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

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

Audience publique

Public Hearing

Commissaire

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

Commissioner

Tenue à:

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

le mercredi 18 mai 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Wednesday, May 18, 2005

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Ottawa, Ontario / Ottawa (Ontario)

--- Upon commencing on Wednesday, May 18, 2005 at 9:09 a.m. / L'audience débute le mercredi 18 mai 2005 à 09 h 09

THE REGISTRAR: Please be seated. Veuillez-vous asseoir.

THE COMMISSIONER: Good morning.

MR. CAVALLUZZO: Before my friend commences, I just want to advise counsel that at 2:30 this afternoon, prior to the evidence of Ms McDonough, there may be a discussion as to the use of Hansard. We have been notified by the Parliamentary Clerk that they may have some dispute with us as to the use of Hansard, so there may be a full debate at 2:30 concerning the Bill of Rights of 1689.

So if counsel can do their research between now and then, I would appreciate it. Thank you.

--- Laughter / Rires

THE COMMISSIONER: Hopefully, we can avoid the debate that flows through 1689 forward.

MS EDWARDH: Good morning, Mr. Commissioner.

THE COMMISSIONER: Good morning.

MS EDWARDH: I have nothing to say by way of submissions on the Bill as it related to 1689.

THE COMMISSIONER: Very good.

MS EDWARDH: But I do have, if you would indulge me, a few questions I would like to conclude with the witness.

Let me start by saying last evening, at the conclusion of our sittings, I was provided by Commission counsel a document, which is a single page, a very high-level summary, that is described to me as being a summary that was reached by agreement for release if in fact counsel for Mr. Arar thought it was fair, and it represents the proceeds of two documents, one given in November to Franco Pillarella from the head of the Syrian Military Intelligence Service, and then a merger, I gather, of another document or documents delivered by Mr. Martel to the government when he returned with Mr. Arar to Canada.

I have reviewed the summary, and it is such a high-level document, in my respectful submission, it doesn't add anything. And I would

begin this morning by calling on the Government of Canada to release to me the actual documents so I can be in a position to adequately explore the facts alleged, and beyond that then I will hold in abeyance my final decision as to whether or not the document is appropriate to release.

THE COMMISSIONER: I understand. Thank you.

MS McISAAC: Well, I might make a comment, sir, that the Government of Canada claims national security confidentiality with respect to the actual document and its contents as received.

The background to this is, at the request of Mr. Atkey last summer, late fall -- late summer, I should say, early fall -- on the basis that Mr. Arar had the right to have some knowledge of the "allegations against him", we engaged in a process whereby the parties discussed the possibility of summarizing the information that had been received. The actual summary in question was drafted by Mr. Atkey, and the Government agreed that if the Commission or whomever was of the view that it would be useful to the inquiry to have that released publicly, we were not objecting to it and, in fact, were

content certainly that it be delivered to Mr. Arar and his counsel under any circumstances.

So that is the background to the preparation of the document.

THE COMMISSIONER: Thank you, Ms McIsaac.

MS EDWARDH: Thank you, Mr. Commissioner.

So I take it the answer to my question is no, that the actual contents of this document, or the two documents, will not be given to counsel for Mr. Arar. Currently, sir, it's our position that the document as crafted is unfair and misleading.

So with that then, I do not intend to profer it in any way at this time.

THE COMMISSIONER: Thank you.

PREVIOUSLY SWORN: DANIEL LIVERMORE

EXAMINATION (Continued)

MS EDWARDH: Mr. Livermore, it's always dangerous for a lawyer to have an evening, but I do have a few questions that I would like to ask.

Mr. Cavalluzzo took you through the charts relating to the corporate structure,

and if you would like to have reference to them, I will give you the tab number, but I have a very simple question before you search through them.

I noted, and I think you observed, that the two liaison officer positions are no longer filled, or they are vacant at this time?

MR. LIVERMORE: That's not quite true. The CSIS liaison position is temporarily vacant in the sense that the incumbent at the time, who is not, by the way, the incumbent during the events that we are looking at here, went on language training.

MS EDWARDH: I see.

MR. LIVERMORE: So he was physically just removed from the office temporarily for that purpose.

The other office, the RCMP liaison officer position, has been filled by a different individual.

MS EDWARDH: So they are both now occupied today?

MR. LIVERMORE: Well, as I indicated, one office is physically empty because somebody is just not there, but in principle both are filled.

MS EDWARDH: My point being, sir, that it's clear that there has been no corporate decision that the positioning of those liaison officers should be changed?

MR. LIVERMORE: No.

MS EDWARDH: Thank you.

Now, I would like, if I could, sir, have you turn to the Garvie report, which is Exhibit P-19.

Could you provide that to the witness? Thank you, Mr. Registrar.

I would ask you, sir, to turn to page 41. There are two issues on page 41 that I would like to touch upon.

The first is that there is a reference to the RCMP being asked by DFAIT if they -- and I take it that it is the RCMP -- were interested in interviewing Arar, and then there is a comment:

> "RCMP advised that while they were interested in interviewing Arar, it is not a priority at this point."

Were you present or privy to any of those discussions where the RCMP were asked by

DFAIT if they wanted to interview?

MR. LIVERMORE: I don't believe that I was physically present during that conversation, but I am aware of the general question going forward.

MS EDWARDH: And I take it, sir, that when they said it was not a priority, you understood that it simply did not rank high enough on their own agenda of work to make the effort to try and negotiate access to Mr. Arar with the Syrian authorities?

MR. LIVERMORE: Well, the issue, as I recall it, was that arranging for RCMP questioning of any individual abroad is a fairly onerous job with a lot of work involved in it and it's extremely expensive, and my understanding is that the RCMP at some point came back and said, "It isn't a priority for us."

MS EDWARDH: It's not worth the candle, thank you.

MR. LIVERMORE: It's not worth the trouble, the money we would go through.

MS EDWARDH: I have a document, sir.

Mr. Registrar, could you provide

the witness with the document. All other counsel have it. And could you provide the Commissioner with a copy.

I must indicate, Mr. Commissioner, that this document the witness has had an opportunity to review, but it is an Access document. Ms. McIsaac on behalf of the government kindly takes no objection to it being shown to the witness although it has not in fact conformed to the 48-hour rule.

THE COMMISSIONER: Thank you, Ms McIsaac.

MS EDWARDH: Sir, can you tell us something about this document? It is clear that it is released by Access and clear it is released by CSIS.

It seems at the bottom to suggest -- well, first of all, can you identify who may have been the author of this?

MR. LIVERMORE: I am not sure, Mr. Commissioner, whether I should seek your guidance on this, because I -- I know in fact who authored the document, but not because of its authorship at the time. I know because of subsequent events.

THE COMMISSIONER: Are you concerned about --

MR. LIVERMORE: Well, I am concerned about two things. One is whether I am free to provide the name of the individual who authored the document.

THE COMMISSIONER: That's not a problem because you learned it later.

MR. LIVERMORE: And if I learned it later, only because of its release.

THE COMMISSIONER: That still wouldn't --

MR. CAVALLUZZO: Mr. Commissioner, I understand that this document is part of the CSIS exhibits that we have reviewed in camera.

THE COMMISSIONER: Right.

MR. CAVALLUZZO: You should be aware of that before we proceed. And of course the government has claimed NSC in respect of those exhibits.

THE COMMISSIONER: But this document, there is no claim for NSC.

MR. CAVALLUZZO: That's correct. The question is whether he can go beyond the document itself in terms of the information that

is being sought.

THE COMMISSIONER: I think it would be to hear the question and see whether the Government claims NSC over the answer that would be given.

MS EDWARDH: That would be fine, sir. And our position is if the issue relates to the information that is in the document, then that's fine.

THE COMMISSIONER: If you would just alert me, Ms McIsaac, because I must say I am not entirely clear exactly as to what is happening.

First of all, this document can be filed as P-67?

EXHIBIT NO. P-67: Document dated 21 May 2003 on DFAIT letterhead

THE COMMISSIONER: Go ahead, Ms Edwardh.

MS EDWARDH: Let me go back. At least I can start with this and it should be non-contentious.

The document appears to be on the stationery of the Department of Foreign Affairs

and International Trade. Can we agree with that?

MR. LIVERMORE: That is true.

MS EDWARDH: Which would tend to tell us that that places its origin within the department?

MR. LIVERMORE: It does.

MS EDWARDH: I am asking you, sir, if you can identify who this document was written by. Who is the author?

MS McISAAC: If not by name, we could identify the position of the individual.

MR. LIVERMORE: Would that -- is that -- should I proceed with that, Mr. Commissioner.

THE COMMISSIONER: Please continue. Please tell us the position.

MR. LIVERMORE: This was drafted -- my understanding is it was drafted by the CSIS liaison officer in my office.

MS EDWARDH: And the portion that I am interested in is obviously attached -- well, I should ask one other question.

Drafted by the CSIS liaison officer and directed to whom?

MS McISAAC: We would claim

national security for that, if the witness even knows.

MS EDWARDH: I take it that's an objection.

THE COMMISSIONER: Put that question to one side. Carry on.

MS EDWARDH: Okay. It is dated May 21st, 2003?

MR. LIVERMORE: Mm-hmm.

MS EDWARDH: And that is some months after DFAIT has asked if the RCMP wanted an opportunity to interview Mr. Arar.

Is that correct?

MR. LIVERMORE: Yes.

MS EDWARDH: So now we have in the document:

> "Please find attached information that was provided to the ADM as he visited Syria."

And we are aware that the ADM went to Syria.

MR. LIVERMORE: Actually it was the Deputy Minister, Mr. Gaetan Lavertu, that went to Syria. The ADM would imply that it is Jim

Wright, who was the ADM, but it was actually --

MS EDWARDH: The Deputy Minister?

MR. LIVERMORE: The Deputy Minister.

MS EDWARDH: And we have seen documents in respect of that visit?

MR. LIVERMORE: That's correct.

MS EDWARDH: And indeed the Deputy Minister did not raise Mr. Arar with the Government of Syria?

MR. LIVERMORE: That is right, because of circumstances.

MS EDWARDH: Then it says:

"I have also been advised that DFAIT ISI..."

That's Mr. Heatherington?

MR. LIVERMORE: And company. That's his division. So that would be him, and possibly others.

MS EDWARDH: And you would be aware of that because you are ISD?

MR. LIVERMORE: In this case I am aware of it. It doesn't necessarily mean it, but I do. I know who it is.

MS EDWARDH: Then there is a

redaction leading up to Mr. Arar's name.

"Along this line, do you have any questions you would like posed to Arar?"

So as I look at that, sir, it's quite clear that the CSIS liaison officer is asking someone whether or not there are any questions that should be posed to Mr. Arar while he is in detention in May 2003.

Is that correct?

MR. LIVERMORE: That appears to be the case.

MS EDWARDH: Well, do you know anything that indicates that my meaning that I am drawing from this is incorrect?

MR. LIVERMORE: Well, my difficulty in responding is the entire facsimile is incorrect. And if I could explain the context?

The reason I asked you, Mr. Commissioner, is that I was not aware of this transaction, nor, I think, was anyone in ISI aware of this facsimile, until it had been released, which was of course months, if not many months, after the fact.

In our system, this could have

been done one of two ways. We have blank paper, and the fax could have been prepared by the CSLO, CSIS LO and sent appropriately. It could have been done on our computer system, which has what we call a template which puts the logo on a fax. So that could have been done.

But either way, it was not a transmission which was part of the Department of Foreign Affairs per se; it was entirely --

MS EDWARDH: CSIS?

MR. LIVERMORE: CSIS.

MS EDWARDH: Right.

MR. LIVERMORE: Now I could explain possibly the circumstances which might warrant it.

MS EDWARDH: May I stop you, though? I don't want to leave myself with a misimpression because of course, sir, I was not a part of the in camera hearing process.

I hear you saying that there ought not to have been the Foreign Affairs -- a different kind of document should have been sent without the logo from Foreign Affairs?

MR. LIVERMORE: It is a bit misleading to have our logo on it. My point in

explaining how we send facsimiles is I don't know whether it is possible actually to send one without actually using that piece of paper with our logo on it. That's the fax form we have in our office so that's what we use.

MS EDWARDH: Let's forget for a moment that it has a logo. And I think you have explained this is really the CSIS liaison officer communicating with someone about whether or not there are any questions that they would like posed to Mr. Arar.

It certainly leaves the impression, sir, that CSIS was communicating questions to someone who had access to Mr. Arar.

Is that fair?

MR. LIVERMORE: If you say the impression conveyed, that possibly might be true. But my recollection of events is somewhat different, and if you like, I possibly could clarify what the context was.

MS EDWARDH: Certainly.

MR. LIVERMORE: My recollection is that at one point we were a bit perplexed by some of the reporting that we were getting from Damascus with respect to Arabic language

translation/interpretation. And this, as I think I mentioned yesterday, is fairly common, where you have officials who would like the local language used as opposed to English or French when you are talking to an individual.

We had -- and I include me in that. I had raised the point internally: would it be prudent to think about an Arabic speaker, sending an Arabic speaker, a fluent Arabic speaker, to Damascus on this point? And the idea was we could facilitate the consular function for the mission by sending a fluent Arabic speaker.

That's as far as the issue ever went internally. And this, the issue of sending questions with this person, never arose, certainly never arose with us.

MS EDWARDH: Never arose with you?

MR. LIVERMORE: No.

MS EDWARDH: And I take it we can agree, sir, that you are well aware that the internal decision-making of CSIS may be something that is not shared with you, and as well their actions?

MR. LIVERMORE: Well, in this -- with respect, in this one I would argue that what

the -- again, without knowing quite the circumstances of the office -- what the CSIS liaison officer must have done, I conclude, was send a facsimile to someone containing information which simply wasn't the case.

MS EDWARDH: I am sorry, I --

MR. LIVERMORE: In other words --

MS EDWARDH: We are too obtuse for me; sorry.

MR. LIVERMORE: In other words, we weren't going to pose questions to Mr. Arar. That was never the issue. And therefore sending a facsimile to somebody saying "do you have any questions?" wasn't the right thing to do and was addressing the wrong issue.

MS EDWARDH: Let's put it this way: It's clear from DFAIT's perspective that you were not interested in posing questions to Mr. Arar?

MR. LIVERMORE: That is true.

MS EDWARDH: But you will certainly agree with me, sir, that what is conveyed implicitly in this line is that doesn't mean that CSIS may not be interested in posing questions -- let me finish my question -- that

CSIS may not be interested in posing questions, and they are just inquiring whether there are any additional questions that should be asked?

MR. LIVERMORE: I don't think that's quite the conclusion I would draw from this.

MS EDWARDH: It is certainly open on the basis of this document?

MR. LIVERMORE: I would think that, on the basis of this document, a person is asking CSIS, "Do you have any questions that you would like posed?"

I think that's what it basically says.

MS EDWARDH: To Mr. Arar while he is in custody in Syria?

MR. LIVERMORE: To Mr. Arar, yes.

MS EDWARDH: Yes. The other thing I don't understand, sir, is the statement that you or DFAIT were perplexed by the Arabic language used.

MR. LIVERMORE: Yes.

MS EDWARDH: Because, of course, Mr. Martel spoke pretty good Arabic; correct?

MR. LIVERMORE: Yes.

MS EDWARDH: So who is perplexed about what conversation?

MR. LIVERMORE: Well, with respect, we were cognizant that Mr. Martel's Arabic was pretty good. Sometimes it's useful to elevate the linguistic capability from pretty good to excellent so that you can get the nuance of every conversation, and that's what we were thinking.

We were wondering to ourselves, if somebody is translating a particular conversation back and forth, how do we know that that translation is 100 per cent? Are we missing any nuance? Was Leo -- excuse me, Mr. Martel -- able to capture every nuance?

MS EDWARDH: And the person who you were interested in getting every nuance was, in fact, Mr. Arar because he was being forced to speak Arabic and you knew he spoke fluent Arabic.

Is that correct?

MR. LIVERMORE: Obviously what was going through our minds was if Mr. Arar was providing answers in Arabic and the translation was being done for him to us in either English or French, how do we know that that translation was

100 per cent?

MS EDWARDH: Good question.

MR. LIVERMORE: How do we know? Again, it goes back to the scepticism I expressed yesterday. And if there's a chance to alleviate that skepticism, it's not a bad idea to do so.

MS EDWARDH: Sound advice, it seems, in some senses.

Let me just say this: I take it there was no action taken on that perception that Mr. Martel's Arabic may not be sufficiently up to scratch to get the tiny nuances of the conversation?

MR. LIVERMORE: My recollection of what happened to this issue was that it wasn't much of an issue. We raised it one day in the office. We talked about it internally briefly. And I don't think -- I am not even sure, I don't even recall whether we took this to Gar Pardy or the consular bureau in a serious way as opposed to a casual conversation, and after that it dropped because we basically followed the sequence of reporting that came in and were satisfied about the job that was being done.

MS EDWARDH: So the answer, I take

it, is simply that no further steps were taken?

MR. LIVERMORE: No further steps were taken.

MS EDWARDH: Let me turn to another area then.

Can you identify for the Commissioner -- and I am sorry, I don't have a copy; it's one of the disadvantages of being too far from home -- what provisions of the Privacy Act you think support the sharing of information obtained in consular visits with CSIS and the RCMP?

MR. LIVERMORE: I believe it's section 8. But what we do in-house is consult the legal bureau of our department when we have any legal issues obtaining. I am not a lawyer myself, and I would rely on their judgment.

MS EDWARDH: And in getting involved in this case and transmitting information to CSIS and the RCMP, sir, did you do so on the basis of advice?

MR. LIVERMORE: I --

MS EDWARDH: And if so, from whom?

MR. LIVERMORE: I do not recall any particular advice. I don't recall ever

consulting the legal bureau in particular about this issue.

MS EDWARDH: Thank you very much.

Now I would like to take you to a document that has a great deal of important detail in it. You will find it in tab 208.

This is a document, sir. Can you describe -- certainly it's approved by you, sir?

MR. LIVERMORE: It appears to be, yes.

MS EDWARDH: Well, it says "Approved: ISD", and that's you?

MR. LIVERMORE: That's me.

MS EDWARDH: And the date of this document, sir?

MR. LIVERMORE: It appears to be the 18th of October, 2002.

MS EDWARDH: I am sorry, it's 18/11. Is that not November?

MR. LIVERMORE: Eighteenth November, yes. Excuse me.

MS EDWARDH: Sir, it is addressed to the ambassador. Is that correct?

MR. LIVERMORE: It seems to be going to the head of mission in Damascus, yes.

MS EDWARDH: You use the language "it seems". It says "Recipi", which I understand to be recipient?

MR. LIVERMORE: Yes.

MS EDWARDH: And it says "DMCUS - HOM", which is head of mission?

MR. LIVERMORE: Yes.

MS EDWARDH: And it says C4R?

MR. LIVERMORE: Yes.

MS EDWARDH: And I take it this is an encrypted message sent to the ambassador in Damascus. Is that correct?

MR. LIVERMORE: Yes, it would be.

MS EDWARDH: And it's about the trip to Syria. "Topic: Trip to Syria"?

MR. LIVERMORE: Where's that?

MS EDWARDH: At the very top, the subject line.

MR. LIVERMORE: Yes.

MS EDWARDH: About the trip to Syria.

MR. LIVERMORE: Yes.

MS EDWARDH: I am going to ask a question, sir, and before you answer it I will let my friend take a position.

Sir, who was taking a trip to Syria?

MS McISAAC: Obviously that's a matter with respect to which the government claims national security confidentiality, and that of course is the reason for the redaction of the information in the document.

THE COMMISSIONER: The question will be put to one side.

I think, as I indicated in the ruling on this process, I can indicate that that question or line of questions has been asked and pursued in camera.

MS EDWARDH: That's helpful. Thank you.

I would like to put a generic question, because it's a much higher level question, and it may fall within the rubric of the problem.

But was there a trip to Syria by anyone connected with the Government of Canada or any department thereof?

MS McISAAC: There's been an acknowledgment that Mr. Lavertu travelled to Syria for other business and was unable, though he had

wished to do so, to raise the situation of Mr. Arar. His trip was not of course related to Mr. Arar.

With respect to anything else, we are currently claiming national security confidentiality --

THE COMMISSIONER: There is also the MPs' trip.

MS McISAAC: Well, the MPs' trip, yes, of course, sir. We know that is months later.

THE COMMISSIONER: Yes. But at this point in time --

MS EDWARDH: My question should have been -- I apologize to Ms McIsaac. In order to properly take an objection one way or the other, at this time, in the month of November 2002 --

THE COMMISSIONER: Okay. I understand the question. I appreciate that. What I can tell you, Ms Edwardh, is that area has been thoroughly canvassed in camera, and I will be dealing with it in my report. Whether that part of the report will be made public or not I guess remains to be seen.

MS EDWARDH: Thank you.

THE COMMISSIONER: I think to the extent that it's any comfort, it is an area that Commission counsel did cover extensively.

MS EDWARDH: Thank you.

Then I would like to go to tab 208 in the same volume -- oh, I am sorry. No, that's my mistake.

It is tab 218, and it's in the next volume. So that is Volume 3.

Mr. Registrar, perhaps you could assist the witness?

Sir, this is a document sent around the same time. That is November 19th, 2002. It goes from ISI, from Jonathan Solomon, who we have referred to yesterday?

MR. LIVERMORE: Yes.

MS EDWARDH: And it goes, sir, to the head of mission in Damascus; correct?

MR. LIVERMORE: That is right.

MS EDWARDH: It also carries the designation "Secret" and it says:

> "You are aware that the issue of the transfer and imprisonment of Mr. Arar is

prominent in the Canadian media and in Parliament, and was discussed as well between MINA..."

The Minister or the office.

"... and Secretary of State Powell during the latter's visit to Ottawa last week. Arar's situation has been the subject of a great deal of consultation within the Government of Canada, both because of the circumstances of the case as well as because of the information thought to be in the possession of Syrian authorities on the issue of international terrorism."

Do you see that?

MR. LIVERMORE: Yes, I do.

MS EDWARDH: I want to ask you a couple of questions.

After that statement, that the Syrian authorities appear well-informed on matters

of international terrorism, at the very bottom of that same paragraph:

> "He also requested an assessment of Arar's possible involvement in terrorist activities. Any further information beyond your report of November 3 would be extremely useful in this respect."

So am I correct to interpret this as, on behalf of ISI, and therefore under your authority, that what Mr. Solomon is asking the ambassador is, if he can, would he please request some more information. The November 3rd information they have, but they are looking for more with respect to Mr. Arar's involvement.

Is that correct? That's pretty obvious.

MR. LIVERMORE: Yes.

MS EDWARDH: Now here is my difficulty, sir. I take it you have no doubt that, having received this from Mr. Solomon, this is a form of instruction or direction or whatever to the ambassador?

MR. LIVERMORE: It is, yes.

MS EDWARDH: Yes. And I am going to ask you, sir: It was clear, and you said this I think in answer to a question posed by Mr. Cavalluzzo, that at this time the Syrian officials, whatever their reasons were, were kind of keen on having and keeping and maintaining good relations with the Canadian government.

Is that correct?

MR. LIVERMORE: Yes.

MS EDWARDH: So here you have a direction to the ambassador from the intelligence division of DFAIT. And I am going to ask you, sir, to the extent that you want more information, that this is nothing more than an invitation to encourage the Syrians to keep extracting information from Mr. Arar? That's really what it amounts to, does it not?

MR. LIVERMORE: No, I would not draw that conclusion.

MS EDWARDH: Certainly it amounts to encouraging the Syrians to pursue their investigation and interrogation?

MR. LIVERMORE: No, I don't read that into this message at all.

MS EDWARDH: And why wouldn't you read that in?

MR. LIVERMORE: My plain reading of the text is that we asked the embassy in Damascus to provide us with an assessment of their own on Mr. Arar's possible involvement in terrorist activities, and to ask for any further information.

MS EDWARDH: And where would the ambassador get that?

MR. LIVERMORE: We are asking the embassy to make the tactical decisions to do an assessment, if they have any information.

MS EDWARDH: Where would the ambassador go to get more information? This is only November. He has given you what the Security Military Intelligence Service has provided him. This is just a few weeks later and you are saying to him: Do an assessment and get more information, if you can.

MR. LIVERMORE: Yes.

MS EDWARDH: I am just going to put it very simply to you. Number one, the logical place for the ambassador to get that information was from Syrian Intelligence?

MR. LIVERMORE: Well, with respect, I think that he might have gone there and he might have asked other individuals in Damascus. But in any event, what we are asking is for any further information beyond his report and we are saying it would be extremely useful. We are not giving him instructions to go back specifically to anyone to get that information.

MS EDWARDH: And indeed he does go back from time to time; correct?

MR. LIVERMORE: He goes back from time to time and asks for information, I believe. I am not certain exactly how he does it.

MS EDWARDH: Well, the documents speak for themselves, but there are meetings that he has with General Khalil where he is making inquiries.

I am just going to put this proposition to you: Do you know what the word "abet" means?

MR. LIVERMORE: I am not certain that I do understand that.

MS EDWARDH: Let's take the word "encourage". I am going to suggest to you that such a direction from the intelligence branch does

nothing more than convey to the ambassador that he should obtain information and encourage the further investigation and interrogation of Mr. Arar.

May I have your answer, sir?

MR. LIVERMORE: I would not have drawn that conclusion, no.

MS EDWARDH: It is certainly open to that view when you read the document?

MR. LIVERMORE: I would not think so, but I can see why you draw that conclusion.

MS EDWARDH: Reasonable people sometimes differ.

Let me turn to another topic.

In your dealing with the information you had pertaining to Mr. Arar, were you aware of the fact that it was alleged that he spent seven months in a training camp, the Khalden camp, in Afghanistan?

MR. LIVERMORE: I was aware I must say in very vague terms of an allegation that he had spent some time in a training camp in Afghanistan. I was never aware precisely of which camp it was or the length of time that he was alleged to have spent there.

MS EDWARDH: Were you aware that it was alleged that he spent that time in 1993 from information in your department?

MS McISAAC: Could we have the witness pointed to the document?

I am a little concerned here because I think we need to figure out where it is that these allegations are coming from so that the witness can assess what he thinks about them.

I mean, my friend was concerned earlier about not releasing the document prepared by Mr. Atkey. So if we are going to talk about allegations against Mr. Arar, I think we have to go to the source of those and find out just exactly where they are coming from so that the witness can deal with them.

THE COMMISSIONER: Well, I think the witness has answered. I think the witness could answer just what he was aware of.

I think the next question might be what the source of his awareness was. Now, I am not sure -- we will have to be careful when that question is asked.

It seems to me it's a fair point, Ms Edwardh, that the next question would be: What

is the basis for this general awareness he has mentioned?

Don't answer that question until -- well, I am not sure. I will let Ms. McIsaac make the point.

MS EDWARDH: So let me ask the question: Can you recall, sir, what the source of that information is, of your general awareness?

MR. LIVERMORE: I must say that I am a little confused about the proceedings right now.

THE COMMISSIONER: The question is: Were you aware of this information about Mr. Arar having been in Afghanistan? You said, "Yes, generally I was aware of it."

MS EDWARDH: Of the allegation.

THE COMMISSIONER: The allegation.

MS McISAAC: And we have confirmed, Mr. Livermore, that we are prepared to acknowledge that information was received from Syria via the ambassador when he came back in the fall of 2002. So we have acknowledged that that happened.

MS EDWARDH: Well, I am comfortable in the old forum, Mr. Commissioner,

that if I ask a question and the witness can't answer it for reasons of national security, that he makes an objection.

But I am going to go through -- I will let the witness answer this question, but I do intend to go through a series of allegations and ask the witness the same question.

THE COMMISSIONER: And then in each question, depending on this answer, you are going to say, "What was the source of your information?"

MS EDWARDH: Yes, that's correct.

THE COMMISSIONER: The difficulty with this is the witness knows what the source of the information is. I don't. I am not sure if you will, Ms. McIsaac.

If the source of your information is protected by national security confidentiality, you should indicate so.

I think it is appropriate to ask the question as to what he was aware of certain allegations.

MS McISAAC: Well, the difficulty I am having, sir, is that -- let's be clear here.

We know that information came back

from Syria and the government has been willing to acknowledge that, and a summary was prepared by Mr. Atkey.

The difficulty that I had just now is that the allegation my friend says is out there is slightly different than what was in the summary prepared by Mr. Atkey.

MS EDWARDH: I object, because the summary is not before the Commission.

MS McISAAC: The problem is, with the witness not having any documents in front of him when my friend says seven and a half months --

THE COMMISSIONER: But the witness -- I thought the witness handled that question rather nicely.

MS McISAAC: I don't know where she is getting her information from.

THE COMMISSIONER: Well, that's fine. I don't think there's any harm done on that. I know what the record is.

I think the witness handled the question by saying, "I didn't know the details. I knew generally there was an allegation of that sort."

I think we are best just to try it

as I suggest.

MS EDWARDH: Certainly.

THE COMMISSIONER: Ask if he is aware of the allegation. You can answer that question -- well, let's wait to see what the questions are. And then we are going to have to rely to you, to a large extent, on the source of your information, whether there's a claim for NSC. Okay?

MR. LIVERMORE: Yes.

THE COMMISSIONER: Let's try it that way.

MS EDWARDH: Thank you very much.

Let's go to -- I think you have answered the first question, that you were generally aware of the allegation that Mr. Arar had trained in Afghanistan, and you were unclear about the precise year or the amount of time --

MR. LIVERMORE: Yes.

MS EDWARDH: Now, sir, can you indicate the source of your information?

MR. LIVERMORE: I believe that the source of the information is the subject of a national security confidentiality claim.

THE COMMISSIONER: Thank you.

MS EDWARDH: All right. So your task then, Mr. Livermore, is just to say you object on that basis.

MR. LIVERMORE: Okay, thank you.

MS EDWARDH: Second, were you aware of allegations that Mr. Arar was trained in small arms use and military tactics?

MR. LIVERMORE: Again, I was aware that there was an allegation of training. I wasn't particularly aware of what that training consisted of, but I assume that it was along the lines you suggest.

MS EDWARDH: And can you indicate to the Commissioner what the source of your information is?

MR. LIVERMORE: Again, I -- do I say I object?

MS EDWARDH: Yes.

--- Laughter / Rires

MS EDWARDH: That's the routine.

MR. LIVERMORE: I thought other people objected and I was to answer questions.

THE COMMISSIONER: This is an unusual proceeding, Mr. Livermore.

I think we understand how it's

working, and I won't repeat what I said earlier about in camera hearings or anything.

MS EDWARDH: Sir, did you become aware of the allegation that Mr. Arar was alleged to have used a code name?

MR. LIVERMORE: I must acknowledge that I was not aware of that. If I ever read it, it didn't stick with me.

MS EDWARDH: Were you aware that it was alleged that Mr. Arar travelled to Pakistan?

MR. LIVERMORE: Yes, I am aware of that allegation.

MS EDWARDH: And what is the source of your awareness or knowledge of that allegation?

MR. LIVERMORE: Well, again, I think I object.

MS EDWARDH: Were you aware that it was alleged that he had travelled to Pakistan at the behest of a group called Jama'at Tablighi?

MR. LIVERMORE: Again, I am not -- that doesn't ring a bell. It may have been that I read it at that point. But if it does, I have forgotten about it.

MS EDWARDH: Today you cannot recall whether you were aware of that allegation.

MR. LIVERMORE: I cannot recall, no.

MS EDWARDH: And while you were aware of these allegations, is it fair to say, sir, that nothing was alleged in the material you were aware of that Mr. Arar was involved in criminal activity in Canada?

THE COMMISSIONER: I am just -- that, it seems to me, is a different type of question.

MS McISAAC: Can I have the question repeated?

MS EDWARDH: Let me withdraw that because I am going to come back to it and set it up with a document so my friend will have a better chance to deal with it, because I do have a document that I want to deal with.

--- Pause

MS EDWARDH: Sir, I want to deal with just a couple of other areas, if I could.

We can almost go back to that original document I referred you to, the Garvie report, but I am going to put to you a couple of

propositions so we don't have to traipse through documents forever.

You can start with page 41. Again, you have already been referred in your testimony to tab 248, which is the letter from Mr. Proulx, signed by Dan Killam, directed to you, sir, raising concerns about Mr. Pardy's advice to Mr. Edelson.

Do you recall that?

MR. LIVERMORE: Yes, I do.

MS EDWARDH: And you testified yesterday that as far as you were concerned that Mr. Pardy was misunderstood by Mr. Edelson. Is that correct?

That it was all a mistake and that you indeed told Mr. Proulx just to forget it?

MR. LIVERMORE: That's more or less it. Somewhere between Mr. Pardy and Mr. Proulx there was a misunderstanding. I am not sure where it took place, but that's what I understood was the case.

MS EDWARDH: And that document that we were just discussing, this misunderstanding that occurred, took place in 2002. Is that correct?

Let me just check that.

MR. LIVERMORE: I would have to refresh my memory on the dates.

MS EDWARDH: Fair enough.

MR. CAVALLUZZO: It is 2002.

MS EDWARDH: Thank you, Mr. Cavalluzzo.

You are content with Mr. Cavalluzzo's statement?

MR. LIVERMORE: Absolutely.

MS EDWARDH: Then I want to look at page 41 because the issue didn't go away, did it, Mr. Livermore? If you look at the bottom of page 41, there is a discussion about ongoing concerns, and I am going to suggest they were ongoing concerns about a letter; right?

MR. LIVERMORE: Yes.

MS EDWARDH: So despite your best efforts to just make the whole thing go away, it seems pretty clear that Mr. Pardy, welcome or not, kept pressing the issue of some formal statement of the Government of Canada at some level to be sent to the Syrian authorities.

MR. LIVERMORE: Well, with respect, I don't think -- my recollection is it

wasn't quite the same issue. My recollection is that the incident or the series of incidents which might have triggered the Richard Proulx letter to me were slightly different, and the issue there was -- and I must admit, in the interests of moving forward I did not attempt to get to the bottom of the misunderstanding.

My understanding at the time was that a letter was requested from the RCMP. This was a slightly different issue in the sense that it was going to be a letter either from the Foreign Minister or from the Prime Minister, so the issue was slightly different months later.

MS EDWARDH: Fair enough. But all I am really saying is certainly the concern about whether Mr. Pardy was out of line in asking for statements about involvement Mr. Arar may have had in criminal activity or not, which you thought you had put to bed in 2002, is front and centre now in the RCMP and other places in March of 2003. Fair enough?

MR. LIVERMORE: Again, it's a slightly different issue, but I wouldn't quarrel with the main --

MS EDWARDH: The main thrust of

the point.

MR. LIVERMORE: Yes.

MS EDWARDH: Okay.

Sir, I want to just ask whether or not, through the course of your dealings with the Arar matter, you ever became aware of through any reports by the ambassador or anybody else, either in Syria or the U.S., that the Americans were putting pressure on Syria to keep Mr. Arar in custody?

MR. LIVERMORE: No, it certainly did not come to our attention, no.

MS EDWARDH: And certainly -- I am sorry. Let me go back to this Garvie report for a second.

I am going to put to you the proposition that seems pretty evident to me when you look at the evolution of language, about what can the government say, and who should say it, and under what rubric should it be said, that certainly Mr. Pardy and others in the Department of Foreign Affairs took the position that they had not seen any evidence in Canada at all that Mr. Arar was engaged in criminal activity.

MR. LIVERMORE: Could I just ask

for a repetition of the statement because I am just seeking clarification of what you are asking me to comment on.

MS EDWARDH: When one looks at this discussion of the letter, what can the letter say, what DFAIT appears to want the letter to say, what other agencies are concerned about the letter saying, it's pretty clear to me that from the perspective of the Department of Foreign Affairs -- and Mr. Pardy is speaking -- that they were taking the position that they had not seen any evidence that would indicate that Mr. Arar was engaged in criminal activity?

MR. LIVERMORE: Well, if I could clarify this, my understanding at the time was that Mr. Pardy, quite rightly, was seeking to draft a letter which expressed as accurately as possible the position of the Canadian government at that time, and that he had drafted a sentence which was -- I think it's cited in paragraph 41, in the body of that paragraph. And I think it's fair to say that the RCMP, for their own reasons, thought that that sentence did not accurately represent the RCMP opinion.

MS EDWARDH: Right. My question

to you, sir, was very simple. We know Mr. Pardy wrote that. We know Mr. Pardy is privy to all your telexes and e-mails and he is part of the discussions and he meets with CSIS and he meets with the RCMP.

So my proposition is a simple yes or no. It seems apparent that from Mr. Pardy's perspective and DFAIT's perspective that they were taking the position that Canada had no evidence that Mr. Arar was involved in terrorist activities, let alone criminal activities.

MR. LIVERMORE: Yes.

MS EDWARDH: Is that correct? That's what he wrote.

MR. LIVERMORE: That's what he drafted, and I think you will have to ask Mr. Pardy about his own perceptions of that.

MS EDWARDH: Certainly he knew as much as you did?

MR. LIVERMORE: Well, with respect, I do not know. I do not have any evidence one way or another.

MS EDWARDH: That's what the presumption of innocence is, I suppose, Mr. Livermore.

MR. LIVERMORE: Well, absolutely.

I was seeking at the time, and I think that Mr. Pardy was seeking at the time, to capture in a paragraph the most accurate possible expression.

MS EDWARDH: That was his attempt to capture his understanding?

MR. LIVERMORE: That was his attempt at a draft to capture that understanding, and it was subject to comment by others who may or may not have other information to add.

MS EDWARDH: Or may view the same information differently?

MR. LIVERMORE: Possibly.

MS EDWARDH: Now I want to take you to tab 392.

--- Pause

MS EDWARDH: This is from the Ambassador in Damascus, sent through some encrypted system, C4R?

MR. LIVERMORE: It is the C4 system which is encrypted, and it is from -- it was drafted by a different person at the embassy, but it has been approved at the back by Ambassador Pillarella, yes.

MS EDWARDH: Right. It goes to you, sir?

MR. LIVERMORE: Actually, it goes to Mr. Pardy. It goes to the Head of the Consular Bureau, but I am one of the ones -- am I one of the ones?

I am actually not one of the ones that have received this.

MS EDWARDH: Would you have seen this document.

MR. LIVERMORE: I don't recall seeing it offhand, but there is no reason why I would not have seen it.

I don't see myself on the distribution line.

MS EDWARDH: All right.

I'm going to ask you some questions about it because it is self-evident and I think you can answer them whether you have seen the document before.

Turn to page 2, sir, paragraph 5.

This is a description of a meeting between the Deputy Foreign Minister of Syria and Canadian Members Of Parliament; correct?

MR. LIVERMORE: Yes.

MS EDWARDH: So you probably, as a matter of interest, would have wanted to know what that encounter was like.

Fair enough?

MR. LIVERMORE: This is a normal practice.

MS EDWARDH: Right. So the notation made -- and I take it Mr. Shaw would have, or somebody would have been present during these meetings?

MR. LIVERMORE: Most likely, yes.

MS EDWARDH: He makes the following and it is approved by both Mr. Martel and the Ambassador:

> "Turning to the Arar case, the Deputy Foreign Minister explained that the U.S. decision to export Arar to Syria via Jordan had taken his government by surprise. The Syrians had not asked for Mr. Arar and had expected him to be deported to Canada." (As read)

All right? Do you see that?

MR. LIVERMORE: Yes.

MS EDWARDH: That is not a surprise to you. You have seen that information before?

MR. LIVERMORE: Well, this is his explanation. Yes, I have seen this before.

MS EDWARDH: The same explanation, yes.

You have not seen anything any different?

MR. LIVERMORE: No.

MS EDWARDH: Now, if we assume, sir, that the person speaking on behalf of the Government of Syria, who is a highly ranked individual in the department, if you assume that to be correct, and if it is true, it is quite clear no assurances were given by Syria to the United States, if you assume that statement to be true?

Is that correct?

MR. LIVERMORE: In what respect?

MS EDWARDH: Well, one would give assurances, nation to nation, that -- I mean, assurances of fair treatment.

MR. LIVERMORE: Yes, I --

MS EDWARDH: If the Syrian government had no knowledge that Arar would arrive on their doorstep, surely they had not given assurances. That is a self-evident proposition?

MR. LIVERMORE: I would have no information one way or the other.

MS EDWARDH: No. If you accept the statement of the Syrians as true, it inevitably flows from that, inexorably from the logic, that the Syrian government did not know because they were not contacted and therefore, surely, they have not given assurances?

MR. LIVERMORE: Again, you are asking me to speculate. I'm a little loath to do that because I don't know the circumstances.

I have no idea and I have never been informed of the circumstances, and what we have before us is basically what we have by way of information.

MS EDWARDH: Why is it impossible to draw the inference? If the Government of Syria says, "Hey, we were never notified or contacted," why doesn't it flow from that, they weren't contacted, weren't aware he was coming and therefore could not have give assurances?

Doesn't it flow from that statement?

MR. LIVERMORE: I am not in the business of speculation; I'm sorry.

MS EDWARDH: I'm going to take that as you declined to answer the question, sir. I don't think it is speculative at all.

MR. LIVERMORE: I simply don't know.

MS EDWARDH: Were you aware within the department of any question posed to the U.S. authorities after Mr. Arar was sent as to whether or not they had ever sought or obtained assurances from Syria?

MR. LIVERMORE: I am not aware of that.

MS EDWARDH: You have no reason to believe they did, do you, sir?

MR. LIVERMORE: As I said, I have no reason particularly to believe so, no.

MS EDWARDH: All right.

Now, you spoke yesterday of your concern about the information that has come out, all post Mr. Arar's deportation, and you referred to the articles -- indeed there is now a book

written by Mr. Seymour Hirsch, you have undoubtedly seen some of the materials from the 9/11 Commission in the United States, you may even have read Mr. Richard Clarke's book where he talks about extraordinary rendition, and indeed the government statements made in the last year or so about the policy, which they still defend.

Given your understanding, and you are the person who has looked at it, of what happened to Mr. Arar, can we agree, sir, that it in all respects looks like just a form of special or extraordinary rendition that affected his removal to Syria?

MR. LIVERMORE: I can't really say under what legislative or any other authority they made this decision. It wasn't our decision, and I know nothing about the decision.

MS EDWARDH: It smacks of it? Are you prepared to go that far?

MR. LIVERMORE: You are asking me to draw a conclusion about something that I know nothing about.

MS EDWARDH: Right. I take it then through all this period and afterwards none of you went to Legal at Foreign Affairs and said,

"Can you tell us what you think of this? Is this an example of extraordinary rendition that our American counterparts are involved in?"

MR. LIVERMORE: Well, you are asking me to make reference to a term that we didn't -- or at least I personally wasn't aware was even on the books until later on.

MS EDWARDH: I'm not suggesting, sir, that you knew at the time. What I'm suggesting to you is that we all know now,

Fair enough?

MR. LIVERMORE: Yes.

MS EDWARDH: I'm asking you, sir, in retrospect, looking back on what happened, isn't it fair to say that in your own mind you concluded this is just a special form of extraordinary rendition?

MR. LIVERMORE: I don't want to play coy with you on this point.

I have read a number of books, I have read a number of articles which have arisen since that time which have explained a lot of circumstances. Some of them have included Mr. Arar's name as an example, including one that came across my desk this morning.

I take those for what they are worth. These are people that are investigating the situation, drawing appropriate conclusions. I think it is quite appropriate for them to draw that conclusion.

I simply don't know, as an official working in Ottawa, the legislative or other authorities which led the U.S. to take the decision that they take. I have no idea how they arrived at that decision.

MS EDWARDH: Well, certainly one of the things that we have learned about extraordinary rendition, the rule of law doesn't have much to do with it?

MS McISAAC: Excuse me, sir.

We haven't actually learned anything about extraordinary rendition before this Commission. I understand that there will be witnesses addressing it.

Mr. Arar was the subject of a --

MS EDWARDH: I object.

MS McISAAC: -- deportation order of some kind.

MS EDWARDH: Well, maybe. Maybe.

THE COMMISSIONER: But, in any

event, there will be evidence, Ms Edwardh, called by the Commission to deal with sort of the legal framework of it. I think you have probably gotten as much of an answer as you will from the witness on this question.

MS EDWARDH: All right.

Certainly, sir, from your answers it is fair for us to draw one compelling conclusion: It is that while our American friends to the south were engaged in this activity it came as one surprise to you when it became a very public matter and CSIS had not taken the time or opportunity to inform you that this was an ongoing practice.

Fair enough?

MS McISAAC: Excuse me. I don't understand the question.

And why would CSIS have informed Foreign Affairs that this was an ongoing practice?

THE COMMISSIONER: I don't think that is part of the public record certainly, what CSIS knew or didn't know.

MS EDWARDH: I believe it is, sir.

In Mr. Waldman's cross-examination of Mr. Hooper he asked the question of Mr. Hooper,

"Were you aware at the time?", and I believe the record will show Mr. Hooper answered yes. Mr. Loeppky answered no.

THE COMMISSIONER: Then I didn't recall that.

MS McISAAC: I don't recall it either, sir.

THE COMMISSIONER: But I'm certainly content.

Is that the case, Mr. Cavalluzzo?

MR. CAVALLUZZO: Yes, there is contextual evidence, both from Mr. Elcock and Mr. Hooper.

However, there were nuances in their evidence as to whether Mr. Arar's situation was extraordinary rendition, so you should be aware of that as well.

THE COMMISSIONER: But then I do think it is a fair question to ask the witness, having regard to that evidence of Mr. Hooper and Mr. Elcock, whether he is aware that the information they had about it was passed to the Department of Foreign Affairs.

MS EDWARDH: That is simply my question.

THE COMMISSIONER: I think that is a fair question.

MR. LIVERMORE: Well, I was never informed by anyone within the Canadian government about such a practice, nor have I ever been informed by anyone outside the Canadian government, that is some of the friendly agencies that we deal with. Never.

MS EDWARDH: Then my last question, sir, is: When Mr. Arar left and was returned to Canada there were efforts undertaken to continue to get information from Syrian Military Intelligence -- are you aware of that -- to get more of the file?

MR. LIVERMORE: I don't believe I am aware of that.

MS EDWARDH: You don't believe you were involved --

MR. LIVERMORE: Yes.

MS EDWARDH: -- in any of those efforts?

MR. LIVERMORE: I am trying to recall.

MS EDWARDH: Don't let my use of the word "file" confuse you.

The question is: Were you aware, sir, of any efforts that you made, others in the Department of Foreign Affairs made, or any intelligence agency made, or the RCMP made, to get further information from the Government of Syria about Mr. Arar after his departure?

MR. LIVERMORE: I do not recall offhand any information of this order, no.

MS EDWARDH: I take it if there were continuing efforts to get more information, there is nothing inconsistent with you trying to get more information given the conduct of the department today?

MR. LIVERMORE: It depends whether you are asking about -- well, again, I am not aware of the precise circumstances so I can't comment one way or another.

I am trying to think of documents or events or dates that might help me in this, but I can't for the moment recall anything. So I have to answer in the negative then.

MS EDWARDH: Just give me one moment, please.

--- Pause

MS EDWARDH: This is a matter I

can pursue with Mr. Pardy.

Mr. Livermore, those are my questions. Thank you very much for your assistance.

THE COMMISSIONER: Thank you, Ms Edwardh.

Ms. McIsaac...?

--- Pause

EXAMINATION

MS McISAAC: Thank you, sir.

Thank you, Mr. Livermore. I just have a few questions.

Perhaps we could start with the issue of sharing of information, and I want to break this down into two parts.

The first part of my question relates to the sharing of information within Foreign Affairs, and both Mr. Cavalluzzo and Ms Edwardh asked you a number of questions in this regard.

When it comes to classified information, that would be information classified as secret or top secret, or indeed even information that would be subject to protection under the Privacy Act, would it be fair to say

that while individuals with appropriate clearances would have access to that information their access would be on a need-to-know basis?

MR. LIVERMORE: The dominant principle of classified information flow is need-to-know.

MS McISAAC: Could you just explain a little bit what the concept of need-to-know exactly encompasses?

MR. LIVERMORE: The concept is a basic principle which we try then to translate into operational reality, whereby information that is classified is conveyed to individuals only involved in operations, they need to see the information in order to carry out their jobs. Other people who are not involved in those jobs do not need to be in receipt of it and therefore do not have access to it.

MS McISAAC: Therefore, when we were talking about internal assessments of the human rights situation in a particular country or indeed perhaps a political analysis of the situation in a particular part of the world, just because I have a top secret or secret security clearance I understand would not mean that I would

automatically have access to those documents?

MR. LIVERMORE: You would not. A security clearance of itself doesn't mean much.

MS McISAAC: All right.

Let's move then to the sharing of information from the department with other governmental departments and agencies, whether they be security or policing agencies or indeed other agencies that might require information with respect to Canada's foreign policy or global events.

If that information were classified would anybody in another department who had the appropriate security clearance have access to it, or would that also be governed by the need-to-know principle?

MR. LIVERMORE: Well, as I have indicated, the need-to-know principle is supposedly operative throughout the Government of Canada, which means that if we are dealing, for example, with a particular part of the world and we are dealing with agencies that are involved in the particular issue, they might receive the exact same documentation at the exact same level of classification. But those in their same agencies,

outside of that sphere of influence, would not be allowed to see the same material.

MS McISAAC: All right.

Now, if I could move on to another area, and that is the role of the liaison officers within Foreign Affairs.

Just to clarify what their role is, I understood you to say that they would act in a manner that facilitated contact between that agency, whether it be the RCMP or CSIS, and Foreign Affairs for any number of reasons?

MR. LIVERMORE: Yes.

MS McISAAC: All right. So if I were an employee of CSIS and I wanted to have access to information about what was happening, say in North Korea, and I was trying to find out, who would I contact? Who would I deal with at the Department of Foreign Affairs in order to obtain that information, assuming I had a need-to-know, of course?

Would I use the liaison officer as a conduit to make the contacts?

MR. LIVERMORE: That is what we encourage, because Foreign Affairs tends to be a fairly complicated organization in practice.

What we have done with both liaison officers -- LOs as we call them -- is to ask them to be the conduit and to seek, within Foreign Affairs, the appropriate people that each agency can talk to on specific issues.

MS McISAAC: Conversely, if the Department of Foreign Affairs, particularly the Intelligence Branch during its activities, were to come into contact or were to receive through its analysis, information -- and I'm talking about the small "i" intelligence that you use -- that would be of assistance or might be of assistance to the RCMP in connection with, say, global trends in money laundering activities or drug-running activities.

Would that also be funnelled to the RCMP through the offices of the LO?

MR. LIVERMORE: We would seek to do so. It might come from a number of operational units within the department who may or may not know much about how the RCMP works and the job of the LO is to encourage that the right contacts be made at the right time.

MS McISAAC: So the general role of the LOs is considerably broader than was

discussed earlier today -- yesterday and earlier -- I suppose yesterday, with respect to the facilitating of the exchange of more general information?

MR. LIVERMORE: Yes. They do have a specific function within the security intelligence bureau, but they have a much more general role within the department as a whole.

MS McISAAC: Okay, thank you.

Turning to another area, and that is the consular visits that Mr. Martel was able to have with Mr. Arar when he was incarcerated in Syria. I don't think we need to go to the documents, but putting yourself back in time as you were assessing the situation -- and by "you", I mean you and your colleagues -- would I be correct in assuming that you were, "impressed" is not quite the right word, but that you were surprised by the level of consular access and the speed, if you will, within which Mr. Martel was able to obtain that consular access?

MR. LIVERMORE: I think that we concluded -- by "we", I think it's probably fair to say the department as a whole, although Mr. Pardy will have to address this question for

himself. I think we were pretty impressed by the initial call that Ambassador Pillarella had on the Syrian authorities and what they expressed to him, and by then the speed that Leo Martel was able to obtain consular access, yes.

MS McISAAC: And indeed it was on October 21st that the ambassador was first advised that Syria had Mr. Arar in their country, and the ambassador met with Syrian authorities on October 22nd, and the first consular visit was on October 23rd?

MR. LIVERMORE: I believe that's the chronology, yes.

MS McISAAC: I would suggest that that was quite remarkable cooperation given the history that the department had encountered with respect to Mr. El Maati, who had been previously incarcerated in Syria, and for whom no consular access was granted, I understand?

MR. LIVERMORE: Yes, that's correct.

MS McISAAC: And similarly Mr. Almalki was incarcerated and there was no consular access for him either?

MR. LIVERMORE: I believe that's

the case.

MS McISAAC: Can I also ask you to comment. There were ongoing consular visits, of course, but then in April of 2003 the Syrians received the delegation of parliamentarians, Ms Catterall and Mr. Assadourian.

Could you comment on, in your experience, whether that was a surprising or unusual development?

MR. LIVERMORE: Well, in a sense, it had been consistent with what the Syrians had expressed on the first occasion when Ambassador Pillarella went in to see them. But I must say from another standpoint it wasn't surprising, in the sense that at almost any time when the Canadian government appoints or asks parliamentarians to visit for a specific purpose, we would expect them to be received at appropriate levels by the host government. We would think that is an appropriate sign of respect for Canadian parliamentarians.

MS McISAAC: Yes. What I actually was speaking about was the contrast between the level of access, that evidenced with respect to Mr. Arar, and the level of cooperation you have

received in other cases.

MR. LIVERMORE: Yes.

MS McISAAC: With respect to this issue of the roles of CSIS and the RCMP and the Department of Foreign Affairs, are you aware of any consular services that were not provided by the Department of Foreign Affairs with respect to Mr. Arar because of any intervention on the part of CSIS or the RCMP?

MR. LIVERMORE: No, I am not aware of any. I think that Mr. Pardy would have to address that more thoroughly, though.

MS McISAAC: Drawing on your own consular experience which you indicated to us yesterday you have had, there was a suggestion by Ms Edwardh that Mr. Martel was -- I took it to be a little too friendly with the Syrian authorities when he was making the consular visits.

In your experience, what can be the protocol with certain regimes in terms of maintaining access and the kind of discourse with the authorities necessary to ensure continuing access?

MR. LIVERMORE: I think that this varies enormously from country to country. I

know -- and I think protocol would be putting it in too organized a fashion.

I can recall in Chile once when I had a consular visit, I went in and I had a cup of coffee with the major who was in charge of the police detachment. We sat around for an hour and chatted. That seemed like the thing to do. And we were waiting for the prisoner to arrive. This is simply part of the job. This is how it's done.

There may be other situations where the host government does not permit the embassy official access to either prison officials or to anyone before the prisoner -- I think that Mr. Pardy would be the clear expert on this.

My point here is that when you are on the ground, you basically tailor your activity, how you do your job, to local customs and the way it has to be done locally. And if that means you sit down and have a cup of coffee and chat for an hour before the meeting starts, that's what you do. If it means that you do something else, that's what you do.

The point is to get on with the job, and that varies from place to place.

MS McISAAC: You do what is

appropriate and necessary to maintain the goodwill of those who facilitate your access to the individual?

MR. LIVERMORE: Well, again, Mr. Pardy is the expert, but I think that any time that you are facing a situation which might be difficult -- and many times you find yourself in a situation where you are wholly dependent upon local goodwill for consular access, or whatever action they might want to get -- obviously getting into an argument isn't the way to start the conversation.

What you do is chat people up, try to get along, focus on the solution that you want to achieve, tailor your activity to that goal.

Other than that, I don't think I could offer any particular guidance except to say that, again, it varies enormously from case to case.

MS McISAAC: Thank you. Moving a little bit away from that topic but still on the consular side of things, my understanding is that it's the policy of the Department of Foreign Affairs that an individual who is incarcerated in a foreign country and requires consular assistance

is entitled to that consular assistance, is entitled to the best consular assistance they can be provided, regardless of the fact that they might be guilty or innocent of whatever they are charged of.

Is that correct?

MR. LIVERMORE: Absolutely. That's a fundamental principle. And again, it's something that Mr. Pardy is the reigning expert on.

MS McISAAC: Moving to quite a different topic, you were asked some questions yesterday by Ms Edwardh regarding the administrative investigations that were commenced at the behest of the Privy Council Office after Mr. Arar's return and in response to the apparent leak of information to Juliet O'Neill at the Ottawa Citizen.

I just wanted to have you confirm that those administrative inquiries did not just include the Department of Foreign Affairs but that the Solicitor General was tasked to undertake or have undertaken similar internal inquiries with the RCMP, CSIS, and indeed any other government agency that might have been involved or might know

something about the alleged leak of information.

MR. LIVERMORE: My understanding of the way that that proceeded was that the office of Gerry Deneault, who at the time was Director of Security Operations, sent out basically the same notice to each relevant departmental agency. So what we got we did for our department. What others got they did for their respective departments or agencies.

MS McISAAC: Right. And then those administrative inquiries were overtaken by the criminal investigation which subsequently ensued --

MR. LIVERMORE: Yes.

MS McISAAC: -- and is still ongoing?

MR. LIVERMORE: Yes, it is my understanding.

MS McISAAC: Could I ask you to be shown, if you don't have it still, Exhibit P-67 that was introduced this morning.

The date of the document is May of 2003.

Just to refresh your memory, the Members of Parliament visited Mr. Arar in April of

2003, and then there was a period of time, which would include May, where there were no consular visits to Mr. Arar because Mr. Martel was unable, for whatever reason, to arrange them.

Do you recall that?

MR. LIVERMORE: I recall it vaguely, yes.

MS McISAAC: Were your discussions about the possibility of providing consular services with more facility in the Arab language affected by the fact that consular access had been denied for a period of time?

MR. LIVERMORE: Well, obviously what we wanted was consular access, more consular access.

MS McISAAC: And you thought that might assist if access was reinstated for you?

MR. LIVERMORE: Well, what we thought was if the access were reinstated, extreme fluency in the Arabic language might help.

MS McISAAC: Can I have you give the witness tab 218 of the documents, please? This is another one that you were referred to this morning.

This is November of 2002, and

among other activities that are being undertaken, as you can see from this e-mail, is that Minister Graham, the Minister of Foreign Affairs at the time, has discussed the matter with Secretary of State Powell of the United States.

You will recall that there were discussions about how Mr. Graham would interact with the Syrians, I believe either by getting in touch with the Syrian Foreign Minister or perhaps the Syrian Ambassador to Canada.

Would I be correct in assuming that part of the job of the Department of Foreign Affairs would be to ensure that Minister Graham was appropriately briefed as to all the circumstances necessary for him to engage either Secretary of State Powell or Syrian authorities when he discussed the Arar matter with them?

MR. LIVERMORE: Yes, absolutely.

MS McISAAC: And accordingly, would it not be of use to Mr. Graham, in having these discussions, to have the best assessment the department could provide to him as to Mr. Arar's possible involvement with terrorist activities?

MR. LIVERMORE: Yes.

MS McISAAC: And would it not be

appropriate for the department to seek that kind of information and assessment from the ambassador on the ground in Syria who may be able to provide some additional information to assist the Minister?

MR. LIVERMORE: We would normally do that, yes.

MS McISAAC: And I suggest to you that's what was happening here?

MR. LIVERMORE: I think that's the case, yes.

MS McISAAC: Thank you.

With respect to the letter -- and I refer you to page 41 of the Garvie report. That's Exhibit P-19.

Just a couple of things. I would also like the witness to be shown tab 439 of the exhibits.

--- Pause

MS McISAAC: I understand, and I will just ask you if you are aware, that the document at tab 439 is the letter that Mr. Pardy had drafted for Minister Graham's signature to the Minister of Foreign Affairs?

MR. LIVERMORE: Yes.

MS McISAAC: And I note, if we go to the second paragraph of that letter, it says in second sentence:

> "I assure you that there is no Canadian Government impediment to Mr. Arar's return to Canada."

Correct?

MR. LIVERMORE: Yes.

MS McISAAC: Are you aware of what happened after that to result in a suggestion that the wording which is at page 41, "I assure you that the Government of Canada has no evidence Mr. Arar was involved in any terrorist activities"?

MR. LIVERMORE: I am afraid I have lost the sequence of events. I would have to consult the chronology on which documents are going forward at which time.

Would there be a problem if I did that?

MS McISAAC: There wouldn't be. But if you don't have any knowledge about it, that's fine, if you want to just say that.

MR. LIVERMORE: I was -- a lot of

this were dealings between Mr. Pardy and others in the other parts of the Canadian government and my own people. I wasn't directly involved in the negotiations.

MS McISAAC: I will leave it until Mr. Pardy testifies. He is obviously in the best position to provide that information.

However, going back to the entry in the Garvie report at page 41, which appears to be an excerpt from -- I believe it's a letter from Deputy Commissioner Loeppky to an individual at the RCMP -- pardon me, the National Security Directorate.

MS EDWARDH: Sorry, Mr. Commissioner, I don't know that it's a letter. I have not seen such a document.

The only thing I have is reference to a source document, Volume 2, tab 47, which, quite frankly, Mr. Commissioner, I don't have a clue what that document is.

MS McISAAC: It doesn't matter whether it's a letter or not. What I am addressing is the statement attributed to Deputy Commissioner Loeppky.

Deputy Commissioner Loeppky

concludes at the bottom of page 41, or his advice was:

> "Mr. Arar is currently subject of a national security investigation in Canada. He remains a subject of great interest."

Then he goes on to say:

> "Given this situation, we do not believe it would be advisable for Minister Graham to send this letter to his Syrian counterpart."

Do you have a view on whether that was appropriate or inappropriate advice by Deputy Commissioner Loeppky?

MR. LIVERMORE: Well, I believe I recall at the time that what the discussion was about was the accuracy of the phraseology which should be inserted into the letter. It was not about the letter, the idea of the letter itself.

Mr. Pardy had initiated the discussions about the letter which he thought was appropriate to the circumstances. And the debate then centred on the accuracy of the statements

which were going to be put into the letter.

MS McISAAC: And if in fact Mr. Arar was the subject of or a person of interest in a national security investigation, would you agree with me that it would be appropriate for the RCMP to advise Minister Graham that it might not be a good idea to send a letter --

THE COMMISSIONER: If I could just interrupt there, that is quite a leading question. This is your witness.

MS McISAAC: I understood I was allowed to ask leading questions but...

THE COMMISSIONER: Well, yes. I think with your own witness you would ask the question in a non-leading way and have him answer.

Certainly from my standpoint, it's of more help when counsel is examining their own witness, when they get to critical areas, something of real substance, that they not suggest the answers.

MS McISAAC: I hear you, sir.

THE COMMISSIONER: I have given, I think in fairness, that admonition to others on occasion in the same role.

MS McISAAC: All right. I take your point, sir.

THE COMMISSIONER: Don't get me wrong. I appreciate the fact that you do lead the witness to get the proper context and so on, and that shortens it, and I very much encourage that.

MS McISAAC: Okay.

THE COMMISSIONER: Thank you.

MS McISAAC: Thank you.

If I could rephrase the question, perhaps again to just ask you if you have a comment with respect to Deputy Commissioner Loeppky's advice.

MR. LIVERMORE: My comment would relate to the last two lines of the paragraph that we have in the Garvie report.

> "We do not believe it would be advisable for Minister Graham to send this letter to his Syrian counterpart."

My recollection is that a letter of some description, whether it was a letter from Mr. Graham, whether it was a letter from the Prime Minister, a letter was going to be sent. That was the discussion.

I would think that the expression here is rather confusing in this sentence because it lends the impression that he says "don't send the letter".

My impression at the time was that they were not saying don't send a letter. It was don't send a letter which contains a sentence in it which we do not believe is factually correct.

MS McISAAC: And that would be advice from the RCMP?

MR. LIVERMORE: That was advice from the RCMP. My recollection of the event is that's what it centred on.

With respect, I must say that we in the department, and me in particular, leave the discussion of whether a letter is appropriate or not to Mr. Pardy, because Mr. Pardy was in charge of the consular business of how we conduct ourselves.

And with respect, that is his function.

Part of my job, part of the job of others, is to make sure if you have a letter, it has to be true, it has to be factually correct.

I think if I were Garry Loeppky I

would have phrased his memorandum a little more carefully so it was clear that it doesn't say "don't send the letter"; it says "don't send this letter", underlining "this".

As I repeat, I think the debate at that time was about phraseology, about words, and words are important.

MS McISAAC: Thank you very much. Those are my questions, sir.

THE COMMISSIONER: Shall we take the morning break, or how long are you going to be, Mr. Cavalluzzo?

MR. CAVALLUZZO: I think I will be about ten minutes. It may be wise to do this right now so that when we do take the break, we can have the next witness come in, unless the witness would prefer a break at this point in time?

MR. LIVERMORE: Could we usefully have a break?

MR. CAVALLUZZO: I think we can have a break.

THE COMMISSIONER: We will rise for 15 minutes.

MR. CAVALLUZZO: Thank you.

--- Upon recessing at 10:42 a.m. /
Suspension à 10 h 42
--- Upon resuming at 11:00 a.m. /
Reprise à 11 h 00

THE REGISTRAR: Please be seated. Veuillez-vous asseoir.

THE COMMISSIONER: Mr. Cavalluzzo?

MR. CAVALLUZZO: Thank you, Mr. Commissioner.

EXAMINATION

MR. CAVALLUZZO: Mr. Livermore, I have a few questions in re-examination which hopefully you can help us with in terms of understanding what occurred in these proceedings.

The first relates to what you talked about yesterday in response to some questions from Ms Edwardh, and it relates to information-sharing. You told us yesterday that after 9/11 the department -- I am trying to quote your answer -- shared more information in cases of criminal intelligence information and national security information.

Do you recall that response?

MR. LIVERMORE: I recall the general discussion, yes.

MR. CAVALLUZZO: The questions that I have, first of all, in respect of sharing more information in respect of those two matters, criminal intelligence and national security intelligence, was any protocol or policy passed by DFAIT which would permit the expansion of sharing of information as you described?

MR. LIVERMORE: We did not engage in such a protocol.

I must clarify. If those are my exact words I have to clarify a bit, because in fact information -- the point of the exercise after 9/11 was to encourage the sharing of information among appropriate agencies.

In other words, there is no particular reason why the RCMP would need to provide us with criminal intelligence information, which they don't, as a matter of course. There is no particular reason why a lot of CSIS information, which is not relevant to Foreign Affairs, is shared with us. But one would hope that with relevant agencies that they deal with, that they have exchange arrangements which permit them to exchange appropriate information.

In other words, my point is, it

doesn't necessarily go through us as a matter of course because we are simply not in the line for a lot of these pieces of information.

MR. CAVALLUZZO: Now, what I want to understand in terms of the sharing of information, when you gave that response I assumed that you were talking about DFAIT sharing information with other agencies as opposed to other agencies sharing information with DFAIT.

Is that correct?

MR. LIVERMORE: What we have done, we have tried to establish systems, if I could put it that way, which enable other agencies to acquire information which we might have on particular subjects --

MR. CAVALLUZZO: Right.

MR. LIVERMORE: -- in a timely way.

It tends, in the nature of the things that we do, that ours is not criminal intelligence information, ours is not security intelligence information, ours is basically diplomatic information. In other words, what we are sharing is what we do at missions abroad, that is that we analyze what is going on in other

countries and we endeavour to do assessments about the international situation.

So that is the generic type of information that we are sharing.

MR. CAVALLUZZO: But you did state that subsequent to 9/11 there was an enlargement or expansion of the scope of information, at least as far as these two matters are concerned, criminal intelligence and national security are concerned, that you were prepared to share?

MR. LIVERMORE: My understanding -- yes, and I have to clarify that, if those were my exact words.

MR. CAVALLUZZO: They were.

MR. LIVERMORE: That was the effort that was made post-9/11, to try to end up with a system where there is a seamless sharing of information among relevant international agencies who are involved in it.

Now, as I say, because we are not necessarily relevant, we don't get the information.

MR. CAVALLUZZO: Okay. What I want to know from you is, I'm talking about information coming from DFAIT to other agencies.

First of all, if there was an expansion of the scope of information that was shared in relation to these two matters subsequent to 9/11, was there a protocol or policy which permitted that expansion of scope?

MR. LIVERMORE: No.

MR. CAVALLUZZO: Who made the decision that there would be these two exceptions in terms of the expansion of information given?

MR. LIVERMORE: Well, as I say, what we did on our part within Foreign Affairs was try to establish systems that made information that we had available to a wider network of people who had the need to know and who had the appropriate security clearances in other agencies.

MR. CAVALLUZZO: Who made the decision? You say "we". Who?

MR. LIVERMORE: I think in part we did in the security and intelligence field, in part, because we do get a fair amount of diplomatic reporting.

MR. CAVALLUZZO: Now, as a result of this change, if we can call it that, change in practice, since it wasn't a policy or protocol, but as a result of this change in practice, did

you notify Consular Affairs that -- just listen to the question, please -- did you notify Consular Affairs that there was this exception, now subsequent to 9/11, so that they could appropriately advise detainees, Canadian detainees, held in foreign detention centres?

MR. LIVERMORE: I'm not sure that we advised consular in the specific terms but, in any event, consular is in control of their own information, which is to say, it is Consular Affairs that has to release consular information and, by and large, what we are talking about post-9/11 is not consular information which we are seeking to release, it is other information, primarily threat information and information relating to patterns of terrorist actions abroad, incidents abroad affecting national security, et cetera.

Consular Bureau remained in charge of their own information.

MR. CAVALLUZZO: Well, let me give you an example.

I am a Canadian detainee held somewhere, in a country that does not have a great human rights record. For whatever reason I admit

to being a terrorist. I get a consular visit.

MR. LIVERMORE: Mm-hmm.

MR. CAVALLUZZO: And through the discussions in that consular visit it is made known that I have admitted to being a terrorist. That becomes part of the consular report. That information is given to you. You told us after 9/11 that in terms of national security information your manner or practice of sharing information was broader.

Isn't it possible that that information, which came from a consular visit, may have been shared by your division with other agencies, including non-Canadian agencies?

Is that possible?

MR. LIVERMORE: Highly unlikely would be my -- you are asking me for a bit of speculation, but I would say highly unlikely in this sense, that if it is a consular visit where the normal consular protocols are adhered to, it is information that passes from Mission through the consular network back to the Consular Bureau.

In a normal course of events, as I have explained, I don't have access to CAMANT and I don't get those reports.

Nevertheless, it may be that there is a national security issue here and we would be brought into the picture. I don't preclude that, but we are in the nature of hypothesis here.

MR. CAVALLUZZO: Well, let us get a little more specific and move one step beyond the consular and let's look at the November 18, 2002 e-mail sent from Jonathan Solomon to Mr. Pillarella in Damascus, where he is saying, "Give us more information on Mr. Arar, if there is more information, relating to his terrorist activities."

Let us assume -- I can't give you a concrete example.

Let us assume Pillarella sends an e-mail back to Jonathan Solomon and says, "This is what they have on him." That goes to you.

This is after 9/11 and it seems to me according to the new practice you could share that information with the RCMP, with CSIS and with American agencies.

Isn't that correct?

MR. LIVERMORE: Not precisely.

It would go back to Mr. Pardy. I would probably be copied on the message because

it is, in essence, a reply to something we had sent out.

Whether that was shared or not would be appropriately decided within Foreign Affairs. It might well be decided -- as I have said before, we believe that we have the authority under the Privacy Act to share such information, but it is not automatic.

As I have mentioned, there are caveats attached to information. If someone said to us -- I don't want to get into the specific situation, but we get information frequently that says, "This is something for you, Canada, alone. Here is a chunk of information for you alone."

It usually bears the caveat, "Canadian eyes only". If that is the caveat, it is very clear. Caveats are clear in other circumstances. There are procedures in place which would preclude us necessarily from sharing that information.

MR. CAVALLUZZO: A final question relating to that.

You told us that this new practice, or this expansion of sharing of information arose subsequent to 9/11. We are now

at May 18, 2005.

Is that practice still existing?

MR. LIVERMORE: What I would say on that -- that is a tough question, or you could say it is an easy question but it requires a tough answer.

MR. CAVALLUZZO: Let me think about that one for a moment.

--- Laughter / Rires

MR. CAVALLUZZO: Go on.

MR. LIVERMORE: I would say it is something that people aspire to do. You will read in various declarations of the G8 Summit, or various declarations of meetings at the United Nations that work to combat terrorism, the need for information-sharing.

I think that progress along those lines -- and I would describe it as "progress" because I think that it is a useful step to keep in mind exactly what we are dealing with here.

I think it has been limited in the sense that there are a lot of practical barriers that have to be overcome.

One of them is simply technological. It is a simple fact that in order

to share information you have to have computer systems that allow you to share, and we are not there. We are not anywhere close to that.

So you can look at what you call full share of information, you can look at the phraseology that we explored yesterday, and you will probably find that we fall short on many grounds.

MR. CAVALLUZZO: I assume the answer is, yes, the practice is still existing, subject to the qualifications you have related?

MR. LIVERMORE: Well, it is -- Okay.

MR. CAVALLUZZO: Thank you.

I just want to clarify something for the record. If you go to Volume 5. Perhaps the Registrar could put it in front of you? In particular, Mr. Livermore, if you would review tabs 480 and 481. You were asked questions about this by Ms Edwardh and there was some discussion, you may recall, between the lawyers as to what it was, and there was a reference that 481 was a draft and 480 was the signed copy.

This should be clarified for the record, Mr. Commissioner.

We have checked the documents and are prepared to say that the documents are identical in terms of content, other than the fact that on 481, you will see that paragraphs 5 and 6 have been removed because they don't relate to the RCMP involvement.

The reason for that is that 481 was submitted to Mr. Garvie, who was reviewing, as you will recall, the RCMP involvement in Mr. Arar's situation.

But other than those references at paragraphs 5 and 6, the contents of both documents are identical.

THE COMMISSIONER: Thank you.

MR. CAVALLUZZO: Now, I would ask you, Mr. Livermore, to look at Exhibit P-67 and the Garvie report, Exhibit P-19.

Initially with the Garvie report at pages 40 and 41 -- if you go to page 40 you will see that the date that Mr. Garvie sets out is May 14, 2003, and it says at page 41 that the RCMP was asked by DFAIT if we were interested in interviewing Arar.

MR. LIVERMORE: Mm-hmm.

MR. CAVALLUZZO: Then

Exhibit P-67, which you were shown this morning, was dated May 21, 2003, about a week later, and it says along this line: Do you have any questions you would like posed to Arar? We talked about that in terms of the CSIS context.

The questions I have relating to this -- and obviously there is a difference in sending someone to interview Mr. Arar in Syria as opposed to sending questions to be asked by someone, whether it be the Syrians or a Canadian going over. We won't deal with that distinction today because we are going to deal with that distinction with another witness.

What I would like to ask you, though, is: As a member of DFAIT it would appear -- and we will hear this from Mr. Pardy -- that right from the very first time that we knew that Mr. Arar was in Syria, our initial goal, and the goal I thought that we had throughout, was to get him back to Canada as soon as possible.

You would agree with that?

MR. LIVERMORE: I think that is something we can agree on, yes.

MR. CAVALLUZZO: Okay.

The question I have for you is:

if I am General K, head of the Syrian Military Intelligence, and on the one hand I have some guy coming in and saying, "Listen, we want you to send this guy back to Canada as soon as possible," and then the next day, the same guy comes in and says, "Listen, we want to send the RCMP over to interview Arar or we want to ask some questions about Mr. Arar," do you think that General K might be getting mixed signals from Canada?

MR. LIVERMORE: Well, part of the job of the embassy is avoiding mixed signals and making sure that when they talk to General Khalil -- and I'm not sure exactly how many contacts they had with him over the course of the period -- but the exact position of the Canadian government is known.

MR. CAVALLUZZO: That's right. But then -- go on, I'm sorry. I didn't mean to cut you off.

MR. LIVERMORE: Well, I didn't -- there are other -- there are lots of interests engaged.

MR. CAVALLUZZO: Right.

MR. LIVERMORE: if he Is incarcerated, if there is an incarcerated

Canadian, it is not unusual to have a request for the RCMP to interview a Canadian detained abroad.

MR. CAVALLUZZO: Right. But you would agree with me -- you would agree with me that mixed signals are being sent to the Syrians? On the one hand we are saying: Send him home. On the other hand we are saying: Oh, by the way, can we come over and interview him?

MR. LIVERMORE: With respect, I don't recall exactly how the sequence of events proceeded, but the normal course of action for us is not to approach the Syrian government until we have our own house in order, and that is that if the RCMP wanted to interview Mr. Arar the ideal situation would be that they would come and we would talk about it internally, and if we thought it was a good idea that message would be confirmed to Damascus to avoid exactly what you are talking about, mixed signals.

MR. CAVALLUZZO: And you would recall with me our review of section 10 of the Department of Foreign Affairs Act says that the Minister of Foreign Affairs is the official communicator with foreign governments?

MR. LIVERMORE: That is correct.

MR. CAVALLUZZO: So that if the Minister of Foreign Affairs -- and we will ask him this question -- wanted, as the final official communicator with the Syrians, he could have said to the RCMP, he could have said to CSIS, "No interviews, no questions. I want this guy home"?

MR. LIVERMORE: He is in charge of coordination of foreign policy, and that is possible.

MR. CAVALLUZZO: Okay.

The other question related to that is: This series of questions you were asked by Ms McIsaac concerning the letter that Mr. Pardy was attempting to get in the spring of 2003, and the RCMP, through Mr. Loeppky, was saying, "Listen, we don't want you to send that letter with the words that we have no evidence that he is involved in terrorist activity because he is a person of interest and he is the subject of a national security investigation." Okay?

I thought I heard you say that the purpose of Consular Affairs was to provide consular assistance whether the person is alleged to be a criminal, a convicted criminal, or whatever. That is what you said.

MR. LIVERMORE: Yes.

MR. CAVALLUZZO: Okay. It would seem to me, if I put it as bluntly as possible, that even if he is a terrorist, he is our terrorist and you should get him home so that he can be tried according to Canadian law?

You would agree with me that is a reasonable policy decision to make for this government?

MR. LIVERMORE: If I could draw a slight distinction, which is not material to this particular case because I think this case is exceptional in many respects.

MR. CAVALLUZZO: Yes.

MR. LIVERMORE: I think Mr. Pardy is probably the one who is the expert on this, but it may be that someone is a terrorist and is incarcerated in another country and is legitimately being tried by that country for terrorist activities.

MR. CAVALLUZZO: Right.

MR. LIVERMORE: In that case, it may well not be the task of the Canadian government to get that individual home. It may well be the task of the Canadian

government to try to ensure, as much as is practicable in the circumstances, that that individual has a fair trial.

MR. CAVALLUZZO: That is a good point if I'm dealing with a democratic country. I'm not dealing with a democratic country in Mr. Arar's case, I'm dealing with Syria.

Even though you may not want to comment on Syria, the fact is, we have a public record, we have a public record which shows the legal system there is not very democratic: arbitrary arrest, illegal detention, corrupt judges, and so on and so on.

My point to you is: Shouldn't it have been the goal of this government, through DFAIT, to do whatever to get this man home. And even if he was a terrorist, at least he could be tried in accordance with due process under our Canadian legal system?

MR. LIVERMORE: Well, I think the record is pretty clear on this, that that was Mr. Pardy's goal from the outset.

As I indicated, just for a point of clarification, what I endeavoured to clarify was a hypothetical case of another and not to

apply myself to the Arar situation.

MR. CAVALLUZZO: Right. I have one more question, but certainly if that was the goal of the Canadian government, then in dealing with these other agencies such as CSIS and the RCMP, one could have easily said to them, "Listen, RCMP, don't worry if he is a terrorist. We have our own courts that can try him and, if he is, he will be dealt with according to law. Don't worry about it. Let's just get him home."

You would agree that is a reasonable position to take? You would agree with that?

MR. LIVERMORE: I think that with the hindsight of three years that might be a reasonable proposition to advance. I'm not sure in the context of the time that it seemed that reasonable.

MR. CAVALLUZZO: Okay. One final question, Mr. Livermore.

On numerous, numerous occasions you deferred to the judgment and expertise of Mr. Pardy as far as consular affairs are concerned, and I just want -- you are a senior member of DFAIT -- you to acknowledge that as far

as DFAIT is concerned Mr. Pardy is really the last say as far as consular affairs are concerned and the way we treat Canadians abroad that are detained?

MR. LIVERMORE: Well, I have to -- as much as I respect Mr. Pardy, I have to refer to the way that the Government of Canada is organized. The last say is the Prime Minister.

MR. CAVALLUZZO: Oh, obviously.

MR. LIVERMORE: The second last say is the Foreign Minister. The third last say is the Deputy Minister. It goes down the line.

MR. CAVALLUZZO: Right.

MR. LIVERMORE: There is of course the reality, and the reality is that Mr. Pardy, at the time of the incident in question, was the leading authority in our department and almost everyone deferred to his judgment on this.

But, nevertheless, the formal responsibility is --

MR. CAVALLUZZO: No, I understand that.

MR. LIVERMORE: -- slightly different.

MR. CAVALLUZZO: No, I appreciate

that qualification.

Mr. Livermore, thank you very much.

MR. LIVERMORE: Thank you.

MS McISAAC: Mr. Commissioner, if I may, I feel it incumbent for me to put on the record, in light of Mr. Cavalluzzo's question suggesting that Deputy Commissioner Loeppky said "don't send the letter," the excerpt we have says:

> "We do not believe it would be advisable for Mr. Graham to send this letter to his Syrian counterpart."
>
> (As read)

THE COMMISSIONER: I think that is a fair comment. Thank you, Ms McIsaac.

That's it, Mr. Livermore, you will be pleased to know. Let me thank you very much for the time you have spent for preparing and giving evidence now on two occasions. I am much obliged and I appreciate the way that you have given evidence and responded to the questions. So thank you.

MR. LIVERMORE: Thank you very much, Mr. Commissioner. Let me thank

counsel as well.

THE COMMISSIONER: Okay.

We are going to break for five minutes so we can get reorganized for the next witness.

MS EDWARDH: Mr. Commissioner, I wonder if Ms Davis and I can take our leave. Mr. Waldman and Ms Parnes are here, and if we could, we would appreciate that.

THE COMMISSIONER: By all means, yes. That's fine.

MS EDWARDH: Thank you.

THE COMMISSIONER: Absolutely. Okay.

--- Upon recessing at 11:24 a.m. /
Suspension à 11 h 24

--- Upon resuming at 11:32 a.m. /
Reprise à 11 h 32

THE REGISTRAR: Please be seated. Veuillez-vous asseoir.

THE COMMISSIONER: Good morning, Ms Verma.

MS VERMA: The next witness we have before us is Roberta Lloyd.

THE COMMISSIONER: Good morning,

Ms Lloyd.

MS VERMA: I believe Ms Lloyd wishes to be affirmed.

THE COMMISSIONER: Do you wish to be affirmed?

MS LLOYD: Yes.

THE COMMISSIONER: Would you stand then, please?

AFFIRMED: ROBERTA LLOYD

THE COMMISSIONER: Your full name is?

MS LLOYD: Roberta Lloyd.

THE COMMISSIONER: Thank you. You may be seated.

EXAMINATION

MS VERMA: Commissioner, Ms Lloyd's testimony shall be brief. We are really going to just be touching upon two areas.

The first, we will go through her education and professional background. The second thing is, Ms Lloyd will be describing statements she had heard made by an RCMP officer at a course in January of 2003.

To start, if we could enter our first exhibit, which is Ms Lloyd's CV.

THE COMMISSIONER: Exhibit P-68.

EXHIBIT NO. P-68: The curriculum vitae of Roberta Lloyd

MS VERMA: Ms Lloyd, I am just going to quickly take you through your CV.

If we start with the last page first, start with your education at the bottom there, it states that you have an Audience Development Certificate from Algonquin college in 1981.

MS LLOYD: Yes.

MS VERMA: And subsequently you studied at Trent University in the area of Canadian Studies and Native Studies.

MS LLOYD: That's right.

MS VERMA: And graduated in 1977?

MS LLOYD: I actually didn't graduate. I am completing my degree at Carleton right now.

MS VERMA: Okay. I will leave it to the parties to review your career.

Obviously over the years it appears that you have held several positions with not-for-profit organizations.

MS LLOYD: That's right.

MS VERMA: Currently you are, if we look at the first page, the Project Officer for Global Health Research Initiative and the Canadian Coalition for Global Health Research.

Is that correct?

MS LLOYD: That's right.

MS VERMA: That is with the Canadian Institutes of Health Research.

How long have you held that position?

MS LLOYD: Since October 2002.

MS VERMA: Is this a position with the federal government?

MS LLOYD: Yes. I am employed by the Canadian Institutes of Health Research and I work for the Global Health Research Initiative.

MS VERMA: Is that position a full-time position?

MS LLOYD: Yes.

MS VERMA: Are you a permanent member or on contract?

MS LLOYD: I am a term employee.

MS VERMA: A term employee.

MS LLOYD: Yes.

MS VERMA: Would that be like on a contract? Are you renewed every year?

MS LLOYD: Yes.

MS VERMA: Just very briefly, if you could just describe what it is that you do?

MS LLOYD: The Global Health Research Initiative is a first in Canadian history. It is a collaborative agreement between two international development agencies, the IDRC and CIDA, the Ministry of Health, and the major funding institutes in Canada, the Canadian Institutes of Health Research.

These four agencies have signed an agreement to work together on global health to improve health for citizens in lower and middle income countries.

MS VERMA: Okay. The next area I want to take you to is actually the course that you attended in January of 2003. I believe it was January 20th of 2003.

Is that correct?

MS LLOYD: It was a three-day course and it started on the 20th and ended on the 22nd.

MS VERMA: Just to put this into

some context, at that time Mr. Arar was still detained in Syria?

MS LLOYD: That's right.

MS VERMA: Okay. Perhaps you can tell us how it is that you became enrolled in this course and tell us a little bit about what the course was about.

MS LLOYD: Okay. On Monday morning before the course started I received a phone call from my supervisor. She had been enrolled to attend the course, but was -- I can't remember why, but she was not able to attend so she asked me if I would go.

I did attend most sections of the course. I had a few meetings that I had to attend and so was not there for the section when a woman came from DFAIT, and also because I was enrolled at the last minute my security clearance was not complete and I did not go to visit the U.S. Embassy.

MS VERMA: Maybe we will back up a little bit. If you could just tell us what the course was called?

MS LLOYD: Canada in The World.

MS VERMA: Who was delivering

the course?

MS LLOYD: It is the Canadian Centre for Management Development, CCMD. It is just over -- it is almost next door. It is a centre that is set up, I think, for training probably middle managers and up. There are annual courses. The first one is actually inside Ottawa.

MS VERMA: This Centre for Management Development, is this also a federal government agency or is it a private organization that carries out this course?

MS LLOYD: That I don't know. I think it is -- it is definitely geared towards training federal employees. I do know that.

MS VERMA: Okay. You said it was offered annually to federal employees.

MS LLOYD: Yes.

MS VERMA: Would this course be offered to management employees only or non-management employees also?

MS LLOYD: I doubt if they would turn anybody away, but I think it's geared towards higher level. It's quite expensive also. So it's unlikely that somebody in a lower ranking position would be able to go.

MS VERMA: And I think you said the course was called Canada and the World. Can you tell us briefly what your understanding was of the purpose of the course or what was being taught at this course?

MS LLOYD: I think it was to prepare probably especially individuals who were coming into positions where they might have international collaborations or work to be done, to kind of place them in a context.

And what they called the four pillars were covered.

Health: Francine Lord came to talk about that. Values and culture: that was Ron Graham came for that. And then the security section was Dan Killam. And then there was the fourth section, which I think was trade, and that's the one I missed.

MS VERMA: Were all of these speakers members of the federal government? Do you recall?

MS LLOYD: I am not sure about Ron Graham's position. I don't remember. But the others definitely were.

MS VERMA: Do you recall

approximately how many participants were at this course?

MS LLOYD: I think there were probably about six rounds of five people, something like that. So between 25 and 30 people.

MS VERMA: I want to focus in on the pillar of security. You said that there was one module focusing on security which was being delivered by Dan Killam?

MS LLOYD: Yes.

MS VERMA: Perhaps to maybe assist you, we could mark the next exhibit, which is a brief description of that module.

THE COMMISSIONER: That will be P-69.

EXHIBIT NO. P-69: Course module entitled: The Second Pillar of Canadian Foreign Policy: The protection of our Security Within a Stable Global Framework

MS VERMA: Ms Lloyd, is this the course objective of this module that you had at that time?

MS LLOYD: Yes.

MS VERMA: And if we look at the objectives of the module, it was called: The Second Pillar of Canadian Foreign Policy: The protection of our Security Within a Stable Global Framework.

And there are five objectives listed for this module.

The first was:

> "To acquire a better understanding of the second pillar of Canadian foreign policy, the protection of our security within a stable global framework."

The second objective was:

> "Learn to appreciate that beyond the classic issues of security (example NATO or peacekeeping), threats to Canada now take on a great variety of shapes and constantly acquire new ones."

The third objective was:

> "To increase their awareness of the actors involved,

particularly with respect to their numbers and the diversity of interests."

The fourth objective was:

"Acquire, through direct contact, a better feel for one of the major government agencies involved in non-traditional security issues."

Do you recall which one of those -- that major government agency, when it makes reference, is that referring to the RCMP specifically? Do you know?

MS LLOYD: I believe so.

MS VERMA: In fact it was Mr. Killam from the RCMP who was speaking.

Is that right?

MS LLOYD: Yes.

MS VERMA: And the fifth objective is:

"Develop a keener sense that many of the security issues discussed concern their departments and touch upon

their role as managers."

You said that Dan Killam was giving this presentation. Who is Dan Killam?

MS LLOYD: Well, I think he is the General Director of the National Security Program for the RCMP.

MS VERMA: Okay. Can you just tell us what you recall Mr. Killam -- in terms of what he gave in his presentation, do you have any recollection of what that presentation was about?

MS LLOYD: Yes. I would say that it focused on the linkages that Canadian officials have. Primarily he focused on with the States, but with other countries too, Europe.

He talked about not only the cooperation in terms of information exchange but the spirit of cooperation.

He definitely mentioned specific organizations. He talked about -- which I wouldn't -- I don't think I could list.

He mentioned an example of the RCMP being asked to come and train a group of RCMP staff going to another country and training in that country. He gave us the sense that the reputation that the RCMP had was excellent,

renowned throughout the world, and that there was, you know, excellent open collaboration.

MS VERMA: Open collaboration with whom?

MS LLOYD: With -- in particular, what he focused on was the States, but again European countries too.

MS VERMA: Did he provide a PowerPoint presentation at this course?

MS LLOYD: Yes.

MS VERMA: Perhaps we could enter that as our next exhibit.

THE COMMISSIONER: That will be Exhibit P-70.

EXHIBIT NO. P-70: PowerPoint presentation presented by Dan Killam

MS VERMA: Ms Lloyd, this was a PowerPoint presentation that was provided to us by the government. It appears to be the presentation that Mr. Killam provided at that course.

I know you have had an opportunity to review it. Does this correspond with your memory as to what you saw on that day?

MS LLOYD: Yes.

MS VERMA: And we see through this that several things were discussed, including integrated policing initiatives at page 3 -- unfortunately they are not numbered.

But it seems to be along the lines of what you were saying.

It also discussed the Anti-terrorism Act. There is one slide there where that was reviewed. And as well there is a slide perhaps four or five pages from the back called the International Liaison Program.

--- Pause

MS LLOYD: Sorry.

MS VERMA: That's okay. Unfortunately they are not numbered.

And then if you go to the next page, there was a discussion about the G8 Leon group, and thereafter there was a slide that discusses information-sharing is key. And then the next slide is the conclusion.

And in particular I want to look at that last point, if this refreshes your memory in terms of statements that Mr. Killam may have said, that the RCMP will be steadfast in not only maintaining safe homes and safe communities for

all Canadians but for the global community as well.

MS LLOYD: Mm-hmm.

MS VERMA: Do you recall Mr. Killam saying statements to that effect?

MS LLOYD: I know that the -- I just saw this this morning, but I knew that whatever it was he had said last was an assurance that the RCMP were working to keep all citizens safe. I guess that is what prompted me to ask him a question.

MS VERMA: And what was that question that you asked him?

MS LLOYD: I said: "If that is true, then how can a Canadian citizen, Maher Arar, have been abducted and deported?"

MS VERMA: And prior to that, had there been any discussion about Maher Arar in the course of his presentation?

MS LLOYD: No.

MS VERMA: And that was the first time that you raised it?

MS LLOYD: Yes.

MS VERMA: Do you want to take a break? Are you okay?

MS LLOYD: Maybe I will just have a sip of water.

Thank you.

MS VERMA: Are you okay?

MS LLOYD: I am fine, yes.

MS VERMA: Okay. So you raised the question.

MS LLOYD: Mm-hmm.

MS VERMA: And what do you recall was his answer?

MS LLOYD: Well, he was obviously taken aback. He flushed. I can't tell you all the exact words, but there were certain things that stayed in my mind.

From what he said, the first thing that I knew was that he was intimate with information about Maher Arar. That was obvious.

MS VERMA: Mm-hmm.

MS LLOYD: Otherwise, I don't think he could have spoken so confidently.

The second thing was that, through what he said, he said that -- or he inferred that there was certainly enough information -- I will just take a sec here and get this right.

MS VERMA: Take your time.

--- Pause

MS LLOYD: I understood from what he was saying that he knew of enough information to justify what had happened to Maher Arar. He told us, the entire class -- there may have been a question at that point, but I know that he told us that we should not believe the media, that they didn't have the facts. He was obviously frustrated about that.

MS VERMA: Okay.

MS LLOYD: And in conclusion, he told me and the class that I shouldn't worry about Maher Arar; that this would not be happening to somebody if they were innocent.

MS VERMA: Okay. Was there anything else that was said? Did he say anything else, or is that it, with respect to your question in the context of Mr. Arar?

MS LLOYD: I don't think so.

MS VERMA: Did you ask any follow-up question after that?

MS LLOYD: No.

MS VERMA: And do you recall approximately how long this discussion would have been about Mr. Arar?

MS LLOYD: Maybe three to five minutes.

MS VERMA: Ms Lloyd, you had provided us with your notes from this presentation, and I would like to enter that as the next exhibit.

THE COMMISSIONER: That will be Exhibit P-71.

EXHIBIT NO. P-71: Notes of Roberta Lloyd

MS VERMA: Ms Lloyd, perhaps if you could just identify, are these the notes that you took while Mr. Killam was giving his presentation?

MS LLOYD: During the presentation, yes.

MS VERMA: Did you take any notes -- and I see from these notes that there is no mention of Maher Arar. Did you take any notes of the exchange that was taking place between yourself and Mr. Killam in relation to your question about Maher Arar?

MS LLOYD: No. I was, you know, pretty much engaged in what he was saying and, no, I didn't take any notes. It was a discussion.

MS VERMA: And just for the record, this is a complete record of the presentation that Mr. Killam had given as well as the question period? You don't have any other notes from that module?

MS LLOYD: No.

MS VERMA: Okay. After hearing Mr. Killam's response, what was your feeling or what was your impression?

MS LLOYD: A couple of things. One, I was really surprised. I was surprised because he had revealed a lot, in my opinion; stuff that nobody outside that classroom knew.

MS VERMA: Okay.

MS LLOYD: And some kind of embarrassment. I am not exactly sure if that's the best way to describe it, but I guess the sense that he had told us perhaps more than he should have?

MS VERMA: Okay.

MS LLOYD: I felt this kind of bizarre feeling that we had information that maybe we shouldn't have.

MS VERMA: And did you discuss what Mr. Killam said with any of the other

participants at the course?

MS LLOYD: No.

MS VERMA: And why not?

MS LLOYD: I had sort of been parachuted in at the last minute and I am, you know, kind of shy. I just wasn't -- I guess if I had made a connection with somebody there, I might have talked to them about it, yes.

MS VERMA: And did you talk to anyone about it afterwards, after you left the course, after the day when you went back to the office?

MS LLOYD: Yes. I was definitely disturbed by what I had heard, and I had the feeling that I should be reporting what I had heard.

I mean, this was not the information that was being covered at the time in the media. But I didn't really know how -- I didn't have a clear sense of how significant it was, so I kind of tried it out on coworkers, a couple of policy advisors in the government who are friends, with family members, just to share it, but also to see if somebody would say, "Oh, you should go -- you should go here and tell

here," you know?

MS VERMA: Right.

MS LLOYD: But nobody did suggest to me that I take it somewhere, so I held it inside.

MS VERMA: Can you tell us then how it is that you came to the Commission to provide this information?

MS LLOYD: Yes. Well, I continued to follow what was happening, and I kept thinking about this and I -- I guess in my heart I knew that it was probably important information. So once in a while I would check the website by putting Maher Arar's name in, and I guess on July 2nd, I found the Maher Arar website and there was a section there, probably a "Contact Us". So I wrote to them and told them my story and offered that if there was some way, you know, that I could be of assistance, that I would be willing to do that.

MS VERMA: Okay. Why don't we enter that e-mail that you sent as our next exhibit.

THE COMMISSIONER: That will be 71 -- 72. I have trouble getting the numbers

straight today.

EXHIBIT NO. P-72: E-mail from Roberta Lloyd dated 2 July 2004

MS VERMA: Ms Lloyd, is this the e-mail that you sent to the Maher Arar website?

MS LLOYD: Yes.

MS VERMA: And it's dated July 2nd, 2004. It states in the first paragraph:

"I would like to offer you my experience in case it is of any value to helping Maher Arar. I have been deeply disturbed about what happened to him since I first heard about it. On January 20th to 22nd of 2003, I attended a workshop entitled Canada in the World offered by the Canadian Centre for Management Development."

And then it goes on to talk about what the course was about what the course was about.

And then in the fourth paragraph,

you state, and you are referring to a member of the RCMP:

> "... spoke to us about Canada's role in the world and encouraged everyone to feel very confident and secure as Canadians. I decided to challenge this officer. I asked him how Canadians could feel secure when a Canadian, Maher Arar, had been abducted at the border and deported to Syria. The officer was a bit flummoxed by my question but went on to say that we should not believe what we hear in the media; that they were only telling part of the story. He said there was real evidence that supported the action taken against Maher Arar. He did not say what evidence he had but certainly led us to believe

that he had had enough of it to feel confident that Maher Arar was indeed a terrorist whose deportation was justified."

So upon sending this e-mail, did you get anyone to contact you, or did you get a call back from it, or a response?

MS LLOYD: I did. On the following Monday morning -- it was a holiday weekend, so actually I am not sure if it was a Monday or Tuesday, but whatever was the first work day after that weekend, there was a call, actually, I think on my answering machine.

MS VERMA: Okay.

MS LLOYD: Probably from Kelly Crighton, letting me know that the team for Maher Arar would like to meet me, and could I -- I am not -- there may have been more than one call, actually.

But the bottom line was that we made a date for me to go to where the inquiry was being held at the government conference centre, I think the next day, on the Tuesday or the Wednesday, whichever it was.

MS VERMA: And at that time you met with Mr. Arar's counsel?

MS LLOYD: Yes.

MS VERMA: And subsequently you met with us.

MS LLOYD: Then they brought me up to you.

MS VERMA: Ms Lloyd, my question to you is: It now July 2nd, 2004, approximately a year and a half, a year and five months after you heard this presentation from Mr. Killam. Why did you come forward at this point in time, on July 2nd of 2004?

MS LLOYD: Well, I think what I have already said, that it -- the experience I had with Dan Killam in that classroom had not left me. It had stuck with me, and I felt a responsibility finally to make sure that somebody else had this information and that they could make the decision as to whether it was significant or not, yes.

MS VERMA: Thank you, Ms Lloyd. Those are my questions.

THE COMMISSIONER: Mr. Waldman, do you have any questions?

Do you mind standing?

MR. WALDMAN: No.

THE COMMISSIONER: We can pass the podium. I think it works best for a number of reasons.

EXAMINATION

MR. WALDMAN: Just to clarify, did you ever meet Mr. Arar prior to that first meeting with his counsel?

MS LLOYD: No.

MR. WALDMAN: Did you ever meet his wife or any of his family?

MS LLOYD: No.

MR. WALDMAN: Aside from that, did you actually meet Mr. Arar on the day that you met with his counsel?

MS LLOYD: Yes.

MR. WALDMAN: Did you talk to Mr. Arar outside of the meeting with counsel or just when counsel was present?

MS LLOYD: No. We shook hands and greeted each other. That was basically it.

MR. WALDMAN: Right. And since that time, have you spoken to Mr. Arar again?

MS LLOYD: No.

MR. WALDMAN: And have you spoken

to any of his family members since?

MS LLOYD: No.

MR. WALDMAN: So do you have any personal relationship with Mr. Arar or any of his family members?

MS LLOYD: No.

MR. WALDMAN: Do you have anything to gain by giving this testimony?

MS LLOYD: No -- well...

MR. WALDMAN: I mean aside from your fulfilling your public duty. Are you going to get any benefit aside from that?

MS LLOYD: No.

MR. WALDMAN: Are you in fact concerned about how this might affect your work, or are there any concerns in your mind that this might have an impact on your work in getting your contract renewed or anything like that by the fact that you have come forward in such a public way?

MS LLOYD: I hope not. I think my direct supervisors share my values for a good world for all our children.

MR. WALDMAN: So then, just to clarify: What is your motivation in coming forward to testify today?

--- Pause

MS LLOYD: Well, to -- it's such a big question, I am not sure where to start. I mean, for me to stand up for justice, I guess, in my community and my country. To contribute however I can to that is my motivation.

MR. WALDMAN: Had you ever met Mr. Killam before this?

MS LLOYD: No.

MR. WALDMAN: Have you seen him since that time?

MS LLOYD: No.

MR. WALDMAN: Do you have any personal reason to have any vendetta against Mr. Killam?

MS LLOYD: Definitely not.

MR. WALDMAN: Have you ever had any difficulty at all with the RCMP at any other time?

MS LLOYD: Never.

MR. WALDMAN: So I just want to clarify one more time. The implications of what this -- I think it's Chief Superintendent, if I am correct -- is that right? Chief Superintendent Killam.

In your mind, the implications of what he said were -- did he seem to be well acquainted with the file? Did he say he was, or is that something that was implied from his statements?

MS LLOYD: To me it was obvious that he was very well acquainted with the file. I am sorry I can't, you know, give you more --

MR. WALDMAN: Was this based on what he said in his body language and his reaction, and his whole summary of facts?

MS LLOYD: Yes, there is no doubt in my mind.

MR. WALDMAN: That he was well acquainted with the file.

MS LLOYD: Yes.

MR. WALDMAN: Just to be clear, his evidence -- his message to you was that there were valid reasons for Mr. Arar's deportation?

MS LLOYD: Yes.

MR. WALDMAN: And that he wasn't innocent?

MS LLOYD: Yes.

MR. WALDMAN: Just to understand again, what was the basis for your concern?

I mean, you said that you were shocked. What was it about this information that shocked you?

Was it that he was -- did you feel that he was giving something --

THE COMMISSIONER: Let her answer rather than suggesting the answer.

MR. WALDMAN: Okay. I won't lead the answer.

MS LLOYD: Well, I think I already answered that question. My understanding -- I don't think at that time that there was -- that government officials were saying anything so candid as he was to us. I had not heard anything like that outside that classroom.

MR. WALDMAN: So to understand it, you felt he was giving you information that had not been -- wasn't in the public domain?

MS LLOYD: That's right.

MR. WALDMAN: And that's what was concerning you?

MS LLOYD: That was partly what was concerning me, yes.

MR. WALDMAN: And what else was concerning you, besides the fact that he was

giving you information that was not in the public domain? What else concerned you, because you said "partly". So I am trying to understand.

MS LLOYD: Right. Well, just that -- the subject itself concerned me.

MR. WALDMAN: Now, was there some kind of -- I mean, what was the message behind the information, in your view? What was he trying to tell you about, you know, concerned about Mr. Arar?

MS LLOYD: He was trying -- well, he was trying to tell us that we didn't need to worry that -- because my question had been about if he was saying that Canadian citizens should feel safe and secure, my question was, well, how can that be true? And so he was assuring us that this would not happen to an innocent person.

MR. WALDMAN: Did you get any sense that, in terms of any message that he was giving about what Canadians should do about Mr. Arar as well?

MS LLOYD: No, other than his frustration with the media not having the facts.

MR. WALDMAN: Okay, thank you.

THE COMMISSIONER: Thank you,

Mr. Waldman.

Mr. Fothergill?

--- Pause

THE COMMISSIONER: Can it go inside the podium? Is there a spot in there? That's what people have been doing. Does that work?

Maybe it's a problem because you are tall, Mr. Fothergill.

MR. FOTHERGILL: I will stoop.

THE COMMISSIONER: There is also, if you want to use this podium over here.

MR. FOTHERGILL: I think we are resolving it.

THE COMMISSIONER: Okay.

EXAMINATION

MR. FOTHERGILL: Ms Lloyd, good morning -- pardon me, good afternoon.

My name is Simon Fothergill. I am one of the lawyers who represents the government in this inquiry, and you should also be aware that I am acting for Chief Superintendent Killam.

Commissioner, I have a set of documents that I have put together. I understood from Ms Verma's communication that she would not

be referring the witness to documents, so I took the liberty of putting in a single package the documents that I wish to refer to.

And this now includes what has been marked as P-69, P-70 and P-71, but also some other documents I would like to refer to.

With your permission, I would like to perhaps file the complete booklet as an exhibit.

THE COMMISSIONER: That would be P-73.

EXHIBIT NO. P-73: Book of documents produced by Mr. Fothergill

MR. FOTHERGILL: And I have additional copies for anybody who hasn't got them.

THE COMMISSIONER: Thank you.

MR. FOTHERGILL: Ms Lloyd, I would like to begin by asking you a few questions about your curriculum vitae. This has now been marked as Exhibit P-68.

Do you have that in front of you?

MS LLOYD: Yes. I am pretty familiar with it.

MR. FOTHERGILL: All right. Thank

you.

You begin in your summary by saying that you have 14 years of experience in managing staff and volunteers, as well 20 years of administrative and managerial experience.

Is that right?

MS LLOYD: That's right.

MR. FOTHERGILL: But am I right in thinking that relatively little of that experience is within the federal government setting?

MS LLOYD: That's right.

MR. FOTHERGILL: In fact you joined the federal government in October of 2002. And you are currently the project officer with the Global Health Research Initiative and Canadian Coalition for Global Health Research, Canadian Institutes of Health Research.

Without going into too many details, I understand that this is a multi-agency initiative that deals with global health issues.

Is that right?

MS LLOYD: That's right.

MR. FOTHERGILL: Is that a fair assessment?

MS LLOYD: That's right.

MR. FOTHERGILL: So I take it that it is not generally involved with anything to do with law enforcement or with matters of national security.

Is that correct?

MS LLOYD: No, unless you see something like a disease like SARS as a security issue.

MR. FOTHERGILL: I certainly see that it might have security implications. But generally speaking if we are talking about traditional law enforcement, what the police do, for example, that's not a normal part of your responsibility?

MS LLOYD: No, not at all.

MR. FOTHERGILL: In fact it's fair to say that none of the positions you have occupied professionally or even in your volunteer capacity have involved anything to do with policing or with protecting Canada's national security?

MS LLOYD: No.

MR. FOTHERGILL: If I can refer to some of your experience, starting with your employment, I note that in 1989 to 1992 you worked

with Friends of the Earth?

MS LLOYD: That's right.

MR. FOTHERGILL: Let me just tell you what I am trying to do.

I am going to try to find in your experience issues that might relate to global initiatives, transboundary issues. All right?

For example, when you worked with Friends of the Earth, you were involved in public education kits for ozone and global warming campaigns.

Is that right?

MS LLOYD: Yes.

MR. FOTHERGILL: And I think we can see another initiative with an international dimension when you worked for the Association of Canadian Universities for Northern Studies between 1992 and 2000. I see that you have coordinated a conference which included one called the Human Dimensions of Global Change in Whitehorse?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: When we talk about global change here, are we talking about environmental change or political change?

MS LLOYD: Climate change.

MR. FOTHERGILL: Climate change.

And obviously in your present capacity, there is an international dimension?

MS LLOYD: Very much so.

MR. FOTHERGILL: If we go to your personal experience, which is the final page of your CV, we have the Send a Piano to Havana Initiative.

MS LLOYD: That's right.

MR. FOTHERGILL: This you describe as:

> "An international organization raising funds to repair and purchase new and used pianos for schools and cultural venues in Cuba."

Am I right in thinking that this is in part to ameliorate the effects of the U.S. trade embargo with Cuba?

MS LLOYD: And also the effect of termites on the pianos in Cuba. Most of them are Russian pianos and the termites have pretty much destroyed them and there is great, great musicians in Cuba. And there is a team of tuners in North America, the States and Canada, who raise funds

and go to Cuba and repair those pianos in auditoriums and in schools, and for young pianists who have promise.

MR. FOTHERGILL: Now you said "also", so I take it you agree with my first proposition, and that is that one of the purposes of this initiative is to ameliorate the effects of the U.S. trade embargo against Cuba; correct?

MS LLOYD: Yes.

MR. FOTHERGILL: And you also referred to CGI. What does CGI stand for?

MS LLOYD: SGI?

MR. FOTHERGILL: I am sorry, SGI. Yes.

MS LLOYD: That's the Soko Gakkai International of Canada. It's an organization that I have belonged to for 25 years with members in 190 countries in the world. It's based on a Buddhist philosophy, and the goal is peace through education and cultural exchange.

MR. FOTHERGILL: So I get the impression, looking at your professional experience and also your volunteer experience, that you are a fairly politically aware individual.

Would you agree with that?

MS LLOYD: I am not sure how to gauge myself in terms of the rest of society, but I would say that I have a pretty strong sense of justice, and I am dedicated in my own life to creating a peaceful world, however I can as an ordinary human being.

MR. FOTHERGILL: So in that sense you take an interest in current affairs and you assess them from your particular perspective of justice. Is that fair to say?

MS LLOYD: Yes.

MR. FOTHERGILL: Would you describe yourself as politically astute, in the sense of being able to critically analyze issues and form correct or accurate conclusions?

MS LLOYD: I would say I am at least middle of the road.

MR. FOTHERGILL: Middle of the road?

MS LLOYD: I don't know if I would say I was politically astute.

MR. FOTHERGILL: When you say middle of the road, would you say that --

MS LLOYD: I would say that I was

at least middle of the road.

MR. FOTHERGILL: At least middle of the road. Are you saying that your assessment of international events is essentially mainstream?

MS LLOYD: Is my assessment of --

MR. FOTHERGILL: Yes.

MS LLOYD: Is it mainstream?

MR. FOTHERGILL: Mainstream, yes.

MS LLOYD: I am not sure how to compare myself.

Maybe if you could rephrase that, it would be easier for me to answer.

MR. FOTHERGILL: Do you generally find yourself in agreement with the mainstream views of unfolding international events, or do you typically have a different perspective?

MS LLOYD: Well, it really depends -- in this country, it varies from province to province what is mainstream, for instance, so I...

MR. FOTHERGILL: That's fine. I can move on.

You see yourself as someone politically active; yes?

MS LLOYD: Could you just say what you mean by politically active?

MR. FOTHERGILL: Well, I am thinking perhaps of the initiative to send pianos to Cuba, for example. That's a form of political activism, is it not?

MS LLOYD: I would call it humanitarian.

MR. FOTHERGILL: All right. You are obviously interested in promoting peace through peaceful means.

MS LLOYD: Yes.

MR. FOTHERGILL: Yes. I take it that you would be less enthusiastic about promoting peace through violent means or --

MS LLOYD: Definitely.

MR. FOTHERGILL: Absolutely.

Are you opposed in principle to any violent means to achieve peace?

MS LLOYD: I would do everything in my power to avoid that.

MR. FOTHERGILL: I am going to guess that you are quite a strong critic of the American-led so-called War on Terror.

Is that fair to say?

MS LLOYD: Yes, it is.

MR. FOTHERGILL: And I imagine

that your understanding of U.S. tactics in this so-called War on Terror are generally derived from media reports.

Is that fair to say? What you know of what the U.S. is doing in pursuit of what they call the War on Terror?

--- Pause

MS LLOYD: Would you mind just to say that question one more time? I'm sorry. I just want to make sure I --

MR. FOTHERGILL: Absolutely fine.

I am suggesting that your understanding of U.S. tactics in the War on Terror is derived from what you read or see or hear in the media?

MS LLOYD: Yes.

MR. FOTHERGILL: You have no inside or specialized knowledge of this?

MS LLOYD: No.

MR. FOTHERGILL: No. I take it that at the time you attended this course that you have told us about at the CCMD in January of 2003, you had already formed some quite critical views of what was happening in the United States and around the world as a result of the events of

September 11th.

Is that right?

MS LLOYD: I guess so.

MR. FOTHERGILL: You went into this conference or course with a fairly critical mind-set I am suggesting?

MS LLOYD: No.

MR. FOTHERGILL: No?

MS LLOYD: No, I don't think so. I mean, as I said, I got parachuted into it. I hadn't felt the need to have that course at that point. I was pretty new in the Global Health Research Initiative.

I wasn't going with an attitude. I went to do my best on my boss' part and to learn as much as I could. That is the spirit I went with.

MR. FOTHERGILL: You had certainly heard about Mr. Arar at this point?

MS LLOYD: Yes.

MR. FOTHERGILL: And you were deeply concerned about what you understood to be his circumstances?

MS LLOYD: Yes.

MR. FOTHERGILL: Yes.

I'm going to ask you a few questions about the nature of CCMD and if you don't feel comfortable commenting obviously feel free to say so.

CCMD stands for Canadian Centre for Management Development.

Is that right?

MS LLOYD: Yes.

MR. FOTHERGILL: I believe this is what we now call the Canadian School of Public Service; correct?

MS LLOYD: That I don't know.

MR. FOTHERGILL: You may not know that, that's fine.

Would you agree with me that enrolment at CCMD is limited to members of the federal public service?

MS LLOYD: I'm not sure about that either.

MR. FOTHERGILL: Certainly the course that you attended there was nobody, to your knowledge, who was not a member of the federal public service there?

MS LLOYD: I don't think so, but I'm not sure.

MR. FOTHERGILL: From the content of the course, though, it was clearly geared towards federal public servants?

MS LLOYD: Yes, but I don't know if they exclude nongovernmental employees.

MR. FOTHERGILL: If I suggest to you that CCMD or Canadian School of Public Service is, in fact, exclusively for federal public servants, you have no reason to disagree with me, do you?

MS LLOYD: No.

MR. FOTHERGILL: I think you mentioned this in your answers to Ms Verma, but it is essentially intended to foster management development.

Is that correct?

MS LLOYD: I think so.

MR. FOTHERGILL: The old name, Canadian Centre for Management Development, would suggest that.

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: I am going to suggest to you that it is also intended foster cooperation and collegiality among public servants.

Would you agree with that?

MS LLOYD: I certainly wouldn't disagree.

MR. FOTHERGILL: We will get to the course outline in just a moment and that might shed light on it.

In any event, at the time you attended the course you had been with the federal government for approximately three months.

Is that correct?

MS LLOYD: Yes.

MR. FOTHERGILL: So you were relatively new to federal public service?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: Indeed, as you told us, you had no prior experience in government.

MS LLOYD: No. Well, I had been a client manager for two government associations, the Materiel Management Institute, and the Real Property through the Willow Group.

MR. FOTHERGILL: I see.

I'm going to suggest to you that those who attend courses at CCMD are, for the most part, professional public servants.

Do you agree?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: And the courses are intended to promote a frank exchange of ideas among professional colleagues?

Yes? You have to say yes or the transcript won't pick it up.

MS LLOYD: Yes.

MR. FOTHERGILL: I'm going to suggest to you that professional public servants can be expected to demonstrate good judgment in their dealings with one another?

MS LLOYD: Yes.

MR. FOTHERGILL: And in appropriate cases they can be expected to exercise a degree of discretion?

MS LLOYD: Yes.

MR. FOTHERGILL: I'm going to refer to some documents now.

Do you have this book in front of you?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: The first document at tab 1 is the letter that welcomed participants to the Canada and The World course,

and it is dated December 18, 2002.

Do you have that in front of you?

MS LLOYD: Yes.

MR. FOTHERGILL: I don't know if you will have seen this, given that you were a last minute addition to the course list, but do you recognize the document?

MS LLOYD: I have seen it. I don't know -- one was not sent to me, it was sent to my boss.

MR. FOTHERGILL: Did you see it before you attended the course?

MS LLOYD: I don't think so.

MR. FOTHERGILL: All right.

If we go to the second paragraph it gives us some idea of what the course is intended to achieve.

It says:

> "This three day course provides participants with an opportunity, through a combination of learning methodologies such as exposure to high profile experts from both the public

and private sectors, a site visit to the American Embassy and a simulation exercise, to gain an appreciation for the number and diversity of the players on the international agenda and probe how partnerships develop to support mutual interests abroad." (As read)

I am going to suggest to you -- and I think you can comment on this based on having attended the course -- that one of the purposes was to promote the development of partnerships within the federal government, within the people who are actually attending the course.

Is that fair?

MS LLOYD: That's fair.

MR. FOTHERGILL: All right.

You have told us that you were a last-minute addition to the course and for that reason you were unable to attend the site visit to the U.S. Embassy.

MS LLOYD: That's right.

MR. FOTHERGILL: Had it not been

for that fact, would you have been content to go to the U.S. Embassy or would that have troubled you in some way.

MS LLOYD: No, I would have been very interested to go.

MR. FOTHERGILL: You would have been happy to go. All right.

If we go to tab 2, this is the participant list. We have removed the personal information because I don't think the identities are all that important, similarly the nationality, date of birth and place of birth, but what I do want to discuss with you is the departments and agencies that are represented.

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: Have you had an opportunity to look at this before taking the stand today, this document?

MS LLOYD: Very briefly.

MR. FOTHERGILL: Do you have any disagreement with what you see here in terms of the composition of the course? Who was attending?

I appreciate you may not know for certain, but would you be able to say that this looks like a possible participant list for the

course you attended, or are you unable to say?

MS LLOYD: No, I wouldn't disagree with that. I know that I was interested that there were people from the Canadian Space Agency. I remember thinking that. There is myself, Canadian Institutes of Health Research.

MR. FOTHERGILL: There is in fact another name that appears there, but I think that must be the person you replaced.

MS LLOYD: Yes.

MR. FOTHERGILL: Yes.

MS LLOYD: I remember there were quite a few people from Agriculture and AgriFood also.

MR. FOTHERGILL: We also see Transport and National Defence, those sorts of departments, Fisheries and Oceans on the next page.

MS LLOYD: Yes.

MR. FOTHERGILL: So perhaps now you can agree with me that this was a course that was limited to federal public servants in terms of its attendance. To your knowledge, there was nobody other than the federal public service at the course?

MS LLOYD: No. That's right.

MR. FOTHERGILL: You said something interesting in your response to Ms Verma, which is that you referred to six rounds of five people and therefore you concluded that 30 people were there.

Do you remember that?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: What do you mean by "six rounds of five people"?

MS LLOYD: In the event management business we refer to the round tables as rounds. So you say I want -- please set me up with six rounds for five. So that means that there would be six round tables with five people at each.

MR. FOTHERGILL: They are all in the same room, however?

MS LLOYD: Yes.

MR. FOTHERGILL: I see. Thank you. I was just curious whether -- this was leading to the question of how many people were actually at Chief Superintendent Killam's presentation, and I take it you would say it would be the number we see on that list?

MS LLOYD: Yes.

MR. FOTHERGILL: Which, incidentally, is 25. You said 30, but clearly we are in the same ballpark.

Okay. I'm going to turn now to Chief Superintendent Killam's presentation. That is introduced at tabs 4 and 5 of the book. Tab 4 we have already spoken about, that is now what is Exhibit P-69. Tab 5 we have as well. That is the PowerPoint presentation.

I think you have already told us this, but from your perspective Chief Superintendent Killam's presentation didn't concern anything directly related to your line of work.

Is that right?

MS LLOYD: No.

MR. FOTHERGILL: No. I have spoken to Chief Superintendent Killam about his recollection of this and one of the things he does remember is that at the start of the presentation everybody introduced themselves.

Is that consistent with your recollection?

MR. WALDMAN: Mr. Commissioner, I want to raise the same objection that my friend

raised with respect to Ms Girvan.

If my friend is going to give evidence about what Chief Superintendent Killam has said, it would seem it should come from him and not from my friend.

THE COMMISSIONER: But I think he can do it if he undertakes that Chief Superintendent Killam will be called to give the evidence as he represents it.

MR. WALDMAN: I'm not aware that he is going to be called.

MR. FOTHERGILL: I can respond to that, if you like, or perhaps Ms Verma.

MS VERMA: We can confirm that the Commission intends to call Mr. Killam as a witness.

THE COMMISSIONER: Okay. Thank you.

MR. WALDMAN: Thank you.

THE COMMISSIONER: That's fine. Go ahead, Mr. Fothergill.

MR. FOTHERGILL: Thank you.

I have spoken to him and he does recall that at the beginning of the presentation everybody introduced themselves.

Is that consistent with your recollection?

MS LLOYD: What I remember is him introducing himself. Actually, I don't remember us going around -- going around and introducing ourselves one-by-one.

MR. FOTHERGILL: So you are saying that that did not happen?

MS LLOYD: I don't remember that.

MR. FOTHERGILL: Is it possible that it happened and you just don't recall it, or are you saying it did not happen?

MS LLOYD: I'm saying I don't remember that. I don't remember that happening. It could have happened.

MR. FOTHERGILL: Because I want to suggest to you that Chief Superintendent Killam reasonably understood the kind of group he was addressing.

I know you can't speak for him, but from your perspective is that a reasonable thing for him to believe, that he has an idea of the room that he is addressing, who is there?

MS LLOYD: He would have the experience of the person who he was replacing. He

was replacing somebody that day.

MR. FOTHERGILL: I see.

MS LLOYD: He was not normally the person. He told us that he was not normally the person who did the presentation, so if he did it was probably because he had been briefed by the person who normally did it.

MR. FOTHERGILL: And possibly as a result of these introductions that you are not sure whether they took place or not.

MS LLOYD: That is true too.

MR. FOTHERGILL: So I am suggesting to you that Chief Superintendent Killam would have reasonably understood that he was addressing a room full of professional public servants. Yes?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: That these public servants had at least some knowledge of, or involvement in, matters with implications for Canada's foreign policy?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: And that he would have been justified in believing that he was among professional colleagues. Yes?

MS LLOYD: Could.

MR. FOTHERGILL: Who could be expected to exercise good judgment?

MS LLOYD: Could.

MR. FOTHERGILL: And in appropriate cases, discretion?

MS LLOYD: He could think that.

MR. FOTHERGILL: Now, I was having a look at your notes, which you can find at tab 6 of this booklet, and I was trying to identify what aspect of Chief Superintendent Killam's presentation might have made you think of Mr. Arar, unless you are saying that you went into the presentation thinking about Mr. Arar. But I think you told us that wasn't the case.

When the presentation began you didn't have Mr. Arar on your mind.

Is that right?

MS LLOYD: I can't remember that.

MR. FOTHERGILL: I see. So it is possible you were thinking about Mr. Arar even before the presentation began?

MS LLOYD: I doubt it.

MR. FOTHERGILL: All right. Something that happened in the course of the

presentation caused you to think about Mr. Arar?

MS LLOYD: Yes. I already mentioned the last section that he spoke about, and there is like a brief paragraph in the very -- just before the conclusions?

MR. FOTHERGILL: About making Canadians safe?

MS LLOYD: Yes. That is what triggered my question.

MR. FOTHERGILL: So you don't think there was anything else in his presentation that caused you to think about Mr. Arar. You think it was really just that last slide?

--- Pause

MS LLOYD: I would imagine that talking about security and cross-border communication, all those kinds of things, that for sure I was thinking about Mr. Arar.

MR. FOTHERGILL: Even earlier?

MS LLOYD: Yes.

MR. FOTHERGILL: All right. I'm going to see if we can pinpoint it a little bit with reference to your notes. There are a few notes that I think might relate to this subject.

You will see that at the top of

your notes at tab 6 you have written the words "friendship equals integrated".

do you see that?

MS LLOYD: Yes.

MR. FOTHERGILL: I know that the third slide in reads "integrated policing initiatives," which includes, as its third bullet, "importance of gathering and sharing information."

First of all, can you tell me what you mean by the note "friendship equals integrated"?

MS LLOYD: I don't think I can tell you very much. I do recall him -- you know, something about, you know, the spirit of the work between the countries and possibly using the term friendship. That is --

MR. FOTHERGILL: That is as much detail as you can give us?

MS LLOYD: Yes.

MR. FOTHERGILL: You can't recite to me now the exact words that Chief Superintendent Killam used that prompted you to write "friendship equals integrated," can you?

MS LLOYD: No.

MR. FOTHERGILL: The next entry in

your notes that caught my attention was about halfway down.

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: You wrote:

"Close relationship federal/ provincial/municipal, even local, more so since September 11th." (As read)

Do you see that?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: First of all, can I suggest to you that in view of your views on the American-led War on Terror, the response to September 11th, when a police officer begins talking to you about increased working relationships post-9/11, that is going to cause you some concern.

Is that correct?

MS LLOYD: No. I feel that you have made some assumptions about me that may not be true from what you are saying and so I guess I want to be careful.

--- Pause

MR. FOTHERGILL: You are saying it didn't cause you concern that a police officer was

speaking about increased working relationships with other law enforcement bodies post-9/11 --

MS LLOYD: I think good communication is good, that that will decrease problems.

MR. FOTHERGILL: I must confess I had some difficulty identifying the slide to which that note related. The note immediately before "close relationship" reads "OCIPEP", and I think we can find that slide without too much difficulty.

Can you find the slide that reads "Emergency Preparedness in the RCMP"? It is just a single bullet that talks about the "Office of Critical Infrastructure Protection and Emergency Preparedness, (OCIPEP)"?

MS LLOYD: You want me to find that slide?

MR. FOTHERGILL: Could you, please, yes?

Do you have that in front of you?

MS LLOYD: No, I don't.

MR. FOTHERGILL: It is approximately halfway through the deck and it looks like that. A relatively short slide, just a

heading and a single bullet.

--- Pause

MS LLOYD: Okay. Got it.

MR. FOTHERGILL: If you turn the page we next see a slide on "RCMP Emergency Management", which continues for two slides. Then we come to "EUROPOL", which is the next entry in your handwritten notes.

I'm just wondering if you can help me identify where in Chief Superintendent Killam's presentation, if you know, he spoke about the close relationship between these different law enforcement bodies and how it had increased post-9/11?

MS LLOYD: No, I would be guessing.

MR. FOTHERGILL: You would be guessing?

MS LLOYD: Yes.

MR. FOTHERGILL: Can you tell me the exact words that he used that caused you to write the words "close relationship federal/ provincial/municipal, even local, more so since September 11th"?

MS LLOYD: No.

MR. FOTHERGILL: Completely incapable of quoting him.

Correct?

MS LLOYD: Yes.

MR. FOTHERGILL: The last slide I want to take you to is the one that Ms Verma did, which is "International Policing"?

THE COMMISSIONER: is this in the notes?

MR. FOTHERGILL: It is in the PowerPoint presentation, although there is, Commissioner, an entry called "International Policing" in the notes as well.

THE COMMISSIONER: Yes.

MR. FOTHERGILL: We certainly see on that slide -- do you have it in front of you, Ms Lloyd?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: -- the bottom bullet "International Policing and Integration".

Do you see that?

MS LLOYD: On my notes or --

MR. FOTHERGILL: No, on the slide.

MS LLOYD: On the slide.

MR. FOTHERGILL: On the slide,

"International Policing", the final bullet.

--- Pause

MR. FOTHERGILL: Do you have that?

MS LLOYD: Not yet.

MR. FOTHERGILL: It is very near the end of the presentation.

--- Pause

MR. FOTHERGILL: Yes?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: And I imagine that given that he is now talking about international policing and integration across borders, that might have caused you to start to think about Mr. Arar? Or do you know?

MS LLOYD: It might have.

MR. FOTHERGILL: But you are not sure?

MS LLOYD: No.

MR. FOTHERGILL: Can you tell us the exact words that Chief Superintendent Killam used to describe international policing and integration?

MS LLOYD: No.

MR. FOTHERGILL: You can't quote him, can you?

MS LLOYD: No.

MR. FOTHERGILL: And finally, Ms Verma took you to the slide that you think definitely contributed to your question about Mr. Arar, and that's I think the conclusion, "The RCMP will be Steadfast".

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: Did Chief Superintendent Killam say anything in addition to what we read on this slide, and if you can help us with his exact words, please?

MS LLOYD: I don't -- I can't tell you exactly what he said.

MR. FOTHERGILL: No, you can't, can you?

MS LLOYD: No.

MR. FOTHERGILL: Despite the fact that you do have some handwritten notes to assist you in recreating what he said, your own notes of the presentation?

MS LLOYD: There are very few notes there.

MR. FOTHERGILL: That's right. But even so, you do have some?

MS LLOYD: Yes.

MR. FOTHERGILL: Contrast that with your notes of your discussion with him about Mr. Arar where you have none; correct?

MS LLOYD: That's right.

MR. FOTHERGILL: Yet you cannot even begin to quote Chief Superintendent Killam and what he said that caused you to ask your question, can you?

MS LLOYD: I had a great amount of interest in the discussion that we had about Maher Arar and put it to memory.

MR. FOTHERGILL: But I am also suggesting that your --

MS LLOYD: I also --

MR. FOTHERGILL: Sorry.

MS LLOYD: I also relayed immediately after and for days after that what had happened -- what I had -- that exchange that we had had, which further committed the meaning of that discussion to my memory, compared to these things, which did not have a lot of significance for me as a person. I did not have a great reason to remember the others.

MR. FOTHERGILL: Yes.

MS LLOYD: I had a great reason to

remember the discussion that I had with him about Maher Arar and to remember.

MR. FOTHERGILL: I think you said just a moment ago that you committed the meaning of what he said to your memory time and time again and you repeated it to other people; correct?

MS LLOYD: Yes.

MR. FOTHERGILL: Not so much the words but what you understood as the meaning.

Is that fair to say?

MS LLOYD: Yes, that's fair to say. I think also that he -- I thought about this a lot and I had the feeling that he made general statements and did not reveal anything specific, and that may also be why I am able to, you know -- a reflection of what I am saying also.

MR. FOTHERGILL: I wonder if I can get you to refer to that e-mail message that has been marked as Exhibit P-72?

Do you have that in front of you?

MS LLOYD: Yes.

MR. FOTHERGILL: Mr. Waldman asked you about your motivation in coming forward, and you spoke about your wanting to stand up for justice at the community level and also more

broadly.

Is that right?

MS LLOYD: That's right.

MR. FOTHERGILL: In the first line of your e-mail you say:

"I would like to offer you my experience in case it is of any value to helping Maher Arar."

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: So I suggest to you that your motivation fundamentally is to help Maher Arar.

MS LLOYD: Yes.

MR. FOTHERGILL: And indeed you went on to say that you were deeply disturbed by what happened to him since you first heard about it.

MS LLOYD: That's true.

MR. FOTHERGILL: What you knew about him, however, is what you had read in the media prior to this encounter with Chief Superintendent Killam; correct?

MS LLOYD: What I had read and what I had heard, yes.

MR. FOTHERGILL: Yes. I would like to refer you then to your written account of what you think Chief Superintendent Killam said. Ms Verma read it to you. It is I think the fourth paragraph.

You said:

"He..."

Meaning Chief Superintendent Killam.

"... spoke to us about Canada's role in the world and encouraged everyone to feel very confident and secure as Canadians."

Are you saying that these are his words or is this your impression of what he said?

MS LLOYD: It's a summary of what he said.

MR. FOTHERGILL: So he may have used different words, but this is what you took from it.

MS LLOYD: Yes.

MR. FOTHERGILL: You say you decided to challenge the officer. That's correct?

There was a note of challenge in

your voice when you asked the question?

MS LLOYD: I think so.

MR. FOTHERGILL: Yes? And you asked him how Canadians could feel secure when a Canadian, Maher Arar, had been abducted at the border and deported to Syria.

Do you think you used the word "abducted"?

MS LLOYD: Yes.

MR. FOTHERGILL: So you challenged him. I suggest you put him on the defensive.

MS LLOYD: I guess he would be the best person to answer that question.

MR. FOTHERGILL: Fair enough. Let me ask you about your intention then. You wanted to challenge him.

MS LLOYD: It was not so much him that I wanted to challenge. It was the sense that he was giving, that everyone should feel secure. And in my opinion, there was an innocent person who was not secure and a Canadian citizen. So the two didn't match, in my mind. So I had to challenge him on that.

He was making a statement to the class that I did not feel was true.

MR. FOTHERGILL: And you challenged him by raising the case of Maher Arar, despite the fact that Chief Superintendent Killam had never once mentioned Mr. Arar in the course of his presentation; correct?

MS LLOYD: Yes.

MR. FOTHERGILL: And you have described Chief Superintendent Killam's reaction in your written correspondence as "flummoxed", and I think today you said possibly embarrassed?

MS LLOYD: I said I was embarrassed for him.

MR. FOTHERGILL: But I thought you said -- I am sorry? Go ahead.

MS LLOYD: I said that I thought he flushed.

MR. FOTHERGILL: I understood you to say that he flushed.

MS LLOYD: Yes.

MR. FOTHERGILL: And that you felt that he felt embarrassed.

MS LLOYD: No. I said that I felt embarrassed for him. I did not sense any embarrassment from him.

MR. FOTHERGILL: Flummoxed and

flushed. This is how you describe his reaction?

MS LLOYD: Yes.

MR. FOTHERGILL: Did it occur to you that you might actually be putting him in a somewhat awkward position by asking him to speak about an RCMP operation?

MS LLOYD: I can only tell you that I was really surprised that he was so candid.

MR. FOTHERGILL: But it didn't occur to you that you were potentially putting this man in an awkward position by saying, "Tell us about Mr. Arar"?

MS LLOYD: That's not what I said.

MR. FOTHERGILL: No, you didn't. That's quite right. You said something more. You said, "How can Canadians feel secure in light of what happened to Mr. Arar?"

MS LLOYD: I think it's a fair question to ask when he was making the statements that he was asking -- or that he was making.

MR. FOTHERGILL: And it didn't occur to you that it might actually be quite difficult for him to answer that question?

MS LLOYD: I think that he could have, you know, he had the opportunity to say

nothing.

MR. FOTHERGILL: All right. We will return to that.

Let me just ask you a few more questions about this e-mail that you sent.

You said that you found Maher Arar's website by entering his name in an Internet search engine, Google, for example. Is that right?

MS LLOYD: Probably.

MR. FOTHERGILL: If I suggest to you that if you enter Maher Arar's name in an Internet search engine, certainly his own website comes up, but another website that comes up is the website belonging to this Commission of Inquiry.

Is that correct?

MS LLOYD: Yes, that's correct.

MR. FOTHERGILL: And you noted that at the time?

MS LLOYD: No. No, I think I would have sent my note to the inquiry if that had come up.

MR. FOTHERGILL: And yet you know today that the Commission's website does come out in an Internet search.

MS LLOYD: Yes, because I have looked at it over the past week.

MR. FOTHERGILL: But at the time that you chose to come forward, you ran the Internet search, you found Maher Arar's website, and you are telling us that you didn't notice that the Commission of Inquiry's website --

MS LLOYD: I don't know whether that was the first one that showed up on the list or what, but I found it. I saw the -- you know, I looked it over. I sent the note.

MR. FOTHERGILL: And before making this decision, which I think you have described to us as a difficult decision, you talked it over with a number of people about whether you should come forward; correct?

MS LLOYD: It was not a difficult decision for me to come forward. I didn't know where to go forward.

MR. FOTHERGILL: And then one day you did an Internet search and you found Maher Arar's website and you sent the message.

MS LLOYD: Yes.

MR. FOTHERGILL: But you didn't take the time to consider, for example, whether

approaching the Commission directly might be the best way of bringing your information forward?

MS LLOYD: I think I am acting as any other ordinary Canadian might have acted. Nothing -- nothing -- nothing special. You know, I found an avenue and decided to, you know, express myself, very simply.

There was not -- it was not -- you know, this is not something I do on a regular basis.

MR. FOTHERGILL: No, I am sure it's not. But equally, given a choice between approaching the Commission directly and approaching the Maher Arar support team, you chose the Maher Arar support team?

MS LLOYD: No.

MR. FOTHERGILL: No?

MS LLOYD: No, it was not a choice. What I said was that I saw the -- that time when I put his name in, because I was trying to stay in touch, that time when I put his name in, his site came up. I looked at the site. I took the time to look at the site. I saw that there was a "Contact Us" or something like that and made the decision, with the site open, to send

the note.

There was no big decision about who I should send it to.

MR. FOTHERGILL: Let me turn then to the words that you attribute to Chief Superintendent Killam in your e-mail.

First of all, you are writing this in July of 2004, but you attended the course in January of 2003; correct?

So a number of months have elapsed from the time that you heard Chief Superintendent Killam speak and the time that you committed your recollection of his remarks to paper, several months?

MS LLOYD: That's right.

MR. FOTHERGILL: And in that time you discussed this with a number of other people?

MS LLOYD: That's right.

MR. FOTHERGILL: You had confirmed the meaning of what he said in your own mind; correct?

MS LLOYD: "Confirmed the meaning"?

MR. FOTHERGILL: I think that's what you said.

MS LLOYD: Well, I took the meaning from what Dan Killam said and then relayed that to other people.

MR. FOTHERGILL: And the meaning you attributed to his remarks you found disturbing. Yes?

MS LLOYD: I was really surprised.

MR. FOTHERGILL: And I am suggesting to you that, through repetition to yourself and to others, the meaning you attributed to Chief Superintendent Killam may have changed perhaps slightly, or perhaps in significant ways, from the time that you heard him speak and the time that you wrote this electronic message.

Is that possible?

MS LLOYD: I don't think so.

MR. FOTHERGILL: But is it possible?

MS LLOYD: This past week, because I do feel a great responsibility for what I am saying here, I decided to check with a couple of people who I had talked to back then and asked them to --

MR. FOTHERGILL: Excuse me. I appreciate this is a Commission of Inquiry, but

this seems like a rather unusual way of confirming the witness' evidence, sir.

THE COMMISSIONER: Well, in your question you are challenging her recollection.

MR. FOTHERGILL: Yes.

THE COMMISSIONER: I am not sure that the line of questioning doesn't enable her to go back, in a sense, under past recollection recorded. Now, this isn't past recollection recorded in that she didn't make a note, but she went back to people to whom she has talked and I suppose you could in theory, if she wishes to do that, then call those people to confirm her version of events.

But your line of questioning is suggesting that her recollection today is something that is --

MR. FOTHERGILL: Possibly different.

THE COMMISSIONER: -- of recent origin. So I think a cross-examination along those lines would fairly enable her to refer to if she had recorded it in a note certainly, and I am not sure this isn't akin to that.

MR. FOTHERGILL: I take it from

your response that you are content to hear the evidence, in which case, that's fine.

THE COMMISSIONER: Yes, I think it is. Of course, with all of these questions, there is the matter of weight to be assessed.

In any event, yes, please go ahead.

MR. FOTHERGILL: Yes, I understand.

MS LLOYD: Well, just to say that I did ask a couple of people if they could relay to me what I had said to them, and I felt it was consistent. And that made me feel confident to come today.

MR. FOTHERGILL: These were people who, but for your account of Chief Superintendent Killam's remarks, would not be able to say what he said? They are relating back to you something that you said to them previously; correct?

MS LLOYD: They were relaying back to me what I had said to them, that's right.

MR. FOTHERGILL: Did it occur to you to contact anybody else who was at the course to find out what their recollection of Chief Superintendent Killam's remarks were and find out

if their recollection accorded with yours?

MS LLOYD: Yes, it did occur to me.

MR. FOTHERGILL: And did you do anything about it?

MS LLOYD: I didn't take that action, no.

MR. FOTHERGILL: Why not?

MS LLOYD: I guess because there is a limit to how much I could do and the obstacles in tracking those people down.

MR. FOTHERGILL: All right.

Returning to your account of Chief Superintendent Killam's remarks then, you have explained the question that you asked. You said that he was a bit flummoxed. And then he went on to say that we should not believe what we hear in the media; that they were only telling part of the story. Correct?

You are fairly confident that he said, if not those words, then at least something that conveyed that idea?

MS LLOYD: It was very close, and he said it more than once.

MR. FOTHERGILL: Now, he never

said that what you read in the media is false. He said that they may not be telling you the whole story; correct?

MS LLOYD: He probably said something close to that.

MR. FOTHERGILL: And I suggest to you that that's almost a matter of common sense. The media may not have the whole story.

Or did you think that that was in some ways -- well, I will let you speak.

But that seems like a fairly commonsensical thing for him to say: the media may not have the whole story?

MS LLOYD: It wasn't like that.

MR. FOTHERGILL: I see.

MS LLOYD: It wasn't that common sense -- the media don't have the whole story kind of thing that we all know. There was clearly a great deal of frustration expressed on his part about what had happened with this particular story and -- yes.

MR. FOTHERGILL: Again, you are conveying to us an impression. You are telling us he was frustrated, and that what you took from his remarks is what we see here, not that these are

necessarily his actual words; correct?

MS LLOYD: I --

MR. FOTHERGILL: Yes?

MS LLOYD: At this point, you know, this -- I am not trying to -- I am not trying to -- I am only trying to convey what I have absolute confidence about here today.

MR. FOTHERGILL: And I appreciate you doing that. I am just asking you to confirm that you do not have absolute confidence, when you recite to us the words that you say --

MS LLOYD: No.

MR. FOTHERGILL: No. Thank you.

"...real evidence in support of the action taken against Maher Arar."

The next thing you write in your e-mail. Is it possible that he just said there is some information that might explain what happened to him, or that would help in understanding what happened to him?

MS LLOYD: No. My sense from him was that he was behind it.

MR. FOTHERGILL: Behind it?

MS LLOYD: That it wasn't just

some information; that it was substantial. In his mind, that it was substantial.

MR. FOTHERGILL: Substantial information that might assist people in understanding what happened to Maher Arar, if they could know what it was?

MS LLOYD: No. No. No, it was information that justified what had happened to Maher Arar.

MR. FOTHERGILL: And is it possible that you are colouring his answer by your own sympathies for Mr. Arar?

MS LLOYD: No.

MR. FOTHERGILL: You are certain?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: Chief Superintendent Killam -- and I think you acknowledge this -- he is Director General of the National Security Program.

You may not be able to comment on this, but if I tell you that he was not particularly involved in the file, as in operationally involved in the file, you have no way of disagreeing with that?

MS LLOYD: I have no way of

disagreeing.

MR. FOTHERGILL: And you say, in your e-mail account at least, that he did not say what evidence he had; correct?

"But he certainly led us to believe --"

And again I take it here we are summarizing an impression that you received from him as opposed to his actual words.

MS LLOYD: Yes.

MR. FOTHERGILL: What you say after "He led us to believe," and specifically you say that:

"He had enough of it to feel confident that Maher Arar was indeed a terrorist whose deportation was justified."

I am going to suggest to you that Chief Superintendent Killam never said Maher Arar is a terrorist.

Do you agree with me or disagree?

MS LLOYD: I don't know. I can't remember the words, the exact words that he used, but that was certainly the impression that he left me with.

MR. FOTHERGILL: But it's quite possible that he never uttered the words "Maher Arar is a terrorist"?

MS LLOYD: That is possible.

MR. FOTHERGILL: Equally I am going to suggest to you that he never said that Maher Arar's deportation was justified.

Do you agree or disagree?

MS LLOYD: Just say that one again?

MR. FOTHERGILL: I am suggesting that Chief Superintendent Killam never said to you: "Maher Arar is a terrorist whose deportation was justified"?

MS LLOYD: I can't tell you for sure if those are the words he used.

MR. FOTHERGILL: That was just the impression you formed?

MS LLOYD: Yes. He may have used them. He may have used some of those words. I can't remember.

MR. FOTHERGILL: But equally he might not have and you might have just read into what he said to you that that was what he was telling you. Yes?

MS LLOYD: I don't think so.
MR. FOTHERGILL: But you can't --
MS LLOYD: I had no reason to read into what he had to say or to ascribe anything to him, you know? No reason.
MR. FOTHERGILL: Except possibly, Ms Lloyd, the reason that you gave us earlier, which is that you had already satisfied yourself, based on media reports, that something terrible had happened to Maher Arar; that you therefore would have heard his answers in light of that conclusion you had already reached?
MS LLOYD: I don't know how that could have -- I am not following you.
MR. FOTHERGILL: Before you even heard Chief Superintendent Killam speak, you had already come to the conclusion that something terrible had happened to Mr. Arar; correct?
MS LLOYD: Yes, that he had been abducted and taken -- deported to Syria.
MR. FOTHERGILL: By the United States?
MS LLOYD: Yes.
MR. FOTHERGILL: Yes. And so I am suggesting that anything short of a complete

exoneration by Chief Superintendent Killam would have caused you to think that he wasn't really giving you the response that you wanted to hear.

MS LLOYD: No, I was not asking him whether Maher Arar was innocent or guilty. That was not my question. My question was, how can Canadians feel secure -- he had stated that -- something about, you know, that we should feel confident and secure. And I was saying, how can that be true if one of us has -- if the Canadian government has allowed one of us to have been abducted and deported?

It had not -- my question was not about whether or not he was innocent or guilty.

MR. FOTHERGILL: But you were clearly seeking reassurance of some kind, weren't you?

MS LLOYD: As I said, I was really surprised with everything he said. I don't really think that I expected very much in terms of an answer.

MR. FOTHERGILL: Commissioner, I am very nearly finished. If I might just continue?

THE COMMISSIONER: Yes.

MR. FOTHERGILL: I put it to you, from Chief Superintendent Killam's perspective, he is giving a presentation at a course which is limited to federal public servants --

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: -- public service professionals, and he exercised -- can be expected to exercise good judgment, if necessary discretion. And a member of the federal government, a professional colleague, which is presumably how he sees you at this time, challenges him that possibly something in his organization is not quite as it should be, and you want him to answer for that. And he then, to the extent that he can, gives you an explanation.

Isn't that a fair characterization of what happened?

MS LLOYD: I am sorry, I am kind of getting -- feeling a bit worn down, and I will have to ask you to --

MS VERMA: Mr. Fothergill, could you just repeat your question, please?

MR. FOTHERGILL: I am not sure that I can, in which case I think I will move on.

I can wrap this up with a short

reference to the Garvie report, if you don't mind. That's tab 7 of the document.

Do you have that in front of you? That's page 67 of the report prepared by Chief Superintendent Brian Garvie as a result of a complaint that was filed with the Commission for Public Complaints against the RCMP.

Have you seen this document before?

MS LLOYD: Yes.

MR. FOTHERGILL: Have you seen the whole document before or just this page?

MS LLOYD: No.

MR. FOTHERGILL: No. I want you to look at the conclusions he reached at points 1, 2 and 5. They are fairly short, so I will read them to you.

Point 1 of Mr. Garvie's conclusions was that:

> "Members of A-OCANADA had legitimate reasons to initiate an investigation with respect to Maher Arar."

Two, that:

> "Maher Arar was a person of

interest and that direct and indirect links had been established with other individuals who were suspected of being members of or associated with al-Qaeda."

And finally 5, that:

"There was sufficient other documentation about the actions of both ... and ... to conclude that Maher Arar was at the very least a person of interest to U.S. authorities and they were conducting their own investigation with respect to him."

I want you to assume that at a minimum that's what Chief Superintendent Killam knew when you challenged him about Mr. Arar. All right? Those three points.

MS LLOYD: Okay.

MR. FOTHERGILL: And I put it to you that in light of the question you asked him, he essentially had three choices open to him.

He could, first of all, tell you everything he knew about Mr. Arar. But I take it you would agree with me that that would not have been an appropriate response because it's not a classified environment; right?

MS LLOYD: Mm-hmm.

MR. FOTHERGILL: He could have said, "I am not going to discuss that with you"? He could have said that; yes?

MS LLOYD: Yes.

MR. FOTHERGILL: And I suggest that that would hardly have been a satisfactory response in light of the fact that you had challenged him that his department, his agency, was not acting appropriately?

It would not be reasonable for him just to say, "I am not answering you." Fair enough?

MS LLOYD: I don't know if I can agree with that.

MR. FOTHERGILL: All right. So from your perspective, he should have just said, "I am not answering your question, Ms Lloyd."

THE COMMISSIONER: In fairness, that's not what she said.

MR. FOTHERGILL: No. She can disagree with the characterization.

MR. CAVALLUZZO: The second option, "I refuse to discuss this", is the party line that the RCMP gives to every question that is posed in respect of Maher Arar. So to suggest that that would be inappropriate for Mr. Killam to do on that particular day I think is quite unfair to this witness, because we have heard extensive evidence that the RCMP refuses to discuss this case on the basis that it is an ongoing investigation.

To suggest to this witness that that this is not a reasonable option for Mr. Killam to have exercised is highly unfair.

MS LLOYD: I guess that's probably what I would have said myself, was that certainly nobody outside of that classroom had that information.

MR. FOTHERGILL: Commissioner, just to respond to Mr. Cavalluzzo's intervention, I think that may be an interesting point for argument. I am not sure it's entirely an appropriate intervention.

But in any event, I can carry on

to my final question.

I am suggesting to you, Ms Lloyd, that under the circumstances it was reasonable for Chief Superintendent Killam to say, "Look, there is more to this case than what you see or hear in the media"?

Fair enough?

MS LLOYD: That's what he said, but not in the way that you are saying it.

MR. FOTHERGILL: All right.

"That there is more to Mr. Arar than meets the eye, more information that bears on the issue?"

MS LLOYD: Again, he said something to that effect but not at all in the way that you are saying it.

MR. FOTHERGILL: And, finally, "that Mr. Arar's circumstances may be somewhat different from those faced by other Canadians"?

MS LLOYD: That's not close to what he said.

MR. FOTHERGILL: All right. Thank you.

THE COMMISSIONER: Ms Verma, any re-examination?

EXAMINATION

MS VERMA: Ms Lloyd, I just want to ask one question to you because I think there were some questions about your judgment about coming forward.

I just want to ask you: Were you given a subpoena to appear here today?

MS LLOYD: Yes.

MS VERMA: Thank you. Those are my questions.

THE COMMISSIONER: Well, that's it. Thank you for coming, Ms Lloyd. Thank you for your evidence, and I appreciate your coming forward.

MS LLOYD: Thanks.

THE COMMISSIONER: We will rise until 2:30.

THE REGISTRAR: Please stand. Veuillez-vous lever.

--- Upon recessing at 1:09 p.m. /

Suspension à 13 h 09

--- Upon resuming at 2:39 p.m. /

Reprise à 14 h 39

THE REGISTRAR: Please be seated. Veuillez-vous asseoir.

THE COMMISSIONER: Good afternoon.

MS McDONOUGH: How do you do?

MR. CAVALLUZZO: Our next witness, Mr. Commissioner, is Alexa McDonough. I wonder if she might be sworn or affirmed.

THE COMMISSIONER: Do you wish to be sworn or affirmed?

MS McDONOUGH: Sworn, please.

THE COMMISSIONER: Would you stand, then, and take the Bible in your right hand?

SWORN: ALEXA ANN McDONOUGH

THE COMMISSIONER: Your full name for the record?

MS McDONOUGH: Alexa Ann McDonough.

THE COMMISSIONER: Thank you. You may be seated.

MR. CAVALLUZZO: Mr. Commissioner, at the outset, let me advise you as to the procedure that we are going to follow.

I was intending to take the witness through a chronology of the events relating to Mr. Arar. Some of the events would be questions that the witness posed in the House of

Commons and the responses that were given to the witness on those particular days.

I have been advised by the Parliamentary Clerk that I am prohibited from doing that. Because of parliamentary privilege, I am prohibited from disclosing the content of the questions that were posed by the witness to the Minister involved. All I can do is say to the witness is, "On a particular day, did you ask a question in the House about Mr. Arar?" The witness can respond yes or nay. Then I will ask, "Did you get an answer in your question in the House on this particular day?" She will say yea or nay. Then I will have to move on without asking any questions whatever concerning the content of the questions.

If the public are interested, of course, they could refer to the Hansard for that day, and I have copies if they want.

In any event, during these proceedings we will not be able to go into the content, so that when we get to that point in time what I will do, I will show the witness a copy of the Hansard just so that she can identify on this particular date she asked a question in the House

and got a response.

THE COMMISSIONER: Okay.

MR. CAVALLUZZO: Okay? Thank you.

MS McISAAC: Could I just get some clarification?

The copies of the Hansard are not going to be made exhibits then?

MR. CAVALLUZZO: No, they are not. No, they are not.

What we do have, I should have added to that, is that your client, the Government of Canada, in three CAMANT notes, have produced questions and answers that were put in the House of Commons. I was told that I cannot get into the content of those CAMANT notes which are already exhibits to these proceedings unless I call the maker of the CAMANT note, which I don't propose to do at this point in time.

I was also told that I could ask questions about the content if I went to the House of Commons and sought a resolution of the House. Since I have so much to do I decided against that and decided to proceed this way.

Thank you.

THE COMMISSIONER: Thank you.

MS McISAAC: Well, sir, I think there might be some clarification required as to why this is happening. An explanation of the content of the parliamentary privilege might be of assistance to individuals as to why it is that Mr. Cavalluzzo can't -- it is not the content, it is questioning the content I would understand.

THE COMMISSIONER: Yes. As I understand the privilege is so that you wouldn't impeach the content.

MS McISAAC: Exactly.

THE COMMISSIONER: As I understand Mr. Cavalluzzo's proposal, we are not going to argue about it because we have better things to do.

MS McISAAC: No. I have no trouble with his proposal, I just thought it would be of clarification.

THE COMMISSIONER: No, but I understood there was another proposal, that without impeaching or questioning the content, we could nonetheless put the content into the record on the understanding that nobody here would challenge the content.

That apparently is not acceptable

to the Clerk and so that what that would involve is that -- perhaps that's right, I'm not ruling on it -- but what I think we as a Commission have decided is, rather than debating that issue and getting into legal argument, that we do have certain better use of our time, so we are going to move on on the basis that Mr. Cavalluzzo has agreed to with the Clerk.

I'm not suggesting the Clerk is wrong. I don't know the answer, I haven't heard the legal argument.

MS McISAAC: No, no. I just wanted to clarify what was happening, sir.

THE COMMISSIONER: Okay. Thank you.

MR. CAVALLUZZO: Thank you for the clarification.

EXAMINATION

MR. CAVALLUZZO: Let us get to your evidence, Ms McDonough.

Initially I am going to ask you some questions concerning your background. We have a curriculum vitae that I would ask the clerk to distribute. Thank you.

THE COMMISSIONER: What number is

this? P-74?

EXHIBIT NO. P-74: The curriculum vitae of Ms Alexa Ann McDonough

MR. CAVALLUZZO: Ms McDonough, you are presently a Member of Parliament for Halifax.

Is that correct?

MS McDONOUGH: I am.

MR. CAVALLUZZO: You have held that seat since June of 1997?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: At the present time, as well as holding the seat, you are the NDP Foreign Affairs Critic and the Post Secondary Education Critic.

Is that correct?

MS McDONOUGH: Yes, I am.

MR. CAVALLUZZO: Between 1995 and 2003, you were the leader of the New Democratic Party of Canada?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: Between 1980 and 1994 you were the Leader of the Nova Scotia New Democrats?

MS McDONOUGH: I was.

MR. CAVALLUZZO: Finally, between 1981 and 1995 you were a member of the Nova Scotia Legislative Assembly?

AS McDONOUGH: Yes, I was.

MR. CAVALLUZZO: In terms of your education, you graduated from Dalhousie in 1965, with a Bachelor of Arts in Sociology and Psychology.

Is that correct?

MS McDONOUGH: Yes.

MR. CAVALLUZZO: I also understand that you have received a Master's Degree in social work?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: That was in 1967?

MS McDONOUGH: Yes, 1967, from the Maritime School of Social Work, which was not then but is now part of Dalhousie.

MR. CAVALLUZZO: Is now part of Dalhousie, okay.

Subsequent to receiving your education, you have worked as a social worker, a social policy researcher, you have developed and taught a graduate program in social policy, social administration and community development?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: This was where, at university, community college or --

MS McDONOUGH: At Dalhousie University, the School of Social Work.

MR. CAVALLUZZO: As well, you have received two honorary degrees, one in 1995 from the University of Kings college in Halifax?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: And in 2004, from St. Francis of Xavier University in Nova Scotia?

MS McDONOUGH: That's right, Antigonish.

MR. CAVALLUZZO: Finally, you have received numerous awards for your peace advocacy work and your contributions to the Arab-Canadian community, and in 2003 you received the Results Canada Political Leadership Award -- I'm quoting now:

> "... in recognition of your outstanding leadership in the fight against global poverty and disease." (As read)

MS McDONOUGH: That's right.

MR. CAVALLUZZO: We could go on,

but we would be here all afternoon, so I would like to now come to your evidence.

When did you first learn about Mr. Maher Arar, and how did you learn about him?

MS McDONOUGH: I was in Halifax, in my home riding, when I began to hear in the news about this situation. My English language press secretary -- I was at the time still Federal Leader of the New Democratic Party. My English language press secretary, Gail Dugas, was in touch with me to discuss what we ought to do in the situation.

One of the things we decided, in addition to inquiring of the government what information they had, what they were doing to try to determine Maher Arar's whereabouts, we decided as well that I would try to be in touch with his wife and family, Monia Mazigh, who were reported to be vacationing with her father in Tunisia. So Gail Dugas made initial inquiries, did track down Monia Mazigh in Tunisia.

I subsequently phoned her to say that I was very distressed about what I had heard. I had no idea if there was any way in which I could be of assistance, but I certainly would want

to do so, and I think, frankly, there were two things that drove me to do that at the time.

MR. CAVALLUZZO: What were those two things?

MS McDONOUGH: One, as a mother of two children who are now grown up, but I couldn't begin to imagine the amount of distress that she would be experiencing, to have two small children, and to have had her husband disappear en route to Canada where they of course were intending to join him shortly.

Second, I was very, very distressed in the context of 9/11, to watch increasing incidents of, in my view, very obvious racial profiling, Islamiphobia, suspending of the normal concerns about human rights and civil liberties in the name of security.

You know, I have thought a lot about what was it that really drove a lot of my initiatives around this situation in addition to identifying with the personal side of that.

I grew up in a neighbourhood and in a community where, sadly, anti-semitism was alive and well when I was a youngster and a young person, where there was a lot of racism,

particularly towards Afro-Nova Scotians. My family had been very involved and I subsequently had been involved in human rights issues and fighting racism and fighting anti-Semitism.

To be post-9/11, a very serious concern and a very serious threat to Canada and everything that we want to be, was the very evident rise of bigotry and religious bigotry, and racism really that began to be evident, not just in personal attitudes but actually in the government's response in Bill C-36 and other ways.

MR. CAVALLUZZO: Okay. When you are talking about the middle of October of 2002 at which point in time it was unclear as to where Mr. Arar was, and the evidence is that it is subsequently found out on October 21st that he was in Syria. So we are dealing with the time before October 21st when we knew where Mr. Arar was.

Now, I understand that one of the things you did initially, in an attempt to assist Mr. Arar, was that you spoke initially to the Syrian Ambassador to Canada, Mr. Arnous.

I wonder if you could recall and relate that conversation to us and where the conversation took place?

MS McDONOUGH: My first conversation, in fact my first two conversations with the Syrian Ambassador, Mr. Arnous, took place in Halifax. As chance would have it, it was just a coincidence of timing that the federal government's annual diplomatic forum was taking place in Halifax. Each year Foreign Affairs holds a forum across the country somewhere for all diplomats, all ambassadors appointed to Canada, and it just happened to be taking place. I was in attendance at one of the sessions and I sought him out.

I had met him on previous occasions in my capacity as Leader of the New Democratic Party, and in part because I had been particularly focused on some of the concerns about the Canadian government's response to 9/11.

So I sought him out and very directly said, "I'm wondering if you have any information, what attempts have you made to find out what Maher Arar's circumstances are? It is obviously very worrisome."

He was friendly, I would have to say, responsive, but said, "You know, I have been trying to find out. I have been able to obtain no

information and I'm told by the Syrian government, which I represent in Canada, that he is not, to their knowledge, in Syria."

MR. CAVALLUZZO: Right. This would have been on or about October 15th or 16th of 2002?

MS McDONOUGH: That's right. The forum ran, as I recall it, two days or possibly three. So it was right over that period.

The second occasion, which was the very next day, I was attending, I believe it was a luncheon at the diplomatic forum, and sat at the same table with him and was pushing the same questions and he indicated that he was in touch with Syria earlier that day and they still had no information, were not aware of his presence, his location.

He didn't make a big deal about it, but he certainly left me believing that it was completely in order for me to be asking these questions.

MR. CAVALLUZZO: At that particular conference that was held in Halifax, I understand that the Minister of Foreign Affairs, Mr. Graham, also attended?

MS McDONOUGH: That's right. He was very much the host of the diplomatic forum --

MR. CAVALLUZZO: Right.

MS McDONOUGH: -- and spoke at the luncheon that I mentioned. He didn't speak about this topic. That wasn't on the agenda.

But I had been trying to reach him by phone, and I did make a point of approaching him after the luncheon to ask very directly about any information that he had been able to find out about Maher Arar's circumstances.

MR. CAVALLUZZO: Right. Do you recall what Mr. Graham, the Minister, said to you after you posed these questions about Mr. Arar on, I guess this was October 16th of 2002?

Do you recall what he said?

MS McDONOUGH: I guess I remember two things -- not in absolute detail because it didn't seem that significant at the time -- but I felt that he was genuinely concerned, that he clearly had been trying to get to the bottom of this, and that would be in character with my experience with him.

But I also remember being quite taken aback by what seemed to be a

suggestion on his part that, you know, he heard there are some really serious concerns about this guy. I can't say that I remember the exact words, but it was very strongly an impression of he may be, you know, into some pretty awful things here, may be a bit of a bad character, a bad cat. I found that distressing and I remember quite abruptly saying, "Well, on what basis? Where does that information come from?" or "Where does it reside?"

Not so much on that occasion as a number of subsequent occasions, there seemed to be a kind of suggestion, "Well, I can't even find that out." And I'm thinking, this is the Minister of Foreign Affairs, in whose hands a lot of responsibility rests to try to help solve this problem and I started to become quite alarmed about it right there and then.

MR. CAVALLUZZO: On this day, certainly this was the first occasion upon which you spoke to Mr. Graham about Mr. Arar?

MS McDONOUGH: Yes, it was.

MR. CAVALLUZZO: Now, I understand shortly thereafter, on October 18th, you sent three letters: One to the President of Syria,

Mr. Assad?

I would ask you to identify these letters.

THE COMMISSIONER: Is there just one letter, Mr. Cavalluzzo?

MR. CAVALLUZZO: There are three letters. One to Ambassador Cellucci --

THE COMMISSIONER: Okay.

MR. CAVALLUZZO: The third to Prime Minister Chretien.

THE COMMISSIONER: I will let the Registrar hand the next two around at the same time.

They will be P-75, P-76 and P-77; President Assad being P-75, Ambassador Cellucci P-76, and the Prime Minister P-77.

EXHIBIT NO. P-75: Letter dated October 18, 2002 from Alexa McDonough to Syrian President Assad

EXHIBIT NO. P-76: Letter dated October 18, 2002 from Alexa McDonough to Ambassador Cellucci

EXHIBIT NO. P-77: Letter

dated October 18, 2002 from Alexa McDonough to Prime Minister Chretien

--- Pause

MR. CAVALLUZZO: The initial letter of October 18th to Mr. Assad, the President of Syria, is, in effect, obviously bringing to his attention the deportation which took place in respect of Mr. Arar, pointing out that American actions are in clear violation of international law and urging his government to locate Mr. Arar and to facilitate his safe return to Canada and to his family as quickly as possible.

This is the letter which you drafted and sent to Mr. Assad?

MS McDONOUGH: Yes, it is.

MR. CAVALLUZZO: Did you ever receive a response from President Assad?

MS McDONOUGH: No, I don't believe so.

MR. CAVALLUZZO: Okay.

The next exhibit is a letter dated October 18th to Ambassador Paul Cellucci, who was the American Ambassador to Canada at that particular point in time?

MS McDONOUGH: Yes.

MR. CAVALLUZZO: You go through the history of the events, including references to the Vienna Convention, which guarantees certain consular rights, and then in effect plead with him or urged him to express his government's concern and the Canadians' demand for immediate and detailed explanation of American actions in the case of Mr. Arar.

Is this the letter that you sent Mr. Cellucci?

MS McDONOUGH: This is the letter that I sent, and I didn't receive a reply.

MR. CAVALLUZZO: Okay.

MS McDONOUGH: I might just take a moment to say that I have phenomenally competent staff who do a very good job of keeping track of material. When I say I never received a letter, a response, I think it is highly, highly unlikely because of how systemic and thorough my staff are. I can't absolutely rule out the possibility that in our attempt to reconstruct all of the file that there could in fact have been a response somewhere that didn't turn up.

But I am as certain as I can be

without being absolutely certain that there was not a reply.

MR. CAVALLUZZO: If Mr. Cellucci disagrees with that, he is certainly welcome to come here and testify.

The third letter is to the Prime Minister, Mr. Chretien?

MS McDONOUGH: Yes.

MR. CAVALLUZZO: And in effect obviously you are making a plea on behalf of Mr. Arar, and you go on in your last paragraph to state that:

> "You have a responsibility to condemn those who violate human rights and international law and you have a further responsibility to ensure that all Canadians are treated equally under the law."

I understand that Mr. Chretien did respond to this letter. Is that correct?

MS McDONOUGH: Yes, he did.

MR. CAVALLUZZO: I wonder if I might have the clerk circulate the Prime

Minister's response of November 1?

THE COMMISSIONER: That will be 78.

EXHIBIT NO. P-78: Letter from Prime Minister Chretien dated 1 November

MR. CAVALLUZZO: And in that letter Mr. Chretien points out that Canada first applied for access to Syrian authorities. They were told that Mr. Arar had not yet arrived in that country. And then he goes on:

"When he did eventually arrive from Jordan on October 21, the Syrian authorities alerted us at once and offered us consular access even though they had no legal obligation to do so since Mr. Arar is also a Syrian citizen."

And then he goes on to state:

"Canadian consular officials visited Mr. Arar on October 23rd and again on October 29th."

He concludes by saying:

> "We will continue with our efforts to have Mr. Arar return to Canada at the earliest time. We are also seeking information from Jordanian authorities as to why they detained him en route to Canada."

I understand, once again continuing on with your efforts in respect of Mr. Arar, that on October 21, 2002, you asked certain questions in the House about Mr. Arar and that Mr. Graham responded to your question on that day.

Is that correct?

MS McDONOUGH: The Hansard record will clearly show that that's the case. As the Speaker often reminds us, you are entitled to ask a question and there is no obligation on the Minister to respond to precisely what you are looking for.

But, yes, he responded, as is customary.

MR. CAVALLUZZO: There are other

occasions when I will ask you on a particular date whether a question was asked and the extent of what we can ask you about is just that: that a question was asked and an answer was given.

In terms of the timing, and we are around October 21, did Mr. Arnous, the Syrian ambassador, ever get back to you in terms of the location of Mr. Arar?

MS McDONOUGH: Yes, he did. I had followed up to try to find out if he had further information, after I had seen him in Halifax, and my recollection is that he did call back to confirm that Maher Arar's presence in Syria had in fact been confirmed and that he was there.

MR. CAVALLUZZO: Okay.

MS McDONOUGH: My staff also talked with him on a couple of occasions as well.

MR. CAVALLUZZO: For the purposes of counsel, we have a CAMANT note, number 87, which is part of Exhibit P-41, and the CAMANT note indicates that on December 12 of 2002, you asked a question in the House of Mr. Graham concerning Maher Arar, and Mr. Graham responded to your question.

I can show it to you.

--- Pause

MR. CAVALLUZZO: You did ask the question, Ms McDonough?

MS McDONOUGH: I did ask the question. And I can't say absolutely for certain that it was on that occasion, but it was in response to one of the questions that I asked and this was such an occasion where Minister's response implied that it was perhaps very unhelpful or might even jeopardize Maher Arar's situation for me to be pressing this issue publicly.

THE COMMISSIONER: Excuse me for interrupting. Is this something that transgresses the arrangement?

MR. CAVALLUZZO: I don't think it does, but if anyone --

THE COMMISSIONER: Can I hear from Ms McIsaac? Do you speak on behalf of the government for this?

MS McISAAC: I believe the counsel is here from the parliamentary law clerk's office. They would be the ones best suited.

I must make the point that I am not sure what the point of this questioning is

but...

MR. CAVALLUZZO: I would be pleased to answer that question.

The point of the questioning, Ms McIsaac, is that we are attempting to put on the record the efforts that were pursued by Ms McDonough in respect of Mr. Arar. One of the efforts she pursued was asking questions in the House, and that was the point of the question.

THE COMMISSIONER: Certainly in my estimation it's relevant evidence.

Can I ask counsel for the Clerk, so that I don't keep interrupting, if there is a concern about anything, any question or answer that is being given, if you would then let me know and I can deal with it at that time.

Thank you.

MS McDONOUGH: I don't know whether it's helpful for me to seek clarification. I mean, these are all items in the public record, so I guess I am having some difficulty knowing what the boundaries are on my ability to refer to them.

I mean, if they are already in the public record, I don't --

THE COMMISSIONER: Let me explain to you, as I understand what the position of the Clerk is -- and I haven't ruled on it at this point, because I think there has been some agreement reached between counsel so that we wouldn't have to get into the legal argument and necessitate any ruling on it.

But the concern is that, if in a proceeding like this, any legal proceeding, there is introduced into evidence the content of any question or answer that was asked in the House, there is a danger that doing so could lead to impeaching either what the questioner had asked or the answer that was given, and the Parliamentary privilege is such that Members should feel free to ask any question and give any answer without a concern of later being impeached.

MS McDONOUGH: Right.

THE COMMISSIONER: That's the concern, as I understand it.

But the objection here seems to go one step further, and I am not saying it's wrong. The objection here seems to go, even if there is to be no impeachment, simply a description of what the question and the answer were in the House, the

Clerk takes the position that that raises the danger that there would be impeachment and as a result there is a breach of the privilege.

As I say, I haven't ruled on it, but I think that's as it was explained to me.

MS McDONOUGH: So that precludes my making any reference to the contents.

THE COMMISSIONER: To the content. That's why Mr. Cavalluzzo in his questions is asking "did you ask it about Mr. Arar?" but not any more specifics than that.

Similarly, he is not asking you for the content of any answer that was given to your question.

MS McDONOUGH: Right.

THE COMMISSIONER: Have I fairly set that out? Okay.

As I say, I haven't been asked to rule on it, so I haven't.

MS McDONOUGH: And I am not for a moment challenging you. I just wanted to be helpful to understand what the boundaries are because, for example, what I was going to say is that I wasn't interested in commenting on the question and answer exchange. But what this

prompted for me was a reminder that on, if not that occasion then the next occasion in which it was suggested to me by the Minister that it might be unhelpful for me to be --

MR. CAVALLUZZO: No, let me just stop you there because we are going to come back to it.

I must say that this is a very challenging role for me because I not only have to worry about national security now, I have to worry about Parliamentary privilege. And I will try to guide myself through the middle here somehow.

But in any event, the discussion that you had which prompted -- looking at that question prompted, was that a discussion that you had with Mr. Graham outside of the House?

MS McDONOUGH: No, actually, on that occasion, my recollection is that it was Irwin Cotler, who was then a back bencher, who approached me outside of the House to say, "And don't be intimidated, you know, by the suggestion that it is unhelpful. Keep pushing. And if there is anything I can do to help, let me know, because this is really dangerous stuff going on here."

MR. CAVALLUZZO: Let me just stop

you there. This is Mr. Irwin Cotler, who at that point in time was a sitting Member of Parliament, was not a member of cabinet at that point in time?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: So outside the House, after he saw your question relating to Mr. Arar, he said to you -- if you could just repeat it now?

MS McDONOUGH: Well, "Don't be intimidated by that. It's very important for you to ask those questions." And in fact he said, "People's lives are saved by keeping the spotlight on these things, you know. It may make the difference whether he comes back alive or not. So by all means, keep pushing, and if I can be of assistance in any way, let me know."

MR. CAVALLUZZO: Okay. Now, coming back to the question on December the 12th, which I cannot ask you about in terms of its content, it was a very significant question for you, though, wasn't it, without disclosing the content?

MS McDONOUGH: Now I have to go back and look at the content.

MR. CAVALLUZZO: No, no, it's not

the content --

MS McDONOUGH: It's a very mystical process.

MR. CAVALLUZZO: You were coming to the end of your tenure as the Leader of the New Democratic Party. Do you recall that?

MS McDONOUGH: I know that I made a decision, I chose to ask the last question I ever asked in the House of Commons on the Arar case for very specific reasons. Whether that was the date or not, I am trying to recall.

I think not because -- well, actually, it would be, yes, thank you.

MR. CAVALLUZZO: You are welcome.

MS McDONOUGH: The reason is, I am thinking, well, wait a minute, I didn't step down for some time after that, but that's because we were in the middle of a leadership race, and Parliament was recessing shortly for the Christmas break.

So, yes, sorry. I was thinking, wait a minute, don't take that leadership away from me quite so soon.

MR. CAVALLUZZO: You felt so strongly about Mr. Arar that his problem was the

last question that you asked about in your role as Leader of the New Democratic Party of Canada on that day?

MS McDONOUGH: It is, and I chose to do that. I was very heavily scrummed on why I would do that. I had other people ask me, "Why would you do that? You know, he is not from your riding. You don't have a large Canadian-Arab or Canadian-Muslim population in your riding. You know, is this going over well with your constituents?"

And my reaction now is as it was then: that I feel that what was going on there went to the heart and soul -- I think that's what I said in the scrum -- of what it is to live in a democracy; that much of that is threatened, in my view, by what I see happening here.

And it's not just to Maher Arar it is happening. We were already hearing a lot of other examples of racial profiling and threats and intimidation and I became very, very alarmed by it.

So I suppose it was in my own way a symbolic way of registering how increasingly alarmed I was becoming.

MR. CAVALLUZZO: I wonder if the witness may be given, Mr. Registrar, Volume 3 of the DFAIT documents.

Ms McDonough, if you would refer to tab 263, this is what is called a CAMANT note, which is a note that is used by the Department of Foreign Affairs to in effect track what is going on within the department, files and so on and so forth.

And in this particular CAMANT note, number 89, it is mentioned that:

> "... was in Ottawa this week for a night vigil Monday on Parliament Hill. The vigil, attended by the Human Rights activists, Alexa McDonough, leader of the NDP, and other supporters, was widely publicized in the press and television. There was a CBC radio interview with Monia this week."

Do you recall attending a vigil on Parliament Hill on or about December the 16th of 2002?

MS McDONOUGH: Yes, I absolutely do, because I remember it was one of the coldest days in human history. It was freezing cold. And we had decided to hold that vigil after dark because it was a candlelight vigil, and I also remember that Monia had her two small children there. And it was, to say the least, a dramatic reminder of the horrors of what she and her family were undergoing.

MR. CAVALLUZZO: I understand that you invited a couple of people to attend that vigil: one being the Syrian ambassador. Do you recall inviting him?

MS McDONOUGH: I did.

MR. CAVALLUZZO: Mr. Arnous was invited.

MS McDONOUGH: I called him to say this vigil was taking place; that I hoped between -- I called him about a week beforehand, as I recall, and I hoped that maybe he could come to the vigil and share some information. And the best news of all that he could share was that his government was taking steps to make sure that Maher Arar was released and brought back to his family and brought back to his country, brought

back to justice, which is what his wife always asked.

He certainly didn't indicate that he would be doing so. But I remember having a fairly lengthy conversation with him about how it seemed to me it would be in Syria's interests to show that their terrible record of human rights violations was not ongoing and that they respected the fact that he ought to be brought back to Canada to face the charges, if there were such charges, and justice be done, not what was happening.

MR. CAVALLUZZO: In February of 1993 -- I am referring now to PCO tab 13 --

THE COMMISSIONER: 2003?

MR. CAVALLUZZO: 2003.

MS McDONOUGH: Sorry, what tab? Do I have it here?

MR. CAVALLUZZO: It's another exhibit, P-48.

MS McDONOUGH: Before we pass beyond that, I might say that I also asked Irwin Cotler if he would attend that --

MR. CAVALLUZZO: The vigil?

MS McDONOUGH: The vigil.

MR. CAVALLUZZO: Right.

MS McDONOUGH: And he indicated he would have been very pleased to do so, but that he had a family commitment and otherwise would have been there. He was committed to being with his family, I think probably a religious holiday, on that particular occasion back in Montreal.

MR. CAVALLUZZO: Now, if you refer to tab 13 of P-48, and if you go to the third page in, you will see that there is a handwritten letter --

MS McDONOUGH: Sorry, I must be looking at the wrong one.

MR. CAVALLUZZO: It is tab 13 of P-48.

MS McDONOUGH: Thirteen; okay.

MR. CAVALLUZZO: Do you see that?

MS McDONOUGH: Yes.

MR. CAVALLUZZO: Is that the letter which you forwarded to the Prime Minister on February 6th of 2003?

MS McDONOUGH: Yes, it is. And it is fairly unusual because it is written in handwriting. It is not usually the formal way which you approach the Prime Minister, but I chose

to do that, to write him a handwritten note and ensure that it was delivered to him. I observed it being delivered to him in the House, because I was very concerned about whether he was sufficiently seized with the severity of this problem or whether his officials were bringing it forward. Attempts by Monia Mazigh to get through had not been successful and I felt that if there were some people blocking it that I would like to communicate with him directly, which is a fairly customary thing for a Member of Parliament to do.

MR. CAVALLUZZO: In the third paragraph I see that you said:

> "I once again plead for Canada's direct intervention with the Syrian President to bring Mr. Arar home to his family and home to his country where he can and should be brought to its justice, if indeed there are specific charges against him." (As read)

You will see that on the previous page that there was a response from Prime Minister

Chretien on February 20th?

MS McDONOUGH: That's right.

MR. CAVALLUZZO: In that he stated, in the middle paragraph, that:

> "Minister Graham spoke personally to the Syrian Foreign Minister about Mr. Arar on January 16th and our Ambassador in Damascus will be meeting with appropriate officials in the next few days to pursue the matter." (As read)

Et cetera.

MS McDONOUGH: Right.

MR. CAVALLUZZO: You probably didn't see the front page of that tab, wherein Mr. Himelfarb, the Chief Bureaucrat, says in the third bullet point down, in response to your letter, that:

> "We do not recommend that you call President Assad on this case alone. However, should you need to call him on another matter, we may

suggest you raise it in terms of seeing justice done."

(As read)

And then it refers to the reply to you.

I understand that on April 29, 2003 you put another question to Mr. Graham concerning Mr. Arar?

MS McDONOUGH: If Hansard says I did, I did. I would be bluffing if I said I remembered the date from recall.

MR. CAVALLUZZO: Right.

If we can go now to DFAIT tab 450, Volume 5.

I understand from tab 450 that you presented a petition to the House of Commons respecting Mr. Arar.

Is that correct?

MS McDONOUGH: Yes, I did.

MR. CAVALLUZZO: I can't ask you the content of that, but it is at tab 450.

MS McDONOUGH: I believe we probably posted it on our website at the time. We had a lot of people coming to us to say, "What can we do to help because we are increasingly alarmed

by the government's lack of responsiveness."

MR. CAVALLUZZO: If you stay at that particular Book of Documents, at tab 440 you should find a response to your petition, which is dated June 13, 2003?

MS McDONOUGH: Yes.

--- Pause

MR. CAVALLUZZO: Once again, all we can ask you about is you did get a response?

MS McDONOUGH: I did.

MR. CAVALLUZZO: During this period of time, we have seen that you have asked a number of questions of Mr. Graham in the House; you have related a conversation that you had with Mr. Graham in Halifax on or about October 16, 2002.

During this period between August 16, 2002 -- and we are now at June of 2003 -- did you have any more discussions with Mr. Graham outside of the House -- or outside of the Assembly itself concerning Mr. Arar?

MS McDONOUGH: Yes, I did. On a couple of occasions with him, as well as with Irwin Cotler in a more intensive way, and also with the then Solicitor General Wayne Easter.

MR. CAVALLUZZO: Let's just deal with Mr. Graham.

In conversations other than the one you had on October 16th, did he leave you with the same impression that he left you with on October 16th, that there was more to this guy than meets the eye, that kind of message?

MS McDONOUGH: That was absolutely the response on a couple of further occasions. I mean, my impression was that he actually was experiencing a fair amount of frustration himself and said so, that, you know, he was told that this guy was trouble, that there were some pretty awful things he had been involved in, but also -- you know, and every time I would push him on what is the basis for that information? What is the source? I mean, if you have that information, where is it coming from? Who is supplying it, you know?

He more or less responded every time by saying, "Well, I mean, I am finding it really hard to get information myself. That's just what I'm told." "Well, who are you told by?"

He was not very forthcoming, but I have to say I continued to believe that

was genuinely concerned on a kind of compassionate level.

MR. CAVALLUZZO: Mr. Cotler, did you have any other discussions with Mr. Cotler other than the one you have related after your question on December 12, 2002 where he said: Keep at this, it is an important issue", or whatever the words were?

Did you have any discussions with him?

MS McDONOUGH: Many discussions. Actually I guess I would have to look at some of my own records, which are about this high, to determine the actual occasions, but had several discussions, particularly in the lead-up to his appearing before the House of Commons -- the Parliamentary Committee on Foreign Affairs on the same occasion when Monia Mazigh herself appeared, and through the lead-up to that had various discussions where we were basically trying to ensure that that happened, that Monia was given the opportunity to appear and that he too would have the opportunity to present his concerns about what was going on.

MR. CAVALLUZZO: And he did

present his concerns before the Standing Committee in the fall of 2003 which we cannot file as evidence. However, he did publish an article in which --

MS McDONOUGH: Yes. He published at least two, if not three articles, in which he outlined, from my point of view, the very kinds of concerns that were growing for people that were interested in justice and human rights and civil liberties and the inadmissibility or unacceptability of evidence gained under torture, and trials that were not conducted in any fair way.

I mean, there were many discussions about these things in the lead-up to -- and in his articles. He chose to submit op-ed articles to a couple of major national daily newspapers.

MR. CAVALLUZZO: We will be filing those articles as evidence in these proceedings.

Now, if you go to Damascus CAMANT note 87. I'm sorry, it is CAMANT note 325.

MS McDONOUGH: I seem to have everything, but --

MR. CAVALLUZZO: No, this is

something separate.

MS McDONOUGH: Oh, okay.

MR. CAVALLUZZO: It is dated September 26, 2003.

MS McISAAC: Sorry, is that -- oh, you are handing it out.

THE COMMISSIONER: Is this Exhibit P-79?

MR. CAVALLUZZO: This is part of Exhibit P-41. Just for ease of reference I am distributing that.

THE COMMISSIONER: Thank you.

MR. CAVALLUZZO: Once again, this indicates question -- if you go to the second page, you will see that on this particular day a question was put to Mr. Graham and an answer was given by Mr. Graham.

Once again we can't ask you about the content of the question, but certainly this would indicate that on that day a question was posed and an answer was given by Mr. Graham?

MS McDONOUGH: That is. I remember that what occasioned my raising questions at that time was the horrifying news that Maher Arar was about to face charges and find himself in

court in Syria.

MR. CAVALLUZZO: Right.

MS McDONOUGH: I actually am not able to remember the exact timing of this question I raised in relation to a letter, I believe, from the Prime Minister in which he made it clear that there had been a suggestion that you should either charge Maher Arar in Syria and have him face charges, go to court, or let him come home.

I remember being extremely alarmed about that and talked with people about the human rights record in Syria and the impossibility --

MR. CAVALLUZZO: What was your concern about that choice?

MS McDONOUGH: Well, that there was no possibility in the world of his facing a fair trial in Syria.

We know that that just would not have been a possibility at all, and it felt to me as though it was, you know, feeding Maher Arar to a slaughter, basically, to not take the stand. That it would be completely unacceptable to Canada to have him facing charges in Syria as a result of Canadian and U.S. actions of sending him there when it is well-known that he would have faced

torture, almost certainly, and obviously that was subsequently confirmed.

MR. CAVALLUZZO: Right.

MS MCDONOUGH: So the reason I chose to do the late show -- it sounds rather frivolous, but it arises as a result of questions you ask in the House, it gives you an opportunity to then debate the matter further on a subsequent date.

MR. CAVALLUZZO: I'm talking about outside the House.

Outside the House around this point in time were you calling for a public inquiry, or was this after?

MS McDONOUGH: Yes. I wish I could remember exactly when we began pushing for a public inquiry. It certainly was before --

MR. CAVALLUZZO: Well, Mr. Arar returned October 5th.

Does that help you at all in terms of when you started --

MS McDONOUGH: Yes. I remember calling for a public inquiry actually before he hit the ground in Canada, saying that we need to get to the bottom of what happened here and what

Canada's role in it may have been.

MR. CAVALLUZZO: Right. Outside the House did you raise the issue of using trade sanctions in respect of Syria in order to put pressure on Syria to get Mr. Arar home quicker?

MS McDONOUGH: I can remember saying we should be using every single tool that is available to us, everything that is, you know, at our disposal.

I don't think -- I hope I'm right in my recollection of this, that I or my party made a sort of major issue out of that, because I think we felt that Canada needed to act more directly through diplomatic channels and that they could have been more aggressive than they were being.

For example, when the Prime Minister was urged not to phone the Prime Minister -- or our Prime Minister was urged not to phone the Syrian President directly to raise this, but if you have to call him on something else, well, tag it on. I was just outraged by that, because to me it showed there was not the degree of vigilance, diligence, persistence around this that it warranted.

MR. CAVALLUZZO: Okay. Just a few other questions.

I understand as well on October 27, 2003 that you put a question in the House to Mr. Easter.

Why don't I show you the Hansard itself so that you can confirm that? Once again, I can't ask you about the content of the question --

MS McDONOUGH: I'm sure am glad part of the restrictions don't involve my not being able to look at my questions, because it is pretty hard for me to carry all that in my head.

--- Pause

MS McDONOUGH: Yes.

MR. CAVALLUZZO: So you confirm you asked the question and Mr. Easter gave you an answer.

MS McDONOUGH: Yes.

MR. CAVALLUZZO: Do you recall having any discussions with Mr. Easter outside of the House concerning Mr. Arar's situation?

MS McDONOUGH: I do, only on two occasions, and actually it wasn't -- well, it was outside of the Chamber, but I phoned him

to express a great deal of alarm about what was going on.

I can't actually recall whether the first occasion on which I called him was after what seemed to me to be a flagrant tactic. I mean, "leaks" doesn't really describe it. It started to seem more and more like a campaign of disinformation that was swirling around about Maher Arar, at least totally unsubstantiated but being spread far and wide through all kinds of different channels.

I called him to say I really felt that this was very, very problematic, and I wanted to know if I could have a briefing on, you know -- if there were reasons why there was information that couldn't be brought to light, then, you know, I had no choice but to accept that, but that as a Member of Parliament that had been working very hard on this case, I felt that it was not out of order for me to ask for a briefing.

MR. CAVALLUZZO: Right.

MS McDONOUGH: At that point I would say he was cooperative and responsive, as has been my experience with Wayne Easter. We are on opposite sides of the House but that has been

my experience.

He then came back to me not very long after that -- and I can't say whether I remember whether he returned the call or I called him again -- and he expressed his own dismay that he found, you know -- I remembered him saying in a slightly light-hearted way, I didn't think it was inappropriate, he was just making the point, that, you know, "I'm Solicitor General, I can't get information," so I guess I'm unfortunately not going to be able to get you any information or arrange for a briefing after all, although he had, I think, made a good-faith undertaking that he would try to do so.

MR. CAVALLUZZO: The final question in the House that I can ask you about was on November 4, 2003, which would have been about a month after Mr. Arar's return. I will show that to you, the Hansard.

--- Pause

This was a question posed by you about Mr. Arar and a response given by Mr. Easter, who was the Solicitor General of the day?

MS McDONOUGH: That's right. This was, you know, a continuing attempt to try to

press the government for a public inquiry, because by then there were many, many reasons to be concerned about what Canada's role was, how this happened, what needed to be done to ensure that we didn't have other people facing the same horrors.

At the time the Solicitor General's response was --

MR. CAVALLUZZO: You can't tell us what the response was if it was in the House.

MS McDONOUGH: Okay. So other people have to do that.

MR. CAVALLUZZO: We have Hansards here. I will be distributing them afterwards so we can fill in the blanks afterwards.

One area of questioning I would like to ask you about in closing, and that is a discussion that you had on or about October 18, 2003 when you were in Toronto.

You may recall on that particular day I believe you were receiving some kind of award.

Do you recall that? Why don't you tell us.

First of all, what was the award that you were receiving on, I believe it was

October 18, 2003?

MS McDONOUGH: It was an award from the Canadian-Arab Federation. It was a function that they were hosting, and I am afraid I don't remember the exact title of the award. I could supply that if it were relevant, but something around citizenship and human rights.

I don't remember the exact award.

And I chose on that occasion to really -- and I didn't tell anyone this in advance. I was invited to speak and I took the opportunity to make as strong a case as I could for a public inquiry, as I had done in Parliament, and was taking the opportunity wherever I could find it outside of Parliament to push for a public inquiry.

I had not had any prior knowledge that the Canadian-Arab Federation, totally of its own accord and independent of any initiatives on my part, had made a decision to be quite vocal in calling for a public inquiry. At that event they actually distributed, or made available to people who wanted to pick them up, you know, lapel buttons: "Yes to Arar inquiry".

After I spoke and the events of

the evening were over, I had a lot of people come up and speak to me, as is fairly common, and a lot of people were really concerned about an inquiry.

There were two people who appeared to be together who came up to me and said, in quite --

MR. CAVALLUZZO: Two people, a man and a woman or --

MS McDONOUGH: A man and a woman together.

MR. CAVALLUZZO: Okay.

MS McDONOUGH: In quite sort of a grim tone suggested that maybe I shouldn't be so willing to be in any way associated with a battle on behalf of Maher Arar's rights, and if I knew what a bad cat he was, then I wouldn't do so. And that had by then become a fairly consistent theme. That was presented to me by various Members of Parliament, Cabinet Ministers, other people, actually by taxi drivers with alarming regularity, and I questioned people about where they got that information.

So it became more and more clear to me that there was a campaign of misinformation or disinformation.

I asked them, as I always did, anyone who said that, I said, "where do you get that information?" because I never stopped trying to find out where does this stuff come from? And they indicated, presented themselves as being employees of the embassy in Syria.

I have ever since kicked myself that I didn't respond much more actively about trying to find out their names or whether they really were or what they were doing there or why they were coming up to me and saying this.

Because I was so surrounded by a lot of people wanting to talk and so on, it just didn't really register with me until later in the evening, when I left the event, that this was a pretty astounding thing, but I was never able to determine who they were.

In fact, I subsequently contacted some other people who were at the event to say, "Do you know who those people were?" I tried to describe them as best I could recall. I was never able to find that out.

MR. CAVALLUZZO: You related that event to your staff upon your return to the office after the event?

MS McDONOUGH: I did, and actually some time later, my staff contacted at my request contacted the Canadian-Arab Federation to ask whether they knew anything about those people having been there, who they were or whether they in fact were from the Syrian Embassy. But they weren't able to at help me.

MR. CAVALLUZZO: In closing, Ms McDonough, you have related a number of conversations which you had with fellow parliamentarians, including the Minister of Foreign Affairs, Bill Graham at the time, the Solicitor General Wayne Easter and Member of Parliament at the time Irwin Cotler.

And I am just asking you in closing, do you find this difficult to do?

MS McDONOUGH: Well, I find it extremely uncomfortable. I won't pretend otherwise. I sort of agonized over the implications of doing so, not because I am not happy to be cross-examined in a rigorous way at all but because the reality is that a lot of your ability as a Member of Parliament to really do your job depends on having -- despite what people see from Question Period -- depends on building

trust and confidence and being able to exchange information with, particularly, cabinet ministers.

And so I won't pretend I didn't have to agonize a bit over the possibility that this would create some backlash, that I could understand why other cabinet ministers might say, "I don't know, after McDonough testified at the Arar inquiry, I am sure not going to talk to her about anything because she is just going to go out and blab all over town about everything I said", which is a certain kind of onus not to do.

But I have to say that it didn't concern me -- I mean, it concerned me, but it would not deter me from being here because I feel so strongly about the horrors of what has gone on.

I feel a bit constrained because of not being able to talk about questions that were raised in the House. I guess I understand some of the rationale behind that.

I gather the same applies to information in Parliamentary Committees, because some of the most alarming testimony of all, for me, was what occurred in Committee from the Assistant Commissioner from the RCMP. I have to say that that remains the most alarming of all of

the situations.

Back to the question -- I am not sure this was your question -- about why would you testify or feeling of discomfort.

MR. CAVALLUZZO: Just why would you testify.

MS. McDONOUGH: I have been involved of pushing very hard for other public inquiries. I believe in the process. I think it's incredibly important.

I was instrumental in the public inquiry into the wrongful conviction of Donald Marshall in my own province of Nova Scotia, and the work of that inquiry was very important. It resulted in changes in public policy and laws and regulations and procedures.

The same was true with respect to the Westray Inquiry. I was very closely associated with that, because I believe in the openness of the process that goes on.

What has concerned me greatly about the horrors of what happened to Maher Arar, and then everything that has happened since, is the extraordinary attempts that seem to have been made to utterly demonize Maher Arar without any

checks and balances. And it seems to me there still aren't the kinds of checks and balances that need to be in place to prevent somebody from being a victim of that.

So speaking out at a public inquiry is one of the few things I can do in the face of that.

MR. CAVALLUZZO: I understand with all your experience, this is the very first occasion upon which you have ever testified in any court or any --

MS. McDONOUGH: It is the first occasion. I only recognized what the room would look like when I walked in from seeing it on television.

MR. CAVALLUZZO: Thank you very much.

THE COMMISSIONER: Mr. Waldman?

MR. WALDMAN: Would you like to take the break now?

THE COMMISSIONER: Yes, why don't we. We will take a break for 15 minutes.

THE REGISTRAR: Please stand. Veuillez-vous lever.

--- Upon recessing at 3:48 p.m. /

Suspension à 15 h 48
--- Upon resuming at 4:05 p.m. /
Reprise à 16 h 05

THE REGISTRAR: Please be seated. Veuillez-vous asseoir.

THE COMMISSIONER: Let's just speak to the schedule. How long do you expect to be, Mr. Waldman?

MR. WALDMAN: Not more than an hour maximum. Probably less.

THE COMMISSIONER: Obviously you can go as long as you want.

Ms McIsaac, how long do you think you will be?

MS McISAAC: I didn't think I would be very long until I heard an hour.
--- Laughter / Rires

THE COMMISSIONER: Okay. At this point --

MR. WALDMAN: Well I am --

THE COMMISSIONER: Don't get me wrong. Subject to --

MS McISAAC: I expect to be, at the most, 10 or 15 minutes.

THE COMMISSIONER: So we are

likely to be until 5:30. Does that suit you?

MS McDONOUGH: I have a vote in the House at 5:45, but I understand I won't be responsible for bringing down the government if I am not there.

--- Laughter / Rires

THE COMMISSIONER: We will do our best to accommodate that.

MR. WALDMAN: I will shorten my questions. I wouldn't want the government to fall because I was lengthening my examination.

MS McDONOUGH: Unless other things have happened there this afternoon while I have been gone.

EXAMINATION

MR. WALDMAN: I just want to ask you a few questions. From your evidence it sounds like you spent a lot of time on this file. Is that correct?

MS McDONOUGH: Yes, a lot of time.

MR. WALDMAN: Would you say more than a lot of your other responsibilities, or is it the most important in terms of one file during --

MS McDONOUGH: I would have say

that I would have spent more time on this issue than any other single issue.

MR. WALDMAN: Right.

MS McDONOUGH: In the time I have been in Parliament.

MR. WALDMAN: Did you ever get any complaints from your constituents about spending so much time on Mr. Arar's file?

MS McDONOUGH: I have to say I never got a single complaint, although people often commented that you sure spend a lot of time on this. Then it would lead to discussions about why, and I found there was incredible public support for why I was doing it.

MR. WALDMAN: I would like to --

MS McDONOUGH: And I will say I was asked sometime, do you think that if your constituents realized -- I was asked this in a scrum -- how much time you spend on this, that your constituents would punish you for it? And my reaction was I am prepared to take that chance.

I could get defeated because I spent too much time on this and not enough time on other things, but I felt that it was so fundamental to everything that I value, that

Canadians value, in terms of due process and just treatment of our citizens that that was the price I was prepared to pay.

Another question that was often asked to me was, "What if this guy turns out to be guilty? What if he actually is a terrorist?"

And my reaction was it seems to me that that decision needs to be made through a just process. That's why we have courts. That's why we insist upon having a legal process to deal with these matters, and it's not for me to judge.

I have no idea whether this guy has done something that he should be brought to justice for, but I know he shouldn't be held in a jail indefinitely without facing charges or the possibility of a fair trial.

MR. WALDMAN: That's an interesting point, because you made a comment and I wanted to clarify that.

You suggested that it wasn't acceptable that Mr. Arar be brought to trial in Syria. Is it your view generally that Canadians should be brought back to Canada if they are charged with offences abroad, or was there some specific reason why, in Mr. Arar's case, you felt

it wasn't appropriate?

MS McDONOUGH: It wasn't a case of in Mr. Arar's case. It was a case of the track record of Syria.

I don't think that it would be a practical position to take that no Canadian could face a trial in another country. But under the circumstances in which he found himself in Syria, which is well-known, well acknowledged to practise torture, well-known for not having a fair justice system, it was unthinkable to me that any cabinet minister or Prime Minister would indicate if they wanted to go ahead and try him in Syria, that was fine with us, but if you are not going to, then let him come home.

MR. WALDMAN: So let me just understand. It was your knowledge about the Syrian human rights record and judicial system that caused you concern about a trial in Syria, not the fact that it was a trial outside of Canada?

MS McDONOUGH: No, no. Just that Syria's record -- I mean, we don't send people to face complete lack of justice, and if someone faces the horror of that in a country well-known

for its human rights violations and its lack of due process, then we should try to protect them from it.

MR. WALDMAN: Just to pick up on a thing you said, "Syria is well-known". You keep repeating that. What do you base this on? I mean, do you think it's rather notorious, Syria's human rights record?

MS McDONOUGH: Amnesty International, Human Rights Watch. There has just been recognition that Syria is not the place to be if you want to face justice.

MR. WALDMAN: Do you think it is fairly well-known and notorious, Syria's human rights record?

MS McDONOUGH: If you asked me whether I had a strong sense of that before this happened, the answer is no. But Syria is identified even by the United States as being a country where torture is practised and where justice will not be meted out.

And the more I became concerned -- my concern started with what has happened to this woman and her family, but led to my doing my homework, as it did for a lot of other people,

about what kind of a country is it in justice terms that he finds himself in, and I became increasingly convinced that there was no possibility of having a fair trial in Syria.

MR. WALDMAN: Would it surprise you if I told you that several representatives of Foreign Affairs who have testified before the Commission have professed to not be aware of the human rights record of Syria?

MS McDONOUGH: That would certainly horrify me that --

MS McISAAC: I think that's an unfair characterization of their testimony. They felt unable to comment publicly on the human rights record of Syria.

MR. WALDMAN: Okay. Well, I believe that Ms Girvan -- I read her transcript. I wasn't here, but I am fairly certain she said she wasn't aware of the human rights record of Syria.

THE COMMISSIONER: I think that's a fair comment.

MR. WALDMAN: And she was in Syria for three years.

Does it surprise you that a

consular official who had spent time in Syria would be unaware of the human right record of Syria?

MS McISAAC: Excuse me. Ms Girvan was the consul in New York and lived as a private citizen in Syria for some time quite a number of years ago, I think.

MR. WALDMAN: Well, if I recall correctly, she was the desk officer for the Middle East Bureau for a period of time, according to her curriculum vitae.

Would it surprise you that the desk officer for the Middle East Bureau professed to have no knowledge of the human rights record in Syria?

MS McDONOUGH: That would concern me a lot. I would think that would be pretty basic knowledge that any member of consular staff would have.

MR. WALDMAN: Thank you.

I would like to move on and deal with your comments about your dealings with Minister Graham.

If I understood you correctly, there were two themes that you picked up in your

conversations with him. I am not transgressing into your questions in the House but just in your general conversations.

One was a theme that Mr. Arar wasn't a good person. Is that one of the messages? Did I understand you correctly?

MS McDONOUGH: I never felt that he was trying to persuade me that he had a lot of information on the basis of which he was saying that. I felt that on numerous occasions he conveyed to me quite directly that that was information that was being passed to him. But I was never able to get a sense of where is this coming from? Who is providing that information? What is it based on?

And consistent with or together with a number of other incidents, it added up, in my view, to a very alarming situation in an open, transparent democracy, to have a Foreign Affairs Minister and a Solicitor General who would, you know, be responsible to try to deal with this situation who seemed easy prey for this kind of characterization without being able to get at what is the substantive basis for this information.

And I felt, rightly or wrongly,

that it was a kind of way to intimidate me from pursuing this so aggressively.

MR. WALDMAN: But one of the messages that was transmitted was that Mr. Arar wasn't a good person, and that was both from Mr. Easter and from Minister Graham?

MS McDONOUGH: That's right; that that was the information that came to them. But they weren't able to supply any further details and in fact expressed frustration themselves that they didn't seem to be -- that was the message to them but they didn't seem to get to the basis of that.

MR. WALDMAN: Just to be clear, what was the message that you thought they were giving to you by telling you this?

MS McDONOUGH: Well, you know, it might be unfair for me to really try to attribute motive. I just am saying what I think -- it was more what's the effect of that.

MR. WALDMAN: All right. What was the effect?

MS McDONOUGH: The effect of it, it seems -- well, just to express for myself, that, you know, if one were constantly being told

this guy is a bad cat and there's pretty awful stuff about him but I can't really tell you details, the effect it would have on a lot of people would be to say, "Well, I wouldn't be asking these questions, if I were you, if you prize your political reputation, or if you fear the embarrassment of later information coming out or whatever. It would ruin your reputation."

I want to make it clear I am not accusing them of that being the motive, but I think that was the effect of this constant sort of dissemination of this notion.

With me, it has the opposite effect because I was so alarmed by it that it made me feel all the more strongly of getting to the bottom of it.

MR. WALDMAN: Do you think it might have had an effect on the Ministers in terms of their conduct of the case, that they were being told by other people that he was a bad person, or that might have been the intent of this?

MS McDONOUGH: I absolutely feel that. I just feel that it was, to a large extent, designed to make people very wary of getting very much into it.

MR. WALDMAN: Perhaps I could have the witness be shown --

MS McDONOUGH: But what I found most alarming was the notion that somehow it's not their business to know, or it's certainly not my business to know, or that Canadians have no business knowing.

MR. WALDMAN: That's a second theme I want to get to.

Perhaps before I get to that, could I have the witness be shown DFAIT 548?

I think I sent this to you. I have a copy.

Mr. Commissioner, can I just hand her my copy?

THE COMMISSIONER: Certainly.

--- Off microphone / Sans microphone

--- Pause

MR. WALDMAN: So have you had a chance to review that?

MS McDONOUGH: Yes, I have looked it over.

--- Pause

MR. WALDMAN: Just so everyone will know, this is a memo dated September 8, 2003,

and for MJW, according to the DFAIT acronyms, would be the Assistant Deputy Minister of Global and Security Policy.

So this is a memo from someone by the name of Saunders about a meeting between the Assistant Deputy Minister of DFAIT and the Deputy Commissioner of the RCMP.

In paragraph 5, I am just going to read it to you for the record:

> "MJW (the Assistant Deputy Minister) stressed that we are nervous about this case because our Minister and the Prime Minister have put themselves out to help Arar and if the RCMP has more evidence than we know and Arar is a `nasty', it could be embarrassing for Ministers. Any and all information about Arar that the RCMP is in a position to share with us would be most helpful. (The Assistant Deputy Minister) added that

apart from the consular dimensions of the case it also has implications for our bilateral relations with Syria and, to a lesser extent, with the U.S."

Having read this document, how do you now feel about your concerns about this campaign of misinformation?

MS McDONOUGH: It just reinforces my worst fears or my suspicions about what was going on. I mean, that the concerns would be -- I just read through it -- how it's a problem that Arar has an articulate wife, how it's -- it just feels like the presumption of innocence goes right out the window here, that if there are allegations about somebody being a nasty, well, we shouldn't put ourselves out to bring them to justice, or we shouldn't put ourselves out to make sure that they are treated fairly in the courts because there might be some kind of political embarrassment ensue.

I mean, that is one reaction I have to that.

The other reaction I have is that

it brings to mind instantly the sense of outrage I felt when the Assistant Commissioner for the RCMP just made it clear that there would be no information of any kind shared whatsoever with Members of Parliament.

MS McISAAC: If the witness is referring to testimony before a Parliamentary Committee, I urge us to be careful.

THE COMMISSIONER: Right, yes.

MS McDONOUGH: All right. It is on the public record.

I'm not allowed to express an opinion about it? I guess that's what is being said.

Is that right?

THE COMMISSIONER: That is the position that is taken by the Clerk of Parliament.

MS McDONOUGH: Okay.

THE COMMISSIONER: You are not allowed to -- I am correct that this applies to the content of what was said at a committee?

MS FLOOD: The rule is that without the leave of the House a Member cannot testify about what was said in Parliament, in proceedings in Parliament, and "proceedings in

Parliament" extends to not only what was said on the floor of the House but also something that is said before a Parliamentary Committee, either by another Member of Parliament or by a witness.

MR. WALDMAN: Could I ask for clarification, because it was not my intent to ask about what was said but to ask her opinion about the position taken by the witness in terms of his -- not what he didn't say.

I suppose what I'm saying is, I am not interested in what the testimony is, but her reaction to what happened as a result of the testimony.

THE COMMISSIONER: I think so long as that doesn't disclose the content of the testimony, I understand there is no objection.

MR. WALDMAN: Okay. That's fine with me.

THE COMMISSIONER: I think you would have to be careful in asking that question and answering it that you don't then turn around and disclose the content of the answer.

MR. WALDMAN: Okay.

THE COMMISSIONER: But certainly this witness's reaction to events and

conversations that she had outside the House are acceptable, by all means.

MR. WALDMAN: Thank you.

I have another document. I thought it was part of the record, but it seems it is part of the RCMP chronology that we have, but I understand it hasn't yet been made a part of the public record.

Copies were made, and I am going to ask them to be --

MS McISAAC: Well, I thought that the RCMP chronology is a public exhibit.

MR. WALDMAN: I think the -- anyway, just to save time, I asked the Clerk and he seemed to think it wasn't.

MR. CAVALLUZZO: The RCMP chronology I understand is M-1 and M-2, which was made an exhibit in the in camera proceeding but could be made an exhibit in the public proceedings on consent tomorrow morning.

MR. WALDMAN: But for today I have --

THE COMMISSIONER: For today, so we can move ahead, why not let Mr. Waldman distribute the document?

MR. WALDMAN: That's exactly --

--- Pause

THE COMMISSIONER: We should mark this then.

MS McISAAC: I was under the impression that the RCMP chronology was a public exhibit.

That is an oversight on all of our parts not to have made it a public exhibit? We should attend to that business as soon as possible, I guess.

THE COMMISSIONER: In the meantime, this is Exhibit P-79.

EXHIBIT NO. P-79: RCMP Chronology marked M-1 and M-2 during in camera session

MR. WALDMAN: I would ask you to look at that and when you are ready I will ask one question on that.

--- Pause

MR. WALDMAN: There are two things I wanted to point out in this.

This is a briefing note to the Commissioner signed by Acting Commissioner Richard Proulx dated April 30, 2003.

In the second paragraph of the document it says:

> "Arar became a subject of interest during the `A' Division investigation Project A-OCANADA. Arar was approached by members for an interview but refused. Shortly thereafter Arar moved his family to Tunisia." (As read)

We know from other documents that have been disclosed that in fact this information is inaccurate, that Arar did not refuse an interview but hired a lawyer who offered an interview, and terms of the interview weren't released.

So how do you react when you see a briefing note from the Head of Criminal Intelligence Directorate to the Commissioner which has inaccurate information?

MS McISAAC: Mr. Commissioner, I fail to see the point of asking a witness, who has never seen a document before, has had no role in the preparation of the document, being asked to

comment on the document without any background. It strikes me as being hardly helpful to us.

MR. WALDMAN: With all due respect, Mr. Commissioner, Ms McDonough is a Member of Parliament. She was intimately involved and she has detailed over the last few hours her involvement in this case.

I have put before her a briefing note from the Commissioner which has inaccurate information in it and I would like her to respond to --

THE COMMISSIONER: I am going to permit the question, but I think what I can say about this line of questioning -- assuming for the moment that it is an inaccurate briefing note, and I won't make that finding yet -- but that would be sort of a conclusion and a reaction that I might make in a report.

So I'm not sure how much assistance it is to me, but go ahead with the question.

MR. WALDMAN: I will just ask you and then I have one more question on this document.

MS McDONOUGH: Well, my reaction

to the document again is that it fills in some blanks, that it fleshes out exactly what was wrong with what was happening.

I mean, I understood from an early date that after there was an approach made about Maher Arar being interviewed by the RCMP that he had, as one would expect many people would do, consulted a lawyer, who indicated that he would be happy to be interviewed, but in the presence of a lawyer.

So it is at variance with what I had understood all along.

Second, the reference to potential for embarrassment just reinforces my concern that there wasn't nearly enough concern about the potential for injustice, or maltreatment, or miscarriage of justice, but there was concern enough about potential for embarrassment in case somebody at some later date was found to be guilty of something through some kind of due process, then let's not do anything to bring him to justice.

I mean, I just find it chilling that that's -- but it confirms what my fears and suspicions were.

MR. WALDMAN: Thank you. Okay.

I want to move on for a second to the second message that I think you got from Minister Graham -- and then to Mr. Easter, but we will deal with Minister Graham -- which was "I can't really get information." That is reaffirmed by the document that I took you to before where the tone of this document is: Well, RCMP, if you have information, please tell us, from the Assistant Deputy Minister of Foreign Affairs.

What is your response to the fact that our Minister of Foreign Affairs was having a great deal of difficulty getting information about the RCMP file on Mr. Arar?

MS McDONOUGH: Well, I considered it deeply worrisome at the time, and this confirms there was a reason to be very worried, that, you know, you are left with the sense that our government has no real way to be accountable for what is going on because the RCMP are withholding information. I certainly saw that with my own eyes on some occasions.

That the result of that was a timidity on the part of the Prime Minister himself and Ministers and, in fact, they were counselled

to remain timid by their bureaucrats.

I mean, I find that deeply, deeply troubling in a democratic nation where there is supposed to be accountability. I find it even more troubling knowing that there is no proper oversight or accountability mechanism for the RCMP.

I mean, there needs to be, in regard to such serious matters, some kind of review process that ensures there is, in fact, oversight and accountability, and what it adds up to is a great deal of potential for abuse and injustice to people without there being any accountability.

MR. WALDMAN: Well, if we take it one step further and go to the message that you received from Mr. Easter, who was the Solicitor General and who was the Cabinet Minister who is directly responsible for the RCMP and for CSIS, and if I understood you correctly, he himself said he would give you a briefing, he couldn't. He implied that he wasn't able to obtain information.

MS McDONOUGH: You know, and I find it awkward, in a way, to be reporting on that, because I don't wish to in any way single

him out as an individual person. It is more the fact that a Solicitor General would actually find himself in that situation, and I think, from my point of view, in a moment of candour, actually expressed his own frustration about that, should be cause for worry. And I think was to him.

It is not for me to express what his further thoughts on it were, but I guess the fact that he was prepared to be so candid just further reinforced my feeling there is something altogether wrong with what is happening here that needs to be addressed as a matter of public policy.

MR. WALDMAN: Okay. Now, I'm going to hand you up some -- these are the newspaper reports that I faxed everybody, so I believe everyone should have them but...

--- Pause

THE COMMISSIONER: Should these be marked as an exhibit then?

MR. WALDMAN: They are part of the disclosure motion. All of these were filed. It might just be convenient to have them as a separate exhibit.

THE COMMISSIONER: Any comment

on that?

I think it makes sense.

Exhibit P-80.

EXHIBIT NO. P-80: Newspaper reports

MR. WALDMAN: You have seen these newspaper --

MS McISAAC: Mr. Commissioner, again, I am just having a great deal of difficulty with the point of this evidence.

We are now asking the witness to comment on a number of newspaper articles, which presumably -- with no disrespect, Ms McDonough -- but the witness is not familiar with what happened in the sense of being a participant in the various events and is being asked to comment on newspaper articles, and I fail to see what the point of this is.

THE COMMISSIONER: Well, let me just respond.

The last line of questioning I thought was perfectly appropriate. I mean, it was addressed towards a concern that those who were responsible for making efforts to have Mr. Arar returned, whether or not -- I am not commenting on

whether it is right or not, whether they had the full picture and whether or not they had concerns about embarrassment and so on.

So that I would have thought a line of questioning along those lines would be appropriate as to the efforts that were made by Canadian authorities to have Mr. Arar returned.

Again, as I keep repeating, I am not commenting on the value of the actual evidence itself.

If this line of questioning is pursuing that same theme, then I would have thought it is open to be explored on cross-examination.

I haven't heard any questions about Exhibit P-80 yet so I'm not sure where it's headed.

MR. WALDMAN: Perhaps I could just clarify?

Some of these leaks have to do with comments made by Mr. Easter, and I want to take her to those because it is directly relevant to the last line of questions in terms of the statements that he made. Some of it just has to do with leaks by senior officials, and I just want

to ask her to comment on the fact that people were talking to the media from the government anonymously about Mr. Arar.

It won't take me very long, but I just wanted to --

MS McISAAC: Sorry. Do you know who was responsible for the leaks, Mr. Waldman?

MR. WALDMAN: No. But they are identified as senior government officials.

MS McISAAC: Senior government officials.

MR. WALDMAN: Unless you want to subpoena the authors of the report and see if they will answer the question, then...

THE COMMISSIONER: Go ahead. If we can, objections and comments should be made through me. I don't want to make this overly formal, but let's keep some order here so in future people make objections through me and replies through me.

Go ahead, Mr. Waldman.

MR. WALDMAN: Okay.

The first article is from the Ottawa Citizen July 24, 2003. In the second paragraph -- this is the one leak that was before

Mr. Arar came back, on the second column, the second paragraph:

> "One official would only tell CanWest Service that Mr. Arar is a `very bad guy'."
> (As read)

What is your view in terms of the conduct of officials, assuming that Mr. Fife accurately reported that he had a conversation with a senior Canadian official who told him about Mr. Arar in terms of your efforts to get him back to Canada?

MS McDONOUGH: Well, again, each time something like this happened it just added to -- not just my own concern, but I think the concern of a great many people who understand what it means to have due process of law. The frustration that people felt about what is going on here with respect to leaks that clearly are designed to undermine Maher Arar's credibility. It seemed quite clear without there being any accountability attached, whatever.

It is a repugnant, repugnant practice. I actually think the word "leak" probably isn't accurate. It's a deliberate

dissemination of partial information that is either -- well, it is designed to create a certain kind of impression. I think for a lot of people that would have created an impression of guilt before there had been any kind of due process whatsoever to determine if there is any guilt involved.

MR. WALDMAN: So without going through all of the specifics of the other documents, there are several that we found after Mr. Arar returned, the most notorious being the Juliet O'Neill article, and then others where they are 100 per cent sure that he trained in Afghanistan.

So what was, in your view, the purpose of these newspaper articles that were released --

MS McDONOUGH: It added up to a consistent feeling of an active campaign of disinformation, and I had no way to determine who is doing it, where it's coming from.

I will say that when Juliet O'Neill found her house raided that I called her just in an absolute rage to say, "What is going on here?" I don't think it would be an exaggeration

to say that she was utterly shell-shocked and, you know, it seemed quite clear that it was designed to have a chill effect on other reporters, which in a free and democratic society is in itself terrifying.

So it just was a fairly consistent picture.

MR. WALDMAN: To your knowledge, did any other Members of Parliament have briefings about Mr. Arar during the time he was still in detention?

MS McDONOUGH: Somewhere along the way I came to understand that at least Diane Ablonczy, member of Conservative Caucus did.

I don't know whether Stockwell Day had a briefing or not, but I do know that at least on one occasion he publicly indicated that he was very, very angry that the Canadian government was doing such a bad job in protecting us, in carrying out its security functions, that they let this terrorist, Maher Arar, sort of slip through their hands and it was left to the Americans to determine that this guy, you know, was a bad cat and should be sent to Syria.

At the time I was just outraged

and actually went to him and said, you know, on what basis would you reach that -- I mean, what happened to the presumption of innocence?

And I can't honestly say whether I ever was able to confirm if he had a briefing or not, but I understand that Diane Ablonczy did, who was in the caucus and we worked together. She would be better able to answer questions about whether --

THE COMMISSIONER: I think that's a fair point, actually, if you would, both with the questions and the answer, confine them to things of which Ms. McDonough has actual knowledge.

MS McDONOUGH: I will say one thing I found surprising is that my requests to have a briefing had been denied. But in apparently the case of at least one Conservative member it was granted. And I will have to say -- and this is not very flattering -- that it deepened my suspicion about the idea that those who are quite prepared to fling around sort of vigilante kind of justice are much more likely to get a briefing from the authorities than I would be.

MR. WALDMAN: I have one final area I want to cover.

In terms of the Foreign Affairs Committee, I am not going to ask about testimony before the committee, but I want to ask about Ms Mazigh's efforts to appear before the committee.

Could you tell us what happened with respect to Dr. Mazigh's efforts to appear before the committee?

MS McDONOUGH: I would have to revisit some of the documentation, but my recollection is that there were certainly some members of the committee that were quite prepared to facilitate that happening.

I think I am correct in saying that the Parliamentary Secretary for the Foreign Affairs Minister was not nearly as supportive of that happening, but --

THE COMMISSIONER: I would just as soon, if you are not certain of the facts, that --

MS. McDONOUGH: Yes, I would have to revisit the record to be absolutely certain of that.

MR. WALDMAN: I'm done,

Mr. Commissioner. Thank you.

THE COMMISSIONER: Okay; thank you.

Ms. McIsaac?

--- Pause

EXAMINATION

MS McISAAC: Ms. McDonough, my name is Barb McIsaac, and in case you haven't guessed already, I represent the Government of Canada in respect of this inquiry as agent for the Attorney General.

I would like to start with respect to the discussions you would have had with Mr. Graham when you met him in Halifax on -- I think it was about the 18th of October, if I am not mistaken, in 2002, just after Mr. Arar had been deported from the United States and before he was located in Syria.

Have I got the date wrong, Ms Verma?

MS VERMA: The 16th or 17th.

MS McISAAC: The 16th or 17th, pardon me.

You are aware, of course, at that point in time nobody knew where Mr. Arar was, and

that the Government of Canada, particularly the Department of Foreign Affairs, was making efforts to find him; indeed you were making your own efforts to find him.

MR. WALDMAN: Well, I don't think that's a fair reflection of the evidence, that no one knew. There is certainly a lot of documentation that I have seen in the public record that said as of the 10th they had confirmed that he was in Syria.

So I have some difficulty with that question.

MS McISAAC: I'm sorry. The Syrians were denying having Mr. Arar in Syria at that period of time? You will recall that?

MS McDONOUGH: That's true. That's true.

I mean, I would feel more confident if I had a calendar in front of me; but, yes.

MS McISAAC: Actually, there's one right over there, if the Registrar could move it so you can see it. It is a calendar for the period in question.

But my understanding is that at

the same period you spoke to the Syrian Ambassador to Canada, asking him for confirmation as to whether Mr. Arar was in Syria, and he was unable or unwilling to give you that confirmation; correct?

MS McDONOUGH: That's right. But the reason I was asking him and not every other ambassador is because there was already a great deal of commentary about his having been sent to Syria. So it would seem to be an obvious thing that I would go to the Syrian ambassador to say, "Is it true, and can you please help find him?"

MS McISAAC: No. It makes perfect sense. I was just trying to set the stage for when you had your discussion with Minister Graham, his department and he were also trying, as he told you, to find out exactly where Mr. Arar was; and if he was in Syria, to have that confirmed.

So what I am simply pointing out or asking you to confirm during that period of time is that there was a lot of disinformation, lack of information, confusion over the situation and that likely Mr. Graham was hesitant to make any firm statements about anything until he had had the facts confirmed for him as well.

Would that be fair?

MS McDONOUGH: I think that would be fair.

MS McISAAC: And I think you indicated in your testimony that throughout your discussions with Mr. Graham, he was certainly concerned about the fate of Mr. Arar and expressed that concern and his compassion for the situation Mr. Arar found himself in.

Is that correct?

MS McDONOUGH: Yes, I would say generally that was true. I became increasingly frustrated at his timidity or at the lack of what seeming -- you know, resolve followed by appropriate aggressiveness in trying to solve it.

But I think it would be a fair characterization that he indicated to me that he was sympathetic to this family and to Maher Arar.

I will say that I was furious with him that he had promised on several occasions to be in touch with Monia Mazigh and kept not being in touch with her. Now, eventually he was. But, you know, every hour, never mind every day and every week that passes, when the authorities who you think are supposed to do something don't

follow through and you are in the circumstances that the family was in --

MS McISAAC: But you are aware that the Department of Foreign Affairs, upon finally having Mr. Arar's presence in Syria confirmed, made arrangements and in fact had a consular officer in to visit Mr. Arar within a couple of days?

MS McDONOUGH: Yes, I am aware of that.

MS McISAAC: Now, turning to the issue of information from the RCMP, I take it you would agree with me that one of the fundamental underpinnings of a democratic society is an independent police force; correct?

MS McDONOUGH: Yes.

MS McISAAC: And that a Solicitor General, indeed any other member of the political part of the government, has to tread a difficult path in directing and being the Minister responsible for the RCMP but ensuring that the RCMP maintains the independence necessary for a police force; correct?

MS McDONOUGH: Yes, I would say that, which is why there need to be extraordinary

checks and balances because of the potential for abuse of that.

MS McISAAC: And I will suggest to you that, at least to some extent, Mr. Easter as Solicitor General and possibly even Mr. Graham as the Minister of Foreign Affairs may have been in a position where they were unable to divulge operational information to you which they might have obtained?

MS McDONOUGH: I actually don't believe that because -- and maybe this is naive on my part -- I actually believed they were telling me the truth, which was that they themselves were alarmed.

MS McISAAC: And that was going to be the next part of my question.

To the extent that they may not have been able to obtain information, is it not likely that at least to a certain extent information that the RCMP may have had about their investigation, being operational information, was information which it would not be appropriate for them to share with the political -- well, their political masters of the day?

MS McDONOUGH: It's very difficult

to take myself from this date in 2005 back to what was going on in conversations way back then. But I would have to say that whatever benefit of the doubt that I might have been willing to give at an early date about the possibility that this was a matter of maintaining the independence, appropriate independence of RCMP, long since passed because I was so alarmed by many, many subsequent things that happened.

In other words, I think early on, I probably would have been prepared to give the benefit of the doubt in that regard, but not as events unfolded and more and more it became evident to me that there was a great deal that was going on that was unacceptable.

MS McISAAC: Well, of course, you are in the situation we all are, particularly the Commissioner, who has to evaluate today events that occurred a number of years ago.

But my point was that there is, and you will agree with me, I gather, there is a line that needs to be maintained between politicians and an independent police force?

MS McDONOUGH: Yes. I don't dispute that.

MS McISAAC: Okay. With respect to the information that was discussed by Mr. Waldman regarding the leak of information by whomever, which was subsequently printed in the Ottawa Citizen, I understand that you were, as you said, outraged by the leak of that information.

Did I understand you to say that you were also outraged by the search of Juliet O'Neill's premises?

MS McDONOUGH: Yes, I was.

MS McISAAC: All right. And had it not been for the decision of the media to print the information in that leak, it would not have come to the attention of the Canadian public.

Were you not outraged by the decision of the media to print the information that was so disparaging of Mr. Arar?

MS McDONOUGH: I was alarmed by it. But, on the other hand, I believe particularly when there is a lack of accountability around what is happening, that to clamp down on freedom of the press is a really serious problem. I agree that there is a balance that needs to be maintained, but in the circumstance of what was happening, I would say

more transparency rather than less transparency at least would bring to light there is something really wrong with what is going on here.

MS McISAAC: Now, you were asked to comment -- if the witness could have Exhibit P-79?

THE COMMISSIONER: To your left, I think.

MS McISAAC: This was the briefing note to the Commissioner of the RCMP.

I take it that when Mr. Waldman asked you a few questions about this briefing note a few moments ago, that would have been the first time that you had seen this briefing note?

MS McDONOUGH: I have to say that I have read a lot of documents, but I would -- if you don't mind, I am just going to take a minute to really be sure of what I am about to say.

--- Pause

MS McDONOUGH: I certainly had read somewhere a document that referred to the potential for embarrassment of the Prime Minister becoming involved in the Arar case because of the previous incident involving the Egyptian embassy bombing. Whether it was precisely in this

document or in some other context, I can't say absolutely for sure.

MS McISAAC: Well, may I suggest that since this is an internal RCMP briefing note that has not yet been made public by this Commission, I suppose there is some possibility we have seen it. It is part of an Access request. But you would not have seen it in the course of your normal duties, would you?

MS McDONOUGH: No, no.

MS McISAAC: And indeed you would not be aware, I suggest, Ms. McDonough, of the conversations that might have taken place in the RCMP prior to the preparation of this briefing note or the reasons why the Commissioner would have asked for it?

MS McDONOUGH: No, that's true. That's true.

MS McISAAC: You would not be aware of other information that might have been provided or discussed by the Commissioner or with the Commissioner prior to this note being produced for him?

MS McDONOUGH: Well, that's true.

MS McISAAC: Right. So you are

commenting solely on what you read in this note at this time today before the Commission?

MS McDONOUGH: Well, I am commenting on it in the context of a great many other things that I was privy to that happened and how it seems to simply reinforce some of the things that I have --

MS McISAAC: Sorry to interrupt.

Not in the context of the circumstances in which this note came into being, because you have no knowledge of it?

MS McDONOUGH: No. That's right. That's right.

MS McISAAC: Thank you very much.

THE COMMISSIONER: Mr. Cavalluzzo?

MR. CAVALLUZZO: I just have one question, Ms. McDonough.

EXAMINATION

MR. CAVALLUZZO: In the course of your responding to the questions of Mr. Waldman, you stated that you were aware that Member of Parliament Ablonczy was briefed.

I should tell you in the course of our investigation, we have spoken to Ms Ablonczy, and I am wondering if you could help us in terms

of your knowledge. Is it direct knowledge of her briefing and who was she allegedly briefed by?

MS McDONOUGH: I don't know that, actually. I would just have to say that at I believe the time when -- again, I don't know how far I am allowed to go to refer to Hansard. But there was some fairly intensive questioning in the House by both Ablonczy and by Stockwell Day, which either reinforced my having understood they had been briefed or caused me to think so.

MR. CAVALLUZZO: But you have no direct knowledge that she had been --

MS McDONOUGH: No, I don't, no.

MR. CAVALLUZZO: Okay. Thank you. I have no further questions.

THE COMMISSIONER: Thank you, Mr. Cavalluzzo.

Then that completes your evidence, Ms McDonough. Thank you very much for coming.

MS McDONOUGH: Thank you very much.

THE COMMISSIONER: And for your taking time from your very busy schedule.

MS McDONOUGH: Good luck. I know it is a daunting task.

THE COMMISSIONER: Let me just say that I know that you spent a good deal of time preparing, and I do appreciate your coming and giving evidence very much. Thank you.

MS McDONOUGH: Thank you.

THE COMMISSIONER: That completes today's proceedings.

We are going to start at 9:30 tomorrow. So we will rise now until 9:30.

THE REGISTRAR: Please stand. Veuillez-vous lever.

--- Whereupon the hearing adjourned at 4:56 p.m., to resume on Thursday, May 19, 2005, at 9:30 a.m. / L'audience est ajournée à 16 h 56, pour reprendre le jeudi 19 mai 2005 à 9 h 30

Lynda Johansson

Lynda Johansson,

C.S.R., R.P.R.

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