mr. Arar was  
19 available to give testimony.  
20 It was second best to take  
21 action based only on the  
22 testimony of Dr. Mazigh."

23 Mr. Arar's wife.

24 Further on, paragraph 3 says:

25 "It was agreed that we would

1 stay in close touch and  
2 discuss current action in  
3 Syria with respect to  
4 adjudication of charges in  
5 the Supreme Security Court.

6 This is in Syria.

7 MS GIRVAN: Yes.

8 MR. DAVID: "Mr. Watt was  
9 sensitive to fact that need  
10 for Mr. Arar to be available  
11 for his case could lead to  
12 further American pressure on  
13 Syria to not permit his  
14 release or departure from  
15 Syria."

16 So the issue was, again, one of  
17 political sensitivity, and obviously you were  
18 concerned -- when I say "you", I mean the  
19 officials at DFAIT were concerned that there could  
20 be repercussions of filing this U.S. action on  
21 your ability to obtain Mr. Arar's release in  
22 Syria.

23 MS GIRVAN: Exactly.

24 MR. DAVID: We now go to a  
25 different topic and the context is -- well,

1           actually Mr. Arar has been released. Mr. Arar is  
2           back in Canada and Mr. Graham, the Minister of  
3           Foreign Affairs, is about to testify before the  
4           Standing Committee on Foreign Affairs. So there  
5           is an effort being made to properly brief the  
6           Minister in terms of his eventual testimony, and I  
7           would like to bring you through some documents  
8           that concern that preparation effort and your  
9           involvement in specifying or ascertaining certain  
10          facts for the purpose of his testimony.

11                                So if we could file two documents  
12          that relate to this issue?

13                                THE COMMISSIONER: That will be 62  
14          and 63.

15                                MR. DAVID: The first document,  
16          Mr. Commissioner, will be P-62 and the second  
17          would be P-63?

18                                THE COMMISSIONER: Which is 62?

19                                MR. DAVID: 62 begins at the top  
20          November 3rd. It's an e-mail. At the very top it  
21          refers to November 3rd e-mail.

22                                THE COMMISSIONER: Right.

23                                MR. DAVID: And then the P-62(sic)  
24          at the very top refers to a November 5th e-mail.

25                                THE COMMISSIONER: 63.



1 MR. DAVID: 63, I'm sorry.

2 EXHIBIT NO. P-62: E-mail  
3 dated November 3

4 EXHIBIT NO. P-63: E-mail  
5 dated November 5

6 MR. DAVID: All right. Let's go  
7 through these documents, P-62 to begin with. If  
8 we could go to the bottom portion, which is  
9 actually the first of three e-mails on this  
10 document, Ms Girvan, I'm looking at about halfway  
11 down the page.

12 MS GIRVAN: Mm-hmm.

13 MR. DAVID: So the first e-mail is  
14 from Michelle Lebeau, MINA. MINA is a reference  
15 to the Minister's office.

16 MS GIRVAN: The Minister's office.

17 MR. DAVID: And Ms Lebeau, I  
18 imagine, is an assistant to the Minister?

19 MS GIRVAN: I imagine.

20 MR. DAVID: Okay. It's going to a  
21 number of officials at DFAIT and says as follows  
22 in regard to Mr. Graham's appearance before the  
23 subcommittee.

24 And there's really two messages,  
25 what I've called "A" and "B". So the top part is

1           this -- actually, you know what? It's going to be  
2           easier to do it this way, Ms Girvan.

3                         Let's go to the second message on  
4           that page. I think it will give us better  
5           context.

6                         MS GIRVAN: All right.

7                         MR. DAVID: So the second message  
8           is from Konrad Sigurdson to you, and it's the same  
9           date, November 2nd. It's a bit later in the day.

10                        Mr. Sigurdson, just so we  
11           understand, has now replaced Mr. Pardy. Mr. Pardy  
12           has retired.

13                        MS GIRVAN: Mm-hmm.

14                        MR. DAVID: And he retired at the  
15           end of August of 2003?

16                        MS GIRVAN: Right.

17                        MR. DAVID: So Mr. Sigurdson, in  
18           his capacity as Director General of Consular  
19           Affairs, sends you this message in New York and  
20           asks you to do the following:

21                                 "Further to my earlier  
22                                 e-mail, there are two  
23                                 messages below concerning  
24                                 Arar. I've done some pasting  
25                                 to put them on one page.

1                   Would you please comment on  
2                   both, which contain multiple  
3                   questions. I know we have  
4                   case notes that would provide  
5                   us with some of the  
6                   information, but it would  
7                   help to have the answers come  
8                   directly from you. Besides,  
9                   everyone is working flat out  
10                  for this event, so the more  
11                  helping hands, the better."

12                   And then Mr. Sigurdson is passing  
13                  on the two passages where he is seeking your  
14                  personal comments.

15                   MS GIRVAN: Right.

16                   MR. DAVID: So the first of those  
17                  messages -- or the first passage, it refers to  
18                  recourses that would be open to Mr. Arar and,  
19                  secondly, background information on the United  
20                  States civil action and reads as follows:

21                    "In addition to the public  
22                    inquiry, does Mr. Arar have  
23                    any other recourse and how is  
24                    the government going to help  
25                    him? On this particular

1 element, do we have any  
2 background on the legal case  
3 in the U.S. that is being  
4 initiated by an NGO on behalf  
5 of Arar? The one that Gar  
6 Pardy might testify at? If  
7 so, do we have a reaction?  
8 It would probably be good to  
9 get, if possible, the grounds  
10 on which they are filing and  
11 the time frame."

12 So that's the first message that  
13 your comments are sought.

14 The second message is further down  
15 and reads as follows:

16 "Isa raised a good point with  
17 me."

18 Do you know who Isa, or what that  
19 would --

20 MS GIRVAN: I'm only referring now  
21 up above and seeing Isabel. I don't know.

22 MR. DAVID: That would be short  
23 for Isabel Savard?

24 Again, we are not sure, but it  
25 would be --

1 MS GIRVAN: A working assumption.

2 MR. DAVID: A working assumption  
3 would be Isabel Savard from the Office of the  
4 Minister. Anyway, I don't think much turns on  
5 that.

6 It says as follows:

7 "Isa raised a good point with  
8 me. They will probably ask  
9 about his conversation with  
10 Colin Powell..."

11 "His conversation" is obviously a  
12 reference to Minister Graham.

13 "... what the contents were  
14 and when was it. In addition  
15 I think they could ask  
16 questions about what happened  
17 at the beginning when he was  
18 first detained in the States,  
19 i.e., when did we hear he was  
20 detained and from whom? When  
21 did we first have consular  
22 access? What was said? What  
23 did the Americans tell us was  
24 the reason for his detention?  
25 What happened next?"

1                   So obviously this is now directly  
2 involves or implicates you --

3                   MS GIRVAN: Mm-hmm.

4                   MR. DAVID: -- and you are  
5 certainly qualified to respond to these concerns.

6                   MS GIRVAN: Mm-hmm.

7                   MR. DAVID: The third message,  
8 which is the top message, is going from you to  
9 Konrad, which is the next day, and you say to  
10 Konrad:

11                                 "I'll get right on this.  
12                                 Maureen."

13                   MS GIRVAN: Mm-hmm.

14                   MR. DAVID: We go now to P-63,  
15 Ms Girvan. This is part of your response.

16                   MS GIRVAN: Yes.

17                   MR. DAVID: It's part of your  
18 response to the first of those two paragraphs.  
19 And we will see that at the bottom half of page 1,  
20 where the paragraph has been reproduced. In  
21 addition, you will see it's under protected advice  
22 to Minister?

23                   MS GIRVAN: Mm-hmm.

24                   MR. DAVID: The message is:

25                                 "In addition to the public

1 inquiry, does Mr. Arar have  
2 any other recourse?"

3 MS GIRVAN: Okay.

4 MR. DAVID: So you are responding  
5 now to the issues raised in that paragraph, and  
6 again one is recourse is open to Mr. Arar in  
7 Canada, I presume; and secondly, the background  
8 information on the U.S. civil action.

9 And here is your response to that  
10 paragraph, your personal comments, as being  
11 requested by Mr. Sigurdson:

12 "Our original understanding  
13 was that the Centre for  
14 Constitutional Research in  
15 New York was considering a  
16 class action against the U.S.  
17 government regarding this  
18 sort of case. They had been  
19 involved also with another  
20 detained Canadian ..."

21 The identity is covered.

22 "... and had made a  
23 presentation to the Human  
24 Rights Court in Geneva with  
25 him as a witness. Over time

1 the present case has now  
2 become only Arar and CCR says  
3 that they are going into  
4 court to establish the  
5 legitimacy of the American  
6 decision to deport Arar.  
7 There has never been a  
8 request for involvement of  
9 Canadian officials. It is a  
10 testing of American law that  
11 they are undertaking. There  
12 has been no suggestion that  
13 anyone in Canada would be  
14 involved. The only request  
15 that we received from the  
16 CCR, with the support of Mr.  
17 Arar's wife, was to confirm  
18 certain details of their  
19 draft of the facts of what  
20 happened while Mr. Arar was  
21 detained in the U.S. We did  
22 not have a chance to get this  
23 back to them before the  
24 release of Mr. Arar and then  
25 CCR was able to go directly

StenoTran



1 to Mr. Arar for the details."

2 Let me ask you -- it goes on, but  
3 let's just stop there, maybe -- a couple of  
4 questions.

5 There's reference to the draft  
6 description of claim that we have already covered.

7 MS GIRVAN: Mm-hmm.

8 MR. DAVID: And it's clear from  
9 this, your message in this regard is that it was  
10 never in fact sent back to CCR.

11 MS GIRVAN: That was my  
12 understanding.

13 MR. DAVID: That was your  
14 understanding. What was that understanding based  
15 on?

16 MS GIRVAN: I remember -- and I  
17 believe there is a note to the effect -- Gar was  
18 very busy during a lot of this period on probably  
19 a million other cases but I remember at one point  
20 he was unsatisfied with the draft and with the  
21 information in it, and he just didn't get back to  
22 me. So I never, you know, was able to go back to  
23 CCR.

24 MR. DAVID: Okay.

25 MS GIRVAN: And I believe later on

1           there's some note that may establish that it  
2           doesn't go back.

3                           MR. DAVID:   And the second  
4           question I have, for the information that you are  
5           relaying about the general context of what CCR is  
6           doing, where are you getting this information, for  
7           instance, that the other Canadian has made a  
8           presentation to the Human Rights Court in Geneva?

9                           That information, where is that  
10          coming from?

11                          MS GIRVAN:   Through a fairly brief  
12          conversation, I must say, with Mr. Watt.  He had  
13          informed me that -- I think he may have informed  
14          me after he went to Geneva that that had happened,  
15          but I wasn't aware at the time.

16                          MR. DAVID:   And was this  
17          conversation with Mr. Watt in view of preparing  
18          your response that is being asked of you at this  
19          time, or was it in the normal course of business  
20          that you --

21                          MS GIRVAN:   I don't remember  
22          whether it was then or earlier.

23                          MR. DAVID:   Okay.  So let's  
24          continue with your response at page 2 of Exhibit  
25          P-63, and you go on and say:

1 "CCR is looking at the  
2 legislation on removal from  
3 the U.S. We also were  
4 informed by U.S. INS that  
5 according to U.S. immigration  
6 regulations the U.S. could  
7 deport Mr. Arar to Canada or  
8 to Syria."

9 I am asking you now: Is that a  
10 reference to the phone call that you had with the  
11 INS counsel, if you know?

12 MS GIRVAN: Yes. We were informed  
13 by the U.S. INS -- yes, that would have been  
14 Mr. -- the gentleman I spoke to who was the expert  
15 on the law.

16 MR. DAVID: We will just continue  
17 this message.

18 MS GIRVAN: Mm-hmm.

19 MR. DAVID: It says:

20 "But CCR thinks this should  
21 be done with the consent of  
22 the detainee."

23 MS GIRVAN: Mm-hmm.

24 MR. DAVID: "Since Mr. Arar  
25 clearly and often said that

1 he wished to be deported to  
2 Canada and that he did not  
3 want to be deported to Syria,  
4 then on what basis did the  
5 U.S. deport him to Syria?  
6 Did they go to Canada and  
7 Canada refused to take him??  
8 Or did they use the national  
9 security reasons which  
10 apparently can be used to  
11 override the other rules,  
12 such as consent? These last  
13 two questions are ours. I  
14 don't know what CCR is  
15 thinking. I don't know the  
16 time frame, but could contact  
17 CCR and ask them. Not sure  
18 if Steven Watt will be back  
19 in his office as I heard that  
20 he was on radio in Canada  
21 this morning."

22 So I have a few questions in  
23 regard to your statement here.

24 The first is you are trying to  
25 explain what the U.S. did in deporting Mr. Arar to

1 Syria, and you are referring to two possibilities.  
2 You are referring to did they go to Canada and  
3 Canada refuse to take him? And the second  
4 possibility that you are explaining is that they  
5 used the national security reasons. I guess  
6 that's a reference to al-Qaeda.

7 MS GIRVAN: Something in the law  
8 allows, if something is a security risk, you know,  
9 they can perhaps -- and I'm not an expert on this,  
10 but my understanding at that time was that perhaps  
11 they could maybe override the requirement for  
12 consent because of, you know, and invoke security  
13 reasons. That's what I'm suggesting here.

14 MR. DAVID: So, again, the context  
15 is trying to prepare your Minister in responding  
16 to questions from a committee, a House Committee  
17 on Foreign Affairs, and you're possibly providing  
18 explanations for the U.S. action of removing  
19 Mr. Arar and you're attributing it to two possible  
20 scenarios: the first scenario is that Canada  
21 refused to take him. What are you basing that on  
22 as a possible scenario, Ms Girvan?

23 MS GIRVAN: Just to go back to  
24 your early comment. I'm going back to Konrad, am  
25 I not?

1 MR. DAVID: Yes, you are writing  
2 back to him.

3 MS GIRVAN: So I am actually not  
4 going back to brief the Minister, I'm getting --

5 MR. DAVID: I'm just saying that  
6 there is the context --

7 MS GIRVAN: Fair enough. I may  
8 have gone a little beyond the context.

9 --- Laughter / Rires

10 MS GIRVAN: And you asked me, yes,  
11 in what context did they go to Canada and Canada  
12 refused to take them? Because I am assuming again  
13 that the first order in deportation is to try to  
14 deport him to Canada, and I'm asking, well then,  
15 did they ask Canada? This could be a completely  
16 hypothetical situation. Could they have asked  
17 Canada? And by that I mean Immigration in Canada  
18 to accept him and Canada refused?

19 Because, for example, in the case  
20 of one case I had previously, where the person was  
21 a landed immigrant, I knew when the person is  
22 deported to Canada, the U.S. government  
23 authorities or Immigration authorities have to go  
24 to the Canadian Immigration authorities and ask,  
25 will they accept the person to be deported?

1                   That's an international sort of  
2 rule. And then the country, it signifies its  
3 consent, and I knew that Canada would always  
4 accept, but I'm just saying, well, if he didn't --  
5 the logic is, first, he should be deported to  
6 Canada. If he didn't, I'm saying -- did Canada  
7 say no? And then secondly, then they would look  
8 at another place.

9                   It's just a purely hypothetical  
10 question.

11                   MR. DAVID: Was there any basis  
12 for you believing that Canada, or some authority  
13 in Canada, would have refused entry to Mr. Arar?

14                   MS GIRVAN: Absolutely none.

15                   MR. DAVID: So there's no factual  
16 foundation --

17                   MS GIRVAN: No. I'm trying to  
18 work my way through the reasons that are used.

19                   MR. DAVID: All right. And  
20 there's no response in this document to the  
21 second --

22                   MS GIRVAN: No.

23                   MR. DAVID: -- portion of the  
24 paragraph, which is actually reproduced at the  
25 bottom of the second page of P-63 --

1 MS GIRVAN: I'm saying I will  
2 respond and I think I'm saying that's a long one.

3 MR. DAVID: That is your message:  
4 "I will respond to the second part separately."

5 MS GIRVAN: Mm-hmm.

6 MR. DAVID: And the second part is  
7 then reproduced, and that has to do, as we've  
8 seen, with the conversation that Mr. Graham has  
9 had with Mr. Powell, as well as -- and that maybe  
10 you're not in the best position to address that.  
11 But the more relevant part of that paragraph is  
12 the details of the beginning, of the genesis, of  
13 Mr. Arar's treatment whilst he was in New York  
14 City.

15 MS GIRVAN: It seems to me that  
16 this is the first sort of attempt to start having  
17 a chronology of the events as they took place  
18 perhaps.

19 MR. DAVID: Right. But we  
20 understand -- if you look at the subject matter of  
21 these communications, it has to do with MINA  
22 SCSAIT appearance, and it's the subject matter  
23 that's being noted on all these correspondence.  
24 I'm not quite sure it's in view of preparing the  
25 chronology. It seems to be that, again, it's for



1 Mr. Graham's benefit in his eventual testimony.

2 MS GIRVAN: Correct.

3 MR. DAVID: So I would like to  
4 bring you now on the second portion, the second  
5 paragraph, that you're being asked to respond to,  
6 and I bring you to tab 808, and that would be in  
7 Volume 9, the last volume, Ms Girvan.

8 MS GIRVAN: Okay. The last  
9 volume?

10 MR. DAVID: We're going to be  
11 coming back to the earlier one, so don't get too  
12 encouraged.

13 MS GIRVAN: Which tab is that?

14 MR. DAVID: 808.

15 Now, we don't have a clear  
16 document indicating that you're responding in this  
17 context to the second paragraph, but let me  
18 reconstruct for you my understanding of this tab  
19 and my belief also that it is in response to this  
20 second paragraph, the details of the first visit.

21 To come to that conclusion I bring  
22 you to the last page of this tab, tab 808, and we  
23 see reproduced at this page, page 5 of 5 --

24 MS GIRVAN: Mm-hmm.

25 MR. DAVID: -- the initial message

1           that had been sent to Konrad, which Konrad passed  
2           on to you.

3                           MS GIRVAN:  Mm-hmm.

4                           MR. DAVID:  And we see  
5           reproduction of those same two paragraphs.

6                           MS GIRVAN:  Mm-hmm.

7                           MR. DAVID:  And if we go to page 4  
8           of 5, we see at the bottom half, reproduction of  
9           the same e-mail from Konrad Sigurdson to you  
10          asking for your comments on those two paragraphs.

11                          MS GIRVAN:  Mm-hmm.

12                          MR. DAVID:  And then maybe I can  
13          bring you -- let's go to page 2 --

14                          MS GIRVAN:  Mm-hmm.

15                          MR. DAVID:  You're actually  
16          referring here to CAMANT notes that deal with that  
17          initial period where Mr. Arar is in New York  
18          City --

19                          MS GIRVAN:  Mm-hmm.

20                          MR DAVID:  -- and your  
21          intervention in regard to his presence in New York  
22          City.

23                          MS GIRVAN:  It looks as though  
24          I've cut and pasted.

25                          MR. DAVID:  You've cut and pasted,

1 I would suggest, and, in fact, on page 2, you have  
2 a reproduction of tab 27 of the CAMANT notes.

3 MS GIRVAN: Mm-hmm.

4 MR. DAVID: And at the bottom part  
5 where it's a reproduction of tab 31 of the CAMANT  
6 notes, and that continues on to page 3.

7 MS GIRVAN: Mm-hmm.

8 MR. DAVID: And on page 3 at the  
9 bottom, Ms Girvan, you have a reproduction of tab  
10 32 of the CAMANT notes.

11 MS GIRVAN: Page 3, at the bottom.

12 MR. DAVID: Yes.

13 MS GIRVAN: I have part 2 of my  
14 report.

15 MR. DAVID: Yes.

16 MS GIRVAN: Okay.

17 MR. DAVID: And that is a  
18 reproduction of your report that is found at  
19 tab 32.

20 MS GIRVAN: Mm-hmm.

21 MR. DAVID: So the context is the  
22 two e-mails -- the e-mail from Konrad to you  
23 seeking your comments, and then you're referring  
24 to the CAMANT notes, and let's go to page 1 now of  
25 this tab.

1                   What's misleading about the head  
2 note is the date that is indicated, and it refers  
3 to May 6, 2004, and this --

4                   MS GIRVAN: Confuses things.

5                   MR. DAVID: -- confuses things  
6 because I don't believe it to be correct.

7                   I think a more correct time  
8 estimate would be at the same time as the response  
9 that we've seen at P-63.

10                  MR. BAXTER: Mr. Commissioner, the  
11 reason for this date is that this was pulled off a  
12 backup tape during the document collection process  
13 for this inquiry. So it's an electronic document,  
14 and there are a number of them that are the same  
15 date. It was all done either on May 5 or June 6.

16                  THE COMMISSIONER: What you are  
17 saying, Mr. Baxter, it was not necessarily made on  
18 this date, that is just --

19                  MR. BAXTER: Correct. It's pulled  
20 off a tape or a hard drive.

21                  THE COMMISSIONER: So Mr. David's  
22 suspicion was correct. It is nice for a change to  
23 get something right.

24 --- Laughter / Rires

25                  MR. DAVID: Thank you for that,

1 Mr. Commissioner. It's finally noted for the  
2 record that I've done something right.

3 --- Laughter / Rires

4 THE COMMISSIONER: This is a  
5 momentous occasion.

6 MR. DAVID: Yes, it is.

7 So let's go through what I believe  
8 to be the new message or your response, I should  
9 say --

10 MS GIRVAN: The newer part.

11 MR. DAVID: -- that you're  
12 providing to the paragraph where your input is  
13 being sought on the details of the period in New  
14 York City. Here's what you say, and let's go  
15 through this in detail.

16 "Below are my notes from  
17 Camant after my meeting with  
18 Mr. Arar. All I can add is  
19 that he was crying off and on  
20 throughout our meeting, and  
21 that he was very frightened.  
22 He was accompanied and  
23 observed throughout our  
24 meeting, but he was allowed  
25 to meet with me in a small

1 room (barred). We met at a  
2 table, rather than in other  
3 terrorist suspect cases,  
4 where I would speak with the  
5 client through a barred  
6 partition. He was brought to  
7 the meeting in handcuffs and  
8 shackles.

9 Mr. Arar worried about  
10 being sent to Syria (as at  
11 one point he had been  
12 threatened with that at the  
13 airport, he said) and I said  
14 that normally if he were  
15 deported it would be to  
16 Canada. I told him that  
17 since he was now 'in the  
18 system' and we had been  
19 allowed to visit, he would be  
20 recognized as a Canadian  
21 citizen and his rights would  
22 be protected. He asked about  
23 his wife and child and I  
24 assured him that everyone was  
25 in touch with us and that

1                   they were arranging for a  
2                   lawyer for him. He told me  
3                   that his wife had told him  
4                   not to travel through the  
5                   U.S., but that he had points  
6                   on American Airlines and  
7                   wanted to use them. He told  
8                   me he would never want to  
9                   hurt the U.S. as he loved the  
10                  U.S. and enjoyed working with  
11                  Americans."

12                   Now, clearly, Ms Girvan, and we've  
13                  gone through in detail your original visit  
14                  reports, and be they numbered 1, 2 or more, but we  
15                  have, in very great detail, reviewed those visit  
16                  reports, and now I suggest to you, a year later --  
17                  in fact, a little bit more than a year later --  
18                  you're adding new details, new comments, a new  
19                  description to this visit.

20                   My first question is -- and  
21                  obviously this information is -- I would  
22                  characterize it as being fairly significant. Did  
23                  you have notes when you drafted this response?  
24                  Did you have notes to this effect?

25                   MS GIRVAN: I don't believe so. I

1 think I was working from memory because I did  
2 believe that I had destroyed the notes that I had  
3 made on the visit after I recorded them in CAMANT.  
4 But, you know, it's not possible to be absolutely  
5 exact.

6 MR. DAVID: And information to the  
7 effect that his wife had told him not to travel  
8 through the U.S., again, you know, I would assess  
9 that information to be quite important. Do you  
10 have an explanation why they were not included in  
11 your original visit reports as you drafted them  
12 contemporaneously to your visits with Mr. Arar?

13 MS GIRVAN: I'm thinking I can  
14 only make a good guess or a good -- it's not like  
15 from pure memory, but that these -- these  
16 observations to me were more in the nature of  
17 background and of the atmosphere.

18 I didn't think it significant  
19 necessarily that his wife had told him not to fly  
20 through the U.S. I just thought of it as -- you  
21 know, he's telling me: "My wife told me not to go  
22 through the U.S. She wanted me to fly straight to  
23 Canada. But I had points and so I insisted."

24 And, when I thought about that, I  
25 thought, well, you know, a lot of people were



1           avoiding the United States at that time just  
2           simply because of the security, higher security.  
3           But I didn't give it significance.

4                       I remember -- I remember he talked  
5           a lot. And when I made my report, I put in what I  
6           thought was the important material and I didn't  
7           see this as so important at the time.

8                       But when I was -- when they were  
9           trying to -- I'm not sure about when this is  
10          written, but it does fit with, you know, my  
11          sending messages back and putting a little comment  
12          at the top as I'm sending messages back for the  
13          chronology, and in some of them -- because I see  
14          here, "All I can add is", therefore I think I'm  
15          being asked if I remember anything else, and so  
16          I'm adding the thoughts that -- I put myself back  
17          in the situation and tried to remember everything  
18          we had talked about, and I am confident that these  
19          things were part of our conversation.

20                      MR. DAVID: Other than your  
21          memory, Ms Girvan, were there any other sources of  
22          information that this report contains, refers to?  
23          In other words, were you influenced by any other  
24          source of information other than your memory to  
25          draft these notes?

1 MS GIRVAN: No. The only new  
2 information, as I see it here, is that my saying  
3 that he's now in the system.

4 MR. DAVID: Yes.

5 MS GIRVAN: And I remember that  
6 because I'm trying to reassure him and he's crying  
7 and I'm saying -- and I can sort of see myself  
8 saying to Mr. Arar, you know, you're in the system  
9 now. You're here and I'm here.

10 So I have a sense of remembering  
11 that. And I do remember -- and I'm just trying to  
12 add more colour, you know, that he asked about his  
13 wife and child. I mean, that's normal, but I  
14 might not have written it in my official report.

15 And then the fact that he told his  
16 wife -- I may have read over the notes and  
17 realized that I hadn't written that down, you  
18 know, as I'm sending them back for -- now they're  
19 asking for all these details since he's been  
20 released.

21 And then that he had points, I  
22 remember that, and I think I did refer in the  
23 earlier note that he loved the U.S. and, you know,  
24 had worked with the Americans, and I remember very  
25 clearly him telling me about -- that the wife and

1 children had moved to Tunisia.

2 That was sort of part of him  
3 telling me a story. And that he was concerned  
4 about looking -- that he hadn't been able to find  
5 work there and that he had thought he would have  
6 to look in Europe. So it's all me.

7 MR. DAVID: That was my question.

8 MS GIRVAN: Yes, sorry. It's all  
9 me.

10 MR. DAVID: This response that  
11 you're drafting is based uniquely on your memory.

12 MS GIRVAN: Yes.

13 MR. DAVID: On your recollection.  
14 It's not being influenced from any other sources  
15 of information?

16 MS GIRVAN: No.

17 MR. DAVID: For instance, I remind  
18 you, and perhaps you don't recall this, but  
19 November 4 of this year was when Mr. Arar gave his  
20 press conference, which was obviously a public  
21 event, and -- did you tune in to what Mr. Arar had  
22 said at his press conference?

23 MS GIRVAN: I didn't, actually.  
24 Do you mean that I wrote this after he did his  
25 press conference?

1 MR. DAVID: If we look at the  
2 dates of the response that you provided in  
3 tab 2 -- P-63, I'm sorry -- the response in that  
4 tab is November 2, 2003. So it's all occurring --

5 MS GIRVAN: In that period.

6 MR. DAVID: In that period.

7 MS GIRVAN: Mm-hmm. I did not  
8 follow -- other than sending an e-mail the day I  
9 learned that Mr. Arar had been released, I was not  
10 following the Arar release because, you know, much  
11 as I might like to, I'm terribly focused on what  
12 I'm doing, and I think that's why I was late in  
13 responding to some of the other messages. But I  
14 would say this is from my memory.

15 MR. DAVID: Okay. And the fact --  
16 the reference that Mr. Arar would have said to you  
17 that his wife would have told him not to travel  
18 through the U.S., did he give further explanations  
19 on that? Did you have a further understanding --

20 MS GIRVAN: No.

21 MR. DAVID: -- of those comments  
22 attributed to his wife as to why?

23 MS GIRVAN: I remember stopping at  
24 the thought, you know, just for a moment then and  
25 going on and I didn't ask him any more.

1                   MR. DAVID:  So let's continue with  
2           your notes and the next paragraph, the third  
3           paragraph, says:

4                    "He also told me that he and  
5                    his wife and children had  
6                    moved to Tunisia some months  
7                    previously, and had given up  
8                    their home in Canada, because  
9                    his wife wanted to be nearer  
10                   her father, who was very ill.  
11                   He said that he was looking  
12                   for work in Tunisia at first,  
13                   but that there were not many  
14                   prospects.  He is a computer  
15                   expert.  He had been on his  
16                   way to Canada to see about  
17                   business opportunities, and  
18                   he had had a discussion, he  
19                   said, with his wife about the  
20                   need for him to either look  
21                   in Europe or in North America  
22                   for work.  He talked about  
23                   how much work he had done for  
24                   Mathworks in the U.S. and  
25                   that he had travelled often

1 to the United States during  
2 that period. He wondered if  
3 this had made the authorities  
4 suspicious of him.

5 Mr. Arar was calmer by the  
6 time I left him, and I  
7 assured him I would be in  
8 touch with his wife and that  
9 a lawyer would be visiting  
10 him shortly."

11 Again, the idea being expressed  
12 here is that the Arars as a family had basically  
13 moved to Tunisia on what seems to be a permanent  
14 basis. Is this a recollection that you have of  
15 Mr. Arar's -- of your meeting with Mr. Arar on  
16 October 3, 2002?

17 MS GIRVAN: I don't know if it was  
18 on a permanent basis, but I understood that he had  
19 moved with his family back to Tunisia and the  
20 thought was that he was looking for -- about her  
21 father being ill and also about that, in fact, it  
22 was difficult to work from Tunisia, and so he had  
23 talked to his wife.

24 And I remember that, it sounded  
25 very normal, that he would have talked to his wife

1 and said, look, you know, I'm going to have to  
2 look -- and I don't know if I wrote it here, but,  
3 yes, in Europe or in North America.

4 So I saw him as looking for a  
5 possibility to work in Europe or back in Canada.  
6 I mean, that's my best understanding. But it was  
7 a fairly -- a recollection.

8 MR. DAVID: It was your  
9 recollection --

10 MS GIRVAN: It was my  
11 recollection.

12 MR DAVID: -- of this October 3  
13 meeting.

14 Again, I ask you, why is it or how  
15 do you explain that this information did not find  
16 itself in the reports that you drafted at the  
17 time?

18 MS GIRVAN: The only thing I can  
19 say is that at the time I wasn't thinking that it  
20 would be important whereas later, when he is  
21 deported and when I go back over the notes and I'm  
22 asked, it did occur to me it would have been good  
23 to have done this sort of thing very soon after he  
24 went to Syria but I'm now doing that. I'm now,  
25 for the first time, going back over all the notes,

1 and so I'm trying to remember anything I can add.

2 MR. DAVID: Okay. Do you recall  
3 specifically or with accuracy, Ms Girvan, when you  
4 drafted this document, this response?

5 MS GIRVAN: No, because I don't --  
6 I don't know.

7 I see it in the context of -- I  
8 see your point about the fact that at the bottom  
9 are the two messages, so it could have been right  
10 afterwards, you know, in the other message, but I  
11 can't tell you that. I don't know.

12 MR. DAVID: Yes. And do you  
13 recall sending this response to Mr. Sigurdson?

14 MS GIRVAN: I don't recall sending  
15 it, no.

16 MR. DAVID: So you you're not sure  
17 what you did with this document, with this  
18 response, with this drafting?

19 MS GIRVAN: No.

20 It says "recipient", but --

21 MR. DAVID: Yes. It says  
22 "Recipient: Konrad Sigurdson, John McNee, Peter  
23 McRae, Myra Pastyr-Lupul and Michael Chesson" and  
24 they are all DFAIT officials.

25 MS GIRVAN: Mm-hmm.



1 MR. DAVID: Okay.

2 --- Pause

3 MR. DAVID: If we could now go  
4 back to tab 662.

5 THE COMMISSIONER: Which volume?

6 MR. DAVID: Good question.  
7 Volume 7. The last tab, Ms Girvan.

8 This is a message coming from you,  
9 it's dated November 6, 2003, and again it refers  
10 to the civil action in the United States and says  
11 the following:

12 "The document is a draft that  
13 Mr. Watts of CCR has asked us  
14 to review and let him know  
15 any errors in facts or add  
16 any factual details that we  
17 could. He had the agreement  
18 of Mr. Arar's wife to do so.

19 We did not return the draft  
20 to Mr. Watts. Mr. Pardy was  
21 unsatisfied with the whole  
22 document and wanted to review  
23 it properly but there was no  
24 time. He also was hoping  
25 that we would have Mr. Arar

1 released and that he would be  
2 able to fill in the blanks  
3 himself.

4 Mr. Watts was particularly  
5 unsure about the details  
6 regarding the lawyer and said  
7 that she had been evasive and  
8 hard to reach."

9 And that, I believe, is a  
10 reference to Ms Oummih?

11 MS GIRVAN: Yes.

12 MR. DAVID: Okay. Any comments  
13 about this?

14 MS GIRVAN: Just that -- is there  
15 a note before it that actually has the draft?

16 MR. DAVID: No.

17 MS GIRVAN: Since I'm responding  
18 saying, note that the CCR document is a draft? Do  
19 we know what note 150 is?

20 MR. DAVID: No. Unfortunately, I  
21 don't.

22 MS GIRVAN: Okay. Strange.

23 MR. DAVID: Well, actually, I can  
24 tell you tab 150 is our tab 434. So if you want  
25 to refer to that. Four thirty-four is the -- it's

1 the draft -- no, it's not. Yes, 434.

2 MR. BAXTER: Four thirty-four and  
3 435 go together, Mr. Commissioner. They are also  
4 included in the CAMANT collection, which is a  
5 separate exhibit, and are included together as an  
6 attachment in the original note.

7 MR. DAVID: So 434, Ms Girvan, is  
8 Ms Collins' input to the draft description of  
9 claim.

10 MS GIRVAN: Mm-hmm.

11 MR. DAVID: And then 435 is the  
12 input --

13 MS GIRVAN: Is the possible draft.

14 MR. DAVID: Possible draft or the  
15 input from DFAIT.

16 MS GIRVAN: And then I'm sending  
17 this to --

18 MR. DAVID: Well, you're not  
19 sending it to anybody. It seems to be infocopied  
20 only.

21 MS GIRVAN: Yes, I'm infoing it to  
22 Myra and Nancy Collins and Konrad.

23 MR. DAVID: Right.

24 MS GIRVAN: It's, I see, quite a  
25 bit later.

1                   I think one of the things there is  
2                   there are two cases. There's the Syria case by  
3                   this point and the U.S. case.

4                   I'm not sure, but it might be  
5                   worth checking if there's any note in the Syria  
6                   case that leads to my response in the U.S. case.

7                   MR. DAVID: Okay.

8                   MS GIRVAN: But, as far as the  
9                   actual note goes, it fits with this note in June  
10                  regarding the draft.

11                  MR. DAVID: Right. Okay.

12                  MS GIRVAN: And nothing else.

13                  MR. DAVID: You then have a series  
14                  of tabs, Ms Girvan, and I'm not going to bring you  
15                  to them, I'm just going to state them for the  
16                  record. It's your input on the chronology. And  
17                  I've already referred to you -- to the portions of  
18                  your added comments in the drafting of the  
19                  chronology that I wanted to bring you to in terms  
20                  of the original CAMANT notes.

21                  They would be tab 664, 665, 666,  
22                  667, 668, 669, 670, 671, 672, and 675, as well as  
23                  676 and 679.

24                  So these are simply your  
25                  additional comments at the time the chronology,

1 the DFAIT chronology, was being drafted on the  
2 original CAMANT notes pertaining to the subject  
3 matter.

4 MS GIRVAN: Which this may also  
5 be.

6 MR DAVID: Okay. You would think  
7 then that tab 662 would be in the context of the  
8 preparation of the chronology?

9 MS GIRVAN: That makes sense to  
10 me.

11 THE COMMISSIONER: Do I  
12 understand, Mr. David, that nothing turns on --

13 MR. DAVID: No, whatever I thought  
14 was of significance has already been dealt with.

15 THE COMMISSIONER: Okay. When you  
16 went back --

17 MR. DAVID: When I was dealing  
18 with the two original tabs.

19 THE COMMISSIONER: Thank you.  
20 That's good.

21 MR. DAVID: So, Mr. Commissioner,  
22 maybe at this point we could take the morning  
23 break.

24 THE COMMISSIONER: Okay. We will  
25 break for 15 minutes.

1 THE REGISTRAR: Please stand,  
2 veuillez vous lever.

3 --- Upon recessing at 11:23 a.m./

4 Suspension à 11 h 23

5 --- Upon resuming at 11:45 a.m. /

6 Reprise à 11 h 45

7 THE COMMISSIONER: I apologize for  
8 the delay. I got tied up in something.

9 MR. DAVID: Ms Girvan, if I could  
10 bring you now to tab 687, this is a message dated  
11 November the 6th, 2003, and it's going from you to  
12 Mr. Sigurdson.

13 The context is an article that is  
14 to be published in The Globe and Mail, and your  
15 message reads as follows:

16 "Konrad ... (I think that is  
17 the last name) from the Globe  
18 called Peter Lloyd called  
19 again, and said that there  
20 would be an article in the  
21 Globe and Mail in which  
22 reference is made to a legal  
23 representative at the Centre  
24 for Constitutional Research  
25 having said that the

1 Consulate had not taken the  
2 threat of deportation  
3 seriously.  
4 I just checked our notes, and  
5 I think it is worth looking  
6 at the part where it speaks  
7 of our contact with INS."

8 And then you go on and you explain  
9 basically four different reasons why the  
10 allegation that is being suggested by CCR is just  
11 not true or based on truth.

12 So you say:

13 "We may want the Minister's  
14 office to know that we were  
15 told that this was not a  
16 deportation case, and that  
17 MDC ..."

18 So that's the first reason. The  
19 second is:

20 "... that MDC 9th floor does  
21 not hold deportation cases.  
22 We had no reason to suppose  
23 that the U.S. would deport  
24 him at all, much less to  
25 Syria, since he had been

1 charged with crimes..."

2 So that's the third reason. And  
3 then finally:

4 "... and was being held in  
5 the same prison where other  
6 such suspects had been held  
7 for months."

8 And that, I imagine, is a  
9 reference to Mr. X and Mr. Y.

10 "I have also copied the fax  
11 sent to MDC, for what it is  
12 worth, and the decision to  
13 hold off on sending a dipnote  
14 till we saw if we would be  
15 allowed to visit."

16 The concern is obviously this  
17 allegation being made and you want to set the  
18 record straight or you want it to be understood --

19 MS GIRVAN: I want the Department  
20 to know.

21 I would add one thing and that is  
22 that I was upset by that message and I asked  
23 Steven Watt the next time I spoke to him --

24 MR. DAVID: So you followed up?

25 MS GIRVAN: I did, on the



1 allegation that someone from the Centre for  
2 Constitutional Rights had said that the consulate  
3 had not taken the threat seriously, and Steven  
4 Watt told me that he had been aware of the article  
5 and that it had not happened; that no one at CCR  
6 had said that the consulate did not take the  
7 threat seriously.

8 So I was reassured, because I  
9 would have thought they would have told me if they  
10 would have thought that at the time.

11 MR. DAVID: There is reference to  
12 the Minister:

13 "We may want the Minister's  
14 office to know..."

15 Were you aware at this point that  
16 a briefing note was in preparation on this topic?

17 And if you want to look at the  
18 briefing note, it's at tab 705 and it's dated  
19 November 21st.

20 We will come to it later, but I  
21 just want you to realize that there is a briefing  
22 note that was prepared for the Minister and that  
23 if you look at the contents of 705, in fact,  
24 paragraphs 7 to 11 deal with this issue of a  
25 possible criticism of the consulate general in New

1 York.

2 MS GIRVAN: I don't know for sure,  
3 but anything that appears in the paper should be  
4 reported at this point to the Minister's office.

5 MR. DAVID: Okay. So this was  
6 simply premonition on your part?

7 MS GIRVAN: They say it's going to  
8 be in The Globe and Mail.

9 MR. DAVID: No, but in terms of  
10 the Minister being briefed on this.

11 MS GIRVAN: Can you tell me, on  
12 November 6th, has Mr. Arar been released?

13 MR. DAVID: Yes.

14 MS GIRVAN: Then the Minister's  
15 office is probably handling the file.

16 MR. DAVID: Okay. And if we could  
17 go to tab 703, again it's a further discussion of  
18 this issue about the threat to deport to Syria.

19 MS GIRVAN: Okay.

20 MR. DAVID: In tab 703 there are  
21 three messages. The message I would like to  
22 address with you is the top one, the third one,  
23 which is dated December 10th, 2003.

24 Again, it's coming from you and  
25 it's going to Lillian Thomsen of BCM, and it deals

1 with this same issue, this same topic, about how  
2 you dealt with the threat to deport to Syria.

3 MS GIRVAN: Okay.

4 MR. DAVID: If you could go to the  
5 third paragraph, we will just read this through.

6 "The threat to deport Mr.  
7 Arar to Syria, according to  
8 Mr. Arar, was made to him  
9 while he was being  
10 interrogated at the airport.  
11 In the same period, he was  
12 also promised at least twice,  
13 according to his own report,  
14 that he would be sent on to  
15 Canada - and that he was not  
16 a suspect. The threat was  
17 not repeated, as far as we  
18 know, once he was moved to  
19 the Metropolitan Detention  
20 Centre, maximum security  
21 section in Brooklyn.  
22 The Consulate General has  
23 never had a Canadian citizen  
24 sent on an 'expedited  
25 removal' to his or her

1 country of origin. The first  
2 and principal option is to  
3 'return' the person to the  
4 last point of departure  
5 before arrival at the U.S.  
6 border (in this case, it  
7 would have been Zurich); the  
8 second option, usually  
9 negotiated by the Consulate  
10 with the family and  
11 Immigration, is to allow the  
12 person to be 'returned' to  
13 Canada, with the family  
14 paying the difference in  
15 fare. The Consulate General  
16 has arranged many such onward  
17 removals. Later, it was  
18 pointed out by the U.S.  
19 authorities that the option  
20 existed, but as it had never  
21 to your knowledge been  
22 exercised, we could not  
23 expect them to take such  
24 action.  
25 I think it is important to

**StenoTran**

1 note that the U.S.  
2 authorities at no time raised  
3 the possibility of reporting  
4 Mr. Arar with the Canadian  
5 Consulate or with our Embassy  
6 in Washington."  
7 Then you go on and say:  
8 "As Mr. Arar was questioned  
9 by F.B.I. agents at the  
10 airport and then held in a  
11 federal maximum security  
12 prison in Manhattan, the  
13 clear implication was that he  
14 was being investigated for  
15 his supposed terrorist  
16 connections (the accusation  
17 of being a member of Al Qaeda  
18 was on his charge sheet, seen  
19 by the Canadian Consul on  
20 Oct. 3rd), and that he would  
21 be held there for some time.  
22 Our earlier cases of this  
23 nature (to wit  
24 investigations on terrorist  
25 charges) ... (landed

1                   immigrant). having been held  
2                   in the same prison under  
3                   similar circumstances for  
4                   months. The fact that Mr.  
5                   Arar was allowed to have a  
6                   lawyer visit him strengthened  
7                   this interpretation, as in  
8                   normal cases of  
9                   inadmissibility detainees do  
10                  not have access to a lawyer  
11                  and are 'removed' within a  
12                  few days (depending on flight  
13                  availability) under the  
14                  procedure known as 'expedited  
15                  removal'. Finally, he was  
16                  not held by INS authorities  
17                  or in an Immigration  
18                  detention centre, but in a  
19                  federal prison."

20                                In this communication you are  
21                   clearly, again, justifying the basis for you not  
22                   believing that this was a viable scenario, that he  
23                   was going to Syria.

24                                MS GIRVAN: Yes.

25                                MR. DAVID: This response is going

1 out on November 10th.

2 Is this in furtherance of the  
3 Globe and Mail article, or do you recall -- I  
4 believe if you look at the subject matter, it's  
5 actually the chronology. So it's in the context  
6 of the preparation of the chronology.

7 MS GIRVAN: I remember that  
8 Lillian Thomsen must have been charged with  
9 preparing a chronology and so she spoke to me on  
10 the phone and sent me the draft to see if there  
11 were any errors.

12 MR. DAVID: It's simply that both  
13 issues -- or the issue of the threat to deport to  
14 Syria is being dealt with at the same time but  
15 from two different angles. One is the potential  
16 article to be published in The Globe and Mail that  
17 would have been critical of DFAIT officials and  
18 the other is the preparation of the chronology?

19 MS GIRVAN: I think that one  
20 message that I sent was specifically related to  
21 The Globe and Mail, but I'm not sure that this is.

22 MR. DAVID: Okay. Well, this is  
23 clearly with regard to the chronology.

24 MS GIRVAN: With the chronology.

25 MR. DAVID: If we could go to tab

1           697 now, this is for November the 7th, 2003. The  
2           issue is different. It's now discussion,  
3           explaining why there was no reference or use of a  
4           diplomatic note in the Arar fact pattern.

5                         There are two e-mails here. You  
6           are explaining the circumstances for not having  
7           resorted to a diplomatic note.

8                         The first message is going from  
9           you to Dave Dyet. Dave Dyet works, or worked,  
10          under Mr. Sigurdson at this time, and he was the  
11          director of JPO?

12                        MS GIRVAN: Yes.

13                        MR. DAVID: And that's the  
14          director of consular services.

15                        MS GIRVAN: Yes. He replaced John  
16          Carisse.

17                        MR. DAVID: Okay, Mr. Carisse.

18                        And here you say:

19                                 "Have sent you a faxed copy  
20                                 of discussions and possible  
21                                 dipnotes with WSHDC and then  
22                                 Nancy's response, which show  
23                                 that I raised the possibility  
24                                 of the dipnote with WSHDC  
25                                 (they in fact did a draft and



1                                   were readying it)..."

2                                   Did you see this draft, Ms Girvan?

3                                   MS GIRVAN: No.

4                                   MR. DAVID: And this information  
5                                   came to you from...?

6                                   MS GIRVAN: The conversation, if I  
7                                   remember rightly, was Helen Bouchard.

8                                   MR. DAVID: Okay.

9                                   "... then JPO said to wait  
10                                  until we saw if there was a  
11                                  response from MDC; there was  
12                                  a response, and so I believe  
13                                  the issue of a dipnote was  
14                                  shelved for the moment. When  
15                                  we learned that Arar had been  
16                                  moved (9th), we were talking  
17                                  to all sorts of U.S.  
18                                  officials, but not by  
19                                  dipnote, by phone and in  
20                                  person (8th and 9th)..."

21                                  Of October.

22                                  "... the most important of  
23                                  whom was ... and when we  
24                                  learned he was possibly in  
25                                  Syria, the focus was on

1 getting our Ambassadors in  
2 Syria and Jordan to the  
3 respective MFA's ..."

4 That is the Ministers of Foreign  
5 Affairs.

6 "... as well as speaking with  
7 the Minister's office and  
8 arranging to meet with the  
9 U.S. Ambassador - a higher  
10 level action than a dipnote."

11 Do you recall in what context this  
12 message was prepared at this time? Was it for the  
13 chronology or was it for another reason, if you  
14 recall?

15 MS GIRVAN: I don't know. I would  
16 imagine it's the same, but I don't know, in the  
17 chronology.

18 MR. DAVID: We have, the next tab,  
19 at 707 --

20 Actually, if you'll allow me, Ms  
21 Girvan, to come back to 697, there was a further  
22 paragraph, that maybe I would like to read to you,  
23 and that concerns --

24 MS GIRVAN: 697?

25 MR. DAVID: The one we just dealt

1 with and that's the last paragraph at the bottom  
2 of your message. It no longer concerns the issue  
3 of the dipnote but now contact that you were  
4 having with the State Department, and you say  
5 this:

6 "Also, and perhaps important.  
7 I earlier told someone that I  
8 did not know if we had been  
9 in touch with State  
10 Department when Arar went  
11 missing. In fact Helene  
12 Bouchard reminded me..."

13 MS GIRVAN: Someone was with us  
14 all day on the 9th.

15 MR. DAVID:

16 "...all day on the 9th..."

17 Of October,

18 "...and we consulted him at  
19 that time. He said that he  
20 had no information and that  
21 only immigration would have  
22 information. Therefore, we  
23 were being directed by all  
24 American officials to ..."

25 Again, the reference is simply to

1 the fact that -- is the idea here that progress  
2 was being made and --

3 MS GIRVAN: I think the idea is  
4 that I don't know everything that is going on,  
5 that there are several things going on at the same  
6 time, and so when I earlier said I didn't know if  
7 we had been in touch with the State Department, I  
8 was really focussed on being in touch with the  
9 senior official at INS that day, and other people  
10 were doing other things, and so I didn't really  
11 know all the things that were being done.

12 MR. DAVID: Okay. And, again,  
13 there is reference, if you go to Tab 703, which is  
14 three days later, on November the 10th, in the  
15 context, again, of the preparation of the  
16 chronology, if you go to the before-last paragraph  
17 on the first page, it begins with "I was asked by  
18 BCM if contact had been made with the State  
19 Department"?

20 MS GIRVAN: Mm-hmm.

21 MR. DAVID: There is also  
22 reference here, in this message by you, to this  
23 contact.

24 MS GIRVAN: I told Ms Thomsen they  
25 should contact Bob Archambault, yes.

1 MR. DAVID: We can go now to Tab  
2 707 from November the 12th. This is a follow-up  
3 to Tab 703. It's simply -- in this tab, very  
4 minor changes are being made to the version in  
5 703, for the chronology?

6 MS GIRVAN: Mm-hmm.

7 MR. DAVID: And we see in the top  
8 message, Ms Girvan, which is the second message in  
9 that tab, that your comments in Tab 703, which are  
10 now revised in 707 have been included in the  
11 chronology?

12 MS GIRVAN: Yes.

13 MR. DAVID: So the message is:

14 "We have incorporated all of  
15 Maureen's points in the  
16 document attached below."

17 We have at 709 the final version  
18 of the chronology. I am simply stating that for  
19 the record.

20 Then I would ask you to go to Tab  
21 705. I have referred it to you already, and that  
22 is the briefing note to the Minister. Again,  
23 paragraphs 7-11 deal with the issue of whether the  
24 threat to Syria was taken seriously and how it was  
25 dealt with by officials -- by yourself, namely?

1 MS GIRVAN: Seven through 11?

2 MR. DAVID: Paragraphs 7 through  
3 11.

4 MS GIRVAN: Okay.

5 MR. DAVID: And the conclusion at  
6 paragraph 11 is stated:

7 "At no point did the Consul  
8 take Mr. Arar's concerns  
9 lightly."

10 MS GIRVAN: Mm-hmm.

11 MR. DAVID:

12 "At every point during this  
13 period in New York, the  
14 information received by the  
15 Consul in New York was shared  
16 with senior management at the  
17 Consulate General, the  
18 Consular Case Management  
19 Division (JPO), the Director  
20 General of Consular Affairs  
21 (JPD), as well as the  
22 Canadian Embassy in  
23 Washington. All actions were  
24 taken on the basis of  
25 consultation and

1 instruction."

2 So this is the final version going  
3 to the Minister.

4 And then I bring you to Tab 767,  
5 and we'll have to change volumes.

6 --- Pause

7 MS GIRVAN: Thank you.

8 MR. DAVID: There's a series here  
9 of five e-mails, and two of them are in November,  
10 November the 12th, and if you go to the last page  
11 of this tab, Tab 767, you'll see that it's a  
12 reproduction of Tab 707, which is your input to  
13 the chronology.

14 And if you go to the first page of  
15 Tab 767, it's at the bottom half. Again, it's a  
16 reproduction of Tab 707.

17 MS GIRVAN: Right.

18 MR. DAVID: And the original  
19 content of this tab is found in the three messages  
20 above that. And they are all dated in December.

21 MS GIRVAN: Right.

22 MR. DAVID: Now, clearly, the  
23 chronology, the final chronology, has been filed.  
24 We saw at Tab 709 the chronology is dated November  
25 and these are further comments on the chronology

1           that are in December. Let's just go through those  
2           three messages very briefly. The first is, again,  
3           from Myra to you on December 15th. And Myra says  
4           this:

5                                 "Here is the last version  
6                                 that we could send by SIGNET!  
7                                 This was the New York Chron.  
8                                 Other to follow. Best of  
9                                 luck!"

10                                MS GIRVAN: I think the point  
11                                might be made I never did see the completed  
12                                chronology because it was classified and couldn't  
13                                be sent by SIGNET.

14                                MR. DAVID: And your message to  
15                                Myra in response:

16                                "Myra, I presume that Andre  
17                                did not make any changes,  
18                                then? Thanks, Maureen.

19                                MS GIRVAN: Mm-hmm.

20                                MR. DAVID: A further message from  
21                                Myra to you dated December 16 at 1:16 p.m., which  
22                                says:

23                                "I spoke with Bob Archambault  
24                                on Nov. 12 and he advised me  
25                                of the following additional



1 point for Oct. 11:"

2 So there was seemingly a further  
3 correction or addendum to the chronology that was  
4 inputted by Bob Archambault, and that correction  
5 concerns an entry for October 11, 2002, and is as  
6 follows:

7 " `In light of the  
8 deportation to Syria,  
9 representations are made by  
10 the US authorities in  
11 Washington."

12 MS GIRVAN: "... to the US ..."

13 MR. DAVID: I'm sorry.

14 "...to the US authorities in  
15 Washington. R. Archambault,  
16 Consul, calls INS Command  
17 Centre at 13:35."

18 And that is again a reference to  
19 the INS headquarters in Washington, Ms Girvan, I  
20 would suggest?

21 MS GIRVAN: I actually don't know  
22 what Command Centre is.

23 MR. DAVID: Someone at INS called  
24 back at 1530 and informed Archambault that Arar  
25 had been transported to Jordan and, eventually,

1 Syria.

2 So there was an additional  
3 precision or an additional comment to the effect  
4 that he was sent to Syria via Jordan.

5 MS GIRVAN: On the 11th.

6 MR. DAVID: And this was confirmed  
7 to M. Archambault.

8 MS GIRVAN: Mm-hmm.

9 MR. DAVID: Do you recall why, in  
10 December, this was of concern to you? It was  
11 clearly not in view of preparing the chronology.  
12 Was it in view of an upcoming interview, if you  
13 recall, with Mr. Garvie of the RCMP?

14 MS GIRVAN: I wonder, because he  
15 says "Best of luck." I'd have to check the timing  
16 of when Mr. -- what was the man's title? He was  
17 with the RCMP.

18 MR. DAVID: I believe it was a  
19 superintendent, but I'm not sure.

20 MS GIRVAN: I believe that was in  
21 December, but we probably have a note --

22 MR. DAVID: And we will see that,  
23 at Tab 776, the issue is quite clear that it  
24 concerns your preparation for the Garvie  
25 investigation.

1 MS GIRVAN: Mm-hmm.

2 MR. DAVID: And there are six  
3 e-mails in this tab that concern this. Let's work  
4 backwards because they go from the most recent to  
5 the earliest.

6 MS GIRVAN: Mm-hmm.

7 MR. DAVID: So if you go to page 3  
8 of 4, there is a message -- again, it's your input  
9 to the chronology, and this is Tab 707. If you go  
10 to page 2 of 4, these are reproductions of Tabs  
11 707 and 767, and then the original content of this  
12 tab is found at pages 2 and 1. So let's stay on  
13 page 2, at the top, it's a message coming from  
14 Konrad Sigurdson and it's going to Donna Blois,  
15 who is at Canadian -- Department of Justice  
16 Canada.

17 The message is the following:

18 "I'm not sure that Maureen is  
19 in the office. The following  
20 may be helpful."

21 We then go to page 1 and there is  
22 a message dated December 23rd at 10:10 going from  
23 Dave Dyet to you, with the following message:

24 "Attached is the abbreviated  
25 chronology which was prepared

1 by Michael Chesson. While I  
2 was not present at the  
3 meeting with MJW..."

4 MJW is the acronym for Mr. Jim  
5 Wright, who is the Assistant Deputy Minister  
6 within DFAIT for global security.

7 MS GIRVAN: You must be right.  
8 I'm pretty sure it was.

9 MR. DAVID:  
10 "...it is my understanding  
11 that the following points  
12 were raised:

13 @In response to Shirley  
14 Heafy's decision..."

15 Shirley Heafy is chair of the  
16 Public Complaints Commission of the RCMP.

17 "...to investigate any role  
18 that the RCMP might have  
19 played in Arar's deportation  
20 through the RCMP's Public  
21 Complaints Commission, RCMP  
22 Commissioner Zaccardelli has  
23 asked C Supt Brian Garvie to  
24 conduct his own investigation  
25 on Zaccardelli's behalf.

1 Garvie's report to Z. will be  
2 passed to Heafy."

3 The second bullet says:

4 "@NY Consul Maureen Girvan  
5 needs to review the PROTECTED  
6 PERSONAL NY consular-related  
7 portion of DFAIT's chronology  
8 (complete TS versions having  
9 been exchanged with RCMP,  
10 CSIS, and PCO at meeting MJW  
11 attended in Nov) in order to  
12 be certain that she is  
13 familiar with everything  
14 there."

15 And then the top message, the  
16 final message, is from you to Dave, which says:

17 "Thank you, Dave. I will go  
18 through it today. (I was  
19 away for the couple of days  
20 before Christmas. Hope you  
21 had a good holiday.

22 Maureen."

23 Do you recall now the  
24 circumstances where this was being sent to you and  
25 what you were being asked to do?

1 MS GIRVAN: It makes sense. I  
2 don't recall the exact minutes or dates, but it  
3 makes sense that that's what was happening.

4 MR. DAVID: And what was  
5 happening, Ms Girvan, is that you were being asked  
6 to prepare for an interview by Mr. Garvie in the  
7 context of the RCMP's investigation through Ms  
8 Shirley Heafy's office.

9 MS GIRVAN: Yes, I believe Mr.  
10 Sigurdson had called me and had said that Mr.  
11 Garvie would like to come down and interview me  
12 and would be interviewing other people, then doing  
13 the report.

14 MR. DAVID: And, in fact, Mr.  
15 Garvie did go to New York.

16 MS GIRVAN: He did come to New  
17 York.

18 MR. DAVID: And, in fact, Mr.  
19 Garvie did not meet you?

20 MS GIRVAN: No.

21 MR. DAVID: Do you recall why that  
22 occurred?

23 MS GIRVAN: Yes. Because concern  
24 was raised that we weren't fully aware of what the  
25 purposes of Mr. Garvie's report were, and my

1 consul general decided that I shouldn't be meeting  
2 in such a context without legal advice, and so  
3 when Mr. Garvie came, he met with the consul  
4 general as opposed to meeting with me.

5 MR. DAVID: In the end, did you  
6 ever meet Mr. Garvie?

7 MS GIRVAN: I met him for a moment  
8 in the lobby to apologize because he had taken a  
9 14-hour ride down to New York in a snowstorm and I  
10 felt badly, but I referred him to the Consul  
11 General.

12 MR. DAVID: Okay. And thereafter  
13 you never met Mr. Garvie again?

14 MS GIRVAN: No.

15 MR. DAVID: To your knowledge, did  
16 you collaborate in any way with his investigation?

17 MS GIRVAN: No.

18 MR. DAVID: We go now to May 6th,  
19 2004, Tab 807. Again it's the same situation as  
20 we have seen in the previous tab. This was an  
21 incorrect date. I'm not sure of the correct date.  
22 But Tab 807 simply is a note or a message from you  
23 going to Brian Schumacher and Andre Laporte, who  
24 is the Deputy Consul General of the New York City  
25 Office and your immediate boss was Andre Laporte.

1           Again, the date we don't know.  And it's simply a  
2           message:

3                               "The following is  
4                               unclassified, Brian, and  
5                               could be sent to Karen  
6                               Macdonald in NUR, for  
7                               circulation as she sees fit."

8                               NUR, do you know what that is?

9                               MS GIRVAN:  It's the geographic  
10           division covering the United States but more I  
11           believe in Public Affairs, although it has changed  
12           in its context.  You might need to be exact about  
13           that.  I wouldn't have known much about them at  
14           the time so I'm assuming I'm responding to a  
15           request by Mr. Schumacher.

16                              MR. DAVID:  The subject is  
17           "Correction."  Does that jog your memory?

18                              MS GIRVAN:  I don't see  
19           "Correction."

20                              MR. DAVID:  It's at the very top,  
21           the first line.  Do you know who you're responding  
22           to, or in what context this message --

23                              MS GIRVAN:  I don't.  I don't  
24           remember this at all.

25                              MR. DAVID:  If I could just bring



1           you through the paragraph very briefly.

2                           "The Consulate General  
3                           learned of Mr. Arar's  
4                           detention on October 1st,  
5                           after Mr. Arar himself called  
6                           his wife's mother in Canada  
7                           from the Brooklyn federal  
8                           facility. His mother-in-law  
9                           called her daughter, Mr.  
10                          Arar's wife, in Tunis, and  
11                          she in turn called our  
12                          mission in Tunis and informed  
13                          them. Tunis then entered the  
14                          information in Camant ... and  
15                          New York received the  
16                          message. The Consulate  
17                          General was then able to  
18                          confirm the information with  
19                          the Federal prison in  
20                          Brooklyn and to enquire as to  
21                          the charges."

22                          The last sentence reads as  
23           follows:

24                           "We are never officially  
25                           notified..."

1 about Mr. Arar

2 "... by the U.S.

3 authorities."

4 That is obviously in the context  
5 of Mr. Arar having requested so.

6 MS GIRVAN: Yes.

7 MR. DAVID: Otherwise, there would  
8 be no obligation on U.S. authorities to notify the  
9 Consul General?

10 MS GIRVAN: Yes.

11 MR. DAVID: Okay. Then you  
12 further say:

13 "...and we were not notified  
14 by Canadian authorities."

15 And your reference to Canadian  
16 authorities, Ms Girvan, would that be a reference  
17 to the RCMP or CSIS?

18 MS GIRVAN: I don't know. I just  
19 found it odd when I encountered it just now, but  
20 I'm assuming this must be -- someone must have  
21 asked me, "Were you?" And I'm saying we were not.

22 MR. DAVID: Okay. Speculating  
23 now, had the RCMP been aware before October 1st of  
24 Mr. Arar's detention in New York City, would there  
25 have been an expectation on your part that you

1 would have been notified by the RCMP of his  
2 detention?

3 MS GIRVAN: If the RCMP had  
4 been --

5 MR. DAVID: Well, in point of  
6 fact, the RCMP were aware, as of September 26th,  
7 of his detention.

8 MS GIRVAN: Yes.

9 MR. DAVID: And the question is:  
10 Would you have expected that they pass that on to  
11 you, to your office?

12 MS GIRVAN: No, I did not have  
13 contact with the RCMP on cases.

14 MR. DAVID: If I could just have a  
15 moment, Mr. Commissioner?

16 --- Pause

17 Thank you, Ms Girvan. That  
18 completes my examination.

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

21 MS GIRVAN: Thank you.

22 THE COMMISSIONER: Mr. Baxter?

23 EXAMINATION

24 MR. BAXTER: Thank you, Mr.  
25 Commissioner.

1                   If the witness could be given the  
2 first volume of P-42, please, Mr. Registrar?

3                   While that's being presented to  
4 her, I would call to the Commission's attention  
5 that we have filed the CAMANT notes entirely.  
6 They are Exhibits P-40 and P-41, and in these  
7 cases the CAMANT notes are filed with their  
8 attachments, so that the types of problems we were  
9 having with the P-42 exhibits need not occur in  
10 those cases.

11                   THE COMMISSIONER: Okay.

12                   MR. BAXTER: So P-40 and P-41 have  
13 both sets of CAMANT notes filed with attachments.

14                   THE COMMISSIONER: Thank you.

15                   MR. BAXTER: If you could turn to  
16 tab 11, please, of the first volume? I want to  
17 examine the chronology, Ms Girvan, of the dipnote  
18 debate, if I can put it that way, the troubles you  
19 were having and the consideration that you gave to  
20 a dipnote.

21                   I take it at 447 on October 1st,  
22 this is the first record of your asking people to  
23 consider that; is that fair? If you look at  
24 paragraph 6 there?

25                   MS GIRVAN: You're saying, is it

1 the first --

2 MR. BAXTER: The first time that  
3 you've requested that consideration be given to  
4 sending a dipnote?

5 MS GIRVAN: The only earlier one  
6 would have been -- would it have been earlier when  
7 I spoke to Helen Harris? I'm just trying to  
8 remember.

9 MR. BAXTER: I believe it --

10 MS GIRVAN: No, that's the same  
11 day. Same day, yes.

12 MR. BAXTER: Here you're saying --

13 MS GIRVAN: It's a summary of all  
14 that day, yes.

15 MR. BAXTER: At the end of the  
16 day, on what is a Tuesday, you're saying let's  
17 speak first thing in the morning as to the  
18 advisability of a dipnote. Do you see that in the  
19 sixth paragraph?

20 MS GIRVAN: Yes, I do.

21 MR. BAXTER: Then if we go to Tab  
22 23, which is the next morning, and you have a  
23 response there at 9:30 a.m., I believe --

24 MS GIRVAN: Yes.

25 MR. BAXTER: And 9:53 as well.

1 MS GIRVAN: Yes.

2 MR. BAXTER: There Ms Collins is  
3 saying let's wait and see what they do in response  
4 to the fax that you sent last night.

5 MS GIRVAN: That's right.

6 MR. BAXTER: Then if we go back to  
7 Tab 16, and that's at 11:07 of that same morning?

8 MS GIRVAN: Mm-hmm.

9 MR. BAXTER: There you have Ms  
10 Ward calling you and she told you at least four  
11 things; correct?

12 MS GIRVAN: Mm-hmm.

13 MR. BAXTER: She has acknowledged  
14 they have the subject. She has acknowledged that  
15 she will permit a consular visit. She said that  
16 they will permit a lawyer visit. And she said  
17 that Arar has already made a legal call.

18 MS GIRVAN: Right.

19 MR. BAXTER: Okay. And, in fact,  
20 your visit happened the following morning, we saw,  
21 on October 3rd.

22 MS GIRVAN: Yes, it did.

23 MR. BAXTER: You told Mr. David  
24 that those always take 24 hours to arrange; is  
25 that what you said?

1 MS GIRVAN: It's generally the  
2 case. You'd make the request and they'd respond  
3 by fax.

4 MR. BAXTER: And the lawyer's  
5 visit happened on October 5th. So by 11 a.m. on  
6 the following day, on the Wednesday, 25 hours, you  
7 had notification from Ms Mazigh of where the  
8 subject was, you had those four items that you  
9 needed; correct?

10 MS GIRVAN: Yes.

11 MR. BAXTER: You had  
12 acknowledgment, access, and the lawyer, and you  
13 had confirmation of a legal call.

14 MS GIRVAN: And I have the charges  
15 or at least an idea of the charges.

16 MR. BAXTER: You had an idea of  
17 the charges as well. So what else could a dipnote  
18 at that point in time have accomplished for you,  
19 Ms Girvan?

20 MS GIRVAN: I don't believe it  
21 could have accomplished anything at that time.

22 MR. BAXTER: And the only option  
23 would have been one of the -- what you called a  
24 complaint dipnote after the fact --

25 MS GIRVAN: Regarding the

1 non-notification.

2 MR. BAXTER: Non-notification at  
3 the airport.

4 MS GIRVAN: That can be done at  
5 any point in the following time.

6 MR. BAXTER: You talked to Mr.  
7 David a bit about the effect of a dipnote. You  
8 called it I think the heavy weaponry of your  
9 consular armament and you preferred to use the  
10 light arms. You said don't use it unless you have  
11 to. You said the response tends to be very slow  
12 to these. Can you explain that a bit? How slow  
13 are these responses?

14 MS GIRVAN: I haven't been part of  
15 too many dipnotes, but when I look, for example,  
16 at the diplomatic note we actually did send in the  
17 case, I think it took nearly ten days for a  
18 response and I think that would be considered very  
19 normal. In some countries it would take three  
20 months. In some places you don't get an answer at  
21 all. You just file it and you never hear back.  
22 The States, I would expect a response and I would  
23 expect it could take, you know, a week or two.

24 MR. BAXTER: And you said that the  
25 effect -- another effect of sending a dipnote was



1 to freeze up the lower-level contacts because, you  
2 said, people tend to respond more formally.

3 MS GIRVAN: Yes.

4 MR. BAXTER: So I take it your  
5 contacts, for instance, with Ms Ward at the MDC  
6 would have dried up or might have dried up?

7 MS GIRVAN: Might have dried up.  
8 I've experienced that in other contexts where any  
9 kind of complaint is made. It seems that a  
10 message must go down and then you have to go to  
11 the top.

12 MR. BAXTER: So it goes up the  
13 chain, down, and back to you, et cetera.

14 MS GIRVAN: Mm-hmm.

15 MR. BAXTER: Which obviously is  
16 less efficient.

17 MS GIRVAN: Yeah.

18 MR. BAXTER: Then your contacts  
19 with your local INS officials and the INS  
20 officials at JFK airport would have been frozen  
21 out as well?

22 MS GIRVAN: Yes.

23 MR. BAXTER: How about the  
24 contacts with the Washington INS General Counsel  
25 and his right-hand person; would those have been

1           similarly affected by a dipnote?

2                       MS GIRVAN: I would expect that  
3 they would. I would expect that if we have sent a  
4 dipnote, he would say, we will respond to the  
5 dipnote.

6                       MR. BAXTER: In a --

7                       MS GIRVAN: With a diplomatic  
8 note.

9                       MR. BAXTER: I see. Okay. When  
10 Mr. David was asking you about this, you told him  
11 you had another example of this freezing effect.  
12 You said I have another example, and I don't think  
13 he pursued it with you. Can you tell the  
14 Commission about that?

15                      MS GIRVAN: It's not an actual  
16 diplomatic note but, to me, it was similar because  
17 I'm -- the best expert on diplomatic notes would  
18 be perhaps Mr. Pardy or perhaps our ambassador --  
19 or people in Washington, rather. But in terms of  
20 my experience, I had a young man in prison in New  
21 Jersey who complained that he had been beaten by a  
22 guard, and as is the process, I asked him if he  
23 wanted me to make that complaint, because I can  
24 only complain if the person wants me to, because  
25 sometimes it has repercussions for them, and he

1       said yes. And so I made the complaint. And right  
2       then, until we got an answer, I think maybe a  
3       month later, approximating, I could no longer call  
4       the prison, I could no longer speak to the  
5       psychiatrist that was dealing with him, I could no  
6       longer speak to the Governor's office that I had  
7       been dealing with about him, and I was quite  
8       without information until that complaint -- I had  
9       to go through a very high official and then they  
10      would go down and get the information and then  
11      they would send it to me through the person in the  
12      Governor's office. So I had one person I could  
13      contact for anything.

14                   MR. BAXTER: In other words, the  
15      effect of going up with that complaint to the next  
16      level, in fact, froze you out, in that case, for  
17      four weeks or a month?

18                   MS GIRVAN: Yes.

19                   MR. BAXTER: Now, I take it that  
20      the suggestion by one of the INS Public Relations  
21      officers that you told Mr. David about, that the  
22      ambassador would get involved in the process and  
23      call DOJ. I think you said that was  
24      representative, in your view, of his  
25      misunderstanding of your role; is that what you

1 told Mr. David --

2 MS GIRVAN: Or a misunderstanding  
3 of how things are done because (a) I could not  
4 call the ambassador and (b) the ambassador would  
5 not normally be the one to call the Department of  
6 Justice.

7 MR. BAXTER: We have seen when the  
8 ambassador gets involved, I think as you  
9 qualified, it was at Tab 703, that's a higher  
10 level action than a dipnote; fair?

11 MS GIRVAN: Yes.

12 MR. BAXTER: The freezing-out  
13 effect that you've just described from a dipnote  
14 we can expect would have happened equally much  
15 with the ambassador getting involved at that early  
16 stage; is that fair?

17 MS GIRVAN: I suppose. I can't  
18 anticipate the ambassador doing that, but I  
19 suppose it would have a similar effect.

20 MR. BAXTER: The second area I'd  
21 like you to comment on is the threat that Mr. Arar  
22 received to go to Syria. Now, you told us  
23 yesterday, and we just looked at Tab 703, that  
24 when he reported that to you on October 3rd, he  
25 was reporting discussions that had happened at the

1 airport.

2 MS GIRVAN: Who was -- sorry? No,  
3 it's just me.

4 MR. BAXTER: Mr. Arar told you  
5 about the threat that had been leveled at him --

6 MS GIRVAN: At the airport,  
7 mm-hmm.

8 MR. BAXTER: That was at the  
9 airport.

10 MS GIRVAN: Yes.

11 MR. BAXTER: And it was not at the  
12 MDC?

13 MS GIRVAN: No.

14 MR. BAXTER: We saw that confirmed  
15 in Tab 703. And you made the distinction between  
16 the normal deportation scenario, as Mr. David  
17 qualified it, and the airport scenario. Do you  
18 recall that distinction yesterday?

19 MS GIRVAN: Yes.

20 MR. DAVID: Here we've seen in Tab  
21 703 you refer to the airport scenario as expedited  
22 removal?

23 MS GIRVAN: Yes.

24 MR. BAXTER: So in that case --  
25 what is it? It's an immediate sort of turn-around

1 and back on the plane?

2 MS GIRVAN: It can take a little  
3 longer, as I understand it. In most cases it's  
4 immediate or as soon as there is a plane flying  
5 back to where the person came from. So could be  
6 the next day or it could perhaps be -- maximum I  
7 had ever experienced was about a day or two days.

8 MR. BAXTER: And you contrasted  
9 that with what you called "in the system," when  
10 one is in the system, you describe sort of a  
11 myriad of hearings or interviews or meetings. And  
12 you deal with those that are in the system, you  
13 deal with a fair number of them, I think you told  
14 Mr. David?

15 MS GIRVAN: I deal with a great  
16 number of deportations, at the ends of processes.

17 MR. BAXTER: In that case you get  
18 consular access, in the normal course?

19 MS GIRVAN: Yes. In the normal --  
20 they're all different, the cases, but -- you're  
21 asking would I get consular access at the  
22 deportation part or earlier?

23 MR. BAXTER: Prior. You told us  
24 that once one is in the system, one has a number,  
25 one is granted legal assistance --

1 MS GIRVAN: Mm-hmm.

2 MR. BAXTER: -- and you get  
3 consular access in the normal course?

4 MS GIRVAN: There might be a case  
5 where there would be a process going on.

6 MR. BAXTER: Then you get  
7 notification, you told Mr. David, from the INS  
8 there would be a deportation, and that process  
9 takes 6-8 weeks.

10 MS GIRVAN: Sometimes a notice  
11 comes from the INS, sometimes it comes from the  
12 person themselves, the actual detained person gets  
13 it to me first, but I always know when they're  
14 going to be -- pretty well always know they're  
15 going to be deported.

16 MR. BAXTER: If they've been  
17 moved, you said to Mr. David, sometimes it comes  
18 from the family of the person?

19 MS GIRVAN: All time I hear that  
20 people have been moved. People are moved a lot in  
21 prisons in the United States and they do not have  
22 to notify the consulate but the family usually  
23 learns and then I find out.

24 MR. BAXTER: So you don't get  
25 notice of a move in advance?

1 MS GIRVAN: No.

2 MR. BAXTER: The cases that you  
3 discussed yesterday, if I try to -- Mr. X and Mr.  
4 Y. If I do the math from the chronologies that  
5 you gave, it looks like they were in the system  
6 for about 20 weeks and 16 weeks, at least?

7 MS GIRVAN: Five or six months,  
8 yes.

9 MR. BAXTER: It's actually less  
10 than that. I meant from the time of  
11 acknowledgment that they were there to the time  
12 that they were deported.

13 MS GIRVAN: Okay. Because they  
14 had both been held for some time before I learned  
15 of them, so I think I learned in December of both  
16 of them, and it was March-April --

17 MR. BAXTER: March-April. So each  
18 of those was considerably longer than your normal  
19 6- to 8-week period.

20 MS GIRVAN: Yes.

21 MR. BAXTER: When we look at the  
22 time Mr. Arar was acknowledged, which was either  
23 October 1st or October 2nd, to the time that he  
24 was deported, which was the wee hours of October  
25 8th, that's 6 or 7 days?



1 MS GIRVAN: Yes.

2 MR. BAXTER: And it's fair to say  
3 that's unprecedented in your view?

4 MS GIRVAN: I have never  
5 experienced anything like that.

6 MR. BAXTER: And never since?

7 MS GIRVAN: No.

8 MR. BAXTER: If you could turn to  
9 Tab 703 for one second, please?

10 MS GIRVAN: I think I need another  
11 book.

12 --- Pause

13 MS GIRVAN: Thank you.

14 MR. BAXTER: I'm going to take  
15 you, Ms Girvan -- Mr. David took you through most  
16 of this, but if you go to the last paragraph that  
17 begins with "Liliane."

18 MS GIRVAN: Yes.

19 MR. BAXTER: Mr. Commissioner, do  
20 you have 703?

21 THE COMMISSIONER: Yes, I do.

22 MR. BAXTER: It says:

23 "Liliane, I don't know if it  
24 is germane, but according to  
25 the lawyer, Muni's Nov. 5th

1 statement to CBC, she learned  
2 later on the 7th that Mr.  
3 Arar was no longer at the  
4 federal facility. She says  
5 she was looking for him at  
6 Manhattan and in New Jersey  
7 at immigration detention  
8 centres. She neither  
9 notified the family nor the  
10 Consulate, and yet she was  
11 his lawyer. It took me to  
12 the 9th to catch her by  
13 telephone, after leaving many  
14 messages..."

15 So this is you writing, I take it,  
16 to Lillian Thomsen --

17 MS GIRVAN: Who is preparing the  
18 chronology.

19 MR. BAXTER: -- who is preparing  
20 the chronology. This, as you have reconstructed  
21 it now, is the state of knowledge of Mr. Arar's  
22 immigration proceedings in New York, your  
23 knowledge versus Ms Oummih's knowledge; correct?

24 MS GIRVAN: Yes. I didn't know  
25 about this until Ms Oummih made her statement to

1 the CBC and I saw that. I didn't know. She had  
2 not told me this.

3 Is that what you are asking me?  
4 I'm not sure, sorry.

5 MR. BAXTER: I suppose the  
6 question, it's obvious, is shouldn't she have told  
7 you this or shouldn't she have told Mr. Arar's  
8 family this or shouldn't she have told somebody  
9 this?

10 MS GIRVAN: In fact, she has no  
11 obligation to notify me. She is the lawyer to Mr.  
12 Arar, and so her obligation, I suppose, is to the  
13 family.

14 I remember that when I called the  
15 family on the day Mr. Arar was found to be moved,  
16 they were waiting for a call from the lawyer, so  
17 they were expecting her call. I don't actually  
18 know if they did receive a call that day, but I  
19 didn't hear back from anyone that she did.

20 So I was feeling a bit frustrated  
21 that I couldn't reach her, but she had no  
22 obligation to call me.

23 MR. BAXTER: That goes to the  
24 portion in your consular manual which says that  
25 once a lawyer is involved, you step out of it,

1 don't you?

2 MS GIRVAN: I step back and then I  
3 take my advice, for example, from the lawyer. The  
4 lawyer may come to me on any case and say, "We  
5 would like the Canadian government to write a  
6 letter or attend a court hearing" or do something  
7 to assist. And then I would speak to headquarters  
8 and then I would respond to the lawyer's request  
9 and we try to be helpful to the client.

10 MR. BAXTER: If I may just have  
11 one minute, Mr. Commissioner?

12 --- Pause

13 MR. BAXTER: Those are my  
14 questions; thank you.

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

17 Ms Edwardh, would you like to  
18 start now, or would you like to take the lunch  
19 break?

20 MS EDWARDH: I am content to do it  
21 either way.

22 THE COMMISSIONER: Normally, we  
23 would sit until 1:00, if that suits you.

24 MS EDWARDH: That's fine.

25 THE COMMISSIONER: Would you like

1 one of the podiums?

2 MS EDWARDH: I would indeed like  
3 to switch things around. Just indulge me with one  
4 more moment of organization.

5 THE COMMISSIONER: Take your time.

6 --- Pause

7 EXAMINATION

8 MS EDWARDH: Ms Girvan, my name is  
9 Marlysh Edwardh and I represent Maher Arar.

10 MS GIRVAN: Thank you.

11 MS EDWARDH: If I could, I would  
12 like to take you through a hopscotch of various  
13 topics so we don't have to go back through the  
14 chronology and do this in a bit of a quicker way.  
15 But if I confuse you at any time or you want to  
16 have reference to a specific document, please  
17 don't hesitate to stop me and we will find it and  
18 dig it out for you.

19 I would like to just start, if I  
20 could, with your curriculum vitae, which is  
21 Exhibit P-49.

22 MS GIRVAN: I think I need that.  
23 Thank you.

24 MS EDWARDH: I would like to  
25 direct you to the period of 1994 to 1997.

1                   Do I take it that you would then  
2                   have been a desk officer for the Middle East,  
3                   including the area of Syria?

4                   MS GIRVAN:    Yes.

5                   MS EDWARDH:   So you would have  
6                   been then familiar with the regime in Syria and  
7                   also the evaluation of the human rights record of  
8                   the Syrian government that is produced by the  
9                   embassy from time to time?

10                  MS GIRVAN:    Which embassy?

11                  MS EDWARDH:   The embassy in  
12                  Damascus.

13                  MS GIRVAN:    No.

14                  MS EDWARDH:   Would you have had an  
15                  opportunity, as part of your duties, to review  
16                  evaluations then from the U.S. State Department in  
17                  respect of countries in the Middle East?  They are  
18                  called Country Reports?

19                  MS GIRVAN:    Not specifically.  No.

20                  MS EDWARDH:   Did you view it as  
21                  generally part of your mandate to be familiar with  
22                  the administration of justice, criminal justice,  
23                  or the military intelligence services of the  
24                  countries in the Middle East so you could come to  
25                  any kind of realistic assessment about what could

1 be provided by way of consular services to  
2 detainees?

3 MS GIRVAN: I would -- that's a  
4 long question but I will say no on the first part  
5 because I have -- we have a legal department at  
6 the Department of Foreign Affairs, so wherever a  
7 question came up that implied such issues, I would  
8 refer to them.

9 I covered a large number of  
10 countries, and I covered a large number of issues,  
11 every issue applying to Canadians abroad. So I  
12 couldn't be an expert on anything but I had access  
13 to experts on every area.

14 MS EDWARDH: Yes, but they would  
15 come back to you, would they not?

16 MS GIRVAN: Who would come back to  
17 me?

18 MS EDWARDH: The legal department  
19 would come back to you and answer the questions  
20 you posed.

21 MS GIRVAN: They would come back  
22 to my section, yes.

23 MS EDWARDH: And they would give  
24 you the information you needed to carry out your  
25 duties?

1 MS GIRVAN: That's correct.

2 MS EDWARDH: Let me come back to  
3 the general question.

4 As someone who was the desk  
5 officer for the Middle East, was it or was it not  
6 relevant to your assignment and to the discharge  
7 of your duties to be generally familiar with the  
8 human rights records of the different countries  
9 you were involved with?

10 MS GIRVAN: I don't think it was a  
11 part of my obligations, but it was a part of my --  
12 in other words, I don't remember being expected to  
13 keep track of that, but I would know to get in  
14 touch with the various experts.

15 MS EDWARDH: So if an issue  
16 arose -- and let me just ask you about your  
17 experience, which does cover a number of years,  
18 '94 to '97 --

19 MS GIRVAN: Yes.

20 MS EDWARDH: Would you today,  
21 looking back upon your experience and what you  
22 knew at the time of Mr. Arar's case, consider  
23 yourself in general familiar with the human rights  
24 issues involved with the government of Syria?

25 MS GIRVAN: I wouldn't know much



1 more about the governments of Saudi Arabia and  
2 certain other countries because in the time that I  
3 was the Middle East desk officer I don't believe  
4 there were any consular cases in Syria. I don't  
5 remember any.

6 And I don't believe I ever dealt  
7 with -- I dealt a lot with Lebanon and I certainly  
8 would have known that it was an authoritarian  
9 state, and I would have known that all of the  
10 countries in the Middle East were not similar to  
11 our systems of justice so we had to take greater  
12 care.

13 But I didn't deal with Syria a lot  
14 at all.

15 MS EDWARDH: I hear your answer  
16 but, Ms Girvan, the question was a little  
17 different.

18 Would you consider yourself  
19 generally familiar with issues about human rights  
20 in Syria? You may have known more about Saudi  
21 Arabia or may have known more about Lebanon, but  
22 would you have been generally familiar?

23 MS GIRVAN: I guess I don't know  
24 what you mean by "generally familiar". I'm sorry,  
25 it's not that I am trying to be awkward. All I

1 would know is I would know that it's an  
2 authoritarian regime. But since I didn't have any  
3 Canadians, I wouldn't have looked further into the  
4 actual conditions for Canadians in detention in  
5 Syria.

6 MS EDWARDH: By the time you dealt  
7 with Mr. Arar's case, would you have known that it  
8 was reported by major human rights organizations  
9 as well as the State Department Country Reports  
10 that Syria was a country where there were serious  
11 concerns about the existence of persistent torture  
12 of detainees?

13 MS GIRVAN: No, not specifically  
14 about Syria.

15 MS EDWARDH: And if you had wanted  
16 to know that, I take it would have been very easy  
17 to pick up the phone and consult Legal?

18 MS GIRVAN: I would have consulted  
19 headquarters. In the case where I am in New York,  
20 headquarters would be consulting legal, not  
21 myself.

22 MS EDWARDH: Right. But the point  
23 is there are ample resources available for you to  
24 learn about or identify what the human rights  
25 record is of a particular country?

1 MS GIRVAN: Yes, there are  
2 resources.

3 MS EDWARDH: And let me just ask  
4 another question. If you are dealing with a  
5 country, whether it was when you were dealing with  
6 the Middle East or when you were in the United  
7 States, and you found yourself at a loss -- you  
8 are not legally trained, are you?

9 MS GIRVAN: No.

10 MS EDWARDH: So if you found  
11 yourself at a loss to understand the legal  
12 situation of someone you were providing consular  
13 services to, did you have access through the  
14 consulate to advice to give you some understanding  
15 of what was happening to the person?

16 MS GIRVAN: Generally speaking I  
17 would refer to the lawyer for the person.

18 MS EDWARDH: And if that person  
19 was not yet represented and you wanted to  
20 understand what was happening, is there a vehicle  
21 within the consulate to get access to legal  
22 advice?

23 MS GIRVAN: Not within the  
24 consulate as such. In other countries where there  
25 is less of a legal system, perhaps, but not in New

1 York.

2 MS EDWARDH: So if something were  
3 happening to a Canadian citizen in the State of  
4 New York that made no sense to you and that person  
5 was detained and unrepresented, it's your  
6 understanding that you would have no vehicle to  
7 reach out and get some legal advice --

8 MS GIRVAN: No, I would have a  
9 vehicle. I would go to headquarters.

10 MS EDWARDH: Headquarters in  
11 Ottawa?

12 MS GIRVAN: Yes.

13 MS EDWARDH: And they may or may  
14 not be able to cast any light on it because you  
15 might need an American lawyer; correct?

16 MS GIRVAN: They would be able to  
17 say hire an American lawyer or they would be able  
18 to get information for me.

19 MS EDWARDH: And I take it from  
20 your description of what has transpired with  
21 Mr. Arar, at no time until his removal on October  
22 the 8th or the early morning hours of October the  
23 8th did you or anyone you know in the Government  
24 of Canada make inquiry of somebody who could give  
25 legal advice?

1 MS GIRVAN: Could you repeat that,  
2 please, because it's got a couple of parts to it.

3 MS EDWARDH: From the time that  
4 you became aware of Mr. Arar --

5 MS GIRVAN: Yes.

6 MS EDWARDH: -- and leading up to  
7 the time of his removal --

8 MS GIRVAN: Right.

9 MS EDWARDH: -- in the early  
10 morning hours of October the 8th, I take it you  
11 didn't, nor did anyone you know within the  
12 Government of Canada, make any inquiry of a lawyer  
13 that could give you some advice about what was  
14 potentially happening?

15 MS GIRVAN: No. I got a lawyer to  
16 Mr. Arar, and that's my job.

17 MS EDWARDH: We will come to that.

18 MS GIRVAN: Okay.

19 MS EDWARDH: Have you ever been in  
20 Syria?

21 MS GIRVAN: Yes.

22 MS EDWARDH: Indeed, as part of, I  
23 suppose, the casual conversation that one has with  
24 someone who is very anxious, as you try to settle  
25 them, do you recall telling Mr. Arar that you had

1           been in Syria?

2                           MS GIRVAN:  I don't recall, but  
3           that's entirely possible.

4                           MS EDWARDH:  And you have been to  
5           Damascus as well?

6                           MS GIRVAN:  Yes, I have.

7                           MS EDWARDH:  So it wouldn't  
8           surprise you if his recollection of your  
9           conversation on October 3rd was that you shared  
10          some of that information with him?

11                          MS McISAAC:  Mr. Commissioner,  
12          this is exactly the issue that we have been  
13          concerned about Mr. Arar not testifying.  I assume  
14          there will be an undertaking to bring him to  
15          testify about these -- these are fairly  
16          non-controversial, perhaps, but it is again an  
17          issue of what Mr. Arar has said and now Ms Edwardh  
18          is giving his evidence.

19                          MS EDWARDH:  With respect,  
20          Mr. Commissioner, the witness has just said that  
21          yes, it wouldn't surprise her at all if that  
22          conversation had taken place.  She has, in fact,  
23          been in Damascus and in Syria.

24                          In light of the witness' response,  
25          there is no conflict.

1 THE COMMISSIONER: I agree with  
2 that, but I think going ahead -- and I agree it's  
3 relatively non-controversial. But going ahead,  
4 given the Mr. Arar testimony issue, if I can call  
5 it that, if there were controversial things, we  
6 would have to be careful to avoid a question like  
7 that.

8 MS EDWARDH: Can I get some  
9 guidance then?

10 It would seem appropriate at this  
11 time, if there is a conflict that I may know  
12 about, to at least put it to the witness and so  
13 you can hear the witness' response. And of course  
14 when Mr. Arar testifies at a later date, after the  
15 interim report, should he do so, then indeed that  
16 area will be addressed and at least alerts you to  
17 the fact that there may be a difference in  
18 positions?

19 THE COMMISSIONER: Well, the  
20 difficulty with that could be that he may not  
21 testify at a later date when I'm doing the interim  
22 report.

23 I am wondering if you can put your  
24 questions -- you can certainly put your questions  
25 in those areas, but if you could cast them,

1           perhaps you could relate them to things that had  
2           been said by Mr. Arar publicly. That would be one  
3           way of doing it, rather than doing it sort of in  
4           the sense of a commitment to testify.

5                           MS EDWARDH: With the greatest of  
6           respect, I can't imagine asking the witness  
7           whether it's consistent with her memory that a  
8           discussion may have taken place forces Mr. Arar to  
9           testify.

10                           I will be careful in this area and  
11           try not to create --

12                           THE COMMISSIONER: That is what I  
13           am asking. In this particular area, I don't see a  
14           problem. I think it's non-controversial.

15                           But if there is a question,  
16           Ms McIsaac, you have an objection to something  
17           that makes a difference, we will deal with the  
18           specifics as we go.

19                           Thank you, Ms Edwardh.

20                           MS EDWARDH: Thank you.

21                           I would like to turn to a question  
22           that has been touched on by Mr. David and also by  
23           counsel for the Government of Canada very briefly  
24           and talk about the umbrella under which you  
25           provide consular services.



1                   As part of your training, you  
2 would have of course had an opportunity to at  
3 least review and think about the Vienna Convention  
4 on consular relations.

5                   MS GIRVAN: Yes.

6                   MS EDWARDH: It provides the  
7 general rubric in which you can assert a right of  
8 access and also a right to try to get information  
9 to assist a detainee.

10                  Is that correct?

11                  MS GIRVAN: Yes.

12                  MS EDWARDH: And Canada is a  
13 signatory of that convention, to the best of your  
14 knowledge?

15                  MS GIRVAN: Yes.

16                  MS EDWARDH: So is the United  
17 States?

18                  MS GIRVAN: Yes.

19                  MS EDWARDH: The principal  
20 protection you understood existed for detainees  
21 was that they had to be told that they had a right  
22 of consular access when they were detained.

23                  MS GIRVAN: I don't know if it was  
24 a principal protection but it is required under  
25 the convention.

1 MS EDWARDH: I shouldn't have  
2 phrased it that way. That is, first of all, what  
3 the convention speaks to: the right of a person  
4 who is detained to be told that they can access  
5 consular services?

6 MS GIRVAN: Right.

7 MS EDWARDH: So if an officer or  
8 someone is arresting someone, in addition to  
9 providing them with that information, in your view  
10 does it automatically as well flow that there's a  
11 corresponding duty then to facilitate obtaining  
12 consular access if the person says, "Yes, please,  
13 I want consular access"?

14 MS GIRVAN: That's correct.

15 MS EDWARDH: And that is why, of  
16 course, it was important and you make the  
17 observation in the CAMANT notes that while  
18 Mr. Arar was at the airport he signed a form,  
19 presented to him by INS, asking for consular  
20 access?

21 MS GIRVAN: Yes.

22 MS EDWARDH: Now, some countries  
23 have collateral arrangements, if I can call them  
24 that, whereby the countries agree that not only  
25 will they tell a detainee about consular access

1 and facilitate it, but they will provide  
2 information to the governments. Let me give an  
3 example.

4 MS GIRVAN: The Vienna Convention.

5 MS EDWARDH: So if a Canadian is  
6 arrested in Texas, is there an arrangement,  
7 pursuant to the Vienna Convention, or any other  
8 treaty that you know of, where the Americans have  
9 undertaken to notify the Government of Canada or  
10 Department of Foreign Affairs that they have a  
11 Canadian detained?

12 MS GIRVAN: My understanding is  
13 it's a federal obligation under the Vienna  
14 Convention and that I believe that the State has  
15 to notify the federal body, which would notify the  
16 consulate or the consulate general, although it's  
17 often done more on a local level.

18 MS EDWARDH: I see. So now we  
19 have a third component to the duty, as you  
20 understand it.

21 The detainee must be told that he  
22 has a right. If the detainee asserts the right,  
23 there's a duty on law enforcement agencies or INS  
24 to facilitate the exercise of the right. And if a  
25 detainee is in detention, the government, through

1 the federal mechanism, should be alive to the fact  
2 someone is detained?

3 In other words, there is a  
4 notification to the government?

5 MS GIRVAN: I believe so. I would  
6 suggest, though, that if you want really, really  
7 perfect information on this, you might get a  
8 better expert than me. But that's my general  
9 understanding.

10 MS EDWARDH: That's your  
11 understanding? At least that's your understanding  
12 of how it's supposed to work between Canada and  
13 the United States?

14 MS GIRVAN: Yes, any signatory of  
15 the Vienna Convention.

16 MS EDWARDH: Yes. Now, you made  
17 an interesting statement in your testimony in  
18 answer to a question, and I believe you say, "We  
19 encourage the U.S. to notify us."

20 Might I take it to be the obvious  
21 fact that whatever the convention may say, Canada  
22 has not always received appropriate and timely  
23 notice from American authorities that they are  
24 detaining a Canadian citizen?

25 MS GIRVAN: What I would say is

1           that I can remember meeting with American  
2           officials who were continually trying to make sure  
3           that all of the officers who might arrest someone  
4           would be in a position to know about the Vienna  
5           Convention. Many of them didn't. And so it was a  
6           continuous education process.

7                           MS EDWARDH: That means, of  
8           course, that there have been important cases where  
9           Canada has been very concerned that they weren't  
10          notified?

11                          MS GIRVAN: Yes.

12                          MS EDWARDH: Indeed, you would  
13          probably have been in the department when the  
14          Government of Canada appeared as amicus in the  
15          U.S. Supreme Court to argue very strongly about  
16          the Vienna Convention and consular relations in  
17          respect of Mr. Stan Foulder, a death penalty case  
18          in the State of Texas?

19                          MS GIRVAN: Yes.

20                          MS EDWARDH: Your experience --  
21          and we will come to it in a little more detail --  
22          at MDC, is one where there has been a substantial  
23          failure of notification?

24                          MS GIRVAN: I have not been  
25          notified as yet. One caution there is that they

1 do not state in the Vienna Convention how long  
2 they have to take to notify you. So there is a  
3 big of controversy as to how long they can take.

4 MS EDWARDH: Certainly in your  
5 description of "X" and "Y", having been detained I  
6 think in September, and you having had the  
7 experience of the oops in December, that's  
8 certainly more than any reasonable authority  
9 takes?

10 MS GIRVAN: I would say so. Yes,  
11 I would say so.

12 MS EDWARDH: It's fair to conclude  
13 then from what we have heard of your discussions  
14 that certainly with respect to people on the 9th  
15 floor of MDC, you have never been notified by that  
16 detention centre or through the government about  
17 their detention in U.S.A.?

18 MS GIRVAN: That would be correct.

19 MS EDWARDH: Yes. I want to just  
20 turn to another topic, if I could, for a moment.

21 We have kind of skated around some  
22 of the problems with dual nationals, and by "dual  
23 national" I take it we mean persons who are  
24 citizens of two nations?

25 MS GIRVAN: That's correct.

1 MS EDWARDH: And they may be  
2 citizens of two nations even though they have  
3 never even lived in that second nation or ever  
4 moved around the world with a passport from that  
5 second nation?

6 MS GIRVAN: That's correct.

7 MS EDWARDH: That's correct?

8 MS GIRVAN: Yes.

9 MS EDWARDH: So it's my  
10 understanding, Ms Girvan -- and please correct me  
11 if you disagree -- that we have an evolving  
12 concept of something called dominant nationality,  
13 where even though someone may have two  
14 citizenships, there is generally an understanding  
15 that there might be a dominant nationality?

16 MS GIRVAN: I have never used that  
17 word, but if you mean that I think of someone who  
18 is living as a Canadian citizen in Canada as more  
19 Canadian --

20 MS EDWARDH: No, no. Let me give  
21 you an example.

22 You could have a citizen of Canada  
23 who has another nationality that is resident in  
24 Canada, that travels abroad with a Canadian  
25 passport.

1 MS GIRVAN: Yes.

2 MS EDWARDH: So that while he or  
3 she may have two nationalities, they have adopted  
4 and moved through the world as a Canadian citizen.  
5 So I'm going to call that the dominant  
6 nationality.

7 MS GIRVAN: You can call it that.

8 MS EDWARDH: Just for want of a  
9 better term.

10 MS GIRVAN: Sure.

11 MS EDWARDH: In your dealings of  
12 provision of consular services in the U.S., have  
13 you found them insistent that dual nationals have  
14 both nationalities treated equally, or do they  
15 recognize and respect the idea that a person may  
16 have a dominant nationality?

17 MS GIRVAN: I can't answer that  
18 question. I know that if I go as the Canadian  
19 consulate, they recognize the Canadian  
20 citizenship. Do you see what I mean?

21 MS EDWARDH: Try that again, I'm  
22 sorry.

23 MS GIRVAN: Well, I can think of  
24 one case in which I had a detained Canadian who  
25 was Swiss and Canadian, and both the Swiss consul



1 and the Canadian consul were recognized and  
2 visited the detained Canadian.

3 So I don't think that the country  
4 was necessarily seeing one as more important than  
5 the other. What I did was to call the Swiss and  
6 we agreed what we were doing.

7 MS EDWARDH: Certainly there are  
8 cases where there are dual nationals who want  
9 nothing to do with the second country of which  
10 they hold citizenship?

11 MS GIRVAN: I'm sure that is true.

12 MS EDWARDH: That would certainly  
13 be the case for people who have come to Canada and  
14 been granted political asylum. They may come from  
15 a country like Iran or from Egypt and they may not  
16 want to have that claim upon them that they are  
17 citizens of those countries. They want to be  
18 treated as a Canadian.

19 MS GIRVAN: Yes.

20 MS EDWARDH: And my question is  
21 quite simple. In those circumstances, have you  
22 found the Americans respectful of the Canadian  
23 claim to citizenship?

24 MS GIRVAN: I can only say that I  
25 have always found the Americans respectful of

1 Canadian citizenship, and I have dealt with  
2 hundreds of dual citizens.

3 MS EDWARDH: And that claim of  
4 Canadian citizenship sometimes has some  
5 components. One is the person is usually  
6 travelling on a Canadian passport?

7 MS GIRVAN: That isn't a  
8 requirement, but it makes it much easier for me to  
9 be recognized.

10 MS EDWARDH: They request Canadian  
11 consular assistance; correct?

12 MS GIRVAN: As a precursor to be  
13 considered?

14 MS EDWARDH: To have you  
15 recognized.

16 MS GIRVAN: No, they don't have to  
17 have requested it.

18 MS EDWARDH: All right. So they  
19 have a Canadian passport. They are travelling on  
20 a Canadian passport and it's pretty clear what  
21 their residency is usually. They are resident in  
22 Canada often.

23 MS GIRVAN: I just would mention  
24 that many, many Canadians in the United States do  
25 not have Canadian passports. They are travelling

1 with a driver's licence or other document --

2 MS EDWARDH: Residency becomes a  
3 surrogate in some ways?

4 MS GIRVAN: Residency --

5 MS EDWARDH: Well, I'm sorry.

6 MS GIRVAN: Sorry.

7 MS EDWARDH: So they have a  
8 driver's licence which connects them to Canada.

9 MS GIRVAN: Yes, they are taken to  
10 be Canadian.

11 MS EDWARDH: They are taken to be  
12 Canadian because one or both of the two prongs are  
13 there: passport and/or residence?

14 MS GIRVAN: I think -- it doesn't  
15 even have to be a resident, remember?

16 MS EDWARDH: No, I know it doesn't  
17 have to be. But that makes it very easy to assert  
18 the claim that this is a Canadian.

19 MS GIRVAN: What makes it easy to  
20 assert that a person is a Canadian is proof of  
21 Canadian citizenship, and I obtain proof of  
22 Canadian citizenship.

23 MS EDWARDH: You obtain that?

24 MS GIRVAN: I ask the family or  
25 ask for proof of Canadian citizenship.

1 MS EDWARDH: I'm trying to flip it  
2 into the recognition of the right of Canada to  
3 provide consular services by the American  
4 authorities.

5 If a person has a Canadian  
6 passport and/or is travelling with a driver's  
7 licence but is resident in Canada, I'm going to  
8 suggest to you that you have never had an  
9 experience where their claim to Canadian consular  
10 service has been rejected?

11 MS GIRVAN: Right. In fact, I  
12 have never had a claim rejected by the United  
13 States to recognize a Canadian.

14 MS EDWARDH: I don't know whether  
15 it's convenient, but I want to take you to another  
16 area, and it relates to some of your observations  
17 and experience with the Metropolitan Detention  
18 Centre.

19 Mr. Commissioner, I have provided  
20 references to others.

21 You may or may not be familiar  
22 with this, but I am going to just ask you to  
23 comment on some of the conclusions.

24 THE COMMISSIONER: Thank you.

25 MS EDWARDH: The Office of the

1 Inspector General --

2 MS GIRVAN: Thank you.

3 MS EDWARDH: Could I ask that this  
4 be marked as the next exhibit?

5 THE COMMISSIONER: Sure. Next  
6 public exhibit will be -- what number is it?  
7 P-61.

8 EXHIBIT NO. P-64: Document  
9 entitled "The September 11  
10 Detainees: A Review of the  
11 Treatment of Aliens Held on  
12 Immigration Charges in  
13 Connection with the  
14 Investigation of the  
15 September 11 Attacks"

16 THE COMMISSIONER: It's a couple  
17 of minutes to one o'clock. Do you want to start  
18 on that now or should we break?

19 MS EDWARDH: It's probably an  
20 opportune time to break.

21 THE COMMISSIONER: Does 2:15 suit  
22 everyone then?

23 We will return at 2:15.

24 --- Upon recessing at 12:58 p.m. /

25 Suspension à 12 h 58

1 --- Upon resuming at 2:15 p.m. /

2 Reprise à 14 h 15

3 THE REGISTRAR: Please be seated.

4 THE COMMISSIONER: Thank you very  
5 much, Mr. Commissioner.

6 MS EDWARDH: Thank you very much,  
7 Mr. Commissioner.

8 Ms Girvan, I would like to go back  
9 again to the document you have before you. Of  
10 course, we can start with the obvious: it is a  
11 document produced in April 2003, which is after  
12 the events, but it does relate to an investigation  
13 conducted by the Office of the Inspector General  
14 of the Department of Justice in the period leading  
15 up to August 2002, from 9/11 to 2002.

16 Have you ever had occasion to look  
17 at this report as part of your duties?

18 MS GIRVAN: No, I saw it only the  
19 other day.

20 MS EDWARDH: Okay. I would like  
21 to just confirm some of the Inspector General's  
22 observations, and the purpose of doing so is to  
23 ask you whether, in your dealings with MDC, you  
24 had had an observation as a consular officer to  
25 make the same kinds of statements or conclusions

1           about the 9th floor of DMC?

2                           MS GIRVAN:   Okay.

3                           MS EDWARDH:   Let me just start  
4           with the Inspector General indicates that the  
5           community of detainees were generally aliens on  
6           the 9th floor who were being detained with respect  
7           to allegations by INS.

8                           Given your knowledge of what was  
9           going on on the 9th floor, does that conform with  
10          your recollection?

11                          MS GIRVAN:   I only saw three  
12          people on the 9th floor, so I don't know what the  
13          other people were.

14                          MS EDWARDH:   Fair enough.   But the  
15          three you saw fell within that category, did they  
16          not?

17                          MS GIRVAN:   Well, of course,  
18          because I only see people who are Canadian.

19                          MS EDWARDH:   No, I meant who were  
20          being detained in respect of INS allegations.

21                          MS GIRVAN:   I don't understand,  
22          sorry.   Maybe I'm mistaking something.

23                          MS EDWARDH:   They were facing  
24          either charges or civil proceedings in respect of  
25          some illegality involving their presence in the

1 United States?

2 MS GIRVAN: Correct. But you were  
3 asking, were they aliens, right?

4 MS EDWARDH: Right. And the three  
5 people you saw were Canadians so they were clearly  
6 aliens, right?

7 MS GIRVAN: Correct.

8 MS EDWARDH: Did you understand  
9 that the 9th floor was divided into two units?

10 MS GIRVAN: No.

11 MS EDWARDH: There was a unit  
12 called ADMAXSHU, which was an acronym, it was  
13 Administrative Maximum Special Housing Unit.

14 MS GIRVAN: No.

15 MS EDWARDH: Did you note any  
16 different treatment in respect of the individuals  
17 you dealt with who came from the 9th floor? Did  
18 any of them seem to have greater liberty than  
19 others?

20 MS GIRVAN: Between the people I  
21 saw on the 9th floor?

22 MS EDWARDH: Yes.

23 MS GIRVAN: The only difference  
24 was the fact that with Mr. Arar, I saw him at a  
25 table.



1 MS EDWARDH: That's the only  
2 difference you could identify?

3 MS GIRVAN: That's the only  
4 difference I noted.

5 MS EDWARDH: And one of the  
6 observations made -- if I can just invite you to  
7 turn to page 112 in the first paragraph under:

8 "INITIAL COMMUNICATIONS  
9 BLACKOUT AFTER SEPTEMBER 11"

10 I guess that just defines that  
11 there were two units, if I can just -- just say  
12 that.

13 But in all the institutions you  
14 had been in, in any of the consular services you  
15 had provided, would it be fair to say that the 9th  
16 floor of MDC was the most restrictive environment  
17 you had ever seen or as restrictive as any  
18 environment you ever saw?

19 MS GIRVAN: Yes, I have seen  
20 another as restrictive at MCC.

21 MS EDWARDH: MCC. And when we  
22 talk about restrictive, from you're dealings with  
23 the persons who you saw, were you aware -- and  
24 this is confirmed, I think, at pages 112 and 119  
25 of the document, if you want to look at it -- but

1           were you aware that there was a 23-hour lockdown  
2           policy in some areas of the 9th floor, or indeed a  
3           full lockdown policy? In other words, people were  
4           confined to their cells?

5                           MS GIRVAN: Yes, I would have been  
6           aware of that, as they are in most administrative  
7           segregations.

8                           MS EDWARDH: And was that your  
9           understanding of how Mr. Arar was being treated as  
10          well, or you would have no reason to believe  
11          otherwise?

12                          MS GIRVAN: I think I would have  
13          no reason to believe otherwise.

14                          MS EDWARDH: And when you -- one  
15          of the things that's commented on in the report,  
16          and I can take you, if you want to see it, and I  
17          just want to know whether you observed this kind  
18          of restriction, was that there were escort  
19          policies, so when the person was being delivered  
20          to you, they were always surrounded by a number of  
21          individuals?

22                          MS GIRVAN: They were accompanied,  
23          not necessarily surrounded, but they were brought  
24          to me by --

25                          MS EDWARDH: A group.

1 MS GIRVAN: Two or three or a  
2 couple -- a few people, yes.

3 MS EDWARDH: In some cases they  
4 were brought to you with three people close by and  
5 one person with a video camera?

6 MS GIRVAN: I don't remember that  
7 in the case of Mr. Arar, but I do remember it in  
8 one case.

9 MS EDWARDH: And I take it that  
10 the fact that you may not have observed it with  
11 Mr. Arar doesn't mean it wasn't happening --

12 MS GIRVAN: No.

13 MS EDWARDH: -- you may just have  
14 missed it.

15 MS GIRVAN: That's correct.

16 MS EDWARDH: That was one of the  
17 ways, one of the requirements for detainee  
18 movement on the 9th floor, that there would be a  
19 number of so-called handlers and somebody with a  
20 video camera? You knew that that was a general  
21 policy, didn't you?

22 MS GIRVAN: No.

23 MS EDWARDH: Okay. You do reflect  
24 in your notes a clear sense that you are well  
25 aware there is very limited access to the outside

1 world if you're on the 9th floor? For example,  
2 you know that there is a tight limit on the  
3 frequency of telephone calls?

4 MS GIRVAN: I know that I was  
5 pleased to see that Mr. Arar was being allowed  
6 calls early in his time there, whereas the earlier  
7 cases had taken much longer to have access to  
8 telephones.

9 MS EDWARDH: To any calls?

10 MS GIRVAN: Yes.

11 MS EDWARDH: But as a general rule  
12 you understood, for example, that social calls  
13 were few and far between?

14 MS GIRVAN: In the case of  
15 Mr. Arar, I knew that he had made a call almost  
16 every day from when I was notified that he was  
17 there.

18 MS EDWARDH: Well, you knew he  
19 made a legal call.

20 MS GIRVAN: And I knew he called  
21 his mother-in-law and I knew he called his  
22 brother, so I thought he was getting to make  
23 calls.

24 MS EDWARDH: Let's take it --  
25 that's two social calls.

1 MS GIRVAN: I don't know if --  
2 yes, perhaps they were social.

3 MS EDWARDH: Well, one to  
4 mother -- or mother-in-law --

5 MS GIRVAN: Yes.

6 MS EDWARDH: -- and one to  
7 brother. And indeed when that is drawn to your  
8 attention, you point out that the one to the  
9 mother-in-law was essentially used to get consular  
10 access.

11 MS GIRVAN: I used that to point  
12 out to them that they should make sure that --

13 MS EDWARDH: Make sure not to  
14 count that as a social call?

15 MS GIRVAN: In effect it was just  
16 a chance to say that.

17 MS EDWARDH: Well, surely,  
18 Ms Girvan, you're not there just to irritate but  
19 rather to advocate as well for access.

20 MS GIRVAN: No, what I was doing  
21 was -- I'm just saying that I didn't differentiate  
22 between what calls he was getting. I  
23 distinguished that they said -- I think she said  
24 to me, and we can look at the note perhaps, that  
25 he had -- let me just think for a second.

1 MS EDWARDH: We'll come to that  
2 note more directly --

3 MS GIRVAN: It was because I was  
4 trying to arrange for him to be able to call his  
5 wife.

6 MS EDWARDH: Yes.

7 MS GIRVAN: And she was saying  
8 that there were special rules applying to -- you  
9 know, you had to be arranged for every call. And  
10 then I said, well, he had had certain calls and  
11 that we had received approval from Ms Ward that he  
12 would be able to call his wife. And so I was  
13 drawing attention to that.

14 And then I said, and one of his  
15 calls -- I hope you're not counting that call, you  
16 know, because -- and I was using it, not to  
17 irritate. I took advantage of it to point out to  
18 her that we had not been notified. So that's  
19 really my point in that case.

20 MS EDWARDH: And to advocate for  
21 another call.

22 MS GIRVAN: To make sure that he  
23 could call his wife, yes.

24 MS EDWARDH: But you knew, for  
25 example, that MDC -- I'm going to suggest you

1           knew -- there were in some parts of that range  
2           limits on social calls that may be up to one a  
3           month?

4                           MS GIRVAN:  I didn't know that.

5                           MS EDWARDH:  Did you know anything  
6           about the limits on legal calls?

7                           MS GIRVAN:  No.

8                           MS EDWARDH:  And would it surprise  
9           you, for example, if I told you that the Inspector  
10          General found that the rule on the 9th floor was  
11          that you got one legal call a week?

12                          MS GIRVAN:  I was surprised when I  
13          read that.

14                          MS EDWARDH:  And you read that.  
15          And that was even the case if you were looking for  
16          a lawyer?

17                          MS GIRVAN:  I was, again,  
18          although, of course, in the earlier cases, I knew  
19          that they hadn't been allowed calls.

20                          MS EDWARDH:  Yes.

21                          MS GIRVAN:  And in Mr. Arar's case  
22          I knew that he hadn't been allowed to call, as far  
23          as I could tell, in the first few days that he was  
24          there.

25                          MS EDWARDH:  Yes, the first four

1 days.

2 MS GIRVAN: Yes.

3 MS EDWARDH: He had been unable to  
4 reach anyone.

5 MS GIRVAN: That's what I -- I  
6 mean, since his first call out was -- although I  
7 gathered it, although I don't always know -- you  
8 know, in this report it talked about sometimes you  
9 are allowed to try and then if you didn't get  
10 through --

11 MS EDWARDH: That was it.

12 MS GIRVAN: That was it, but -- so  
13 I don't know if he tried before.

14 MS EDWARDH: Were you aware, as  
15 the Inspector notes, that there were stationary  
16 cameras in every cell on the 9th floor?

17 MS GIRVAN: No.

18 MS EDWARDH: When you met with  
19 Mr. Arar, he came not only accompanied but I  
20 understand that a correctional officer or some  
21 officer stood immediately outside the area that  
22 you were interviewing Mr. Arar?

23 MS GIRVAN: There would have been  
24 perhaps one or two people in that corridor.

25 MS EDWARDH: And that would have



1           been a corridor that had -- that was open to, but  
2           for the bars, the room that you were in with the  
3           desk?

4                       MS GIRVAN:  Yes.  I couldn't  
5           remember -- I can't remember if there were any  
6           window -- or glass areas, but there was a barred  
7           section, you know.  So the table is in the middle  
8           of the cell area.

9                       MS EDWARDH:  Right.

10                      MS GIRVAN:  And he and I were  
11           sitting in the middle.

12                      MS EDWARDH:  But my point is  
13           simply this, that there was nothing about the  
14           arrangement which guaranteed to you, in the  
15           delivery of consular services, real privacy?

16                      MS GIRVAN:  No separate walls,  
17           yes.

18                      MS EDWARDH:  When you saw  
19           Mr. Arar, he was not only brought to you in  
20           shackles, both hand irons and shackles?

21                      MS GIRVAN:  Handcuffs and feet.

22                      MS EDWARDH:  And you can't, I take  
23           it, remember whether he had a chain linking his  
24           feet to his hands?  He may or may not have?

25                      MS GIRVAN:  I have seen them in

1 certain cases. I can't remember if he had them.

2 MS EDWARDH: Certainly he was not  
3 unshackled, nor were his hands taken from  
4 handcuffs, during the interview with you; he  
5 remained in restraints?

6 MS GIRVAN: I believe he did.

7 I can't be positive because  
8 sometimes they did, in these cases, release the  
9 hands, but I can't be absolutely positive.

10 MS EDWARDH: I'm going to suggest  
11 that you have no memory of his having free hands  
12 in order to communicate with you.

13 MS GIRVAN: He could hand me,  
14 though, the document, and he could have touched  
15 me.

16 MS EDWARDH: Certainly you can do  
17 that with handcuffs?

18 MS GIRVAN: Yes.

19 MS EDWARDH: Now, in the report of  
20 the inspector, there are discussions around  
21 allegations made by detainees, both with respect  
22 to physical and verbal abuse at the hands of the  
23 guards? Did you read those?

24 MS GIRVAN: I did read that.

25 MS EDWARDH: I take it you would

1 be alive to the fact -- and we might come back to  
2 it in a little more detail later -- that Mr. Arar  
3 had told his mother-in-law, at least with respect  
4 to the two days or the interview at the airport,  
5 that he had been badly treated?

6 MS GIRVAN: That he was not  
7 treated well --

8 MS EDWARDH: Not treated well.  
9 That sounds like "I'm not well treated, I'm badly  
10 treated."

11 MS GIRVAN: He had also confirmed  
12 that to me about the airport experience in person.

13 MS EDWARDH: And he had confirmed  
14 it in those words?

15 MS GIRVAN: No, he told me that he  
16 had been insulted.

17 MS EDWARDH: Right.

18 MS GIRVAN: And that they had  
19 been -- my sense is vulgar, you know, rude -- and  
20 that he had restrained himself and had remained  
21 calm.

22 MS EDWARDH: Did you inquire of  
23 him in respect of the period of time he had been  
24 at the airport, or that he had been at MDC up till  
25 you saw him, about other aspects of what I might

1 call basic treatment for a detainee? Did he  
2 remain, for example, shackled in his cell? Did  
3 you ask him that?

4 MS GIRVAN: I didn't ask him that.  
5 I understood they were shackled when being moved.

6 MS EDWARDH: Right. But I take it  
7 you wouldn't know whether he was even shackled in  
8 his cell?

9 MS GIRVAN: I don't remember  
10 whether I asked him that. I asked him about his  
11 conditions, how he was being treated, how he was.  
12 Was he well? Did he have --

13 You know, they are questions that  
14 I ask people when I see them.

15 MS EDWARDH: Now, it doesn't come  
16 out in your consular visit report that you would  
17 have conveyed to anyone in Ottawa or anyone else  
18 that a man was brought to you in shackles wearing  
19 a bright orange jumpsuit, none of the kind of  
20 hostile conditions of confinement are evident in  
21 your consular note. Why is that --

22 MS GIRVAN: They are definitely  
23 reported directly to Ottawa immediately on my  
24 return. Whether they're written down, they're  
25 directly communicated, and my office in Ottawa is

1 familiar with the reference to the earlier two  
2 cases and they know very well what the  
3 circumstances are and what the retention system  
4 is.

5 MS EDWARDH: So although it's  
6 not --

7 MS GIRVAN: That's why -- sorry.  
8 That's why they refer -- Nancy Collins refers,  
9 almost from the beginning, to the "X" case.

10 MS EDWARDH: Right.

11 So I take it then your best  
12 recollection is, because of the nature of the  
13 confinement, you would most probably have come  
14 back and reported on the telephone to  
15 Ms Collins --

16 MS GIRVAN: Yes, to all of the  
17 officials and to my own boss.

18 MS EDWARDH: Because those are  
19 considered to be extreme conditions of  
20 confinement?

21 MS GIRVAN: Yes. Well, they are  
22 both -- I guess they signify a very serious case  
23 and a possible terrorist case to me.

24 MS EDWARDH: Right.

25 But from the perspective of

1 consular access, on one side of the coin it  
2 signifies a serious case, potentially a terrorist  
3 investigation or case. On the other side it  
4 engages another set of duties you have in  
5 delivering consular services.

6 You have a duty, do you not, to  
7 ensure that a person is detained in circumstances  
8 where they meet minimum international standards of  
9 detention?

10 MS GIRVAN: My duty is to make  
11 sure that Canadians are being treated as other  
12 Americans are or, you know, they're not being  
13 treated differently because they're Canadians.

14 MS EDWARDH: Yes.

15 MS GIRVAN: That's true.

16 MS EDWARDH: That's the first part  
17 of it. And don't you also have a duty to ensure  
18 that the detention of the person does not fall  
19 below international minimum standards for  
20 detainees?

21 MS GIRVAN: I think that might be  
22 a general rule. I can only judge it what I'm told  
23 by the person.

24 MS EDWARDH: Right. But that's  
25 part of your job in delivering consular services,

1 is to look at that process. How is this person  
2 being treated?

3 MS GIRVAN: Yes, how they're being  
4 treated.

5 MS EDWARDH: Now, one of the  
6 observations made by the Inspector General about  
7 endemic problems on the 9th floor is persons on  
8 the 9th floor are not being given appropriate  
9 hygiene supplies. Did you note that observation  
10 in a timely way?

11 Well, he says that at page 155 in  
12 the report, and if you want to take a look, that  
13 some of the individuals -- it's at the very  
14 bottom. Take a look at his conclusion.

15 MS GIRVAN: Mm-hmm.

16 MS EDWARDH: One of the complaints  
17 is that two of the group of 11 detainees were not  
18 ever given towels or soap for the first month.  
19 Others stated they were deprived of hygiene items.

20 So it was a problem.

21 MS GIRVAN: Mm-hmm.

22 MS EDWARDH: That was also the  
23 case with Mr. Arar. It wasn't because he didn't  
24 have any money to buy at the commissary, he was  
25 supposed to be issued basic hygiene items, like a

1 toothbrush and toothpaste.

2 MS GIRVAN: That's right. That's  
3 why I raised that with the warden immediately the  
4 following day.

5 MS EDWARDH: And when you raised  
6 it, he's been in custody for --

7 MS GIRVAN: Four days?

8 MS EDWARDH: Well, from the 26th  
9 to the 3rd, without a toothbrush or toothpaste.

10 MS GIRVAN: That's correct.

11 MS EDWARDH: Now, there's another  
12 interesting thing you do. You ask the warden to  
13 please give Mr. Arar the rules of the 9th floor,  
14 and I take it you were aware there was a handbook  
15 that was given to inmates on the 9th floor, or  
16 detainees on the 9th floor?

17 MS GIRVAN: I was aware -- there  
18 is generally a handbook in most institutions, but  
19 Mr. Arar personally told me that he was learning  
20 the rules as he bumped into them, and therefore he  
21 didn't have any way of knowing what was coming up.  
22 He was having to learn each thing as he went  
23 along. And so I asked that he be given the rules,  
24 and that's when the warden's assistant said she  
25 would make sure he got the handbook.



1 MS EDWARDH: Right.

2 MS GIRVAN: So I didn't really  
3 think of a handbook, but at least I thought of the  
4 rules.

5 MS EDWARDH: A couple of pages, or  
6 whatever it was.

7 And would it surprise you to learn  
8 that one of the conclusions of the Inspector was  
9 that while the detainees were supposed to be given  
10 that handbook upon entrance into the facility,  
11 indeed while they may have got it, it was promptly  
12 removed because it was viewed as a security  
13 problem.

14 MS GIRVAN: I would be surprised,  
15 of course, it doesn't seem to be a security  
16 problem.

17 MS EDWARDH: No. And that's  
18 discussed, Mr. Commissioner, at page 162.

19 So I just want to then review a  
20 couple of observations.

21 Basically, you knew about the  
22 conditions of confinement at MDC 9th floor before  
23 Mr. Arar ever walked into your life?

24 MS GIRVAN: I didn't know what's  
25 in this report.

1 MS EDWARDH: But you knew many of  
2 the features?

3 MS GIRVAN: I knew the ones we've  
4 discussed.

5 MS EDWARDH: Right. And so your  
6 dealings with the 9th floor were principally based  
7 on Mr. Y and Mr. X. Was there a third person,  
8 another Canadian, as well?

9 MS GIRVAN: On that floor --

10 MS EDWARDH: Yes.

11 MS GIRVAN: -- at that time?

12 MS EDWARDH: No, in that, well, I  
13 guess, 12 months post 9/11?

14 MS GIRVAN: I can't remember. I  
15 have another -- I had another person in another  
16 prison in another -- in a secure zone as well.

17 MS EDWARDH: That's MCC?

18 MS GIRVAN: Yes.

19 MS EDWARDH: That's the same kind  
20 of facility in New Jersey?

21 MS GIRVAN: No --

22 MS EDWARDH: No, I'm sorry.

23 MS GIRVAN: -- it's not in New  
24 Jersey, it's in New York City, in Manhattan, and  
25 it is another -- a terrorist suspect.

1 MS EDWARDH: And are the  
2 conditions of confinement with respect to that  
3 person, were they the same as what you saw on the  
4 9th floor?

5 MS GIRVAN: They do not wear  
6 orange jump suits, but they are similarly  
7 restricted to 23 hours in their cells with one  
8 hour for exercise.

9 MS EDWARDH: And they're shackled  
10 when they leave their cells, et cetera, et cetera.

11 MS GIRVAN: Correct, and visits  
12 are, in fact, no contact through a cell wall.

13 MS EDWARDH: Now, there is a  
14 discussion which you may have looked at in this  
15 report about obtaining consular access.

16 MS GIRVAN: Yes, I did.

17 MS EDWARDH: Did you note that  
18 discussion?

19 MS GIRVAN: Yes, I did.

20 MS EDWARDH: And at least the  
21 Inspector General from the Department of Justice  
22 concludes at page 141, at the top of 141, that the  
23 INS regulations -- do you see that?

24 MS GIRVAN: Mm-hmm.

25 MS EDWARDH:

1                    "...specifically provide that  
2                    an alien detained by the INS  
3                    "shall be notified that he or  
4                    she may communicate with the  
5                    consular or diplomatic  
6                    officers of the country of  
7                    his or her nationality in the  
8                    United States."

9                    And the author concludes:

10                    "Therefore, the INS was  
11                    responsible for informing  
12                    September 11 detainees of  
13                    their rights to contact their  
14                    consular representatives,  
15                    even for those detainees who  
16                    were first held at BOP..."

17                    That's Bureau of Prisons.

18                    "...facilities like the MDC."

19                    And they talk about the form and  
20                    then the observation that in the MDC files, a very  
21                    small or 25 percent of the detainees had the form.

22                    Now, I take it that it is fair to  
23                    say, that if this is correct that INS has the duty  
24                    under its regulations, we know that INS did inform  
25                    Mr. Arar -- at least we believe that to be the

1 case?

2 MS GIRVAN: That he did inform --

3 MS EDWARDH: Mr. Arar that he had  
4 a right of consular access.

5 MS GIRVAN: They asked him, I  
6 believe, if he wanted consular access when he was  
7 at the airport.

8 MS EDWARDH: And he said yes and  
9 he signed --

10 MS GIRVAN: That's correct.

11 MS EDWARDH: -- a form.

12 MS GIRVAN: That's correct.

13 That's what I was told.

14 MS EDWARDH: Yes. We have no  
15 reason to think that that's not the case.

16 We also, I think, know that the  
17 corresponding duty to facilitate communication  
18 with consular officials -- you never heard  
19 anything from INS at all that Mr. Arar wished to  
20 speak to you?

21 MS GIRVAN: That's correct.

22 MS EDWARDH: Would it be fair for  
23 the commissioner to conclude that, in general,  
24 your observation with respect to the detainees you  
25 saw, that it would be fair to say that MDC and INS

1 failed to discharge their duties under the Vienna  
2 Convention by notifying consular officials?

3 MS GIRVAN: I'm a little  
4 uncomfortable speaking to the United States duty  
5 under the Convention because of just the time  
6 limits.

7 I think that becomes a legal  
8 question. I think maybe you have to ask the legal  
9 people whether they failed.

10 MS EDWARDH: Certainly, even  
11 though some of the detainees you dealt with were  
12 there weeks and months, the information about  
13 their detention never came from INS?

14 MS GIRVAN: That's correct.

15 MS EDWARDH: Now, I want to deal  
16 with the index of concern and suspicion that you  
17 must have had. You realize -- and if you want to  
18 look at the specific documents, we can go there --  
19 you realize on October 1 that Mr. Arar is detained  
20 in MDC?

21 MS GIRVAN: Correct.

22 MS EDWARDH: And so you, as the  
23 consular representative, make a phone call to INS  
24 JFK to inquire if he was detained?

25 Take a look at tab 3.

1 MS GIRVAN: I need the documents,  
2 please.

3 MS EDWARDH: Oh, I'm sorry.  
4 Forgive me. We thought you would have memorized  
5 them all by now.

6 --- Laughter / Rires

7 MS GIRVAN: Which tab are we at?

8 MS EDWARDH: Tab 3. And it's  
9 actually your colleague, Madame LeFloch, and I  
10 assume you would be alive to this -- I'm sorry,  
11 this is September 30.

12 MS GIRVAN: I don't yet know that  
13 Mr. Arar is at MDC.

14 MS EDWARDH: Okay.

15 MS GIRVAN: I don't actually know  
16 that he's arrested.

17 MS EDWARDH: Right. So you leave  
18 your call with JFK INS. My purpose in asking the  
19 question, is this an office or entity that you  
20 have dealt with frequently?

21 MS GIRVAN: I've dealt with them  
22 on other occasions, yes.

23 MS EDWARDH: I take it, as I  
24 recall your evidence yesterday, in placing that  
25 call I take it you were very comfortable in the

1           expectation it would be returned?

2                           MS GIRVAN:  Yes.

3                           MS EDWARDH:  You assumed it would  
4           be?

5                           MS GIRVAN:  Yes.  We might  
6           sometimes have to call twice.  They're a very busy  
7           office.

8                           MS EDWARDH:  Of course.

9                           MS GIRVAN:  But they would  
10          normally get back to us at some point.

11                          MS EDWARDH:  Now, did INS JFK ever  
12          return your call?

13                          MS GIRVAN:  They didn't return our  
14          call that day, and the following day, two calls  
15          that day, I believe.  And the following day, of  
16          course, late in the morning, one of the other INS  
17          officials undertakes to make the third call to get  
18          the information.

19                          MS EDWARDH:  I want to take it one  
20          step at a time.  The other INS official is not out  
21          of JFK.

22                          MS GIRVAN:  The one who calls JFK,  
23          though, he calls JFK and gets the information from  
24          JFK.

25                          MS EDWARDH:  Okay.  Help me follow



1 through with that.

2 MS GIRVAN: Sure.

3 MS EDWARDH: In tab 3 you have the  
4 call by someone in your office asking if he had  
5 been detained?

6 MS GIRVAN: That's right.

7 MS EDWARDH: And then, if we go  
8 over --

9 MS GIRVAN: She leaves a detailed  
10 message at that time.

11 MS EDWARDH: Yes?

12 MS GIRVAN: And I understand she  
13 also tried again later in the day, but couldn't  
14 get anyone then.

15 MS EDWARDH: And there's no record  
16 of that second call?

17 MS GIRVAN: No, not in writing,  
18 no.

19 MS EDWARDH: How would -- I mean,  
20 it's a long time since then. How would you be in  
21 a position to recall that two telephone calls were  
22 made that day?

23 MS GIRVAN: At the time, we  
24 discussed -- I discussed this with my assistant,  
25 some point afterwards, and she remembered calling

1           again later in the day and not getting anyone  
2           there either.

3                           MS EDWARDH: All right. So to the  
4           best of your recollection, two calls are made.  
5           And then we go over to October 1.

6                           MS GIRVAN: Right.

7                           MS EDWARDH: And now there is a  
8           call at 9:30, it's tab 4, at 9:30 in the morning,  
9           and you do have information from the family that  
10          Mr. Arar says he's at MDC.

11                          MS GIRVAN: Sorry, where does it  
12          say 9:30 in the morning?

13                          MR. BAXTER: Which tab is that,  
14          please?

15                          MS EDWARDH: Tab 4.

16                          MS GIRVAN: Where does it say 9:30  
17          in the morning?

18                          MR. BAXTER: That's at Tunis.

19                          MS EDWARDH: I'm sorry. I'm  
20          reading this incorrectly. Everybody has an  
21          advantage. They've --

22                          If you look at tab 4, when would  
23          you have gotten this document?

24                          MS GIRVAN: 4:04 is four in the  
25          morning, so that's when that message would have

1           been put into CAMANT and I would have come in  
2           later.

3                           MS EDWARDH:   Are you looking at  
4           CAMANT note number 8?

5                           MS GIRVAN:   No, I'm looking at  
6           CAMANT note number 4 at tab 4.

7                           MS EDWARDH:   If you look at tab 8?

8                           MS GIRVAN:   Tab 8? I'm looking at  
9           note 8.

10                          MS EDWARDH:   And what tab --

11                          MS GIRVAN:   That's at 9:31.

12                          MS EDWARDH:   9:31. So this would  
13           be 9:31 your time in New York?

14                          MS GIRVAN:   Yes. Actually the  
15           time is in Ottawa, but it's the same time in New  
16           York.

17           --- Laughter / Rires

18                          MS GIRVAN:   Just so you know.

19                          MS EDWARDH:   So on October the 1  
20           at 9:31, you receive information, correct, that  
21           Mr. Arar says he's in MDC. Is that fair?

22                          MS GIRVAN:   Or sometime very  
23           shortly thereafter, because when I read it --

24                          MS EDWARDH:   Of course.

25                          MS GIRVAN:   Yes.

1 MS EDWARDH: Now --

2 MS GIRVAN: I take action fairly  
3 quickly, so we must have read it within the 20  
4 minutes.

5 MS EDWARDH: Okay.

6 And am I correct that that time,  
7 on all of the CAMANT notes, there's always a date  
8 and then there is a 24-hour clock time, is that  
9 always Ottawa time?

10 MS GIRVAN: Yes, it is.

11 MS EDWARDH: All right. Then if  
12 we go to tab 9, and now we're dealing with the  
13 same day, and we're just a few minutes later.  
14 Someone has made a confirmation that Mr. Arar is  
15 at MDC --

16 MS GIRVAN: That's correct.

17 MS EDWARDH: And given you the  
18 inmate number and says they are working on finding  
19 out what the charges are?

20 MS GIRVAN: That's my colleague,  
21 Ms LeFloch, yes.

22 MS EDWARDH: Who is CPO?

23 MS GIRVAN: She's the consular  
24 program officer. She is my number 2.

25 MS EDWARDH: So she would have got

1           this information from MDC?

2                       MS GIRVAN:  I believe she got it  
3           from MDC by calling MDC, but there is another -- I  
4           think that's the case, she had called MDC, you  
5           know, and asked them for it.  There is also --  
6           there is a website you can check as well, but I  
7           believe she just called MDC.

8                       MS EDWARDH:  Certainly, it's my  
9           understanding that the website that might be a  
10          locater for federal detainees never included  
11          anybody that was on the 9th floor.

12                      MS GIRVAN:  That's correct.  That  
13          was certainly in the past.  I don't know whether  
14          after this report whether things were changed.

15                      MS EDWARDH:  Well, this report  
16          comes out in 2003.

17                      MS GIRVAN:  Yes, but it refers  
18          to --

19                      MS EDWARDH:  The investigation is  
20          the year before, but the final recommendations in  
21          the report --

22                      MS GIRVAN:  I see.  So you're  
23          thinking they might not have changed things in the  
24          meantime?

25                      MS EDWARDH:  Did you have any

1 reason to believe that there was an easily  
2 locatable computerized index that you could access  
3 for maximum security facilities that carry --

4 MS GIRVAN: We often checked, just  
5 in case, and often they weren't up to date even on  
6 average cases.

7 MS EDWARDH: But your experience  
8 was, was it not, that 9th floor inmates weren't  
9 included in that list?

10 MS GIRVAN: To tell you the truth,  
11 I don't think we used the list in the first cases  
12 anyway, we went straight to -- when we found out  
13 about them, they were at MDC already.

14 MS EDWARDH: All right.

15 MS GIRVAN: So I didn't have that  
16 experience.

17 MS EDWARDH: So we're now at, if I  
18 can just ask you to turn over --

19 MS GIRVAN: Turn over?

20 MS EDWARDH: Yes, to tab 10.

21 MS GIRVAN: Tab 10.

22 MS EDWARDH: This is the document  
23 that captures the anxieties around Mr. Arar's  
24 brother phoning you?

25 MS GIRVAN: He didn't phoned me.

1 MS EDWARDH: I'm sorry, phoning  
2 somebody --

3 MS GIRVAN: Phoning Nancy Collins  
4 in Ottawa --

5 MS EDWARDH: Right.

6 MS GIRVAN: -- the desk officer.

7 MS EDWARDH: And she promptly  
8 gives you the information. So we're just at noon  
9 now, correct, 12:17?

10 MS GIRVAN: I said he called this  
11 morning so...

12 MS EDWARDH: Yes, but when it says  
13 12:17, isn't that the time that this would be  
14 entered into --

15 MS GIRVAN: It's when it's  
16 entered. It doesn't mean when it took place, the  
17 call.

18 MS EDWARDH: No, of course. He  
19 calls in the morning, it's entered, and in real  
20 time it's sitting on your desk.

21 MS GIRVAN: Yes.

22 MS EDWARDH: So at 12:17 you know,  
23 or someone in your office would know, or  
24 reasonably thereafter you would know, that there  
25 is a concern that Mr. Arar will be deported to

1 Syria?

2 MS GIRVAN: I would say that at  
3 some point -- I just have to point out to you that  
4 CAMANT is not like SIGNET. It doesn't beep at you  
5 or tell you that there's any message.

6 So I know that in that day, not  
7 only is it the Monday -- I think it's the Monday,  
8 isn't it? No, it's the Tuesday now. We're the  
9 Tuesday? Yes.

10 MS EDWARDH: Yes.

11 MS GIRVAN: So in the morning,  
12 just so you know the process, I open in the  
13 morning and I read the notes.

14 MS EDWARDH: Right.

15 MS GIRVAN: And then, unless I get  
16 a phone call, I may not go back in and look for  
17 new messages. So I can't be sure of when I read  
18 it, but at some point after it was put in, I read  
19 it.

20 MS EDWARDH: Now, up to this time  
21 there's nothing to suggest that Mr. Arar is  
22 charged.

23 MS GIRVAN: He's just -- he's at  
24 the MDC.

25 MS EDWARDH: And the other piece



1 of information you have is that his brother is  
2 panicky about deportation to Syria?

3 MS GIRVAN: Well, now I get this  
4 information.

5 MS EDWARDH: Yes.

6 MS GIRVAN: Yes.

7 MS EDWARDH: So you then, if you  
8 go to a little later in the afternoon, which is  
9 tab 11, take a number of steps between kind of  
10 13:00 and 16:47, and there are two things I just  
11 want to review with you, because you've been  
12 through this.

13 You, or someone on your behalf,  
14 contacts INS New Jersey?

15 MS GIRVAN: Yes.

16 MS EDWARDH: And you're told  
17 there's no INS file?

18 MS GIRVAN: That's correct.

19 MS EDWARDH: Which logically would  
20 mean this is not a deportation case?

21 MS GIRVAN: Yes.

22 MS EDWARDH: He doesn't say this  
23 person is recorded on the computer as being  
24 charged criminally; that isn't said to you?

25 MS GIRVAN: No, they have no INS

1 file on him.

2 MS EDWARDH: Right. And then you  
3 are told that there are no deportation cases at  
4 MDC by this same person?

5 MS GIRVAN: Yes.

6 MS EDWARDH: And you know that's  
7 wrong.

8 MS GIRVAN: How do I know that's  
9 wrong?

10 MS EDWARDH: Well, look at your  
11 experience with Mr. X and, Mr. Y.

12 MS GIRVAN: But they weren't  
13 deportation cases as such. They were being  
14 investigated for terrorism by the FBI.

15 MS EDWARDH: Right. But they  
16 weren't charged criminally in all cases. They  
17 were people who had been picked up by INS and were  
18 languishing in a federal prison while they were  
19 investigated by the FBI?

20 MS GIRVAN: That's correct. They  
21 were not deportation cases.

22 MS EDWARDH: And then what  
23 happened to them when the FBI was finished with  
24 them?

25 MS GIRVAN: One of them was

1 charged --

2 MS EDWARDH: Yes.

3 MS GIRVAN: -- well, I don't know  
4 if I should be going into too many details of  
5 those cases, but --

6 MS EDWARDH: Leave aside the  
7 person that was charged. The others were  
8 deported, right?

9 MS GIRVAN: I'm only thinking of  
10 the two. Ultimately they were deported to Canada.

11 MS EDWARDH: We're going to come  
12 more specifically to those cases but one of them  
13 was not charged, simply held, investigated, and  
14 thrown across the border?

15 MS GIRVAN: He was handed over to  
16 the INS and moved to a deportation centre and then  
17 deported to Canada, that's correct.

18 MS EDWARDH: Yes.

19 But there were no charges in the  
20 ordinary sense?

21 MS GIRVAN: I think they were  
22 considered, but I think in the end he was just  
23 deported.

24 MS EDWARDH: Yes. So you know  
25 that at least the assertion that there are no

1 deportation cases at MDC isn't quite correct --

2 MS GIRVAN: I don't actually know  
3 that. You see, deportation, for example, in the  
4 case of at the airport, those are people who are  
5 being sort of sent away. That's one group.

6 MS EDWARDH: Yes.

7 MS GIRVAN: So I don't -- I never  
8 thought of "X" and "Y" as deportation cases, I  
9 thought of them as arrested under suspicion of  
10 terrorism and nobody led me to believe that they  
11 were, in fact, being held by INS at the time.

12 MS EDWARDH: Well, we can put it  
13 this way: there are a lot of deportation cases  
14 that are dealt with not at the airport?

15 MS GIRVAN: Perhaps -- yes.

16 MS EDWARDH: Okay.

17 MS GIRVAN: Of course, after  
18 they've done their sentences, they are all --

19 MS EDWARDH: No, leave aside  
20 sentences. Leave aside criminal or civil trials.

21 There are people who enter the  
22 country who are not arrested and detained at the  
23 airport who subsequently come into difficulty with  
24 Immigration.

25 MS GIRVAN: Correct.

1 MS EDWARDH: Are put through the  
2 immigration process and deported?

3 MS GIRVAN: Correct.

4 MS EDWARDH: Right.

5 MS GIRVAN: They're usually  
6 charged with an immigration violation.

7 MS EDWARDH: Yes, an immigration  
8 violation.

9 MS GIRVAN: So there is a charge.

10 MS EDWARDH: Yes, and we'll come  
11 to charges in a moment.

12 MS GIRVAN: Okay.

13 MS EDWARDH: Because you were told  
14 that Mr. Arar was facing an immigration violation.

15 MS GIRVAN: That's correct.

16 But I think the point that they  
17 made when they told me that it was not a  
18 deportation -- a place for deportation files is  
19 that there are specific places that INS uses for  
20 deportation cases and this man was not there in  
21 any of the deportation prisons or parts of  
22 prisons.

23 MS EDWARDH: We also know that  
24 none of those other institutions are maximum  
25 security.

1 MS GIRVAN: Or have a maximum  
2 security area? I don't actually know that, but --

3 MS EDWARDH: In any event, to say  
4 that there are no deportation cases at MDS --

5 MS GIRVAN: MDC.

6 MS EDWARDH: -- MDC, sorry, does  
7 not accord with the reality of somebody being  
8 detained, investigated, and deported when there  
9 are no criminal charges ever laid because they  
10 really are nothing more than INS deportation  
11 cases?

12 MS GIRVAN: What they told me was  
13 correct, that MDC is not a deportation prison or  
14 where they use -- where the INS uses for  
15 deportation cases --

16 MS EDWARDH: All right.

17 MS GIRVAN: As far as I know, it's  
18 correct.

19 MS EDWARDH: Okay. So now you  
20 have two pieces of information from INS, is that  
21 correct?

22 MS GIRVAN: Which two pieces?

23 MS EDWARDH: I'm sorry. One piece  
24 of information from INS. INS JFK has not returned  
25 your call --

1 MS GIRVAN: Mm-hmm.

2 MS EDWARDH: -- and INS New  
3 Jersey has given you this other snippet of  
4 information, which is really that there are no  
5 deportation cases at MDC and there's no  
6 deportation file. That's what you've got from  
7 them?

8 MS GIRVAN: Yes. Which one are we  
9 looking at, by the way?

10 MS EDWARDH: Tab 11.

11 MS GIRVAN: Tab 11. Thanks. Yes,  
12 we have contacted -- because we are concerned when  
13 the brother -- when we read the message from the  
14 brother saying that they're concerned, that  
15 they're worried about deportation, first of all, I  
16 would make the point that everyone who's a dual  
17 citizen probably worries about deportation --

18 MS EDWARDH: We're going to come  
19 to that.

20 MS GIRVAN: But we then -- the  
21 reason I want to mention that is that's why I  
22 then -- we then call INS and we call also the  
23 Public Relations. So we actually try to make the  
24 two calls to find out if he is in fact subject to  
25 a deportation --

1 MS EDWARDH: Let's talk about the  
2 second call to INS Public Affairs.

3 MS GIRVAN: Mm-hmm.

4 MS EDWARDH: You've phrased it  
5 quite gently, but I take it the real message you  
6 were getting is, "We will not discuss this case  
7 with you"?

8 MS GIRVAN: This is when the --  
9 just show me the part and I'll just remember.  
10 It's when we speak to the Public Affairs Office?

11 MS EDWARDH: Yes.

12 MS GIRVAN: And was again told  
13 there was no one there to discuss the case --

14 MS EDWARDH: Yes.

15 MS GIRVAN: -- which meant that  
16 they said didn't know about it --

17 MS EDWARDH: Yes. I'm  
18 interpreting what you said, but I gathered  
19 yesterday you were really saying that they were  
20 telling you: "We're not discussing this case with  
21 anyone."

22 MS GIRVAN: I think, in the first  
23 call, I don't think they know. I just think they  
24 just don't know anything about it.

25 MS EDWARDH: And the second?



1 MS GIRVAN: Then I ask -- I say to  
2 Lisiane, ask to speak to the superior officer,  
3 because, you know, these deportation officers,  
4 they are just kind of doing their files and they  
5 have lots and lots of cases. So I said ask to  
6 speak to the superior officer, and then we speak  
7 to the officer, who actually is very helpful and  
8 says that he will.

9 So it's not that they're refusing  
10 to talk to us, they don't have the information.  
11 He says he will undertake to call JFK, and to see  
12 if he can find out anything to tell us and he will  
13 call us back within 15 minutes.

14 MS EDWARDH: Well, let me just  
15 stop you, because it's obvious who the officer is  
16 in later notes, and I'm going to call him  
17 Inspector "A", correct?

18 MS GIRVAN: I need to know -- I'm  
19 very careful about mentioning the names of these  
20 people because I have a replacement consul in New  
21 York who deals with detained Canadians, so you can  
22 do that, but I will just keep on referring to him  
23 as the officer, if I may?

24 MS EDWARDH: All right. But  
25 Inspector "A" is not anyone other than -- he holds

1 an executive liaison position with INS. He's on  
2 the ground, senior INS person?

3 MS GIRVAN: I don't know if he's  
4 the absolute senior, but he's a superior officer  
5 to the first one I spoke to.

6 MS EDWARDH: Not just in Public  
7 Affairs. He's an on-the-ground operational  
8 officer, correct?

9 MS GIRVAN: I don't know.

10 MS EDWARDH: In any event --

11 MS GIRVAN: But I would assume  
12 that he's an INS officer. Of course.

13 MS EDWARDH: Okay. So he tells  
14 you that he will get back to you and he, by no  
15 stretch of the imagination, gives you the  
16 impression that there is no INS file. He's an INS  
17 officer saying the case is so serious that you've  
18 got to take it to the highest level, correct?

19 MS GIRVAN: That's correct.

20 MS EDWARDH: Nothing in that tells  
21 you anything other than there is probably an INS  
22 file, correct?

23 MS GIRVAN: No.

24 MS EDWARDH: Well, an INS  
25 inspector doesn't log into the FBI computer, does

1 he, or do you know that?

2 MS GIRVAN: I don't know,  
3 actually. But I would assume that it means that  
4 he's been arrested and that there's a very serious  
5 case. I have no idea who he's been arrested by.

6 MS EDWARDH: Certainly the INS  
7 inspector does not tell you this person is facing  
8 criminal charges?

9 MS GIRVAN: No. He doesn't tell  
10 me what the charges are.

11 MS EDWARDH: He doesn't tell you  
12 whether there are any charges. "Charges" in the  
13 sense that a person will be called into a  
14 courtroom and will have to defend themselves or be  
15 sentenced. He doesn't say that at all?

16 MS GIRVAN: He doesn't give me any  
17 details except that it's a serious case.

18 MR. DAVID: Yes. And -- so that's  
19 fair enough. You have no details except you now  
20 know that INS is telling you there's a serious  
21 case?

22 MS GIRVAN: Correct.

23 MS EDWARDH: So the person who  
24 said there is no INS file is clearly wrong?

25 MS GIRVAN: No. I'm sorry, but I

1 don't see that.

2 MS EDWARDH: All right. Why don't  
3 you see that?

4 MS GIRVAN: Because I am aware  
5 that when you speak to the airport, the airport  
6 knows whatever has gone on with the case.

7 If he was at the airport and was  
8 arrested and was taken to MDC, then presumably the  
9 airport know what happened to him.

10 I don't know what happened to him.  
11 And I am being told that there is no INS file and  
12 that he's not in a deportation centre.

13 What I'm now being told is that  
14 this officer has learned -- and I don't know that  
15 he learned it at JFK. He has learned that this is  
16 a very serious case, and that's all I know. I  
17 don't speculate as to what it means.

18 MS EDWARDH: All right. But you  
19 do know that the person speaking is a senior INS  
20 officer?

21 MS GIRVAN: I know he's a superior  
22 at that office.

23 MS EDWARDH: Yes.

24 MS GIRVAN: Correct. I don't know  
25 how senior he is, I'm sorry.

1 MS EDWARDH: The information that  
2 senior INS person gives is that you should take  
3 the matter to its highest level and have the  
4 ambassador talk to the Department of Justice;  
5 correct?

6 MS GIRVAN: Yes.

7 MS EDWARDH: You would have  
8 appreciated, unless this was fanciful advice, that  
9 this was not the kind of advice given in  
10 circumstances where one was facing serious  
11 criminal charges. The ambassador would have no  
12 role.

13 MS GIRVAN: I would make no such  
14 assumption.

15 MS EDWARDH: You would make no  
16 such assumption?

17 MS GIRVAN: I've never had anyone  
18 tell me you should have the ambassador call the  
19 Department of Justice, and we are talking about  
20 the Department of Justice.

21 MS EDWARDH: Yes.

22 MS GIRVAN: Therefore, it could be  
23 any charge under the Department of Justice. I  
24 don't think of what the charge is. I really don't  
25 know --

1 MS EDWARDH: Rather than -- I'm  
2 sorry.

3 MS GIRVAN: I don't know.

4 MS EDWARDH: You don't know what's  
5 going on, is your answer?

6 MS GIRVAN: Exactly.

7 MS EDWARDH: So you don't take  
8 this person literally at all because you would  
9 never have thought of contacting the ambassador  
10 and informing him?

11 MS GIRVAN: It's not a question of  
12 whether I would have thought of it. It's just  
13 that's not the way I report. So I would report to  
14 my boss and I would report to Ottawa.

15 MS EDWARDH: And it's clear you  
16 didn't report with the recommendation that this  
17 course of action be pursued?

18 MS GIRVAN: Why is that clear?

19 MS EDWARDH: You may have told  
20 about the conversation but you describe the  
21 meaning you attached to it, Ms Girvan, by saying  
22 you knew it was big, you knew it was national, so  
23 you called Nancy Collins. But there's nothing in  
24 your CAMANT note that says we strongly urge you to  
25 follow this course of action.

1 MS GIRVAN: I called Ottawa and  
2 did not discuss it with Nancy Collins, I discussed  
3 it with Helen Harris, who was the Director for  
4 Emergency Services. I, in fact, called the most  
5 important person in the department for consular  
6 affairs. I called Mr. Pardy.

7 I tried Nancy. I don't think -- I  
8 didn't reach her, but that's not on record. And  
9 then I called Mr. Pardy because he is the person  
10 that you go to with an urgent case --

11 MS EDWARDH: Was Mr. Pardy there?

12 MS GIRVAN: I don't have to make a  
13 recommendation to Mr. Pardy or Ms Harris.

14 No. Mr. Pardy was away.

15 MS EDWARDH: Yes. He is not in  
16 the city of Ottawa at that time.

17 MS GIRVAN: I'm not sure, but he's  
18 not in his office, and I'm referred to Helen  
19 Harris who is the director of emergency services.  
20 When I speak to the director of emergency  
21 services, I tell her exactly what has happened and  
22 I listen to her for her advice. She is the  
23 director in Ottawa, and we discuss what might  
24 happen.

25 MS EDWARDH: I take it that it's

1 fair to say, in reading these CAMANT notes, no one  
2 discusses following the advice of Inspector  
3 officer?

4 MS GIRVAN: We discussed Helen  
5 Harris would contact Washington. So I don't know  
6 whether -- how -- you know, who she spoke to in  
7 Washington, but she would be checking into the  
8 case and she would be looking at talking to  
9 Washington and we would all discuss together in  
10 the morning.

11 MS EDWARDH: You will agree with  
12 me, though, there is nothing in these notes -- and  
13 you have them in front of you and we have reviewed  
14 these first few days in detail -- that constitutes  
15 a recommendation that the proposed course of  
16 action urged by INS, the senior INS officer, is in  
17 fact undertaken?

18 MS GIRVAN: The actual action as  
19 suggested --

20 MS EDWARDH: Yes.

21 MS GIRVAN: I would think -- I  
22 haven't seen that. What they would do is  
23 consider -- you see, we are a department who deal  
24 with problematic cases all the time. Helen Harris  
25 is a director used to dealing with very serious



1 cases. She looks at what her options are, not  
2 necessarily exactly what the person has said but  
3 how we will take care of it.

4 So, for example, she discusses the  
5 possibility that we may not get information from  
6 MDC and that we may not learn, and therefore we  
7 should be perhaps considering a diplomatic note.

8 That is the proper means of going  
9 to the Department of State, in fact, not  
10 necessarily Justice. If we want to go to the top,  
11 that's the way we have to go. She knows that.

12 And she is going to discuss it  
13 with Washington because our consular office in  
14 Washington would know more of the lower level  
15 because, remember, it's a sort of fundamental rule  
16 that we try to make the connections at the lower  
17 levels when we can and raise them to the higher  
18 levels if we can't.

19 So I think that she is looking at  
20 all the options. But you might want to speak to  
21 Mr. Pardy on what happened --

22 MS EDWARDH: We will have the  
23 opportunity to do so.

24 MS GIRVAN: Yes.

25 MS EDWARDH: But my point is the

1 same. There is certainly nothing in any of the  
2 discussions noted back and forth between any of  
3 the parties that there was any serious  
4 consideration given to having the ambassador  
5 contact the Department of Justice?

6 MS GIRVAN: Yes, it wouldn't  
7 normally be the proper course.

8 MS EDWARDH: I see. And at the  
9 end of this day, what is preoccupying you and  
10 Ms Collins and Ms Harris, as I read these notes,  
11 is a very real concern about what are the charges?

12 MS GIRVAN: That's correct.

13 MS EDWARDH: And you make a plan  
14 to fax MDC that evening and ask what are the  
15 charges. And you do that.

16 MS GIRVAN: I've actually  
17 already -- yes, we have talked to them on the  
18 phone and sent a fax, you are correct.

19 MS EDWARDH: And we see your fax.

20 Of course, in reality at this  
21 point, you don't know whether there are any  
22 charges?

23 MS GIRVAN: No, though  
24 generally -- that's right. It can take time for  
25 charges.

1 MS EDWARDH: You don't know that  
2 they exist.

3 MS GIRVAN: Except that, yes, they  
4 have told us on the phone that they won't tell us  
5 the charges without a faxed request. So there is  
6 an assumption that there may be charges.

7 MS EDWARDH: You have to ask.

8 MS GIRVAN: You have to write.

9 MS EDWARDH: You have to write.  
10 And you do that.

11 And the next morning you get some  
12 information. Is that fair enough?

13 MS GIRVAN: Yes. Next morning  
14 the -- Miss Ward called me back.

15 MS EDWARDH: Tab 16.

16 MS GIRVAN: Tab 16?

17 MS EDWARDH: That might refresh  
18 your memory.

19 MS GIRVAN: She calls me back as a  
20 result of the fax.

21 MS EDWARDH: And you are told that  
22 it is a matter in respect of immigration  
23 violations?

24 MS GIRVAN: Yes.

25 MS EDWARDH: That may or may not

1 be a matter that is a subject of a charge, where  
2 you have a trial?

3 MS GIRVAN: He is being held for  
4 an immigration violation. That's what I know.

5 MS EDWARDH: Right. You don't  
6 know whether there are any charges?

7 MS GIRVAN: No.

8 MS EDWARDH: And as best I can  
9 determine, no one from INS, no one from MDC ever  
10 talks to you or tells you about charges?

11 MS GIRVAN: You are talking on the  
12 1st?

13 MS EDWARDH: Between then and  
14 Mr. Arar's deportation to Syria.

15 MS GIRVAN: Well, when I saw  
16 Mr. Arar.

17 MS EDWARDH: I'm being specific.  
18 I know he did, or he told you something.

19 No one from MDC, no one from INS  
20 ever told you Mr. Arar faced charges.

21 MS GIRVAN: I consider this to be  
22 a charge, an immigration violation. There's a  
23 charge in that she is not giving me any more  
24 details. She says you'll get the same run-around.  
25 I'm assuming they are using it as a bit of a

1 cover.

2 MS EDWARDH: A cover. Because you  
3 know from your experience that some immigration  
4 violations can lead to indictments and full trials  
5 in the United States and others are dealt with in  
6 an entirely different process. You can be in  
7 minor non-compliance in an immigration matter and  
8 end up deported but not be charged in the U.S.A.  
9 You can outstay your visa.

10 MS GIRVAN: And you get charged  
11 with illegal -- with overstaying your visa.

12 MS EDWARDH: You can be processed  
13 by indictment, under a real charge, or you can  
14 simply be put into an immigration hearing process  
15 and be determined to have overstayed your visa and  
16 be deported?

17 MS GIRVAN: I actually haven't had  
18 any experience with those cases, but that may be  
19 true.

20 MS EDWARDH: At this time, the  
21 concept of an immigration violation, you'll agree  
22 with me, is very vague?

23 We are talking about tab 16 --

24 MS GIRVAN: Yes.

25 MS EDWARDH: October 2nd, and

1 Ms Ward's communication to you, where she won't  
2 tell you anything but this vague description.

3 MS GIRVAN: It leads to my  
4 question below and that's when I decide that he is  
5 a terrorist suspect.

6 MS EDWARDH: Right.

7 MS GIRVAN: Because of the way she  
8 talks to me.

9 MS EDWARDH: But you are not told  
10 by her that he is charged?

11 MS GIRVAN: No.

12 MS EDWARDH: You believe he may  
13 be -- you are very suspicious that he may be under  
14 investigation in respect of terrorist matters?

15 MS GIRVAN: That's why I ask her:  
16 Is he in the special unit?

17 MS EDWARDH: Yes, of course.

18 MS GIRVAN: Exactly.

19 MS EDWARDH: When you see Mr. Arar  
20 and he gives you a document -- we can find it, if  
21 you want -- you are actually in the position to be  
22 at the table with him. He can hand you the  
23 document, and you have enough pieces of paper to  
24 be able to carefully write down the factual  
25 issues.

1 MS GIRVAN: Yes.

2 MS EDWARDH: And you do that.

3 MS GIRVAN: Yes.

4 MS EDWARDH: And you read the  
5 document.

6 MS GIRVAN: I write it.

7 MS EDWARDH: You read it and write  
8 it.

9 MS GIRVAN: That's right.

10 MR. BAXTER: It's at tab 31 for  
11 the witness' assistance.

12 MS EDWARDH: Feel free to look at  
13 it.

14 MS GIRVAN: I would like to.

15 MS EDWARDH: And you will agree  
16 with me that there is nothing in what you have  
17 written that indicates Mr. Arar is facing charges.  
18 It is classically a statement of inadmissibility  
19 to the United States under some unknown provision  
20 of the statute because you don't understand the  
21 reference. Fair enough?

22 MS GIRVAN: Yes, I've never  
23 actually seen a document like this before, so I'm  
24 looking at it. And I will tell you exactly what I  
25 thought, and that is that they are accusing him of

1 being a member of al-Qaeda, and that's what is the  
2 most striking element of the document that I note.

3 MS EDWARDH: You have seen  
4 instruments charging people; correct?  
5 Indictments?

6 MS GIRVAN: Not often, no.

7 MS EDWARDH: Ever?

8 MS GIRVAN: Not in the United  
9 States. The lawyer usually sees that.

10 MS EDWARDH: So I just want to  
11 confirm with you. You will agree with me, in  
12 reading what you have written, you have a clear  
13 statement that he is alleged to be inadmissible  
14 under the Immigration Act?

15 MS GIRVAN: Mm-hmm.

16 MS EDWARDH: There is nothing in  
17 that document that tells you he's charged.

18 MS GIRVAN: With a criminal  
19 offence?

20 MS EDWARDH: With a criminal or  
21 quasi-criminal offence. He is alleged to be  
22 inadmissible.

23 MS GIRVAN: Yes. My suggestion,  
24 because I haven't actually encountered this  
25 before, when I read it I think that it is a crime



1 to be a member of al-Qaeda.

2 MS EDWARDH: But that's not what  
3 it alleges. It says the factual allegations of  
4 inadmissibility.

5 MS GIRVAN: It says it is alleged  
6 that he's a member of al-Qaeda.

7 MS EDWARDH: But he's alleged to  
8 be inadmissible.

9 MS GIRVAN: That was less striking  
10 to me than the rest; but, yes.

11 MS EDWARDH: And he is  
12 inadmissible under a provision of the Immigration  
13 Act?

14 MS GIRVAN: Correct.

15 MS EDWARDH: And while you may  
16 have leapt to the conclusion he was charged, you  
17 will agree with me there's nothing in this  
18 document that says: "You are charged that on or  
19 about such-and-such a day you were a member of  
20 al-Qaeda."

21 MS GIRVAN: I would just say that  
22 it's not that I leapt to a conclusion, but in my  
23 experience people who are being investigated for  
24 terrorism are going to be investigated over time.  
25 Charges may not come up for months.

1                   In the case of the one man I've  
2                   been dealing with for over two years, as far as I  
3                   know, he was never charged but is still in prison  
4                   in the United States.

5                   So I'm sort of -- it's the Patriot  
6                   Act. I'm not very conscious of what can be done  
7                   under it but I know that it's very legal, you  
8                   know, and I assume he may be charged.

9                   MS EDWARDH: Really now, if we  
10                  backtrack, what I hear you saying, Ms Girvan, is  
11                  that in the circumstances of this allegation, even  
12                  though there's no reference to someone who is  
13                  charged, you assume there is an investigation  
14                  under way that may lead to charges?

15                 MS GIRVAN: I assume he may be  
16                 held for a long time, and that he is being  
17                 investigated by the FBI.

18                 MS EDWARDH: And that people who  
19                 are investigated over a lengthy period of time may  
20                 or may not end up being charged. Some of them may  
21                 be simply released and others of them may face  
22                 prosecution?

23                 MS GIRVAN: Yes.

24                 MS EDWARDH: And I would suppose  
25                 that with an NO3 it isn't entirely clear how long

1 the FBI will or will not want to investigate  
2 someone. It may be for a short period of time,  
3 because I suppose they could have made a mistake  
4 about a name, or it could be months and months?

5 MS GIRVAN: I mean -- I don't make  
6 assumptions. I'm very worried about this man --

7 MS EDWARDH: Well, with respect,  
8 you did make an assumption.

9 MS GIRVAN: What was that?

10 MS EDWARDH: The assumption you  
11 made was that he would be detained in the United  
12 States for a lengthy period of time under  
13 investigation, to be possibly charged?

14 MS GIRVAN: These are thoughts  
15 that I'm having, but my opinion doesn't really  
16 matter because what I have to do as a consul, and  
17 I think it's important for people to know that  
18 there are limitations to what I can do as a  
19 consul. I have to make sure that this man gets  
20 legal assistance. I am not a legal advisor and I  
21 am not required to interpret things legally.

22 So whatever I think, I think it's  
23 important. I think they are going to hold him  
24 because of my experience, but my main job right  
25 now is to get this information to Canada and to a

1 lawyer, if possible, and that's what I do.

2 MS EDWARDH: I take it, though,  
3 that while you saw and made a note of section 235C  
4 of the Immigration Act that's referred to, you did  
5 not return to the consul offices and say, "I'd  
6 like a consult with Legal. What is this?"

7 MS GIRVAN: No. I send it to  
8 Canada. You have to also appreciate that I do a  
9 huge number of things, but one of them is not to  
10 do the research into the legality of actions; it  
11 would be to refer it to Ottawa, because I have  
12 also got all the other things to do. I'm more a  
13 generalist, in a sense, than I am a specialist in  
14 those things.

15 So I would have said to Ottawa, as  
16 I did -- I immediately reported all of this  
17 information to them, and then I had taken  
18 instructions.

19 MS EDWARDH: But you didn't ask  
20 Ottawa -- although you told them what the section  
21 was and what the alleged facts setting out  
22 admissibility were, you do not ask for any  
23 assistance to give yourself guidance as to what  
24 course of action you are going to take?

25 MS GIRVAN: Yes, of course I did.

1 MS EDWARDH: And where do you do  
2 that?

3 MS GIRVAN: That's what I'm doing  
4 in reporting to Ottawa. That is my job. I report  
5 back to headquarters. I talk to the desk  
6 officers. I report and they advise me. They are  
7 waiting for this report. They have been waiting  
8 since I had arranged to go and see him.

9 I can't remember the minutes after  
10 that one, but I can remember after the others and  
11 many cases I come out, I report back. I'm fresh.  
12 I'm probably in my own self quite -- it's a very  
13 emotional thing when you interview someone in  
14 those conditions. You come out. You report back  
15 and let the people who are a little bit more  
16 distant think about what you have given them.  
17 Then you discuss it and you take action after  
18 that.

19 MS EDWARDH: Certainly as I look  
20 at the record, no one sends anyone section 235C of  
21 the Immigration Act. No one --

22 MS GIRVAN: It wouldn't show up  
23 here if they did, necessarily, would it?

24 MS EDWARDH: I don't know.

25 MS GIRVAN: My notes to my

1           correspondent, we would have to look and see what  
2           the responses back are.

3                       MS EDWARDH:  Yes, but you have a  
4           chance --

5                       MS GIRVAN:  I think much later on  
6           we see a section.

7                       MS EDWARDH:  Yes, you see a  
8           section, and my friend will correct me if I'm  
9           wrong.  But the statutory material in the file is  
10          sent much later by Mr. Steven Watt from the Centre  
11          for Constitutional Rights.

12                      MS GIRVAN:  Yes, when Mr. Pardy  
13          asks me to check --

14                      MS EDWARDH:  Yes, that's much  
15          later.  Mr. Arar is long gone by that time.

16                      MS GIRVAN:  That is because we  
17          don't expect him to be deported at the time that  
18          I'm calling.

19                      MS EDWARDH:  I appreciate that.  
20          But he is long gone by the time anyone is  
21          discussing the law; correct?

22                      MS GIRVAN:  I don't know what  
23          Ottawa is doing, but I don't have any information  
24          on the law at that point.

25                      MS EDWARDH:  I want to take you to

1 tab 44 for a moment.

2 Give me a moment.

3 And this is case note 39? Are we  
4 on the same page?

5 MS GIRVAN: Yes, it is.

6 MS EDWARDH: And this is your  
7 handwriting?

8 MS GIRVAN: Yes, it is. But it's  
9 later.

10 MS EDWARDH: Yes. I just want to  
11 understand your framework, because of course it  
12 would appear to me -- and this is now October the  
13 7th.

14 And you may have made those  
15 notes -- when would you think you made those  
16 notes?

17 MS GIRVAN: It could have been a  
18 year later. It could have been at any time.

19 MS EDWARDH: But it would be fair  
20 to say it reflects the understanding you had on  
21 October 7th. It reflects your understanding right  
22 through, if it took you a year to write them?

23 MS GIRVAN: Although I use a word  
24 there that I realize isn't correct. The  
25 presentence idea. It wasn't quite technically

1 correct. I thought about that later when I read  
2 it.

3 MS EDWARDH: Right. But when you  
4 wrote it, that's certainly the words that you  
5 wrote at the time?

6 MS GIRVAN: Yes, they are.

7 MS EDWARDH: And I'm going to  
8 suggest to you, Ms Girvan, that it shows a  
9 fundamental misapprehension of what's going on.  
10 You somehow think that there is an  
11 interview that is different from an adjudicative  
12 process.

13 MS GIRVAN: That's what I've been  
14 told, is that there will be an interview, not an  
15 adjudicative process.

16 MS EDWARDH: And that's why you  
17 use the kind of loose analogy of a presentence  
18 report. It is something that is done before you  
19 go to court. It isn't the court itself.

20 MS GIRVAN: That's correct.

21 MS EDWARDH: And so the model that  
22 you are working with, which is a preoccupation of  
23 knowing the charges, if you can get them; right?

24 And you will agree, you have  
25 testified, that you and your colleagues were



1           preoccupied with knowing the charges against  
2           Mr. Arar.

3                           MS GIRVAN:  It's just an automatic  
4           thing that we do.  We ask for the charges.

5                           MS EDWARDH:  And it's carried  
6           through, right through, to this perception of the  
7           interview which, in your mind, is a  
8           non-adjudicative process maybe that precedes some  
9           other court process; right?

10                          MS GIRVAN:  Yes, and I must add,  
11           though, that this is after the lawyer is involved  
12           and the lawyer tells me it's an interview.  The  
13           lawyer does not tell me that it's an adjudicative  
14           process, and the lawyer doesn't suggest any  
15           specific meaning to this.

16                          She says that the district  
17           director has asked to interview Mr. Arar that  
18           evening.  My thought at the time was I'm glad they  
19           have invited the lawyer.  The lawyer is the one  
20           who has been talking presumably with the district  
21           director, because when she calls me that morning  
22           she says she had a call from the district  
23           director.

24                          So I take the lawyer's advice as  
25           to what is going on.

1 MS EDWARDH: Right. Now, it's  
2 also clear -- and let's see if I can get you to  
3 agree -- that on October 7th Mr. Arar had no  
4 lawyer. He didn't have a settled relationship  
5 with counsel at best until October the 8th.

6 MS GIRVAN: I believe he had a  
7 lawyer on October 7th.

8 MS EDWARDH: I will take you  
9 specifically to the language you use in your later  
10 notes, but I think it's going to suggest just one  
11 thing, and you can respond to it, that Ms Oummih  
12 made it clear that her retainer was still  
13 conditional and it needed to be confirmed by the  
14 family and indeed the receipt of funds.

15 MS GIRVAN: She never spoke of  
16 funds to me.

17 MS EDWARDH: All right. It needed  
18 to be confirmed by the family?

19 MS GIRVAN: And she was phoning  
20 them immediately.

21 MS EDWARDH: Yes. But when she  
22 said that to you, "I need to have my retainer  
23 confirmed" --

24 MS GIRVAN: She didn't say that.  
25 She said -- I can't remember her words. She needs

1 agreement from the family and is in touch with  
2 them. And I receive a call almost -- you see, in  
3 the same message, if you read?

4 MS EDWARDH: Mm-hmm.

5 MS GIRVAN: I get a call very  
6 shortly thereafter from the friend of the family  
7 who says they are retaining Oummih and they are --  
8 and that's when he asks me if there will be  
9 consular representation. He tells me that she is  
10 being retained.

11 MS EDWARDH: I want to take you to  
12 another group of notes which suggests that there  
13 was a conflict and a lack of clarity about her  
14 retainer because she didn't receive the funds on  
15 the day she was expecting them. We'll come to it.

16 MS GIRVAN: Sure.

17 MS EDWARDH: Okay. But I want to  
18 just finish this other --

19 So your reference to the  
20 presentence report --

21 MS GIRVAN: October the 7th I  
22 believe that Oummih is retained.

23 MS EDWARDH: We'll come to that.  
24 I hear your evidence. So does the Commissioner.  
25 I want to point you to certain things that suggest

1 the contrary.

2 MS GIRVAN: Sure.

3 MS EDWARDH: In any event, when  
4 you look at tab 54.

5 MS GIRVAN: 54?

6 MS EDWARDH: I'm sorry, 44. It's  
7 abundantly clear, if you tack all of these  
8 concerns that you had about charges, that no one  
9 had told you that there were kind of the criminal  
10 charges. At best you knew there was an alleged  
11 immigration violation and a proposed interview  
12 that you didn't think was an adjudicative process?

13 MS GIRVAN: Correct.

14 MS EDWARDH: I want to go back to  
15 a document, if I could, at tab 647.

16 THE COMMISSIONER: Which volume is  
17 that?

18 MR. DAVID: Volume 7.

19 THE COMMISSIONER: Thank you.

20 MS EDWARDH: If I could have your  
21 indulgence?

22 Sorry, Mr. Commissioner, I may  
23 have the...

24 --- Pause

25 MS EDWARDH: I'm sorry, it's 687.

1 I'm getting dyslexic.

2 MR. DAVID: Volume 8.

3 MS GIRVAN: Thank you.

4 MS EDWARDH: This may be the wish  
5 being the father of the thought, but if you look  
6 at the first half of that page, it is an e-mail  
7 message from you, Ms Girvan; correct?

8 MS GIRVAN: Yes.

9 MS EDWARDH: Dated November 6th,  
10 2003, to Mr. Sigurdson, and it's one we've talked  
11 about today.

12 MS GIRVAN: Mm-hmm.

13 MS EDWARDH: But I'm interested in  
14 the second paragraph.

15 It seems to me that when you write  
16 and say:

17 "I just checked our notes,  
18 and think it is worth looking  
19 at the part where it speaks  
20 to our contact with INS. We  
21 may want the Minister's  
22 office to know that we were  
23 told that this was not a  
24 deportation case..."

25 Okay?

1 MS GIRVAN: Mm-hmm.

2 MS EDWARDH: "... and that MDC 9th  
3 floor does not hold  
4 deportation cases. We had no  
5 reason to suppose that the  
6 U.S. would deport him at all,  
7 much less to Syria, since he  
8 had been charged with crimes  
9 and was being held in the  
10 same prison.."

11 What you don't include in that  
12 note, Ms Girvan, is an accurate reflection that no  
13 one told you he was charged with crimes; correct?

14 You don't say that?

15 MS GIRVAN: Yes, that's correct.

16 MS EDWARDH: You don't, in fact,  
17 say that not only did INS tell you that it was not  
18 a deportation case and that MDC 9th floor doesn't  
19 hold deportation cases, but other INS senior  
20 officials told you that this was a case of great  
21 significance, very serious.

22 MS GIRVAN: They know that.

23 MS EDWARDH: Well, they know this  
24 too.

25 MS GIRVAN: This is just a note a

1 year later to Konrad to remind him. Konrad is  
2 very aware of all of the aspects of the case. But  
3 I don't see why I should repeat everything,  
4 though.

5 MS EDWARDH: I see. But what you  
6 leave out are matters which would indicate that  
7 INS had told you that this was a very serious case  
8 and also that the person who said that to you was  
9 an INS official?

10 MS GIRVAN: I'm addressing only  
11 the aspects that seemed to be -- that it's a  
12 deportation case.

13 MS EDWARDH: Right. Or it's not a  
14 deportation case.

15 MR. BAXTER: In fairness,  
16 Mr. Commissioner, if you read down the page, that  
17 very thought is captured there, about three  
18 paragraphs in, further down.

19 THE COMMISSIONER: What does the  
20 paragraph start with?

21 MR. BAXTER: "Also contacted".

22 MS GIRVAN: The seriousness is --  
23 in fact, it's in the same page. It's in bold  
24 writing down the page.

25 MS EDWARDH: And what is a

1 duplicate of the CAMANT note.

2 MS GIRVAN: Which is included in  
3 the message. So I did in fact draw that to the  
4 attention of Konrad.

5 MS EDWARDH: Am I correct in  
6 understanding that everything below the line that  
7 says October 2nd is a CAMANT note?

8 MS GIRVAN: That I pasted into my  
9 e-mail; correct.

10 MS EDWARDH: And up above are your  
11 written comments that you write in November of  
12 2003?

13 MS GIRVAN: Correct.

14 MS EDWARDH: So what we can agree  
15 to at this point, while pasting it in, is that you  
16 were never told that Mr. Arar had been charged  
17 with crimes by anyone?

18 MS GIRVAN: We had no reason to  
19 suppose -- I must say that I'm considering the  
20 al-Qaeda as a charge, so I'm speaking rather  
21 informally rather than technically correctly.

22 MS EDWARDH: And it's informally  
23 rather than technically correct in the context of  
24 a document that describes an immigration matter,  
25 not a criminal charge?



1 MS GIRVAN: That was the case for  
2 all the terrorists held, and therefore, to me, the  
3 more important thing is that he was a terrorist  
4 suspect. And that's what leads me back each time  
5 to the fact that if the United States government  
6 has seen fit and the FBI have seen fit to move  
7 Mr. Arar from the airport to MDC and to enclose  
8 him in the secure wing, it is because they  
9 consider him to be a terrorist suspect and that  
10 they are considering charges against him as a  
11 terrorist.

12 It doesn't change anything about  
13 my job, however, which is to make sure that he  
14 gets legal representation and that he gets it as  
15 quickly as possible.

16 I do have to emphasize that I'm  
17 not a lawyer.

18 MS EDWARDH: I appreciate that.

19 THE COMMISSIONER: Is this a  
20 convenient time for the afternoon break?

21 MS EDWARDH: Yes, I'm in your  
22 hands, Mr. Commissioner.

23 THE COMMISSIONER: Then we will.  
24 We will rise for 15 minutes.

25 THE REGISTRAR: Please stand.

1           Veillez-vous lever.

2           --- Upon recessing at 3:30 p.m. /

3                   Suspension à 15 h 30

4           --- Upon resuming at 3:45 p.m. /

5                   Reprise à 15 h 45

6                           THE REGISTRAR:   Veillez-vous  
7           asseoir.   Please be seated.

8                           MR. DAVID:   Mr. Commissioner,  
9           before we continue the cross-examination of  
10          Ms Girvan, for the schedule, we would go to 4:45  
11          today.   And with agreement of Ms Girvan and  
12          Ms Roussel, we would begin Monday's hearing at one  
13          o'clock instead of two o'clock to make sure we get  
14          finished.

15                           THE COMMISSIONER:   You think that  
16          will get us finished on Monday?

17                           Ms Roussel may have some  
18          examination.   I think the only two ones of any  
19          substance will be those.

20                           MS ROUSSEL:   Exactly.   We will be  
21          available for one o'clock.

22                           THE COMMISSIONER:   That's great.

23                           MR. DAVID:   Thank you.

24                           MS EDWARDH:   Thank you very much.

25                           Ms Girvan, we have just covered

1 the period from the 1st of October to the 3rd, and  
2 it's fair to say that your primary focus is  
3 getting access and to try to find out what those  
4 charges are that you believe are there; right?

5 MS GIRVAN: And to facilitate the  
6 lawyer visiting him, that's correct.

7 MS EDWARDH: On October 3rd -- and  
8 I'm going to do the consular visit in a couple of  
9 sections. But my theme I want to follow through  
10 with you is your conversation with Mr. Arar about  
11 what he has been told by the INS.

12 To the best of your knowledge, the  
13 only time he has spoken with INS is when he is at  
14 the airport?

15 MS GIRVAN: Yes.

16 MS EDWARDH: And he reports to you  
17 that they have told him that that he will be  
18 deported to Syria?

19 MS GIRVAN: Mr. Arar told me that  
20 on one occasion at the airport two immigration  
21 officers told him that they were going to deport  
22 him to Syria.

23 MS EDWARDH: Yes. And in your  
24 conversation, I think you very candidly said that  
25 you endeavoured to assure Mr. Arar that this was a

1 highly improbable event, and you characterized his  
2 concern as not uncommon for dual nationals who  
3 sometimes were anxious about where they might go.  
4 That was something you said I believe was common  
5 for dual nationals to be worried about.

6 MS GIRVAN: You are suggesting I  
7 said that to him?

8 MS EDWARDH: No, no.

9 MS GIRVAN: Oh.

10 MS EDWARDH: That in your mind his  
11 concern was one you decided was quite common for  
12 dual nationals.

13 MS GIRVAN: It's one I have  
14 encountered before.

15 MS EDWARDH: Yes.

16 MS GIRVAN: In fact in the case of  
17 one of the former people in the same area.

18 MS EDWARDH: Right. That's very  
19 helpful.

20 But the difference between  
21 Mr. Arar and most dual nationals is most dual  
22 nationals are not told where they are going. They  
23 are not told by the Immigration Service, "You are  
24 being sent to the country of your birth,  
25 regardless of your citizenship, regardless of your

1 passport, and regardless of your residence",  
2 et cetera?

3 MS GIRVAN: It has to be put in  
4 context, though, that Mr. Arar told me that he was  
5 also told in the same time period and subsequently  
6 that if he answered their questions, the FBI  
7 questions correctly, he would in fact continue his  
8 journey to Canada.

9 So there's no -- and also at the  
10 end of that day, he is told they have no decision.  
11 So they in fact -- the FBI, I gather -- had taken  
12 him to MDC. So I see that all in a flow.

13 But I report it all to the lawyer.

14 MS EDWARDH: So in your mind --  
15 and I suppose you have had this conversation with  
16 a number of detainees -- you view the threat as an  
17 interrogation tactic designed to soften him up, as  
18 I thought you said, and make him be more complete  
19 or fullsome in his answers?

20 MS GIRVAN: Well --

21 MS EDWARDH: You maybe didn't put  
22 it that way. That's the way I put it.

23 MS GIRVAN: It's a passing thought  
24 in my head that that might have been why. I don't  
25 conclude that. But I see that something has gone

1           on over hours and hours and hours and there had  
2           been changes.

3                           So what I understand is at the  
4           beginning he was interviewed by the INS, and then  
5           the FBI came out and then they interviewed him for  
6           hours, and then they interviewed him the next  
7           morning again, I believe.

8                           So I see it all as a whole lot of  
9           things that went on that resulted in Mr. Arar  
10          being brought in to the city and taken to MDC; so  
11          no longer being considered for immediate return,  
12          you know, in the sense of refused entry at the  
13          airport.

14                          That's my thinking at that time.

15                          MS EDWARDH: In order to just  
16          round out your thinking, you have been told, I  
17          take it, as a consular official listening to  
18          detainees, that there is often some carrot, i.e.,  
19          "You'll get on the next plane if you answer my  
20          questions", and some stick, "You'll end up in  
21          Syria", that may be used in an interrogation  
22          process. That doesn't surprise you?

23                          MS GIRVAN: I think it's more  
24          likely the movies that I have seen that in. But  
25          basically I'm not making conclusions. I'm just

1           noting all of these things as they go along.

2                       MS EDWARDH:  But the one important  
3           thing -- I just want to disentangle for a moment.  
4           Let's take a look at these three notes of the  
5           visits, 31, 32 --

6                       MS GIRVAN:  Is that tab 31?

7                       MS EDWARDH:  Yes, I'm sorry.  It  
8           is tab 31, 32.

9                       MS GIRVAN:  Yes.

10                      MS EDWARDH:  And probably tab --  
11           no.  Let's just take a look at those.

12                      It's my understanding that  
13           Mr. Arar -- and if you please take a moment and  
14           read this because I may be overstating it, it's  
15           not my intention to -- that while Mr. Arar is  
16           interrogated by both the FBI and the INS, it is  
17           only the INS who informs him where he's going.

18                      The cooperative side, "We'll let  
19           you go out on the next plane", are words that are  
20           not attributed to the INS but are, rather,  
21           attributed to the FBI.  Take a look at your  
22           discussion.

23                      MS GIRVAN:  You'll have to find  
24           the right message because, of course, one of the  
25           things I had a little difficulty with Mr. Arar

1           telling me all that was going on was he talked  
2           about police, he talked about FBI, he talked about  
3           police more often than INS, so really, I didn't  
4           know always who was talking.

5                        I just wrote down the bits -- I  
6           got the bits that I got, but I knew there was  
7           more, but I didn't, you know -- I remember writing  
8           "police" and not knowing -- thinking to myself,  
9           that would be probably the immigration police, but  
10          Mr. Arar was himself I think a little unclear as  
11          to who was talking to him at various times.

12                       The one time he specifically  
13          mentions the FBI is when he says -- I asked him if  
14          he got their names, and he said that they had --  
15          either he had asked them or they had shown him  
16          their identification cards, but he couldn't  
17          remember their names.

18                       But I wasn't clear as to who was  
19          talking to him at all the various times.

20                       MS EDWARDH:   When Mr. Arar used  
21          the term "police", did you ever ask him whether  
22          that was the NYPD?

23                       MS GIRVAN:    I didn't ask him.

24                       MS EDWARDH:   So if you look at  
25          your description in tab 31.



1 MS GIRVAN: Thirty-one, mm-hmm.  
2 MS EDWARDH: Yes.  
3 MS GIRVAN:  
4 "...by police and the FBI for  
5 many hours."  
6 MS EDWARDH: Yes?  
7 MS GIRVAN:  
8 "During the interrogations,  
9 he was polite..."  
10 He gave them all his e-mail  
11 accounts -- yet, I don't really know who he's  
12 giving all those things to, which of the groups.  
13 MS EDWARDH: I know. But as  
14 you've recorded it, as best you can from his  
15 discussions, it would appear that the only direct  
16 communication from the INS as to what's going to  
17 happen is that he will be deported to Syria?  
18 That's the only thing attributed to them in your  
19 notes?  
20 MS GIRVAN: Let me just read it  
21 through. He's stopped by Immigration and taken to  
22 an interview room where he was interrogated by  
23 police and FBI for many hours.  
24 I remember him saying at one time  
25 they said they were going to deport him to Syria.

1 MS EDWARDH: That's at the bottom.

2 MS GIRVAN: Is it.

3 MS EDWARDH: Yes.

4 MS GIRVAN: At one point. Yes,  
5 and I remember that that wasn't necessarily at the  
6 end, you know, it was earlier, I think.

7 MS EDWARDH: And my point isn't so  
8 much where it is --

9 MS GIRVAN: Mm-hmm.

10 MS EDWARDH: -- as that it is the  
11 only portion of this process where Mr. Arar is  
12 being interrogated by police, FBI agents, that is  
13 directly attributable to the INS.

14 They do not -- according to this  
15 note, they are not the officers who are holding  
16 out the option of getting on the aircraft, but at  
17 the end of this process, or sometime during this  
18 process, they tell him that he will be deported.  
19 And I'm going to just put this suggestion to you.

20 MS GIRVAN: Sure.

21 MS EDWARDH: That's a very  
22 different situation than having an anxious dual  
23 national worrying about whether they might go to  
24 their country of birth?

25 MS GIRVAN: Let me tell you

1 exactly, for example, if -- and this has  
2 happened -- a detained Canadian calls me from the  
3 airport, or the family, calls me and says the man  
4 is at the airport, and I get in touch with the  
5 airport and I ask the immigration police if I can  
6 speak to the person and then he tells me that  
7 they're going to send him back to Tunis or to  
8 Syria, I would then speak to the immigration  
9 officer at the airport.

10 I would assume that there might be  
11 something going to take place, and I would speak  
12 to the officers and I would say, "I would rather  
13 that he be forwarded to Canada. Is there any way  
14 that I can arrange that?"

15 I don't have the right. I don't  
16 have the right to do that, but I can try to do it,  
17 I try to negotiate with them. And once they take  
18 him, though, once he has been taken from the  
19 airport to the prison, I assume that they have  
20 decided not to send him back, not to send him to  
21 Syria at that point, and he is taken --

22 MS EDWARDH: So if we break that  
23 down, though, certainly as part of your consular  
24 duties at an airport deportation you are in there.  
25 If some detainee phones and says "I am a Canadian

1 citizen born in Tunis and they are telling me they  
2 are sending me back to Tunis, you would not  
3 hesitate to get involved to say to the immigration  
4 officials, "let me facilitate his return to  
5 Canada"?

6 MS GIRVAN: If the family -- you  
7 know, if the family gets involved, because they  
8 don't have to call me at all from the airport.

9 MS EDWARDH: But if they do.  
10 Let's start with, if you are aware of the  
11 situation --

12 MS GIRVAN: Then I would like to  
13 assist them to go on and usually you can help them  
14 to, because it's, you know, as long as you can pay  
15 the difference in the fare.

16 MS EDWARDH: Now, let's talk about  
17 the person who gets in the country, and you  
18 referred very -- just a few moments ago to one of  
19 the other cases.

20 MS GIRVAN: Mm-hmm.

21 MS EDWARDH: -- where you had  
22 facilitated something about the removal, and I'm  
23 going to suggest to you that that was one of Mr. X  
24 or Y, and you or the consulate were of assistance  
25 in ensuring that they return to Canada instead of

1 a third country?

2 If that's too obscure,  
3 Mr. Commissioner --

4 MS GIRVAN: I just got lost I  
5 think, but I think if I go straight back to saying  
6 what I know happened with the other cases, is that  
7 they were perfectly normal, that once they were --

8 Again, in the case of one of  
9 them -- in the case of one of them, he was  
10 concerned that he might be sent to the country of  
11 his origin, and I said you ask to be sent to  
12 Canada and there's no reason -- actually I said in  
13 his case, because of the landed immigrant, I  
14 wasn't absolutely positive, but I said, "But you  
15 ask."

16 And then I checked with the  
17 immigration authorities myself, just for my own  
18 information, and learned that, in fact, Canada  
19 would accept an immigrant, a landed immigrant.

20 So, in fact, I did not have to  
21 intervene. It perfectly logically proceeded from  
22 the person asking to be returned to Canada, and he  
23 was returned to Canada. I did not have to take  
24 any action in that regard.

25 MS EDWARDH: But you would have if

1           you had.  If you had to raise it with Immigration  
2           authorities, you would have?

3                       MS GIRVAN:  I'm trying to think.  
4           I think it's hypothetical.  I guess I would rather  
5           stay with what I actually did.

6                       MS EDWARDH:  Okay.

7                       MS GIRVAN:  At the airport, I've  
8           had to do, that and I have done it.

9                       MS EDWARDH:  In any event,  
10          Mr. Arar's situation is quite different than the  
11          anxious dual national, because he has received  
12          information, correct?

13                      MS GIRVAN:  He's been told at one  
14          point that he may be deported to Syria, and I tell  
15          him, quite rightly, that no Canadian, in my  
16          experience, has been deported to their country of  
17          other citizenship.

18                      That is definitely my  
19          understanding, and Canada -- nor does Canada send  
20          U.S. citizens to any other country than the United  
21          States.

22                      So I am fairly sure that he will  
23          be able to return to Canada based on my  
24          experience.

25                      However, I am not the final

1 authority. I have to emphasize here. I am giving  
2 him my considered opinion, but I am not giving him  
3 legal advice.

4 His lawyer will tell him what the  
5 actual possibilities are and what will happen. My  
6 job is to get him, you know, to look after sort of  
7 the general things and then to get a lawyer to  
8 him.

9 MS EDWARDH: Right.

10 So when you leave the consular  
11 visit, in your own mind, as I think you testified  
12 to yesterday, your single concern at that point is  
13 to facilitate a retainer with counsel? That's  
14 your most important preoccupation?

15 MS GIRVAN: That's one of my  
16 first. I'm of course concerned about Mr. Arar,  
17 and I'm very concerned about his state of mind,  
18 and I'm concerned that he hasn't been able to call  
19 his wife. I have a number of concerns, actually.

20 But I want to, first of all, make  
21 sure that I've told him that the family have found  
22 a lawyer for him and I want to make sure that the  
23 lawyer will be able to visit in spite of any  
24 bureaucratic holdups.

25 That's why I make sure to send the

1 fax as soon as possible on my return to the  
2 office.

3 MS EDWARDH: So if I can just  
4 summarize then.

5 MS GIRVAN: Sure.

6 MS EDWARDH: I understand you've  
7 stated what your concerns were. Between  
8 October 3, when Mr. Arar tells you that the INS  
9 has informed him he may be deported to Syria, and  
10 the time that he leaves the United States in the  
11 wee hours of October 8, am I correct that no  
12 Canadian official spoke directly with any  
13 governmental entity in the United States to ask  
14 the question: Is this a realistic possibility?  
15 And, if so, why?

16 MS GIRVAN: I think you've gone a  
17 little too broad for me. I didn't. That's --

18 MS EDWARDH: And to your -- I'm  
19 sorry.

20 MS GIRVAN: -- the only person  
21 that I can speak to.

22 MS EDWARDH: And to your  
23 knowledge, given the communications, no other  
24 official did either?

25 MS GIRVAN: I just want to



1 check --

2 MS EDWARDH: Certainly.

3 MS GIRVAN: -- because on the 8th  
4 and the 7th -- I know that, you see, after the --  
5 Washington is involved in that period.

6 MS EDWARDH: 3 a.m.

7 MS GIRVAN: On the 8th.

8 MS EDWARDH: On the 8th.

9 MS GIRVAN: That's right. I just  
10 want to see the note before the 8th. Can anyone  
11 help me find that?

12 MS EDWARDH: Sure, I can try to.

13 MS GIRVAN: You see, if you look  
14 at those I took many actions in that period.

15 When I send my information back to  
16 Canada, I don't know what actions Canada takes or  
17 whether, for example, they talk to Legal or  
18 whether -- and how much they talk to Washington.

19 Usually I just get whatever comes  
20 back to me directly, and I never assume that it's  
21 everything, you know, just as these notes aren't  
22 everything.

23 MR. BAXTER: Mr. Commissioner,  
24 could I ask that the witness be given Volume 1 of  
25 P-40, which is the entire --

1 THE COMMISSIONER: P-40.

2 MR. BAXTER: Yes, it's the entire  
3 set of CAMANTs. It's not the selection of CAMANTs  
4 that's found in P-42. That may be of some  
5 assistance --

6 MS GIRVAN: Thank you.

7 MR. BAXTER: -- in following the  
8 trail here.

9 MS GIRVAN: Thanks.

10 MS EDWARDH: If my friend could  
11 identify a document that would assist the witness  
12 I would be most pleased if he would just help us  
13 out.

14 MR. BAXTER: Your friend hasn't  
15 had the time to do that yet, but we'll all be  
16 looking at the same time, perhaps.

17 MS EDWARDH: I don't have the  
18 exhibit in front of me.

19 MS GIRVAN: Do you have this one,  
20 the P?

21 MS EDWARDH: Yes. Thank you very  
22 much.

23 THE COMMISSIONER: Do you have  
24 P-40?

25 MS EDWARDH: I don't. We gave

1 up --

2 THE COMMISSIONER: Why don't you  
3 take a look, if you want to go through, and if  
4 questions come out of it, I can get it back.

5 MS EDWARDH: Starting at tab --

6 MS GIRVAN: You see, I think of it  
7 I can -- I just looked at the 7th one and what I'm  
8 aware of is that in the period from, I guess from  
9 the 1st until the 7th, I am preoccupied with doing  
10 all the things that I'm supposed to do and doing  
11 them, and that includes following up on Mr. Arar's  
12 requests for assistance, you know, the toiletries,  
13 et cetera, following up with his family.

14 I do -- if you think about the  
15 fact that I'm handling about also 90-odd other  
16 detained Canadians and many other issues, I'm  
17 actually taking rather a lot of actions, but I'm  
18 mainly making sure that I do everything that I  
19 should do for Mr. Arar, and I believe I do that.

20 I follow the -- you know, it's  
21 sort of in my mind. It's sort of -- to make sure  
22 that he's all right, you know, as much as so, and  
23 he has told me that he's lacking the toothpaste  
24 and toothbrush, but he has not said that he's  
25 being mistreated physically at the MDC, and I'm

1           trying to make sure that his family -- you know,  
2           I'm receiving calls from -- I just want to give  
3           you the picture from all of his family calling me,  
4           and I try to say, let's have one person call me  
5           but, in fact, I'm talking to everyone.

6                         I'm also trying to make sure that  
7           he has not just access to his lawyer, because, of  
8           course, the family have found a lawyer for him,  
9           but also that the CCR, which are a rather expert  
10          group, are in touch with his family, or if they  
11          want to be in touch with CCR, that's my  
12          obligation. Not to make sure that their lawyer  
13          goes to him but that they have the information  
14          they need to make that decision.

15                        And then to facilitate getting the  
16          lawyer to him I think is very important, and I do  
17          that, because I'm not the person, no matter how  
18          much we talk about what I think is going on, I'm  
19          not the one that's going to help him in this, it's  
20          going to be the lawyer.

21                        I'm reporting to headquarters, I'm  
22          reporting to my Head of Mission, I'm letting  
23          everybody know of every issue that is raised with  
24          me, and then I'm going back to the family and I'm  
25          reassuring them as much as possible that things

1 are progressing.

2 That is my job as a consul.

3 That's what I'm doing. And that's what I'm doing  
4 right through those days.

5 The lawyer has certain duties; I  
6 have certain duties; the headquarters have certain  
7 responsibilities. And we're all doing our jobs.  
8 And I can't actually focus on the responsibilities  
9 of the others because my own duties take more than  
10 the time I have available to carry them out.

11 MS EDWARDH: I understand,  
12 Ms Girvan, what you are saying, but it does not,  
13 madam, answer my question.

14 MS GIRVAN: Which is?

15 MS EDWARDH: My question is that  
16 neither you, nor anyone to your knowledge,  
17 contacted U.S. authorities between your interview  
18 on October 3 and Mr. Arar's deportation at 3 a.m.  
19 on October 8, to ask them, or demand from them, or  
20 beg from them information about whether it was a  
21 realistic possibility that this man was going to  
22 Syria, to your knowledge?

23 MS GIRVAN: To my knowledge, no.  
24 The only thing I would say is that we have also  
25 the information earlier, that he's not being

1 considered a deportation case.

2 MS EDWARDH: Now -- and we dealt  
3 with that --

4 MS GIRVAN: Yes.

5 MS EDWARDH: -- so I will not go  
6 back to it.

7 And you have explained all your  
8 reasons for not viewing it as a realistic  
9 possibility, your personal decision-making, your  
10 personal thinking --

11 MS GIRVAN: The experience and  
12 precedent. That's right.

13 MS EDWARDH: Yes.

14 I am going to suggest to you,  
15 Ms Girvan, that when you took umbrage to the  
16 Centre for Constitutional Rights' statement that  
17 you did not treat Mr. Arar's deportation as a real  
18 possibility, they were dead right?

19 MS GIRVAN: I would suggest to you  
20 that they didn't make the statement.

21 MS EDWARDH: No.

22 MS GIRVAN: That's what they told  
23 me.

24 MS EDWARDH: I'm suggesting  
25 whether they made it or not --

1 MS GIRVAN: Oh, I'm sorry.

2 MS EDWARDH: -- it is true that  
3 you did not treat his possible deportation to  
4 Syria as a real possibility, given the framework  
5 you had in your mind?

6 MS GIRVAN: I believe that when I  
7 was apprised of the fear of the brother, as  
8 expressed to Nancy, that I took the action that I  
9 could, given the information I had, to find out if  
10 this was a real possibility and was informed that  
11 it wasn't.

12 When I found, on the 3rd, that  
13 Mr. Arar was in the secure wing and was in all of  
14 the conditions of the precedent cases, it was a  
15 good working assumption that he was going to be --  
16 the more serious the case, the more likely  
17 terrorism is involved, the longer the United  
18 States authorities would want to hold him, and  
19 therefore that's where I'm at. I believe it's  
20 going to be longer.

21 MS EDWARDH: And therefore,  
22 Ms Girvan, you did not treat the possibility of a  
23 deportation to Syria as a serious risk, because of  
24 all your working assumptions?

25 MS GIRVAN: But not on the day --

1 not on all the days. On that day. For example,  
2 the 1st, I did consider it a possibility and --

3 MS EDWARDH: Between October 3 and  
4 3 a.m. on October 8, your working assumptions made  
5 that a matter that you did not consider was a  
6 serious risk?

7 MS GIRVAN: I think that's true,  
8 because no other Canadian had ever been deported  
9 to their other country of nationality.

10 MS EDWARDH: Now, I want to turn  
11 to a couple of other small areas, and we'll  
12 perhaps come to the one large one on Monday.

13 Do you have any information -- I'm  
14 sorry, Mr. Commissioner, I'll give you back your  
15 exhibits --

16 THE COMMISSIONER: Thank you.

17 MS EDWARDH: -- that can explain  
18 how the Royal Canadian Mounted Police knew the  
19 contents of the INS document you saw the day  
20 before you saw it? Do you have any information  
21 that could explain that?

22 MS GIRVAN: I have no information  
23 on that. I was not in touch with the RCMP at any  
24 point in this process, and I did not know it.

25 --- Pause



1 MS EDWARDH: So if I were to show  
2 you an entry at page 16 of the Garvie report --  
3 Mr. Commissioner, do you have that?

4 THE COMMISSIONER: I'm not sure.  
5 P-19?

6 MS EDWARDH: P-19.

7 MS GIRVAN: Right. What's the  
8 date on that? The 10th? October 2?

9 MS EDWARDH: The date is  
10 October 2, 2002, and you'll see there that there  
11 is a list of matters, and I'd like you to confirm  
12 that that list is identical to the one you  
13 observed on the document Mr. Arar showed you on  
14 October 3, a day later?

15 MS GIRVAN: That's correct. I'm  
16 just wondering where Mr. Garvie got the  
17 information.

18 MS EDWARDH: We'll have to ask him  
19 perhaps.

20 MS GIRVAN: Because I think that's  
21 a compilation of information.

22 MS McISAAC: I don't know if my  
23 friend wants me to give the answer, but I believe  
24 I know the answer to that question.

25 THE COMMISSIONER: I think it

1 would help the pursuit of what happened.

2 MS McISAAC: Well, I believe that  
3 the reference that Mr. Garvie gives -- remember  
4 that he is doing this well after the fact --

5 THE COMMISSIONER: Yes.

6 MS McISAAC: -- is to a series of  
7 documents which have been compiled after the fact  
8 and the reference is, in fact, Ms Girvan's CAMANT  
9 report, if I'm not mistaken.

10 MS EDWARDH: Perhaps my friend  
11 would provide those documents.

12 MS McISAAC: I think they are in  
13 here. It's just a matter of me finding them.

14 THE COMMISSIONER: They are in  
15 Inspector Garvie's report. Are they appended to  
16 it?

17 MS McISAAC: No. They would be --

18 THE COMMISSIONER: What are those?  
19 I can't remember, Ms. McIsaac.

20 MS McISAAC: I believe those  
21 references are to the RCMP chronology, and I'm  
22 just looking for the exhibit number for the RCMP  
23 chronology.

24 MS EDWARDH: Perhaps I can leave  
25 it to Commission counsel. I don't know what those

1 source documents are, Mr. Commissioner. They are  
2 in camera.

3 But on the face of it, it would  
4 certainly appear that the Royal Canadian Mounted  
5 Police had this information 24 hours in advance of  
6 this group.

7 MR. DAVID: We will verify.

8 MS McISAAC: I don't believe they  
9 are in camera. I believe those documents are part  
10 of the RCMP chronology, which is part of the  
11 public exhibits.

12 THE COMMISSIONER: Which were  
13 released through the --

14 MS McISAAC: Yes, and I'm just  
15 looking for them now, sir.

16 MS EDWARDH: As well, if I ask you  
17 to turn to -- well, maybe I will wait.

18 If they are part of the public  
19 exhibits, I sometimes -- because the exhibits are  
20 not obvious and I get reference to source  
21 documents --

22 THE COMMISSIONER: Well, you have.  
23 And I think what would be useful is between now  
24 and Monday if you --

25 MS EDWARDH: I will do that and

1           come back to that.

2                       MS McISAAC: We will undertake to  
3 do that. Unfortunately, the way the RCMP  
4 chronology was released, it wasn't released with  
5 sort of very explicit page numbers referencing  
6 back to the next document.

7                       We will undertake to find that.  
8 If it is part of the public record, as I believe  
9 it is, we will let my friend know.

10                      THE COMMISSIONER: That is very  
11 helpful.

12                      MS EDWARDH: Thank you very much.  
13 We will revisit that, if necessary,  
14 Mr. Commissioner.

15                      THE COMMISSIONER: Thank you.

16                      MS EDWARDH: All right. I want to  
17 turn now to the question of your understandings.  
18 You have testified quite firmly, Ms Girvan, that  
19 to the best of your understanding, during the day  
20 of October 7th, just before Mr. Arar was removed  
21 from the United States, you believe he had a  
22 lawyer?

23                      MS GIRVAN: Yes.

24                      MS EDWARDH: And I want to look  
25 more carefully at the reports in question, and

1           there are two in particular I want you to review.

2                       MS GIRVAN:  Sure.

3                       MS EDWARDH:  They are to be found  
4           at tab 42 and also at tab 44.

5                       MS GIRVAN:  Tab 42 is note 42?

6                       MS EDWARDH:  No.  I believe when I  
7           say tab I mean tab.  It is tab 44 and tab 44 is  
8           note 39; and tab 42 is note 41.

9                       MS GIRVAN:  And my tab 44 is note  
10          44.  Maybe I'm in the wrong book.  I'm in the  
11          P-48 --

12                      MS EDWARDH:  Oh, we are in the  
13          wrong exhibit.

14                      MS GIRVAN:  Sorry.  Say it again.

15                      MS EDWARDH:  Let's start with --  
16          if you put them together, it's tab 44 and tab 42.

17                      I Am going to start, if I could,  
18          with Tab 44, because it in fact is dated October  
19          7th at 11:31.  So it comes first chronologically.

20                      MS GIRVAN:  Okay.

21                      MS EDWARDH:  And I want to look at  
22          the language.  This, of course, is written by you?

23                      MS GIRVAN:  Yes.

24                      MS EDWARDH:  And it is sent to --  
25          you tell us.  Where does it go?

1 MS GIRVAN: It's copied to my  
2 assistant, to my superior officer, Andre Laporte,  
3 to myself and to Nancy Collins in Ottawa.

4 MS EDWARDH: Yes. And we start  
5 with:

6 "Wife called, concerned about  
7 Mr. Arar's mental state and  
8 wanting us to intervene so  
9 that he can call her, so that  
10 he can obtain reading  
11 material from the library,  
12 and toothpaste...  
13 Money arrived account..."

14 MS GIRVAN: According to the  
15 lawyer.

16 MS EDWARDH: "Money arrived  
17 acc. to lawyer. Lawyer  
18 visited him on Saturday and  
19 found him in very bad  
20 emotional condition. She is  
21 not yet representing him.  
22 She needs agreement from the  
23 family and is in touch with  
24 them."

25 Okay? So let's look at that.

1                   As the clock ticks through the  
2           day, we can agree, can we not, that as of 11:31  
3           when you entered that note, you believed that she  
4           was not yet representing him?

5                   That's the words you wrote?

6                   MS GIRVAN: Yes, but that's not  
7           what it means, because if you look at the title,  
8           you will see that the topic is:

9                               "Calls from wife, lawyer and  
10                              friend"

11                   So it's a summary of all the  
12           calls.

13                   So the part speaking about what I  
14           said to the wife and the lawyer is then followed  
15           by the conversation with the friend of the family  
16           who has then spoken to the lawyer and who says to  
17           me that he has spoken to the lawyer --

18                   MS EDWARDH: May I stop you?

19                   MS GIRVAN: Sure.

20                   MS EDWARDH: You show me these  
21           conversations because, quite frankly, the lawyer  
22           is a lawyer is a lawyer, whether retained or not.  
23           I mean, this woman is a lawyer.

24                   So when you say she is not yet  
25           representing him, that's what I take --

1 MS GIRVAN: That's when she calls  
2 me, right?

3 The first call -- all right. We  
4 have the wife calling.

5 MS EDWARDH: Yes.

6 MS GIRVAN: And that I believe is  
7 possibly early. That's possibly the first call.

8 MS EDWARDH: Right.

9 MS GIRVAN: So she is asking me  
10 about his mental health and all of that, and that  
11 is taken care of.

12 And then, you see -- I mean, I  
13 must say I'm probably in a rush because I've  
14 summarized several calls here.

15 But I say "money arrived according  
16 to lawyer". So I didn't start out by saying  
17 lawyer calls me, you know? That's Ms Oummih calls  
18 me. And she tells me a number of things; that she  
19 had visited him on Saturday and she goes through  
20 her visit with him. And she tells me that the  
21 money has arrived, which is the money that the  
22 friend of the family was to send so that he could  
23 call his wife.

24 MS EDWARDH: Yes.

25 MS GIRVAN: That is the second



1 call, all right?

2 MS EDWARDH: All right.

3 MS GIRVAN: And at that time --  
4 and I write down exactly what she said at that  
5 time: "Found him in bad emotional state, not yet  
6 representing him, needs agreement from the family,  
7 is in touch with them."

8 She called to me to report that  
9 the district director of the INS called her this  
10 morning. So she tells me everything and I write  
11 it down, much exactly as it happened.

12 MS EDWARDH: Yes.

13 MS GIRVAN: Then the friend  
14 calls --

15 MS EDWARDH: Keep reading that  
16 paragraph. From the reference to:

17 "She called to report that  
18 the District Director of the  
19 INS called her this morning  
20 to tell her that they would  
21 like to interview Mr. Arar  
22 this evening at 7 p.m..."

23 MS GIRVAN: That's right.

24 MS EDWARDH: "If she is  
25 retained..."

1 MS GIRVAN: She will attend the  
2 meeting.

3 MS EDWARDH: She will attend this  
4 meeting.

5 MS GIRVAN: Correct. Then I speak  
6 to the friend of the family.

7 MS EDWARDH: Where are you  
8 referring to?

9 MS GIRVAN: The very next  
10 paragraph.

11 MS EDWARDH: Thank you.

12 MS GIRVAN: The black mark  
13 "called."  
14 That is a friend of the family.  
15 If you look to the top, you will see calls from  
16 wife, lawyer and friend. That's the friend.

17 MS EDWARDH: Let's read that  
18 paragraph.

19 MS GIRVAN: So it's, his name,  
20 called me.

21 MS EDWARDH: Yes.

22 MS GIRVAN: What is not written  
23 there is he goes into -- you know, he has talked  
24 to the lawyer, because obviously he has since he  
25 asks me if there will be consular representation

1 at the meeting that evening.

2 So, you see, in between my  
3 conversation with the lawyer, she had told me she  
4 would be calling him immediately. She did call.  
5 She talked to the family. And then he called me  
6 back. He says he understands there is to be a  
7 meeting that evening and will there be consular  
8 representation at that meeting?

9 I tell him that the lawyer has  
10 been invited. He tells me the lawyer will be  
11 retained. And so I believe that the lawyer will  
12 attend the meeting. I tell him I cannot attend  
13 the meeting.

14 MS EDWARDH: So the words that are  
15 missing at 11:31 a.m., October 2nd, are that he  
16 informs you that the lawyer has been retained?

17 MS GIRVAN: And that he has spoken  
18 to her and that she has told him about the visit,  
19 you see, because she has also visited him.

20 MS EDWARDH: That's not there?

21 MS GIRVAN: Right.

22 MS EDWARDH: So let me ask you  
23 then to turn to later in the day.

24 MS GIRVAN: Mm-hmm.

25 MS EDWARDH: Which is tab 42.

1 MS GIRVAN: Mm-hmm.

2 MS EDWARDH: And you have a call.

3 This is 1313, correct?

4 MS GIRVAN: Correct.

5 MS EDWARDH: We are now in the

6 afternoon.

7 MS GIRVAN: From MDC.

8 MS EDWARDH: Yes.

9 MS GIRVAN: Mm-hmm.

10 MS EDWARDH: And I'm going to say

11 it is palpably obvious, Ms Girvan, that

12 conversation about the Centre for Constitutional

13 Rights is nothing more or less than you saying to

14 Ms Ward, or whoever you are speaking to --

15 MS GIRVAN: Right.

16 MS EDWARDH: -- at the prison that

17 the Centre may be calling because they may be

18 recommending a lawyer, right?

19 Do you see those words?

20 MS GIRVAN: I do.

21 MS EDWARDH: And furthermore, you

22 say:

23 "...as Mr. Arar has not, as

24 far as I know, yet retained

25 counsel."

1                   So I am going to suggest to you  
2                   that you are mistaken that you were assured three  
3                   or four hours earlier, or three hours earlier, at  
4                   11:31, and if you read these two notes together,  
5                   it is abundantly obvious that the issue of who was  
6                   retained and who would be acting was in the air,  
7                   unclear, unsettled?

8                   MS GIRVAN: I think actually I can  
9                   clarify this. I know it may look that way, but,  
10                  in fact, when I speak to -- I don't know at what  
11                  time I spoke to MDC because, again, the title is  
12                  "Info on phone calls." I am in a state where I  
13                  cannot tell you whether that call preceded or  
14                  followed. I go -- as far as I can I put notes  
15                  into CAMANT. That's just one thing that I want to  
16                  note.

17                  The second thing is that MDC is  
18                  calling me to complain in a way that --  
19                  constitutional rights people have been calling and  
20                  using my name to get in to see with Mr. Arar.  
21                  What I'm reporting is what I said to her. I said  
22                  to her that they may recommend a lawyer to the  
23                  family, as Mr. Arar has not as yet, as far as I  
24                  know, retained counsel. I had not referred the  
25                  agency to MDC. She thanked me. My feeling is

1           that that call actually took place earlier in the  
2           day --

3                       MS EDWARDH:   Certainly it doesn't  
4           appear that way on the notes, does it?

5                       MS GIRVAN:   That's true, but I'm  
6           not subject to those.  What I can tell you with  
7           absolute certainty is that when I went home that  
8           day, as I walked along the street in New York, I  
9           was confident that the lawyer representing Mr.  
10          Arar, that his family had retained, would be going  
11          to that meeting, and she confirmed, in fact, in  
12          the following notes, that she did go.  And she  
13          also -- you do have a note later, if you'll turn  
14          to the note where I next speak to the friend of  
15          the family, he confirms that she was retained.

16                      MS EDWARDH:   I know that's the  
17          next day.

18                      MS GIRVAN:   But, in fact, she was  
19          retained the previous day.

20                      MS EDWARDH:   I'm going to suggest  
21          to you that you carefully scrutinize your record,  
22          and we have just gone through the two lawyer  
23          entries.

24                      MS GIRVAN:   Sure.

25                      MS EDWARDH:   There is nothing to

1 suggest that the issue of the retainer is settled  
2 on October the 7th, but that on October the 8th,  
3 you get the invitation that there is a lawyer who  
4 has accepted to act. And that's important.  
5 That's in the record. We're relying on your  
6 memory of events from September --

7 MS GIRVAN: They may be more from  
8 my memory. There may be also calls, I don't know,  
9 to Canada. It's just that there are certain  
10 things that stand out in my mind because of -- as  
11 I go -- because I wouldn't have felt comfortable  
12 if I didn't know and I was comfortable and I did  
13 know. That's how I felt.

14 MS EDWARDH: Ms Girvan, if you  
15 can, with the assistance of your counsel, find a  
16 record that in any way confirms your belief that,  
17 in spite of the language that there is no one  
18 retained, that there was someone, if you can find  
19 a call or a record, I would appreciate you take a  
20 look and bring it with you on Monday.

21 MS GIRVAN: Presumably, also, the  
22 friend of the family might be able to confirm.

23 The other thing I'd like to  
24 mention, just in context of the MDC, is the other  
25 purpose I had in speaking to the MDC is that I do

1 not want to discourage them from being open to the  
2 CCR. I'm thinking that as long as they think that  
3 there is a likelihood that they may hire someone  
4 through CCR, they will remain open to them. You  
5 see, I have two things. On one hand I mustn't be  
6 seen to be annoying MDC by sending CCR to them,  
7 and so I say, no, I didn't send them, but, on the  
8 other hand, they may eventually refer someone as,  
9 you know, she didn't know yet about the lawyer.  
10 It's just keeping the door open.

11 MS EDWARDH: Yes. Well, for you  
12 it may be keeping the door open. CCR was seeking  
13 access to Mr. Arar to conduct an interview with  
14 him in circumstances where the record shows he was  
15 unrepresented and your comment keeps them out.

16 MS GIRVAN: Keeps whom out?

17 MS EDWARDH: CCR.

18 MS GIRVAN: No, they've already  
19 been refused.

20 MS EDWARDH: Well, you're asked if  
21 you would -- you've referred them.

22 MS GIRVAN: That's not correct. I  
23 was not asked if I would refer them. They have  
24 gone and they have been turned away. She has  
25 already told me that they won't be accepted,



1           except the lawyer for Mr. Arar will be the only  
2           person allowed to visit him.

3                       MS EDWARDH:   You will agree with  
4           me, when you assured them you have not referred  
5           the agency to MDC for an interview --

6                       MS GIRVAN:    Yes.   I referred Ms  
7           Oummih.

8                       MS EDWARDH:   Yes.

9                       MS GIRVAN:    Because I believed Ms  
10          Oummih to be his lawyer.

11                      MS EDWARDH:   And if I'm right and  
12          Ms Oummih was not retained, then the only lawyer  
13          in sight for Maher Arar in the afternoon of  
14          October 7th was the Centre for Constitutional  
15          Rights lawyers.

16                      MS GIRVAN:    Centre for  
17          Constitutional Rights doesn't actually represent  
18          people.

19                      MS EDWARDH:   Sure they do.   They  
20          represent Mr. Arar in litigation today.

21                      MS GIRVAN:    Sorry.   My information  
22          at the time was that they do not supply lawyers to  
23          people, that they will maybe arrange for a lawyer,  
24          and they had, in fact, contacted me and told me  
25          that they would try to find a lawyer.   They hadn't

1           yet come back to me with that lawyer. They had  
2           said they would contact Mr. Stoller and they said  
3           they would get back to me if they found Mr.  
4           Stoller. So I had not had a contact from CCR,  
5           neither to ask them to tell MDC that they would be  
6           coming to MDC, nor did I understand them to have  
7           found a lawyer to Mr. Arar, nor did I have  
8           instructions from the family that they were  
9           considering a lawyer through CCR. My  
10          understanding from the family was that they were  
11          considering Ms Oummih only.

12                   MS EDWARDH: And on October 3rd,  
13          when you saw Mr. Arar, you knew that Ms Oummih was  
14          on the horizon?

15                   MS GIRVAN: Yes.

16                   MS EDWARDH: And when Mr. Arar was  
17          told by you that his family had found a lawyer  
18          that --

19                   MS GIRVAN: Yes, that's right, I  
20          told him.

21                   MS EDWARDH: Yes, you told him.  
22          Do you recall giving him the address and telephone  
23          number of Ms Oummih, or had you left it at the  
24          office?

25                   MS GIRVAN: I don't recall that.

1 I said that I would be arranging for her to come  
2 and visit him as soon as possible.

3 MS EDWARDH: Is there any record  
4 of you giving Mr. Arar Ms Oummih's telephone  
5 number?

6 MS GIRVAN: I don't think -- I'm  
7 not sure. I don't have that record.

8 MS EDWARDH: And you don't have  
9 any recollection of providing it, do you?

10 MS GIRVAN: No.

11 MS EDWARDH: So let's go back to  
12 your meeting on October 3rd.

13 MS GIRVAN: Mm-hmm.

14 MS EDWARDH: Mr. Arar hands you a  
15 notice. It's the only piece of paper he can bring  
16 to the meeting room; correct?

17 MS GIRVAN: Oh, I don't know. He  
18 could bring whatever he wanted to the meeting room  
19 that he had.

20 MS EDWARDH: All right. He didn't  
21 have anything else but his little INS paper,  
22 right?

23 MS GIRVAN: I don't remember that.

24 MS EDWARDH: All right. Did you  
25 have a file with you?

1 MS GIRVAN: I had at least -- I  
2 think I had the file. I can't remember exactly  
3 what I had. I know I had pieces of paper so that  
4 I could make notes.

5 MS EDWARDH: I'm going to suggest  
6 to you that one of the things people who are  
7 shackled don't do very well is write on their note  
8 pads.

9 MS GIRVAN: One of the things,  
10 when you asked me earlier, about whether he would  
11 be -- whether he was shackled is that, of course,  
12 he did hand me a document, therefore he had his  
13 hands in front of him as opposed to -- very often  
14 when they are brought fourth, they have their  
15 hands behind.

16 MS EDWARDH: Yes?

17 MS GIRVAN: So I would assume  
18 that, in fact, either his hands were in front all  
19 the time or they switched Mr. Arar's hands to be  
20 in front of him so that he could, in fact --  
21 it's difficult to write, but, yes -- he may have  
22 had papers. I just don't remember.

23 MS EDWARDH: Do you have any  
24 recollection of Mr. Arar having a pencil, or can  
25 we at least agree on the fact --

1 MS GIRVAN: Mr. Arar was not  
2 taking notes.

3 MS EDWARDH: Yes. And one of the  
4 issues that from time to time concerned you at MDC  
5 on the 9th floor is that detainees did sometimes  
6 not have access to writing materials, and Mr. Arar  
7 didn't come with pen and paper to your meeting?

8 MS GIRVAN: It wasn't a concern  
9 that I had.

10 MS EDWARDH: Okay. You have no  
11 recollection of Mr. Arar coming with pen or pencil  
12 to the meeting?

13 MS GIRVAN: Nor did any of my  
14 clients. In fact, I couldn't give -- you know,  
15 when you talked about giving names and phone  
16 numbers, I couldn't give papers to the detainee.

17 MS EDWARDH: And you couldn't give  
18 pens or pencils to the detainee?

19 MS GIRVAN: Not in that case -- in  
20 most cases I remember I didn't do that. I wasn't  
21 allowed to. In normal prisons either.

22 MS EDWARDH: So you're reading the  
23 notice he has.

24 MS GIRVAN: And I make notes of  
25 it.

1 MS EDWARDH: And he puts it in  
2 your hands and you read it carefully and it shocks  
3 you.

4 MS GIRVAN: Yes.

5 MS EDWARDH: Although you say you  
6 have not seen one like it ever before, I take it  
7 you have no doubt that -- nothing about it  
8 indicates it wasn't given to Mr. Arar on October  
9 the 2nd? He tells you that and it's not  
10 inconsistent with the document?

11 MS GIRVAN: Yeah, that's right.

12 MS EDWARDH: And in addition to  
13 the grounds of admissibility or inadmissibility,  
14 what else did the document say?

15 MS GIRVAN: We can look at --

16 MS EDWARDH: Let's look. Tab 31.

17 MS GIRVAN: Thirty one?

18 MS EDWARDH: Yes.

19 MS McISAAC: Can we please  
20 remember this is not the document, its simply  
21 notes taken from the document?

22 MS EDWARDH: Let's look at your  
23 record of the document.

24 MS GIRVAN: You ask me --

25 MS EDWARDH: First of all you say

1           wording on documents held by Mr. Arar.

2                           MS GIRVAN:   Mm-hmm.

3                           MS EDWARDH:   So I take from the  
4 plural form that there was at least two pages to  
5 this document.

6                           MS GIRVAN:   I don't know.

7                           MS EDWARDH:   You can't recall?

8                           MS GIRVAN:   I don't remember.

9                           MS EDWARDH:   Right.  And that you  
10 have described the factual allegations, but you  
11 don't say anything more about the document; am I  
12 correct?

13                           MS GIRVAN:   That's right.  He told  
14 me that it had been given to him the day before.

15                           MS EDWARDH:   Yes.  And there's no  
16 record in your written description here of what  
17 you took from the document about what anything  
18 else -- whether it announced anything else, you  
19 know, take notice that we're going to have a  
20 hearing, take notice that something's going to  
21 happen?

22                           MS GIRVAN:   No, I didn't read  
23 anything like that or else I would have noted  
24 that --

25                           MS EDWARDH:   You would have noted

1           that down.

2                           MS GIRVAN:  Yes.

3                           MS EDWARDH:  So there are two ways  
4           to come at this.  You were someone who was alive  
5           to the fact that there might be a period of time  
6           in which Mr. Arar had to respond to something.  I  
7           think you said in answer to Mr. David, you were  
8           alive to the issue of notice.  I mean, did Mr.  
9           Arar have to do anything?

10                          MS GIRVAN:  No.

11                          MS EDWARDH:  I took your answer to  
12           mean that.

13                          Do you recall reading on this  
14           document that Mr. Arar had five days to respond?

15                          MS GIRVAN:  No.

16                          MS EDWARDH:  And that he therefore  
17           had until October 7th, 2002, to make a  
18           submission --

19                          MS GIRVAN:  No.

20                          MS EDWARDH:  -- to the  
21           authorities that had issued the document to him?

22                          MS GIRVAN:  No.

23                          MS EDWARDH:  If you had seen that,  
24           you would have been alive to that, would you not  
25           have?



1 MS GIRVAN: Yes, and I would have  
2 noted it.

3 MS EDWARDH: Yes. And I was going  
4 to suggest to you, particularly if there was any  
5 issue as to whether a lawyer was clearly in place,  
6 a five-day or now four-day period is a very short  
7 period for an inmate or detainee in those  
8 conditions to get an answer out?

9 MS GIRVAN: Well, he's going to  
10 see his lawyer anyway within two days, so at least  
11 I would say in response to what you're saying now,  
12 he's going to see his lawyer in that time.

13 MS EDWARDH: If you had seen it,  
14 would you have made note of it?

15 MS GIRVAN: I believe so.

16 MS EDWARDH: So then we're left  
17 with the suggestion that the line pointed to --  
18 you were taken to a line in the INS decision by --  
19 well, let me find it.

20 THE COMMISSIONER: Where is that?

21 MS EDWARDH: Tab 43. Thirteen, is  
22 that correct, or 14? It's a single line.

23 THE COMMISSIONER: Page 4 of 9.

24 MS GIRVAN: Yes.

25 MS EDWARDH: Arar's submissions.

1 MS GIRVAN: Yes.

2 MS EDWARDH: What's written there  
3 is he failed to respond.

4 MS GIRVAN: Yes.

5 MS EDWARDH: So if this document  
6 was the notice he got, the whole thing's a trap,  
7 isn't it? You had no reason to believe he had any  
8 other basis of knowledge other than the document  
9 he showed you; right?

10 MS GIRVAN: When I saw this a long  
11 time later, I thought perhaps -- it seemed to  
12 suggest he was given other documents, but I don't  
13 know that he was given other documents and so --  
14 and I would have thought that Mr. Arar also would  
15 have drawn attention to a concern about that. So  
16 I thought that he may not have been given other  
17 documents.

18 MS EDWARDH: So he may never have  
19 been told --

20 MS GIRVAN: That was a thought --

21 MS EDWARDH: A concern of yours.

22 MS GIRVAN: That was a thought  
23 that came through my mind, but I only saw this so  
24 much later.

25 MS EDWARDH: Let me finish that.

1 He may never have been told that if he didn't file  
2 a submission that they would act in the absence of  
3 any submission?

4 MS GIRVAN: From what I saw,  
5 that's possible. And in fact, to add to that, the  
6 lawyer did not refer to it either -- or when she  
7 talks to me on the 7th, she doesn't say he has to  
8 respond. So I see that she did not either see  
9 that.

10 MS EDWARDH: So there's no  
11 information we can have reliably that would help  
12 us believe that the authority who issued this  
13 document to Mr. Arar gave him the opportunity to  
14 know he needed to respond, and I'm going to make  
15 one other suggestion to you: Given the conditions  
16 at MDC, if Mr. Arar was required to respond on his  
17 own, it's highly unlikely he even had a pencil to  
18 do so?

19 MS GIRVAN: I can't answer that.

20 MS EDWARDH: Certainly, if you had  
21 known about it and had had some discussion where  
22 Ms Oummih wasn't acting, or you believed she  
23 wasn't acting, you would have assisted him in  
24 raising the issue with the proper authorities that  
25 he needed more time to retain counsel?

1 MS GIRVAN: I would have raised it  
2 with the lawyer. If I had known that, I would  
3 have raised it with the lawyer when I spoke to the  
4 lawyer the same day to help her to go see him. I  
5 would have passed it to the lawyer and asked the  
6 lawyer to take the action.

7 MS EDWARDH: And if someone was  
8 unrepresented, would you help the person  
9 communicate with the authority that they had not  
10 yet retained counsel --

11 MS GIRVAN: If they asked me to,  
12 certainly.

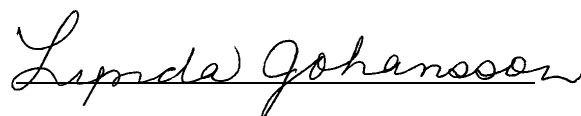
13 MS EDWARDH: Mr. Commissioner, I'm  
14 entering into a whole new area, and my watch says  
15 two minutes to when we were going to retire.  
16 Rather than start it, if it is convenient, sir, I  
17 would perhaps recommend we break and that we start  
18 at one o'clock on Monday.

19 THE COMMISSIONER: So it will be  
20 one o'clock on Monday? We'll rise until then.

21 THE REGISTRAR: Please stand.

22 --- Whereupon the hearing adjourned at 4:44 p.m.,  
23 to resume on Monday, May 16, 2005, at  
24 1:00 p.m. / L'audience est ajournée à 16 h 44,  
25 pour reprendre le lundi 16 mai 2005 à 13 h 00

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Lynda Johansson,

C.S.R., R.P.R.

StenoTran

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